OAR 690 Division 512 Extended Public Comments Received

Below is a tabulation of the written comments received during the public comment period for the OAR 690 Division 512 Harney Basin Groundwater Rules. Recordings of the public hearings can be found on the ***Division 512 Webpage***

ACW Rock
Andy Root
Antar Pushkara
Anthony Ellis
Ava Bowen
Bachman Farm Bays
Bill Jaeger
Bill Mosser
Bob Bumstead
Bob Hunter
Brandon Haslick
Brenda Smith
Bryce Otley
Burns Paiute
Cameron Molt
Casey A. Otley
Charlie Harris
Cheryl Larsen
Christy L. Sanders
Chuck Gehling

City of Burns
Cliff Mitchell
Craig Neher
Dan Otley
Dave Heller
David Hohler
Debbie Gouveia
Debbie Webb
Delores Porch
Denis Kryger
Denny and Corinne
Donald Doverspike
Donna Harris
Doug Heiken
Earl Bowyer
Ellen Franklin
Environmental Defense Fund
Erick and Christy Keerins
Erick Keerins
Erick Young
Erik and Laura Steen
Fran Recht
Fred Otley
Gary S. Marshall

Gerrit A. Jager and Patricia M. Jager
Glenn Harris
Gloria and Bob Ziller
Greg Kupillas
Harmony Burright
Harry L. Foster
Jack and Emilie Glascock
Jane McCleery
Jacob Davis
Jennifer Taynton
Jerry Grondin
Jesse Svejcar
Jill Bachman
Jim Coverdell
Joan Suther
Jocelyn Hough
Joe Moore
John Oconnor
Jolene Gouveia
Julie Riel
Julie Weikel
Kacie Otley
Karen Lewotsky
Kathleen McNeil

Katie Baltzor
Katie Otley
Katy Mcfadden
Kelly Singhose
Ken Bierly
Kirby Isaac
Kristopher Robbins
Kyla Potter
Larry Otley
Laura Webb and Robert B. Berstein
Laurie O'Connor
Leon Werdinger
Lesley Richman
Linda Greenman
Loren Fennell
Lorissa Singhose
Lou Davies
Lower Blitzen Voltage
Lydia Garvey
Marjorie Stuart
Margaret Swoboda
Margaret Wallis
Mario Patrelie
Mary Jo Davies

Matt Stashin
Melissa Brown
Melodi Molt
Michael T. Williams
Mike Dahlstrom
Mike Peila
Mindy Sheley
Neal Hadley
Nellie Franklin
Nick Schott
Nikki Morgan
Normandy Helmer
Oregon Groundwater Association
Otley Brothers
Patrick McCleery
Patty Dorroh
Paty Jager
Paul Engelmeyer
Penelope Kaczmarek
Peter Tronquet
Philip Klimbal
Representative Owens
Richard Stoltze
Rob Frank

Rob Kuntz
Rob Sharp
Robert Long
Robert N. and Sandra N. Cargill
Roger Sheley
Ron Garst
Ryan J. Krabill
Sabrina Maki
Sally and Joe Hendry
Sandy Potter
Sara Pritt
Scott Campbell
Shani Hodge
Sheryden Cary
Stephanie Bowen
Steve Parsons
Susan Mates
Susan Otley
Terry Keim
Theo Dreher
Thomas Berridge
Thompson Ranch Inc
Tim Devine
Todd Sandell

Tom and Barbara Howard
Tom Cooney
Tony Svejcar
Trenton Potter
Vineto Andre
Walter Petty
Water League
WaterWatch
Wayne Evans
Will Henry
Zach Freed

October 1, 2025

Attn: Water Resources Commission

Oregon Water Resources Department
725 Summer St. N.E. Suite A
Salem, OR 97301-1271

RE: Public Comment in Support of the Harney Basin Groundwater Management Petition

As a local business owner in the Harney Basin, I am writing to express my strong support for the petition, which is proposing a more balanced approach to groundwater management in our region. The petition reflects a thoughtful and common sense response to the complex groundwater challenges we face—one that protects water resources while also safeguarding our local economy, jobs, and way of life. The petition recognizes that groundwater conditions vary across the basin and that the current proposed regulatory approach would be unnecessarily harmful to small businesses like mine.

Key Reasons I Support the Petition:

- **Targeted Regulation Based on Real Conditions:**
  The petition wisely focuses regulatory action in areas where there are clear, science-based thresholds for concern, while allowing for voluntary and cooperative actions in areas where groundwater is stable. This ensures that regulation is meaningful and not overly broad.
- **Minimizing Economic Impacts:**
  State law requires minimizing the economic impacts of regulation, and the petition does just that. It presents a path forward that avoids unnecessary harm to local businesses, avoids disruptions to local jobs, and maintains essential services.
- **Protection of Groundwater Rights:**
  The petition better protects legally established groundwater rights and respects those who have complied with state water law. It also encourages fair compensation for those who voluntarily give up rights, or are impacted by necessary regulations.
- **Support for Domestic and Stock Wells:**
  Recognizing that many families and ranches rely on shallow wells, the petition calls for continued financial and technical support to address the impacts of declining water levels—ensuring public health and safety remain a priority.
- **Encouraging Local Solutions, Public Input and Transparency:**
  Harney Basin has a strong history of collaborative problem-solving. This petition builds on that legacy, inviting the state to work with local stakeholders instead of imposing top-down solutions. It is rooted in public engagement and reflects the voices of those who will be most affected. It embodies the legal requirement to include affected stakeholders in water management decisions.

- **Path Toward Recovery:**
  Importantly, the petition outlines a clear pathway for lifting a critical groundwater area designation if groundwater is being sustainably managed—offering hope and a tangible goal for our community.

In summary, the petition offers a balanced and reasonable path forward—one that protects water, people, and our future. I urge the Water Resource Commission to support this petition.

Thank you for considering my comments.

Sincerely,

Scott McManus

ACW Rock & Ready Mix

October 1, 2025

Attn: Water Resources Commission

Oregon Water Resources Department
725 Summer St. N.E. Suite A
Salem, OR 97301-1271

Subject: Petition for Rulemaking

My name is Andy Root. I am a landowner, irrigator, business owner, father of seven, grandparent of 14 and a lifelong resident of the Harney Basin. I also served as a Division 512 RAC member.

In the Harney Basin, we have a problem: water has been over-allocated. This didn't happen overnight—it developed over the last 30+ years—and it cannot be solved quickly without devastating our community.

The rulemaking process grew to be so complicated that many people no longer felt they could participate. Community members felt unseen, unheard, and uneducated in the process, so they stopped showing up. Unless you held a higher education degree in hydrogeology or were an OWRD staff member, it seemed designed to go right over your head. For someone like me—with only a high school education—the process has been overwhelming, frustrating and discouraging.

We need a gradual, common-sense approach that reduces water use without tearing apart our way of life. Agriculture isn't just what we do—it's how we feed our families, keep our community alive, and build something to leave for our kids and grandkids. I want my grandchildren to inherit more than a pile of legal bills fighting an agency that has chosen to not work collaboratively.

Through the RAC process, it felt like our voices didn't matter. That's why we came together and submitted a petition—because we weren't being heard and our questions went unanswered. There must be a common sense approach,and a more equitable way to protect our natural resources while still allowing us to make a living. As commissioners, you now have the opportunity to support our community and our petition.

Sincerely,

Andy Root

MEINZ Kelly A * WRD

From: Antar Pushkara <pushkara50@yahoo.com>
Sent: Thursday, October 2, 2025 3:56 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from pushkara50@yahoo.com. Learn why this is important

- I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.

Sent from Yahoo Mail on Android

October 1, 2025

Attn: Water Resources Commission

Oregon Water Resources Department
725 Summer St. N.E. Suite A
Salem, OR 97301-1271

RE: Public Comment in Support of the Harney Basin Groundwater Management Petition

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  Recognizing that many families and ranches rely on shallow wells, the petition calls for continued financial and technical support to address the impacts of declining water levels—ensuring public health and safety remain a priority.
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  Importantly, the petition outlines a clear pathway for lifting a critical groundwater area designation if groundwater is being sustainably managed—offering hope and a tangible goal for our community.

In summary, the petition offers a balanced and reasonable path forward—one that protects water, people, and our future. I urge the Water Resource Commission to support this petition.

Thank you for considering my comments.

Sincerely,

Anthony Ellis

ACW Rental

MEINZ Kelly A * WRD

From: Ava Bowen <bowenavaa@gmail.com>
Sent: Friday, October 3, 2025 7:09 AM
To: WRD_DL_rule-coordinator
Subject: Division 512 Rules & Petition

Some people who received this message don't often get email from bowenavaa@gmail.com. Learn why this is important

My name is Ava Bowen and I am a senior at Crane Union High School, graduating in the spring. My family has a small farm between Crane and Princeton. I will be attending college next year and have altered my original plan of starting out at a four year university and am currently applying to two-year community colleges with the hope that I can transfer in two years. This is not my first choice, but is a result of an increasingly challenging economic environment where the cost of everything for a family farm is going up dramatically… power, insurance, fuel, etc. Added to this is the uncertainty and fear surrounding the ability of our farm to carry on once the Division 512 Rules are put in place. My parents laid out that they simply cannot afford to send me and my two siblings that are graduating next year to four-year colleges and that we will have to alter our plans by working during school and starting at JuCo. This is fine, I have accepted that sometimes our first choice is just not feasible.

Why I'm commenting on the rules proposal and the petition today is that I do not believe the "economic impact" study factors in the true cost of economic value lost by the Division 512 Rules proposal.

The fact that the program I wish to transfer into at OIT in two years may be out of reach for my family means that my future earning potential will be stunted. Burns will not likely be a place I can return once I have the health-related certifications and degrees that I hope to obtain because the public service sector will be decimated. The community I grew up in and love will no longer be a place I can land after my education. How many small-town kids are facing the same bleak future? How many small towns have had their young people driven away due to over-regulation and loss of economic opportunities?

The state is required by law to minimize economic impacts. The petition presents an alternative that minimizes economic impacts on small businesses and the community.

The petition encourages programs that will fairly compensate groundwater rights holders who voluntarily cancel their groundwater rights or can no longer use their water right due to regulation.

The petition protects public health, welfare, and safety, by preserving jobs, minimizing cuts to public services, protecting municipal water supplies, focusing regulation where domestic and stock wells have been most impacted, and allowing for an economic transition to absorb the impacts of cuts in groundwater use.

The petition will reduce conflict and the costs associated with litigation and will allow our community and groundwater users to invest in water conservation instead.

Thank you,
Ava Bowen

Bachman Bay Farms

Malheur Gap Farm
Dominic & Jill Bachman

51789 highway 78, Princeton, OR 97738

Bachmanbayfarms@gmail.com

October 1, 2025

Division 512 Rules Coordinator
Oregon Water Resources Department
725 Summer St. N. E. Suite A
Salem, OR 97301-1271
WRD_DL rule-coordinator@water.oregon.gov

Subject: Dominic and Jill Bachman comments on the Harney Basin community petition filed September 12

We are first generation farmers. We recently put our life's savings into owning a hay and cattle farm in Princeton, Oregon at the far southeastern edge of the current 512 rule critical groundwater area. We believe in the American dream of owning a farm. Of course, we don't own our farm the bank does, and we purchased at a time of high interest rates and low hay value. That may not have been the smartest move however, we specifically chose the location of this farm based on the seniority of its water rights and a location known for excellent quality and quantity of groundwater. As of May 2025, we learned that the Windy Point Subarea had been removed, and we are now part of the Northeast Crane subarea if the 512 rule goes through as proposed. The petition moves us to the blitzen voltage groundwater reservoir and that makes so much more sense based on usgs science and our own knowledge of what wells are similar.

On a scale of Harney basin, we are a small operation. However, if we lose our water rights, our bankruptcy will hurt just as much as it would for anyone. Our retirement, our children's inheritance and our ability to own a piece of the

American dream is at risk here. If we don't feel the department is taking our concerns seriously, we will be one of many in this county taking legal action against the OWRD over these new rules. If the petition were adopted as proposed, we would be much less likely to be taking legal action.

The state has been over-allocating water and allowing transfers that didn't make sense for decades and now wants to come down on this basin much harder than it has ever done anywhere in the state. This feels very unfair and puts us into defensive mode. We are frustrated with the fact that we have legal state allocated water rights being used lawfully and it feels like the state is missing a huge opportunity to collaborate and conserve resources in the Harney Basin.

As new farmers in the area our neighbors have greeted us with open arms helping us at much cost to themselves without asking for anything. When a pickup or tractor drives by our farm, we wave, and folks wave back, and we know those people are our friends. When our neighbor's hay bailer caught fire this July, another neighbor was immediately there with a plan to help them get hay done before the fire was even put out! We have always wanted to live in a place where neighbors truly take care of each other, and we have found that place. We would give everything we have to protect our farm and our community.

We currently irrigate with two agricultural wells using four, older wheel lines some of them over ¼ mile long and about a dozen handline sections. We move water twice and sometimes three times a day. It is exhausting work. We grow alfalfa, grass hay and have leased out our land to fall cattle grazing. Although we have only owned this farm for three years, we talked extensively with the previous owners who lived and farmed here for 26 years, as well as talking to two different farmers who leased this property. They all said the same thing. They have not seen any major drops in water well levels and even on the driest of years this place has had more than enough water for irrigation needs.

We spent many years living in the Weaver Springs area, and we saw firsthand the impacts of groundwater static levels going down drying out the land, neighbors having to drill deeper and deeper for domestic wells. We specifically moved to Princeton because the area is known to have lots of high-quality groundwater and few problems with wells.

We believe in water conservation and feel flow meters should be installed on every ag well and those meters should be checked and quantified by a third party and all costs associated with this should be paid for by the department.

We are worried about groundwater and surface water in the basin and would like to see the department focus on positive ways to improve the position they have put us all in. The petition is a much better way to do this than the 512 rules proposed by the state.

1- Our farm is at the far eastern edge of what the state 512 is calling the critical groundwater boundary. Our eastern boundary is the end of the boundary and any farm east of us has no water curtailment. We are within one mile of a farm south of us in the Malheur gap that is not even considered in the same basin as us according to the department and it is facing no water restrictions. If our farm was on the other side of Highway 78 we would be in a different subarea as the farms directly across the road from us are all in the Lower Blitzen-Voltage subarea. Does the department believe highway 78 somehow effects groundwater?
2- We agree with the petition boundary and feel our farm should be in the Lower Blitzen-Voltage Groundwater Reservoir, all our wells and water and well drillers and geology seem to fit with that. We can easily see the north Steens across the road from our house that is our watershed. There is no cone of depression in our area. Contour maps show how we are so different that some of the areas in the Crane subarea. The geologic feature of windy point seems pretty obvious as a separation and that the state 512 rules were are in the wrong area. We believe all the irrigated lands south of windy point including farms owned by Thompson, Wilson, Potter and Otley should all be in the Blitzen-Voltage groundwater reservoir.

    - In the 2022 USGS hydrologic budget for the basins groundwater they clearly delineated the southern region of the basin as everything south of windy point and based that line of major geographic and cultural features. See map from page 20 of SIR 2021-5128: Hydrologic budget of the Harney Basin groundwater system, southeastern Oregon (usgs.gov))

- On page 8-9 in the 2024 Groundwater Level Trends in the Proposed Harney Basin Critical Groundwater Area report it appears to us that all the wells that are reported on south of windy point are similar to the wells of the lower Blitzen-Voltage Subarea. Further evidence that this area is more like that subarea than to the Northeastern Crane Subarea.

- We feel that the department proposing 39% decrease in the L. Blitzen-Voltage Subarea is not founded in science and they failed to show us how this level of cuts make any sense in this area. Especially when other subareas with much more widespread water losses are receiving less curtailments and currently many pivots are being transferred into the lower Blitzen subarea. Just today we drove by and saw a new pivot being constructed on what has historically been sage steppe habitat. How does this make any sense? How can the department justify cutting an area with very little water loss more than they are cutting some of the areas with extensive water loss? How can the department justify the need to cut an area 39% (the second highest curtailment of all subareas) and yet allow water rights and new pivots to be transferred into this area? The petition would put us in the Blitzen voltage groundwater reservoir and puts us in an area with a 10% voluntary reduction which is very doable in our area.
- We question the departments believe of hydrologic connection and everything being one groundwater reservoir. Why are wells near each other so different? Why are many wells not losing water if everything is connected? The petition's five groundwater reservoirs seem much more logical and make sense based on local knowledge of groundwater.
- We believe the departments job is to protect our water rights, and the department should be using the existing definition of "reasonably stable" consistent with current law.

- The department has known about water issues in the basin for decades yet is still allowing water rights to be transferred from areas such as weaver springs how is this protecting water rights? We believe the framework should be flexible if groundwater losses in some areas are reduced those areas should receive less cuts.
- We believe this petition will pair extremely well with the voluntary agreements, which many of us feel are the only reasonable options available to irrigators and the department should do everything in its power to support and take seriously any local voluntary agreements that are created by the water users.

The department should be doing all it can to create programs within the department, FSA and NRCS to reduce water use and help irrigators transition ground out of irrigation or to more efficient systems instead of focusing on policies that will shut off irrigators. We don't understand why this has not been the focus of the department's efforts in the first place. The department should be funneling conservation assistance expertise and money into programs to help with the situation they created. The current FSA program and state department conservation programs do not work for us and need significant modification.

The department should also assess the viability of utilizing and funding the High Desert Partnership to find creative ways to assist the farming and ranching community as we transition to reduced water use. We should find a way for funds to hire Harmony Burright

The petition recognizes that groundwater conditions are different in different parts of the basin and that groundwater will be more effectively managed as separate groundwater reservoirs rather than treating the whole basin as one groundwater reservoir.

• The petition focuses regulation in the areas where there are clear problems that meet the thresholds for regulatory action.

• The petition encourages voluntary actions in parts of the basin where groundwater levels are reasonably stable and expected to remain reasonably stable.

• The petition adjusts proposed boundaries to better reflect our understanding of groundwater conditions in the basin.

• The petition will continue to encourage the collection of information to target actions that restore or maintain the flow of springs important to the Malheur National Wildlife Refuge in partnership with the Refuge.

• The petition does a better job of protecting groundwater rights that were legally granted and the people who have dutifully followed all of the state laws.

• In the Harney Basin we have a track record of working together to solve problems collaboratively. The petition recognizes this history and invites the state to work with us.

• We believe the petition encourages programs that will fairly compensate groundwater rights holders who voluntarily cancel their groundwater rights or can no longer use their water right due to regulation. Without this our basin's economy will collapse and we will all be stuck in litigation for decades.

• We believe the petition will reduce conflict, and the costs associated with litigation and will allow our community and groundwater users to invest in water conservation instead.

Thank you for the opportunity to provide comments on the proposed petition. I hope that the department will seriously consider our comments.

Sincerely,

Dominic & Jill Bachman

Oregon State University
College of Agricultural Sciences

Department of Applied Economics
Oregon State University
213 Ballard Extension Hall
Corvallis, Oregon 97331-3601
P 541-737-2942 | F 541-737-1441
agsci.oregonstate.edu/appliedecon

To: Kelly Meinz, Oregon Water Resources Department
kelly.a.meinz@water.oregon.gov
Date: October 7, 2025

Re: Comments on Economic Analysis for the Division 512 Proposed Rules

In addition to my previously submitted comments, I want to comment on the economic analysis undertaken by ECOnorthwest in connection with the Division 512 proposal. It is important that the limitations of these kinds of models are understood by the audience for the analysis. The model used by ECOnorthwest for this analysis is known as an regional input-output model or economic base model. The specific version used is produced and sold under the name IMPLAN.

It is important to understand that these are "static models." The authors of the analysis mention this fact, but they do not say much about its implications. This model is static in the sense that it does not adjust over time in the way that an economy adjusts. The kinds of changes in supply, demand, price, etc., that occur in real economies (or in a general-equilibrium model) over time are not recognized or allowed for in IMPLAN models (The ECOnorthwest authors state that IMPLAN is a "partial equilibrium model" but this is incorrect). IMPLAN models assume a period of one year. They do not have a way to evaluate what happens in an economy over longer periods of multiple years where the economy is clearly not static, so using IMPLAN to evaluate the 30-year implementation of the DIV 512 proposal is an untrustworthy exercise.

There are many economic adjustments in a regional economy that may change very little in a given year, but will adjust over time in ways that will make the IMPLAN results lose their ability to offer accurate information. Two examples can help underscore the importance of this shortcoming in this case.

First, labor markets are assumed to be static in IMPLAN including the assumption of no change in the population in the region or the wages in each sector. In reality, counties in Oregon see inflows and outflows of people typically ranging from 6 to 8 percent each year (for both immigration and emigration). This is based on IRS income tax filing data. Depending on economic fluctuations, the net change could be positive or negative, with impacts on wages, incomes, and employment. IMPLAN models do not allow for people moving in or out of the region in this way, and so their static model will not capture changes that occur due to these movements. As a result they will omit, for example, how people moving to nearby counties will give a boost to the economies of those counties. The net effect of those movements may be a shift in the location of economic activity, rather than a larger loss or gain overall. And this could differ by a large amount from what a static IMPLAN model indicates for the county under study.

Another example would be the market for hay, where changes in prices, supply, demand, in Harney county versus nearby counties, would likely adjust to changes in ways that an IMPLAN

model does not allow for. Other market adjustments will occur due to other changes in the Harney economy, or changes in other counties and states. These dynamics in regional economies are not recognized or allowed in an IMPLAN model, and this limits their accuracy and hence their usefulness.

In general, a negative disruption in a regional economy results in some markets being out of equilibrium. A critically-important dynamic in a market economy is the way markets respond to disruptions to moderate and reduce these disequilibria and find a way to a new equilibrium. Because these forces tend to reduce the adverse impacts over time, overlooking them will lead to an overstatement of their negative impacts.

There is one other aspect of IMPLAN models that is important to recognize. They are focused on measuring levels of economic activity, not measures of welfare or net social benefit. The two should not be confused. Measures of farm profits and net farm income are different from measures of total farm revenue, for example. The differences in what these measures are intended to convey need to be recognized for purposes of interpretation.

For all these reasons input-output models such as IMPLAN are not used for peer-reviewed economics research with few exceptions. They are also not taught as part of graduate economics programs like our PhD program at OSU. General-equilibrium models are much preferred for estimating the impacts of shocks to a specific economy.

Thank you for the opportunity to share these comments.

Sincerely,

William Jaeger
wjaeger@oregonstate.edu

Public comments on Agency Proposed Rules – Division 512
October 2, 2025

My name is Bill Jaeger, and I'm a professor in the Department of Applied Economics at Oregon State University. Over the past six years I have been studying groundwater in the Harney Basin under a research grant from the US Department of Agriculture's National Institute for Food and Agriculture. This work was carried out by an interdisciplinary team including two faculty colleagues in my department and a US Geological Survey hydrologist, Stephen Gingerich, who, with his USGS colleagues, constructed a groundwater hydrology model of the Harney Basin. We coupled that model with an economic model of irrigated farming in the basin to create a hydro-economic model of the groundwater and irrigated system. Our main research findings were published in the peer-reviewed journal Water Resources Research last November. The paper is available online: Jaeger, William K., et al. "Advancing sustainable groundwater management with a hydro-economic system model: Investigations in the Harney Basin, Oregon." *Water Resources Research* (2024).

Our study enabled us to look at the Harney Basin as a regional system connecting hydrology and economics, within the context of the rules that govern water allocation. We looked at many detail-oriented questions, but also found the work illuminating on big picture questions about policy and management. Our model made it possible to understand what has happened in the past and also to simulate a range of future alternative scenarios looking 30 years into the future. We ran simulations for a suite of 15 scenarios on different kinds of actions intended to contribute to stabilizing groundwater. This work generated Insights on a range of questions.

OSU/USGS Study Findings

Before making some observations about the OWRD rule proposal and the alternative petition rule proposal, I'll summarize a few of our main findings about the Harney groundwater situation, many of these reinforce what has been recognized elsewhere:

I. The irrigated areas in the basin are hydrologically connected, which limits the efficacy of remedies focused on regulations only in some areas.

II. The total permitted groundwater irrigation pumping exceeded sustainable rates beginning in about 1993.

III. Nevertheless, between 1993 and the year 2015 (when the problem of declining groundwater was generally recognized), the total permitted groundwater irrigation pumping rights doubled.

IV. This kind of long lag between a) the time when permitted pumping rates exceed what can be sustained and b) when the evidence of the problem becomes apparent cannot generally be avoided; it represents a key characteristic making maintaining sustainable groundwater levels extremely challenging for managers.

V. Declining groundwater levels have raised costs and reduced well yields, but for most irrigators in the basin, current practices will remain profitable even as lower water levels make pumping somewhat more costly.

VI. Declining groundwater levels have impacted hundreds of domestic wells and stock water wells, with more than 70 wells going dry as of 2018. Many of these wells likely have priority dates senior to many of the irrigation wells that have caused them to go dry.

VII. Declining groundwater levels in the basin as of 2018 caused springs and lowland flows to decline since the 1990s by about 25 percent.

VIII. Continued current pumping rates have exacerbated and will continue to exacerbate these costs and impacts on groundwater users and the public interest.

Comparison with current rule proposals

The fifteen 30-year scenarios simulated in our study provide a robust set of results about different types and scales of interventions. These include simulated land idling, financial incentives, spatial targeting, pumping regulations, seniority-based regulations, and basinwide pumping limits. Our results provide a good basis for comparison with the OWRD rule proposal and with the alternative petition. In determining whether groundwater levels are stabilized with a given scenario we looked to see that there was no increase in the number of dry wells nor any decline in springs and lowland flows over the course of the 30 years. In comparison to our model results we find:

a. The OWRD rule proposal does not stabilize groundwater in the basin. Our analysis shows that stabilizing groundwater will require reducing irrigation pumping from 129,000 acre-feet/year to about 74,000 AF/year. The OWRD proposal reduces pumping to 89,000 AF/year, which is 20% higher than what would be necessary to achieve stability according to our analysis.

b. The recent petition rule proposal introduces reductions in pumping by less than 22%, which is half the reduction needed to stabilize groundwater according to our analysis. The OWRD technical analysis of the petition rule proposal makes similar observations.

c. Under both proposals the impacts described above under points V, VI, and VII would continue during, as well as after, the projected completion in 33 years.

It deserves underscoring that these rule proposals do not protect all senior water rights, in particular domestic and stock water wells, many of which are likely senior to many irrigation wells permitted since the early 1990s. The proposals thus do not protect existing water rights according to their seniority. My understanding is that exempt wells have an enforceable priority date relating back to when the well began pumping water, according to OR. REV. STAT. § 537.545(3) (2007), and regulators can use that priority date to regulate and protect exempt uses along with permitted uses (Amos 2008).

Oregon's groundwater management system has been recognized to be reactive rather than predictive or proactive by many observers (e.g., Amos 2008). This is the primary issue on which change is needed--both to address the Harney situation but also to make changes so that groundwater management and regulation can be put on a better path statewide. Indeed, whatever direction the Harney situation does will have ripple effects statewide and for the future.

General problem description/diagnosis

These four elements combine to make current approaches to groundwater management problematic.

1. Lagged information: with rising use of a groundwater resource there is a lag between the time when pumping exceeds sustainable levels and when the evidence of declining groundwater levels is apparent. This is an unavoidable fact about groundwater dynamics.

2. A non-functioning corrective mechanism: the prior appropriation is designed to use a seniority system as the mechanism by which water is allocated among users when supply is limited relative to demand. Its rules, triggers, and enforcement are transparent and predictable. Although groundwater rights in Oregon apply the same prior appropriation system as surface water, it does not work for groundwater because interference between individual junior and senior wells cannot be determined adequately, or to a legal standard. Thus the mechanism intended to regulate groundwater does not function, leaving the groundwater system with no regular, timely mechanism to correct imbalances between supply and demand to maintain reasonably stable groundwater levels, as required by rule.

3. Poorly defined objective: The state's groundwater rule to maintain reasonable stable groundwater levels is insufficiently defined. Absent is any requirement or guidance on timing or level. If managers can take decades to attain stability and if stability can eventually be attained at groundwater levels so low that they interfere with, degrade, or deny access for many users or uses, the rule is ineffectual and thus, among other consequences, provides no basis for evaluating the performance of those responsible for meeting the rule's objectives.

4. Without predictable and enforceable corrective mechanism like those for surface water management, the state created multiple designations for groundwater basins where problems already exist. These are 'after-the-fact' response to groundwater declines that are reactive rather than predictive or proactive (Amos 2008). Importantly, these designations do not give water right holders a predictable and transparent understanding of the degree of their vulnerability to future potential regulatory corrective measures.

Taken together these fact mean that Oregon's groundwater basins are vulnerable to over-appropriation with no regular, transparent, corrective mechanism like the regulation of surface water triggered when a call is made under prior appropriation. With no clear rule about when or at what level stability is to be achieved, nor a requirement to adhere to regulation according to priority date, water right holders have strong incentives to pushback against, and delay as long as possible, proposed corrective actions. The net present value of the profits earned from a permanent irrigation water right is only slightly higher than one whose regulation can be delayed for 30 or more years.

Some insights from economics

Much of what has happened in the Harney Basin involves two areas of economics involving people's incentives and expectations. So I'll digress briefly to frame this perspective. The two areas include the concepts are market failure and policy failure.

In standard microeconomics we understand markets incentives, exchange, and efficiency. But we also recognize "market failures." These include externalities like pollution and the free rider problem with common-pool resources like fisheries and groundwater. Incentive problems arise in these cases because individuals do not generally take account of the impacts of their actions on others, and the resulting market failures can be very costly to society.

Market failures gives rise to the need for policy to correct the problem (for example pollution regulation or catch-shares programs for fisheries), but sometimes policy failures occur so that the goals of the policy are not achieved. This can happen where regulators may be influenced by other incentives. This can lead to outcomes that do not align with the policy goals to serve the public interest. Policy failures include one type called a "principal-agent problem." A principal-agent problem is when an agent (e.g. regulator or other government official) has interests misaligned with the principal (e.g., the public). For example a regulator may have private professional goals, or they may wish to avoid risks and conflicts, or act to please particular stakeholders.

Policy failures can lead to "regulatory capture." Regulatory capture is a form of policy failure where agencies established to regulate an industry or group in the public interest, instead become "captured" by these interest groups and instead act to protect and defend the interests of the group they are meant to regulate (Carpenter and Moss 2013). This can lead regulators to weaken or delay regulations or enforcement, or to treat one group of stakeholders more favorably than other groups of stakeholders who, according to the policy, should receive equal treatment. This can result from lobbying to influence rulemaking, intimidation, exercise of economic or political power, or relying too much on expertise and information provided by industry insiders. The Harney Basin epitomizes what can result from a combination of market failures, policy failures and regulatory capture.

This digression into economics is intended to shed light on a way forward, one that mitigates policy failures and regulatory capture so that the original intent of groundwater law can regain its central focus from groundwater managers and the authorities responsible for addressing such problems.

Potential solutions

The current rule proposals for the Harney Basin do not address the need for fundamental changes to improve the way that groundwater is managed. One can point to successes elsewhere to see the contrast. In Kansas, for example, groundwater laws are also based on prior appropriations. One can see that timely, effective adaptive regulation is achievable. When evidence of declining groundwater levels were confirmed in the Walnut Creek groundwater use control area in 1989 following a study of the situation, restrictions on pumping were introduced starting three years later, and significant reductions in pumping occurred shortly after (Earnhart and Hendricks, 2023).

Fisheries may seem irrelevant, but they actually represent a very similar kind of resource and there are success stories in Oregon and increasingly around the world. Oregon's coastal fisheries are resources that are also hidden below with stocks that are hard to measure and that vary in difficult to predict ways. Under NOAA catch-share management, the total allowable catch can be adjusted up or down, year to year. This means that each fishers' share is also adjusted up or down. Fishers understand that this is in their long-term interests, and they mostly support the adjustments even when it can cost them in the short run. They also share data on harvest with managers so that the best information is used to fine tune sustainable management of the resource. Fishers in general accept these rules as serving their interests as well as those of coastal economies, recreational

fishers, etc. Key to their success is a set of predictable, transparent, and nearly automatic corrective measure to respond to evidence of resource depletion. Fishery stock assessment and groundwater dynamics are similarly difficult.

Two main factors contribute to conflicts and pressures that lead to policy failure and regulatory capture. The first factor is the belief that groundwater permits come with a permanent entitlement to a fixed rate and duty is incompatible with the realities of lagged hydrological adjustments and overshooting. The second (related) factor is the lack of a regular, predictable and transparent response and mechanism that is understood by all parties to be triggered and made operational by evidence of groundwater declines.

Addressing the second factor would also lead to changes in the first factor. This would change incentives and expectations by water rights holders, and it would strengthen the resolve of managers, regulators, and authorities with the responsibility to maintain reasonable stable groundwater, to resist the (diminished) pressures that create regulatory capture and policy failure.

There are many ways this could be done. One could lock-in rules for specific corrective responses when evidence shows a declining groundwater level (e.g., a five-year trend). The measures could impose regulatory reductions, for example, on permitted wells more junior than, say, the median priority date (weighted by maximum rate or duty). Gradual reductions could follow updated evidence of a decline. Alternatively, one could modify relatively junior groundwater permits to have a fixed term of, say, ten years, automatically renewed subject to evidence that groundwater levels are reasonably stable. With rules of this nature in place, individuals' expectations would also adjust to this reality, much like the way junior surface water right holders recognize the uncertainties and risks they face.

My focus is on how changes in this vein would alter incentives and expectations, and how changes in those intangible aspects of the situation are essential to better groundwater management, resulting in fewer conflicts and hostilities, less policy failure and regulatory capture, which I suspect would also greatly improve the working relationships between water users and OWRD staff, in addition to reducing harmful impacts like those in the Harney Basin and elsewhere.

References

Amos, A. (2008). Freshwater Conservation in the Context of Energy and Climate Policy: Assessing Progress and Identifying Challenges in Oregon and the Western United States. *U. Denv. Water L. Rev.*, *12*, 1.

Carpenter, D., & Moss, D. A. (Eds.). (2013). *Preventing regulatory capture: Special interest influence and how to limit it*. Cambridge University Press.

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Jaeger, W. K., Antle, J., Gingerich, S. B., & Bigelow, D. (2024). Advancing sustainable groundwater management with a hydro-economic system model: Investigations in the Harney Basin, Oregon. *Water Resources Research*, *60*(11), e2023WR036972.

Public comments on Petition for Rulemaking – Division 512
October 2, 2025

My name is Bill Jaeger, and I'm a professor in the Department of Applied Economics at Oregon State University. Over the past six years I have been studying groundwater in the Harney Basin under a research grant from the US Department of Agriculture's National Institute for Food and Agriculture. This work was carried out by an interdisciplinary team including two faculty colleagues in my department and a US Geological Survey hydrologist, Stephen Gingerich, who, with his USGS colleagues, constructed a groundwater hydrology model of the Harney Basin. We coupled that model with an economic model of irrigated farming in the basin to create a hydro-economic model of the groundwater and irrigated system. Our main research findings were published in the peer-reviewed journal Water Resources Research last November. The paper is available online: Jaeger, William K., et al. "Advancing sustainable groundwater management with a hydro-economic system model: Investigations in the Harney Basin, Oregon." *Water Resources Research* (2024).

Our study enabled us to look at the Harney Basin as a regional system connecting hydrology and economics, within the context of the rules that govern water allocation. We looked at many detail-oriented questions, but also found the work illuminating on big picture questions about policy and management. Our model made it possible to understand what has happened in the past and also to simulate a range of future alternative scenarios looking 30 years into the future. We ran simulations for a suite of 15 scenarios on different kinds of actions intended to contribute to stabilizing groundwater. This work generated Insights on a range of questions.

OSU/USGS Study Findings

Before making some observations about the OWRD rule proposal and the alternative petition rule proposal, I'll summarize a few of our main findings about the Harney groundwater situation, many of these reinforce what has been recognized elsewhere:

I. The irrigated areas in the basin are hydrologically connected, which limits the efficacy of remedies focused on regulations only in some areas.

II. The total permitted groundwater irrigation pumping exceeded sustainable rates beginning in about 1993.

III. Nevertheless, between 1993 and the year 2015 (when the problem of declining groundwater was generally recognized), the total permitted groundwater irrigation pumping rights doubled.

IV. This kind of long lag between a) the time when permitted pumping rates exceed what can be sustained and b) when the evidence of the problem becomes apparent cannot generally be avoided; it represents a key characteristic making maintaining sustainable groundwater levels extremely challenging for managers.

V. Declining groundwater levels have raised costs and reduced well yields, but for most irrigators in the basin, current practices will remain profitable even as lower water levels make pumping somewhat more costly.

VI. Declining groundwater levels have impacted hundreds of domestic wells and stock water wells, with more than 70 wells going dry as of 2018. Many of these wells likely have priority dates senior to many of the irrigation wells that have caused them to go dry.

VII. Declining groundwater levels in the basin as of 2018 caused springs and lowland flows to decline since the 1990s by about 25 percent.

VIII. Continued current pumping rates have exacerbated and will continue to exacerbate these costs and impacts on groundwater users and the public interest.

Comparison with current rule proposals

The fifteen 30-year scenarios simulated in our study provide a robust set of results about different types and scales of interventions. These include simulated land idling, financial incentives, spatial targeting, pumping regulations, seniority-based regulations, and basinwide pumping limits. Our results provide a good basis for comparison with the OWRD rule proposal and with the alternative petition. In determining whether groundwater levels are stabilized with a given scenario we looked to see that there was no increase in the number of dry wells nor any decline in springs and lowland flows over the course of the 30 years. In comparison to our model results we find:

a. The OWRD rule proposal does not stabilize groundwater in the basin. Our analysis shows that stabilizing groundwater will require reducing irrigation pumping from 129,000 acre-feet/year to about 74,000 AF/year. The OWRD proposal reduces pumping to 89,000 AF/year, which is 20% higher than what would be necessary to achieve stability according to our analysis.

b. The recent petition rule proposal introduces reductions in pumping by less than 22%, which is half the reduction needed to stabilize groundwater according to our analysis. The OWRD technical analysis of the petition rule proposal makes similar observations.

c. Under both proposals the impacts described above under points V, VI, and VII would continue during, as well as after, the projected completion in 33 years.

It deserves underscoring that these rule proposals do not protect all senior water rights, in particular domestic and stock water wells, many of which are likely senior to many irrigation wells permitted since the early 1990s. The proposals thus do not protect existing water rights according to their seniority. My understanding is that exempt wells have an enforceable priority date relating back to when the well began pumping water, according to OR. REV. STAT. § 537.545(3) (2007), and regulators can use that priority date to regulate and protect exempt uses along with permitted uses (Amos 2008).

Oregon's groundwater management system has been recognized to be reactive rather than predictive or proactive by many observers (e.g., Amos 2008). This is the primary issue on which change is needed--both to address the Harney situation but also to make changes so that groundwater management and regulation can be put on a better path statewide. Indeed, whatever direction the Harney situation does will have ripple effects statewide and for the future.

General problem description/diagnosis

These four elements combine to make current approaches to groundwater management problematic.

1. Lagged information: with rising use of a groundwater resource there is a lag between the time when pumping exceeds sustainable levels and when the evidence of declining groundwater levels is apparent. This is an unavoidable fact about groundwater dynamics.

2. A non-functioning corrective mechanism: the prior appropriation is designed to use a seniority system as the mechanism by which water is allocated among users when supply is limited relative to demand. Its rules, triggers, and enforcement are transparent and predictable. Although groundwater rights in Oregon apply the same prior appropriation system as surface water, it does not work for groundwater because interference between individual junior and senior wells cannot be determined adequately, or to a legal standard. Thus the mechanism intended to regulate groundwater does not function, leaving the groundwater system with no regular, timely mechanism to correct imbalances between supply and demand to maintain reasonably stable groundwater levels, as required by rule.

3. Poorly defined objective: The state's groundwater rule to maintain reasonable stable groundwater levels is insufficiently defined. Absent is any requirement or guidance on timing or level. If managers can take decades to attain stability and if stability can eventually be attained at groundwater levels so low that they interfere with, degrade, or deny access for many users or uses, the rule is ineffectual and thus, among other consequences, provides no basis for evaluating the performance of those responsible for meeting the rule's objectives.

4. Without predictable and enforceable corrective mechanism like those for surface water management, the state created multiple designations for groundwater basins where problems already exist. These are 'after-the-fact' response to groundwater declines that are reactive rather than predictive or proactive (Amos 2008). Importantly, these designations do not give water right holders a predictable and transparent understanding of the degree of their vulnerability to future potential regulatory corrective measures.

Taken together these fact mean that Oregon's groundwater basins are vulnerable to over-appropriation with no regular, transparent, corrective mechanism like the regulation of surface water triggered when a call is made under prior appropriation. With no clear rule about when or at what level stability is to be achieved, nor a requirement to adhere to regulation according to priority date, water right holders have strong incentives to pushback against, and delay as long as possible, proposed corrective actions. The net present value of the profits earned from a permanent irrigation water right is only slightly higher than one whose regulation can be delayed for 30 or more years.

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Market failures gives rise to the need for policy to correct the problem (for example pollution regulation or catch-shares programs for fisheries), but sometimes policy failures occur so that the goals of the policy are not achieved. This can happen where regulators may be influenced by other incentives. This can lead to outcomes that do not align with the policy goals to serve the public interest. Policy failures include one type called a "principal-agent problem." A principal-agent problem is when an agent (e.g. regulator or other government official) has interests misaligned with the principal (e.g., the public). For example a regulator may have private professional goals, or they may wish to avoid risks and conflicts, or act to please particular stakeholders.

Policy failures can lead to "regulatory capture." Regulatory capture is a form of policy failure where agencies established to regulate an industry or group in the public interest, instead become "captured" by these interest groups and instead act to protect and defend the interests of the group they are meant to regulate (Carpenter and Moss 2013). This can lead regulators to weaken or delay regulations or enforcement, or to treat one group of stakeholders more favorably than other groups of stakeholders who, according to the policy, should receive equal treatment. This can result from lobbying to influence rulemaking, intimidation, exercise of economic or political power, or relying too much on expertise and information provided by industry insiders. The Harney Basin epitomizes what can result from a combination of market failures, policy failures and regulatory capture.

This digression into economics is intended to shed light on a way forward, one that mitigates policy failures and regulatory capture so that the original intent of groundwater law can regain its central focus from groundwater managers and the authorities responsible for addressing such problems.

Potential solutions

The current rule proposals for the Harney Basin do not address the need for fundamental changes to improve the way that groundwater is managed. One can point to successes elsewhere to see the contrast. In Kansas, for example, groundwater laws are also based on prior appropriations. One can see that timely, effective adaptive regulation is achievable. When evidence of declining groundwater levels were confirmed in the Walnut Creek groundwater use control area in 1989 following a study of the situation, restrictions on pumping were introduced starting three years later, and significant reductions in pumping occurred shortly after (Earnhart and Hendricks, 2023).

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fishers, etc. Key to their success is a set of predictable, transparent, and nearly automatic corrective measure to respond to evidence of resource depletion. Fishery stock assessment and groundwater dynamics are similarly difficult.

Two main factors contribute to conflicts and pressures that lead to policy failure and regulatory capture. The first factor is the belief that groundwater permits come with a permanent entitlement to a fixed rate and duty is incompatible with the realities of lagged hydrological adjustments and overshooting. The second (related) factor is the lack of a regular, predictable and transparent response and mechanism that is understood by all parties to be triggered and made operational by evidence of groundwater declines.

Addressing the second factor would also lead to changes in the first factor. This would change incentives and expectations by water rights holders, and it would strengthen the resolve of managers, regulators, and authorities with the responsibility to maintain reasonable stable groundwater, to resist the (diminished) pressures that create regulatory capture and policy failure.

There are many ways this could be done. One could lock-in rules for specific corrective responses when evidence shows a declining groundwater level (e.g., a five-year trend). The measures could impose regulatory reductions, for example, on permitted wells more junior than, say, the median priority date (weighted by maximum rate or duty). Gradual reductions could follow updated evidence of a decline. Alternatively, one could modify relatively junior groundwater permits to have a fixed term of, say, ten years, automatically renewed subject to evidence that groundwater levels are reasonably stable. With rules of this nature in place, individuals' expectations would also adjust to this reality, much like the way junior surface water right holders recognize the uncertainties and risks they face.

My focus is on how changes in this vein would alter incentives and expectations, and how changes in those intangible aspects of the situation are essential to better groundwater management, resulting in fewer conflicts and hostilities, less policy failure and regulatory capture, which I suspect would also greatly improve the working relationships between water users and OWRD staff, in addition to reducing harmful impacts like those in the Harney Basin and elsewhere.

References

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MEINZ Kelly A * WRD

From: Bill Mosser <billmosser@gmail.com>
Sent: Friday, October 3, 2025 9:05 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from billmosser@gmail.com. Learn why this is important

Dear Kelly Meinz,

- I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.
- I would like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.
- The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

Sincerely,

William Mosser
1143 SE Umatilla Street
Portland, OR 97202

MEINZ Kelly A * WRD

From: Bob Bumstead <robertgbumstead@gmail.com>
Sent: Tuesday, October 7, 2025 2:48 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from robertgbumstead@gmail.com. Learn why this is important

- I am commenting on both the "Petition for Rulemaking —Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. The petition will allow continued overpumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- I urge OWRD to first strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.
- I urge OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.

Bob Bumstead

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Bob

MEINZ Kelly A * WRD

From: Bob Hunter <hunterbob10@gmail.com>
Sent: Wednesday, October 1, 2025 11:01 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from hunterbob10@gmail.com. Learn why this is important

Kelly Meinz:
I am writing in connection with both the "Petition for Rulemaking - Division 512" and the "Agency Proposed Rules - Division 512.
I am very concerned that the Petition for Rulemaking filed by Representative Mark Owens will severely undercut protections to groundwater in the Harney Basin and the efforts that the Oregon Water Resource Department has put into its proposed rules to protect the basin's groundwater and those who use it. **I urge the Oregon Water Resources Commission to reject Representative Owens' petition.**
The petition's promotion of optional voluntary actions that lack any required pumping reductions jeopardizes real groundwater protection in the basin and would severely undermine OWRD's proposed adaptive management program and long-term improvement to the ground situation in the basin.
I would also like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.
I also urge OWRD and the Commission to re-evaluate the proposed rules to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater. Rules that offer real protection and improvement to the basin's ground water offer an important opportunity to make much needed progress in addressing the basin's groundwater issues.
Sincerely,
Bob Hunter
Jacksonville, Oregon

MEINZ Kelly A * WRD

From: Brandon Haslick <bdhaslick@yahoo.com>
Sent: Tuesday, June 3, 2025 4:25 PM
To: WRD_DL_rule-coordinator
Subject: Harney RAC Comments

Some people who received this message don't often get email from bdhaslick@yahoo.com. Learn why this is important

Hi Kelly,

Thank you for your hard work and dedication to help the Harney RAC cross the line. It was a stressful and frustrating process for most in the room but I appreciate the professionalism exhibited by you and everyone at OWRD. I generated these comments mostly after the April 16th RAC, and I want to stress that they represent only my personal thoughts and opinions. I would like to at least be on the record with my concerns.

The most disappointing part of the process, in my opinion, was the way irrigators threw their weight around the room. The dialogue was often one-sided, leaving very little room for a diversity of opinions or so much as a counterpoint. I understand they have the most to lose and I know it wouldn't have been productive to argue, but entire conversations consisted of irrigator complaints, criticisms, whining, and finger-pointing. As if they share no responsibility for draining the high desert of the Harney Basin. A casualty of all the rhetoric was that OWRD completely walked back the use of springs and domestic wells as indicators to monitor in the adaptive management plan. This could have been a great opportunity to show that it's not just about the irrigators in the basin but the entire community. The end result is that OWRD will allow the drying out of domestic wells- and throw thousands of dollars of money they don't necessarily have to 'solve' this new problem that doesn't have to exist.

I know this is not entirely the fault of OWRD and I wish my belief that Harney County was a special community that cared about its neighbors had been realized. But after the hostility on full display at many of the RAC meetings, I'm not so sure anymore- and I don't see how any type of voluntary agreement will work when irrigators with healthy water tables protest any cuts to their allotted use to help others in the basin and senior users refuse to rescind any part of the water rights they hold on to so dearly. Tragedy of the commons on full display.

The other concern I had about the process was the pervasive stalling tactics used by irrigators to prevent curtailments. "Let's just wait and see what a good water year does to water levels..." are you kidding me? Like a wildfire and good snow year is going to move the needle on 25 years of overallocation and 100 foot drops in the water table! Thank you for holding fast in the face of those tactics.

Anyway, I want to be clear that I do appreciate the needed curtailments that will go into effect and the adaptive management process that should stabilize our groundwater tables and I hope it will be enough. But the record is stormy- Cow Valley was the first critical water management area in Oregon and it currently sits 30 feet below the level at which it was designated. Will we in Harney follow suit or learn from what didn't work?

Thanks for considering my comments.

All the best,
Brandon

Brandon Haslick
(616) 566-0955

MEINZ Kelly A * WRD

From: Brenda Smith <director@highdesertpartnership.org>
Sent: Tuesday, September 30, 2025 4:31 PM
To: WRD_DL_rule-coordinator
Subject: Public Comment on Petition for Admin Rules (OAR)690-512 (Harney Basin)
Attachments: HDP Div. 512 Petition Comments 9-30-2025.pdf

Some people who received this message don't often get email from director@highdesertpartnership.org. Learn why this is important

Dear Kelly,
I have attached an additional comment for consideration in this reopening period for Admin Rules for the Harney Basin.
Thank you very much,
Brenda

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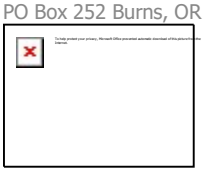
-

Brenda Smith, Ph.D.
Executive Director
director@highdesertpartnership.org
541 589-4220
PO Box 252 Burns, OR 97720



September 30, 2025

Kelly Meinz – Rulemaking Coordinator
Oregon Water Resources Department
725 Summer St. N.E. Suite A
Salem, OR 97301-1271

Subject: Comment on Harney Petition to Amend Oregon Administrative Rules Chapter 690, Division 512

Dear Mr. Meinz,

On behalf of the High Desert Partnership, we would like to express continued support for meaningful public involvement in an adaptive management/ implementation approach for groundwater in the Harney Basin. We previously submitted directly to the Department and previously submitted in the earlier comment period for consideration a proposal for High Desert Partnership to convene an implementation collaborative that utilized adaptive management. In Harney County much of our community would like to work with the Department to meet sustainable groundwater management that balances social, economic, and environmental needs and considerations. At High Desert Partnership, we are an organization that successfully convenes collaborative groups through understanding and navigating complex tradeoffs and finding solutions that are supported by different interests who might otherwise be at odds. We are also fundraising to support this collaborative effort, we are not requesting state funds to support this effort.

As a Div 512 RAC member for the Harney Basin, I have always viewed an important part of my role to ensure that all that wanted to participate and be part of the process had that opportunity. I am not sure that I was particularly successful in that role but staying impartial and paying attention to the process is keenly important in my position at High Desert Partnership. It remains important that the Department be meaningfully engaged in that process as well for success in addressing these very complex issues as they relate to groundwater reduction.

As with the Division 512 comment we submitted we once again are requesting an adaptive management/ implementation approach with community involvement as that has been consistently supported by members of the community who are putting forward this petition. We are especially committed to working with other partners, including the Harney County Watershed Council, to ensure that a groundwater collaborative is inclusive, transparent, well resourced, and effective as we weave together regulatory and voluntary approaches and transition to implementation of our community based integrated water resources plan. Success of any collaborative and adaptive approach will be largely dependent upon the Department's active participation, leadership, and continued provision of technical information and assistance.

Sincerely,

Brenda Smith

Brenda Smith, Ph.D.
Director, High Desert Partnership

My name is Bryce Otley. I am the 6th generation in my family to live in Harney County. All six generations have been involved in agriculture. This alone should be enough to prove that we use sustainable agriculture practices. I graduated four years ago from Oregon State University with an Agricultural Science degree, and minors in animal science, rangeland resources, and business management. My wife and children moved back to the family homestead with me three years ago. We moved back to hopefully raise the next generation in agriculture. The family invested in a farm in Princeton that has a stable static water level. We purchased it to become more diverse and have a home for another generation. Now, with the new Division 512 rules, which I have commented on, we have discovered the new farm which we have a loan on is in danger due to the blanket rules in 512 to be lost. Due to 512 being so radical and disconnected from reality on the ground. I am writing in support of the reality of the proposed petition rules. The petition has a wide variety of support from the community because it was created on the ground in the county, and not across the state. The petition is correct with all of the questions and concerns that I had on 512. I have little faith in my comments being implemented into 512 because of how radical it was to start with. With the original 512 rules, the local economy will take such a high financial blow that it will never recover. Through this petition we could minimize the financial impact on the local community. Just with how the Great Depression impacted the United States, the 512 rule will impact the families in Harney County. This proposed petition is the only option to pressure our local culture, livelihoods, and a sustainable ground water for another six generations of Otley's.

Burns Paiute Tribe
Office of the Tribal Council
100 Pasigo St
Burns, OR 97720
Phone (541)573-1910
Fax (541)573-2012

October 2, 2025

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

SENT VIA EMAIL (WRD_DL_rule-coordinator@water.oregon.gov)

RE: Harney (Division 512) Rulemaking

Dear Director Gall and Members of the Commission:

This letter is sent on behalf of the Burns Paiute Tribe ("Tribe") on the Harney (Division 512) Rulemaking ("rules"), including the alternative proposal submitted by a variety of local entities including the Tribe.

The Burns Paiute Tribe is a federally recognized sovereign tribal nation headquartered in Burns, Oregon. Since time immemorial, the people of the Burns Paiute Tribe occupied the Harney Basin. Today, the Tribe owns 13,736 acres in acres in reservation and trust land, all of it in Harney County, Oregon. The Tribe and its members depend upon these lands to serve as its Tribal headquarters, economic development including agriculture, cultural activities, natural resource protection, and to serve as a homeland for Tribal members. These purposes would be twarted without water. Water is life.

For these reasons, a myriad of Supreme Court cases,including the seminal 1908 *Winters v. U.S.* case, have recognized that Tribal reservation have reserved water rights necessary to meet the homeland purposes of those lands. These federal reserve rights, whether adjudicated or not, cannot be terminated unilaterally by state action. In the Harbey Basin, the quantification and protection of senior water rights — including rights held by the Burns Paiute Tribe that have not yet been

adjudicated — are essential to long-term groundwater security and Basin stability for the Tribe and other users.

The Tribe strongly believes that these rules will be truly transformative for the Tribe and the greater community. The state and the community has known for over a decade that there are problems in need of remedies in the Weaver Springs area and the Northeast Crane area. The Tribe supports responsible, reasonable regulation in response to over-appropriation of groundwater resources in these areas. We also support community-led voluntary reductions in the other parts of our Basin where groundwater levels are reasonably stable. However, these efforts cannot unduly burden Tribal sovereignty, impact Tribal water rights whether state rights or unadjudicated rights, and must occur in a manner that recognizes the unique role of the Tribe as a sovereign government and its role as a co-steward of water in the Basin.

We believe long-term Basin sustainability requires a formal government-to-government co-management framework between the State of Oregon and the Burns Paiute Tribe. This framework should be embedded in the regulatory structure and reflect shared decision-making authority, mutual consent on key regulatory actions, and joint participation in groundwater science, monitoring, and basin-wide planning. According, any rule must include the following language:

1. Protection of Tribal Rights. Nothing in these rules, nor their implementation, shall be interpreted to impair, curtail, condition, meter, require reporting for, or otherwise limit any water right of the Burns Paiute Tribe. This protection applies to all federally reserved, aboriginal, and state-recognized rights, including but not limited to:
   - Certificate 20245 (1940, quasi-municipal, 112.2 acres, T-10100);
   - Certificate 20244 (1947, irrigation, 14.3 acres, T-10100);
   - Permit G-16405 (1991, irrigation, 21.1 acres).
2. Jurisdiction; Non-Application of Division 512/CGWA. Division 512 rules and any Critical Groundwater Area (CGWA) process shall not apply to Burns Paiute Tribal rights or to waters on Tribal lands in any Harney Basin subarea (including Weaver Springs, NE-Crane, Silvies, Silver Creek, and Blitzen-Voltage) without the express written consent of the Burns Paiute Tribe.
3. Monitoring, Metering, and Access. No monitoring, metering, installation, reporting, inspection, or access obligations shall be imposed on Tribal lands, Tribal systems, or Tribal rights without the express written consent of the Burns Paiute Tribe. Consent may be conditioned and may be revoked by the Tribe at any time.
4. Non-Waiver; Sovereign Immunity Preserved. Nothing in these rules, nor any Tribal participation in programs, agreements, or forums, shall be construed as:
   (a) a waiver of the Burns Paiute Tribe's sovereign immunity;
   (b) consent to state or agency jurisdiction;
   (c) a concession regarding the existence, scope, seniority, quantification, or exercise of Tribal water rights; or
   (d) evidence of abandonment, forfeiture, or subordination to state-law priority.

5. Co-Stewardship Commitment. Within twelve (12) months of rule adoption, OWRD shall initiate a co-stewardship process with the Burns Paiute Tribe and basin stakeholders to support collaborative management of Harney Basin water resources. The structure and authority of this framework shall be developed jointly, with no presumption of Tribal waiver or subordination.
6. No Adverse Inference. Voluntary conservation actions, data sharing, pilot projects, or participation by the Tribe shall not be used to argue waiver, diminution, quantification, or subordination of Tribal rights.
7. Severability and Construction. If any provision of this section is held invalid, the remainder shall remain in effect. In the event of conflict between this section and other rule text, this section controls.

The Tribe urges the Department to work with the Tribe, local elected officials, and government representatives to ensure that we can all work collectively to build a secure water future for our people, for our fish and wildlife, and for our economy. The Tribe believes that the alternative proposal offer a balanced approach with tribal and community support specifically including:

- Recognition of the different groundwater reservoirs in the Harney Basin and the conditions within those reservoirs;
- Reservoir-specific criteria for critical groundwater area designations;
- A mix of regulatory and voluntary approaches, with regulatory reductions focused only on known problem areas;
- A reasonable definition of “reasonably stable” that is more consistent with current statewide policies;
- Inclusion of a trigger for regulatory action if reasonably stable groundwater levels are not maintained within a groundwater reservoir;
- A process and criteria for lifting a critical groundwater area designation;
- Exemptions for tribal water rights (including the language identified above), municipal water rights, and other high economic value, low-use water rights;
- Phased implementation to allow for our community to absorb the economic impacts of reductions and transition to less groundwater dependent industries;
- Timelines and goals for voluntary reductions in groundwater use;
- Support for specific actions to better understand and remedy impacts to senior surface water appropriators, specifically springs that are a part of the Malheur National Wildlife Refuge;
- A clear commitment to continue to support existing programs that mitigate impacts to domestic wells and support voluntary cancellation of groundwater rights with compensation;
- A clear commitment to support implementation of our state-recognized place-based integrated water resources plan;
- A clear commitment to continue to partner with us to improve upon our current scientific understanding of groundwater in our Basin.

These are reasonable requests that will move the entire Basin towards a truly integrated and coordinated approach to groundwater management in our Basin that recognizes and builds on our history of partnership.

We appreciate your consideration of this letter and request an opportunity to engage in further consultation prior to the adoption of a final rule.

Sincerely,

MEINZ Kelly A * WRD

From: Cameron Molt <cameronmolt@gmail.com>
Sent: Sunday, September 28, 2025 6:56 PM
To: WRD_DL_rule-coordinator
Subject: Harney Basin Community Petition

Some people who received this message don't often get email from cameronmolt@gmail.com. Learn why this is important

To whom it may concern,

I strongly support the Harney Basin Community Petition. I operate a family farm in the areas of affected water rule changes. It is my goal to raise my own family in the same lifestyle and the same values that I was. The HBCP is better able to protect our groundwater and our farms than the alternative. Working together voluntarily and in designated areas rather than being forced by law as a whole Basin is the most effective way to protect our resources and our community.

Thank you for your consideration

Cameron Molt
Farmer and Rancher.
Burns Oregon.

Item D - Attachment 10

Open in app

From: Cameron Molt <cameronmolt@gmail.com>
Sent on: Monday, September 29, 2025 1:56:19 AM
To: WRD_DL_rule-coordinator <wrd_dl_rule-coordinator@water.oregon.gov>
Subject: Harney Basin Community Petition

Some people who received this message don't often get email from cameronmolt@gmail.com. Learn why this is important

To whom it may concern,

I strongly support the Harney Basin Community Petition. I operate a family farm in the areas of affected water rule changes. It is my goal to raise my own family in the same lifestyle and the same values that I was. The HBCP is better able to protect our groundwater and our farms than the alternative. Working together voluntarily and in designated areas rather than being forced by law as a whole Basin is the most effective way to protect our resources and our community.

Thank you for your consideration

Cameron Molt
Farmer and Rancher.
Burns Oregon.

MEINZ Kelly A * WRD

From: Riddle Ranch <riddle.ranch.inc@gmail.com>
Sent: Tuesday, October 7, 2025 4:55 PM
To: WRD_DL_rule-coordinator
Subject: I am for the petition rules

Some people who received this message don't often get email from riddle.ranch.inc@gmail.com. Learn why this is important

My name is Casey Otley and I work on the family ranch. I live in Princeton and I take care of the irrigation pivots and wells that produce the alfalfa for the ranch cattle. Part of my job of taking care of the pivots is monitoring the water usage from the wells and keeping track of the static water levels.
If the proposed OWRD Division 512 rules becomes adopted, the ranch would lose two-thirds of our alfalfa production ground. The Divison 512 rules's over regulation of our irrigation wells puts our pivots in the NE-Crane subarea. The petition acknowledges the actual hydrology and geography of the area and aligns the subareas with this in mind. Our wells are reasonably stable, similar to the nearby wells. The static level of our wells has risen in the last few years. Our wells are bordered by the Lower Blitzen-Voltage subarea and wells that are not in the critical groundwater area.
I support the Harney Basin community petition filed on September 12. It was drafted by a collaborative of community members who want best for the preservation of water while minimizing negative economic impact on the county. Instead of a simple minded declaration of the Harney Basin groundwater as one aquifer, the petition gives room for more studies and future knowledge of groundwater behavior. Unlike Division 512, the petition also gives those affected more of a voice and opportunity to participate in current and future issues regarding groundwater management. It allows the citizens and state government to collaborate in this issue with minimal government overreach.

Casey A. Otley
caseyotley32@hotmail.com

MEINZ Kelly A * WRD

From: charris1 <charris1@frontier.com>
Sent: Thursday, October 2, 2025 10:27 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from charris1@frontier.com. Learn why this is important

Please reject the petition of Rep. Owens. As in much of Oregon, groundwater pumping in the Harney Basin needs to be reduced.

Thank you.

Charlie Harris
Newberg, OR

MEINZ Kelly A * WRD

From: Cheryl <silver_sally@yahoo.com>
Sent: Wednesday, October 1, 2025 9:32 AM
To: MEINZ Kelly A * WRD
Subject: Harney County Water Petition

[You don't often get email from silver_sally@yahoo.com. Learn why this is important at https://aka.ms/LearnAboutSenderIdentification]

I am submitting this email to voice my support for the groundwater petition proposed by collaboration of our local stakeholders in water use regulation in the Harney Basin.

Regulating the groundwater in Harney Basin is unlike any other watershed in the state or Oregon. Regulation cannot be modeled after watersheds that drain into the ocean. Only people who have lived and farmed here can understand the unique issues involved in managing and preserving an inland water basin. Only people who have lived and farmed here can understand how the water is used, stored, and varies from year to year.

It is important that regulation of our most valuable resource be done by those who depend upon it and use it. There is no other way to keep it from being depleted or exploited in favor of the wealthy.

Please acknowledge and agree with our petition.

Sincerely,

Cheryl Larsen
70409 Red Barn Rd
Burns, OR 97720
541-413-0853

MEINZ Kelly A * WRD

From: Christy L. Sanders RN <csanders@harneydh.com>
Sent: Monday, October 6, 2025 9:24 PM
To: WRD_DL_rule-coordinator
Subject: Support for petition

Some people who received this message don't often get email from csanders@harneydh.com. Learn why this is important

To whom it may concern:
I would like to voice my support for the Harney Basin Water Management Petition which is a compromise and coordinated effort to meet the States water goals in a sustainable way that won't decimate our county's economy.
Many good people in the county ranch and raise hay . They employ many people and use the recourses in our county like healthcare. I live on acreage and have a private domestic well. I work in healthcare and I see the many jobs agriculture provides . I see them as exceptional stewards of the land and smart about water usage. They have a buy in with this petition.
We plead with you to adopt this water management petition to minimize the impacts on our community especially our businesses. Please help us help you! Allow us a say in this.
Thank you
Christy Sanders RN
Sent from my iPhone

_____
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==========
========== Please be aware e-mail communication can be intercepted in transmission or misdirected. Please consider communicating sensitive information by telephone, fax, or mail. The information contained in this message may be privileged and confidential. If you are NOT the intended recipient, please notify the sender immediately with a copy to hipaa.security@harneydh.com and delete this message. Any subsequent disclosure, copying, or distribution of this message is strictly prohibited.

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MEINZ Kelly A * WRD

From: chuck50fis@aol.com
Sent: Tuesday, October 7, 2025 1:39 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from chuck50fis@aol.com. Learn why this is important

Attention Kelly Meinz,

Thank you for letting me comment.

- I am commenting on both the "Petition for Rulemaking —Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. The petition will allow continued overpumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- I urge OWRD to first strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.
- I urge OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.

Sincerely,

Chuck Gehling
Hood River, Or.

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

Subject: Written Testimony of the City of Burns in Response to Proposed OWRD Division 512 Rulemaking – Harney Basin Alternative

Submitted to: Oregon Water Resources Department (OWRD)

Date: October 7, 2025

Dear staff and Commissioners,

Please accept this written comment in addition to the City's prior written testimony related to the Division 512 Rulemaking.

The City of Burns strongly recommends the Commission adopt the language in the alternative/Harney Basin petition proposed as OAR 690-512-0060 (applying to all critical groundwater areas), which states:

> *"The following water rights shall not be subject to corrective controls that result in groundwater use reductions in the critical groundwater areas:*
>
> *a) Exempt groundwater uses as defined in ORS 537.545*
>
> *b) Municipal and quasi-municipal groundwater rights*
>
> *c) Geothermal uses*
>
> *d) Recreational groundwater rights*
>
> *e) Groundwater rights held by a federally recognized Indian tribe."*

As documented in our prior testimony, the City's main concerns with the rules as proposed by OWRD and our support for the alternative petition are based in part on the following:

Science-Driven, Collaborative Management

The alternative petition represents the culmination of extensive local engagement, technical consultation, and the best available scientific data from the USGS and OWRD. Its approach—defining five groundwater reservoirs as distinct management areas—matches the basin's hydrogeology and ensures that regulatory action is targeted at areas experiencing real declines, rather than applying blanket restrictions across the region. This precision enables both robust resource protection and practical flexibility for local needs.

Social and Economic Balance

Excessively broad municipal caps risk devastating Harney County's main population centers, threatening housing, public safety, and the local economy. The cities of Burns and Hines constitute over half of the county's population, yet they account for less than 1% of the basin's groundwater use. Disproportionately severe restrictions on municipal users undermine state growth policies, penalize proactive conservation, hurt housing development, and endanger future economic opportunity—without addressing the main causes of groundwater decline.

Legal and Policy Consistency

Oregon's land use goals (notably Goal 14) require cities to plan for and support urban growth. Capping municipal use based only on recent history, as in the draft Division 512 rules, conflicts with those goals and disregards the unique legal status of municipal water rights under state law. Municipal rights are protected to secure public benefit, enable long-term community planning, and ensure flexibility for future needs. These rights should not be curtailed except where absolutely necessary for public safety, nor should they be subject to rules that inadvertently penalize conservation and seniority.

Proportionate Reductions and Incentives for Conservation

The alternative proposal achieves more rapid and deeper reductions in problem areas than the OWRD's own "Scenario B," but does so through a mix of immediate reductions (where excessive decline is proven), voluntary agreements, and regulatory backstops elsewhere. This method protects jobs, public services, and economic activity by minimizing unnecessary loss of productive farmland and limiting heavy-handed curtailment to where it is demonstrably needed. Importantly, it continues support for well mitigation and assistance funds, recognizes community investments in conservation, and shifts the regulatory burden to high-volume junior users driving basin declines.

Pathway for Ongoing Collaboration and Adaptive Management

The petition's adaptive approach, coordinated basin planning, and voluntary reduction pathways reflect the spirit and statutory preference in Oregon law for collaborative local action and

solutions. Regulatory triggers ensure true problem areas are addressed, while the option for lifting restrictions if conditions improve builds both flexibility and accountability into long-term management.

Conclusion

In summary, the alternative petition submitted by Representative Owens is a locally driven, science-based framework that safeguards both the Harney Basin's groundwater and its communities. It offers a more equitable, effective, and lawful means to restore aquifer stability, support local and state economic goals, and respect the unique status of city water rights vital for future growth.

I urge the Commission to approve the alternative rule amendments as proposed and honor the collaborative, place-based solution the Harney Basin needs.

Respectfully Submitted,

Brenda Engebretsen
City Manager

cc: Nick Green, Catalyst Public Policy Advisors
cc: Bob Long, RG, CWRE, CwM H2O, LLC
Cc: Michael Martin, League of Oregon Cities

MEINZ Kelly A * WRD

From: Cliff Mitchell <cliffmitchell1@yahoo.com>
Sent: Tuesday, October 7, 2025 1:14 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from cliffmitchell1@yahoo.com. Learn why this is important

Please DO NOT adopt the Petition for rulemaking filed by Rep. Mark Owens. Stop over allocating and over pumping of groundwater in all of Oregon.

- I am commenting on both the "Petition for Rulemaking —Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. The petition will allow continued overpumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- I urge OWRD to first strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.
- I urge OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.

Cliff Mitchell
cliffmitchell1@yahoo.com

MEINZ Kelly A * WRD

From: Cliff Mitchell <cliffmitchell1@yahoo.com>
Sent: Wednesday, October 1, 2025 10:21 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from cliffmitchell1@yahoo.com. Learn why this is important

Please adopt and implement OWRD proposed rule for groundwater management in the Harney Basin. Over pumping should be stopped immediately and not allowed to go on in the future.

The Oregon Water Resources Department (OWRD) is moving to **designate the Harney Basin** in the high desert of southeast Oregon a "critical groundwater area" to ensure more sustainable groundwater levels.

Proposed rules developed over the course of a lengthy and exhaustive public process would, over time, **allow for reductions** in **existing groundwater pumping** in the Harney Basin, and continue the existing prohibition on new permits to address the **region's extreme overpumping** of groundwater.

Reject Oregon Representative Mark Owen's alternative rule.

Cliff Mitchell
cliffmitchell1@yahoo.com

Craig Neher
36101 Hutchensen Lane
Burns, OR 97720
craig.neher@edstaub.com

September 23, 2025

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

RE: Letter of Support for Petition Regarding Harney Basin Critical Groundwater Area – OAR 690-512 Rules

To Whom It May Concern:

I am writing in support of the petition recently submitted to the Oregon Water Resources Department regarding the Harney Basin Critical Groundwater Area and the proposed revisions to OAR 690-512 rules.

This petition represents a thoughtful, community and science-based approach to managing groundwater in the Harney Basin. It rightly recognizes that groundwater conditions vary significantly across different parts of the basin and that the most effective and equitable way to manage this vital resource is by treating these areas as distinct groundwater reservoirs. Grouping the entire basin into a single groundwater reservoir fails to account for the complexity of the region's hydrogeology and risks imposing one-size-fits-all solutions that are neither fair nor effective.

Importantly, the petition better reflects current understanding of groundwater behavior in the basin. This is a necessary step to ensure the Department’s policies are both technically sound and legally defensible.

Furthermore, Oregon law requires state agencies to minimize economic impacts in their regulatory actions. The petition upholds this mandate by proposing an alternative framework that reduces economic harm to small businesses, farmers, and the broader Harney Basin community. By focusing regulatory efforts on the areas where groundwater decline has been most severe, it also helps preserve jobs, safeguard public services, and lessens the economic damage to our communities.

It’s also important to emphasize that the people of Harney Basin care deeply about their ecosystem. This petition reflects a commitment not only to economic survival but also to environmental stewardship and long-term sustainability. It protects legally established groundwater rights and respects those who have consistently complied with state laws and water regulations.

Lastly, this approach supports public health, safety, and welfare by insuring and promoting targeted, effective management. Recourses can be spent on rehabilitation of problems areas and reasonably stable areas, and not on litigation of overreaching policy.

I respectfully urge the Oregon Water Resources Department to give this petition full and fair consideration. It presents a more equitable, scientifically grounded, and community-oriented path forward for groundwater management in the Harney Basin.

Thank you for your time and attention to this important matter.

Sincerely,
Craig Neher

MEINZ Kelly A * WRD

From: Riddle Ranch <riddle.ranch.inc@gmail.com>
Sent: Tuesday, October 7, 2025 9:32 AM
To: WRD_DL_rule-coordinator
Subject: Harney Basin Community petition

Some people who received this message don't often get email from riddle.ranch.inc@gmail.com. Learn why this is important

I am Dan Otley and I fully support the Harney Basin community petition filed on September 12. This petition is how OWRD should have written the 512 rules. The petition is what the state promised it would deliver in the rule making. The partition has support from the community, county, local municipalities, federal wildlife refuge, local indian tribe, and the irrigators.
My family and I grow alfalfa with irrigation wells. We use this hay to feed our livestock during the winter months. We are located in the Princeton area south of Windy point. My family has made a living off of the land in the Harney basin for 138 years. We use sustainable management practices with the land and water. The proposed 512 rules would impact our family ranch financially for years to come. Under the OWRD 512 rules, we would lose 2/3 of our irrigated acres. Our wells are stable. The static water level has risen over the last 2 years on our property. The petition puts our wells with similarly behaving wells. We would not lose our right to irrigate our acres, and it allows us to continue to maximise our water efficiency. The petition fixes most of the flaws in the 512 rules, it has overwhelming support, and it conforms to state law. This is why I support the community petition. I encourage OWRD to stop only listening to the multi billion dollar special interest groups. Work collaboratively with the people who will be affected by the rule. Adopt the community petition.

Dan Otley
riddle.ranch.inc@gmail.com

MEINZ Kelly A * WRD

From: Dave Heller <daheller@aol.com>
Sent: Wednesday, October 1, 2025 9:12 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from daheller@aol.com. Learn why this is important

Bad idea. At a time where ground water levels are dropping and rainfall and snowmelt are decreasing, it is important to be cautious and use good science to manage and conserve ground water. Please reject the Alfalfa growers bill.

MEINZ Kelly A * WRD

From: Dave Hohler <dbhohler@gmail.com>
Sent: Wednesday, October 1, 2025 11:13 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments ATTN Kelly Meinz (OWRD)

Some people who received this message don't often get email from dbhohler@gmail.com. Learn why this is important

1. I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512. I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
2. OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.
3. I would like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.
4. The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

Thank you for your consideration,
David Hohler
541-760-2605

MEINZ Kelly A * WRD

From: Debbie Gouveia <one@gouveiaranch.com>
Sent: Monday, September 29, 2025 12:57 PM
To: WRD_DL_rule-coordinator
Subject: Harney Basin Water Proposal

Please in going forward, adopt the Community Based Proposal. It would fairly monitor the water supply going forward without penalizing areas not being a Critical Groundwater area. The situation in Harney County needs to be addressed , but fairly, and not tied up in court cases. Again please adopt the Community Based Proposal.
Thank you
Gouveia Family
Sent from my iPad

MEINZ Kelly A * WRD

From: Debbie Webb <campgaldebbie@gmail.com>
Sent: Saturday, October 4, 2025 3:48 PM
To: WRD_DL_rule-coordinator
Subject: Support for Division 512 Rulemaking Petition — Consistent with Representative Mark Owens' Position

Some people who received this message don't often get email from campgaldebbie@gmail.com. Learn why this is important

October 4, 2025

Oregon Water Resources Department
Division 512 Rules Coordinator
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Support for Division 512 Rulemaking Petition — Consistent with Representative Mark Owens' Position

Dear Rulemaking Coordinator and Members of the Commission,

We are writing to express our support for the current **Division 512 rulemaking petition**, and to echo the points made by Representative **Mark Owens** in his letter of support. Like Representative Owens, we believe that this petition represents a **reasonable, necessary, and community-driven approach** to addressing groundwater management in the Harney Basin.

The petition recognizes the importance of **protecting existing water rights and private well owners**, while also ensuring that **sound science and local input** guide any regulatory actions. We appreciate Representative Owens' efforts to promote a process that balances environmental responsibility with the economic realities of the people who live and work here.

The Division 512 petition is a practical way forward — it allows for **continued study, transparency, and collaboration** among local stakeholders, state agencies, and property owners. It avoids hasty or one-size-fits-all regulation and instead supports solutions that are **data-based and locally informed**.

As a property owner in this region, we fully support the petition's intent to protect our groundwater for the long term without placing unnecessary burdens on small property owners or those who responsibly use their wells. I encourage the Department to move forward with the petition as written and to continue working closely with local leaders such as Representative Owens to ensure that the voices of the community remain central in this process.

Thank you for the opportunity to provide comments in support of this petition.

Respectfully,
Mark and Debbie Webb
35676 Resort Lane
Frenchglen, Oregon

MEINZ Kelly A * WRD

From: Delores Porch <verandafay@gmail.com>
Sent: Wednesday, October 1, 2025 9:30 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from verandafay@gmail.com. Learn why this is important

I am against Representative Owens' petition to change the rules in the Harney Basin that were proposed by OWRD. I listened to the concerns of farmers during public presentations. But, the climate in the basin has changed over the years. All those who use the water cannot use it as it has always been used over the centuries.

Delores Porch
SE Albany OR

MEINZ Kelly A * WRD

From: Denise Kryger <denisekryger@cranehotsprings.com>
Sent: Monday, September 29, 2025 12:31 PM
To: WRD_DL_rule-coordinator
Subject: Harney Basin Community Petition wrd_dl_rule-coordinator@water.oregon.gov

Some people who received this message don't often get email from denisekryger@cranehotsprings.com. Learn why this is important

To Whom It May Concern:

As owners and operators of Crane Hot Springs, Daniel and Denise Kryger are writing to express our strong support for the petition filed on September 12.

Our business motto, "It's about the water," directly reflects our deep reliance on groundwater reservoirs, which are vital to our livelihood. We established Crane Hot Springs 27 years ago, and it has since become the heart of our family's life. We are proud to share that the second generation of our family is now actively taking over the business operations.

As a small business, we respectfully ask that you consider minimizing any potential economic impacts on Crane Hot Springs and our 26 employees.

Thank you,
Dan and Denise Kryger
--

Owner
Denise Kryger

Crane Hot Springs
59315 HWY 78
Burns, OR 97720
T. 425.971.1063

MEINZ Kelly A * WRD

From: Denise Kryger <denisekryger@cranehotsprings.com>
Sent: Monday, September 29, 2025 12:12 PM
To: WRD_DL_rule-coordinator
Subject: Harney Basin Community Petition

Some people who received this message don't often get email from denisekryger@cranehotsprings.com. Learn why this is important

Crane Hot Springs, represented by Daniel Kryger and Denise Kryger, hereby supports the Harney Basin community petition filed on September 12.

Crane Hot Springs depends on water for our livelihood, and our motto reflects that commitment. We firmly believe that our groundwater reservoir is distinct from those of our neighbors, and we also believe that multiple groundwater reservoirs exist within the region

Sincerely, Denise Kryger

Owner
Denise Kryger

Crane Hot Springs
59315 HWY 78
Burns, OR 97720
T. 425.971.1063

MEINZ Kelly A * WRD

From: Denny & Corinne <djmccs@comcast.net>
Sent: Sunday, October 5, 2025 7:15 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

[Some people who received this message don't often get email from djmccs@comcast.net. Learn why this is important at https://aka.ms/LearnAboutSenderIdentification]

I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512." I have visited the Harney Basin (specifically the Malheur NWR and Steens Mtn.) many times over the last 40+ years. I support adoption of the Harney Basin groundwater protection rules which were developed by the OWRD after significant public input. I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.

OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.

I would like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.

Corinne C. Sherton
2213 Thrush Ct SE
Salem, OR 97306

Donald Doverspike
30552 Hotchkiss Lane
Burns, OR 97720
October 1, 2025

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

Re: Support for Harney Basin Community Petition to Amend Division 512; Opposition to OWRD's Division 512 Proposed Rulemaking

Dear Vice-Chair Smitherman and Commissioners,

I am writing as a fifth-generation farmer and rancher in Harney County, now raising the sixth generation on the same family place that has been here since 1888. My family's livelihood—and the future of our children and grandchildren—depends on a stable and fair groundwater policy. Almost all the forage we raise goes directly to sustaining our operation, feeding our livestock, and keeping our ranch viable.

Our operation spans multiple sub-basins, including the Silvies and Silver Creek areas. That is why the Petition's reservoir-by-reservoir approach makes sense. Conditions are not the same everywhere in the Harney Basin, and management rules should reflect that reality. The Petition does exactly that, while OWRD's "one-size-fits-all" Division 512 proposal would treat diverse areas as if they were all the same.

I also have serious concerns with the baseline numbers used for the Silver Creek area. From my perspective on the ground, those numbers appear incorrect and result in a reduction far greater than the public has been led to believe. It appears OWRD has applied a duty of 2.16 acre-feet, a basin-wide average, rather than a value that reflects the actual conditions of the Silver Creek sub-area. Evapotranspiration (ET) mapping would validate a higher and more realistic duty. By applying a generalized basin average, the Department understates the actual conditions in our sub-area and inflates the reductions imposed on water users.

Furthermore, if you review the attached chart, you will see the math showing that the proposed Permissible Total Withdrawal (PTW) for Weaver Springs—when combined with the total amount of "paper water" rights in the Upper Silvies and Double O areas—is still less than OWRD's own modeled recharge numbers for our sub-basin. In other words, the Department's proposal is more restrictive than the actual hydrology justifies, and the reductions being forced on families like mine are not grounded in the full picture of water availability.

Western Recharge Basin Recharge Estimate 47,000 ac/ft a year

Silver Creek subarea Western recharge basin	Authorized GW use in 2023	Authorized Use with Petition *	Authorized Use with OWRD proposal **		
Riley Upper Silver Creek	31,488 ac/ft	31,488 ac/ft	31,488 ac/ft		
Harney lake- OO Lower Silver Creek	3,731 ac/ft	3,731 ac/ft	3,731 ac/ft		
Weaver Springs	28,134 ac/ft	*9,200 ac/ft	**4,800 ac/ft		
Total		44,419 ac/ft	40,019 ac/ft		
Amount of pumping < recharge		+2,581 ac/ft	+6,981 ac/ft		

We also believe that the Silver Creek, Silvies, and Blitzen-Voltage sub-areas do not meet the statutory requirements for Critical Groundwater Area designation. Declines there are very minor and or don't exist, conditions remain reasonably stable. To classify them as critical groundwater areas is both unnecessary and unjustified, and it places additional burdens on water users where none are warranted.

Additionally, OWRD's proposal is extreme and unprecedented. The size of current Critical Groundwater Areas in Oregon ranges from 21 to 274 square miles. By contrast, designating the entire Harney Basin as a single Critical Groundwater Area would encompass 2,410 square miles—10X to 100 times larger than any other area ever designated. No Critical Groundwater Area has ever been created where the only criterion met is "about to be overdrawn." Historically, regulatory reductions have only been applied in areas where groundwater levels are actually declining or have already declined excessively.

Equally concerning, the state has historically set a clear precedent that **baseline Permissible Total Withdrawal (PTW)** should be equal to modeled recharge. Yet in the Department's current proposal for the Harney Basin, baseline PTWs are set far below recharge and at widely inconsistent levels. In the northern region, baseline PTW is set at 77% of recharge; in the southern region it is only 18%; and in the western region it is 43%. These figures show that OWRD's proposal does not follow the established precedent and applies far more restrictive standards to Harney Basin water users than have ever been applied elsewhere in the state.

It is also important to note that we are not sitting back and doing nothing. In fact, we are actively working on voluntary agreements within our sub-areas to ensure that groundwater is managed responsibly. This is the approach Oregon law itself calls for—voluntary joint action whenever possible. The Petition recognizes and supports this work, while the Department's current proposal does not.

The Petition represents the voices of our basin: Harney County, the Cities of Burns and Hines, the Burns Paiute Tribe, irrigators, local businesses, and families like mine. Unlike the Department's rulemaking, which left many concerns unaddressed, this Petition was built from the ground up through years of collaboration, place-based planning, and real community engagement. Because of that, it has broader legitimacy, fairness, and long-term support.

It also makes better policy. The Petition uses the best available science to identify specific groundwater reservoirs, targets strong reductions in areas of serious decline like Weaver Springs and Northeast Crane, and emphasizes voluntary conservation where conditions remain reasonably stable. This is a more balanced and adaptive approach than the Department's Division 512 rules, which risk broad economic harm without the same flexibility.

Agriculture is the backbone of Harney County's economy. Families like mine not only make our living here, but we also support our schools, hospitals, local businesses, and community services. If water is curtailed indiscriminately, the impacts will ripple across the entire county.

For these reasons, I urge you to adopt the Petition to Amend Division 512 and reject the Department's current Division 512 rulemaking proposal. The Petition honors both the science and the people who depend on this resource. It offers a path to sustainable water management that keeps family farms and ranches alive for the next generation, while protecting the groundwater we all share.

Thank you for your consideration.

Sincerely,
Donald Doverspike

MEINZ Kelly A * WRD

From: Kermit Williams <kermit.donna@gmail.com>
Sent: Tuesday, October 7, 2025 3:33 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from kermit.donna@gmail.com. Learn why this is important

To the decision makers:

- I am commenting on both the "Petition for Rulemaking —Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. The petition will allow continued overpumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition. I have read from multiple sources and media reports about the severe draw down of groundwater, especially in Harney Basin, mainly from alfalfa growers . This crop demands an unreasonable amount of groundwater for irrigation. Every agricultural grower should be supporting protections of groundwater and reduced pumping.
- I urge OWRD to first strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.
- I urge OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.

Sincerely
Donna Harris

Sent from my iPad

MEINZ Kelly A * WRD

From: Doug Heiken <dougheiken@gmail.com>
Sent: Wednesday, October 1, 2025 10:40 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from dougheiken@gmail.com. Learn why this is important

Dear OWRD:

I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512."

I have been recreating in Harney County for more than 40 years. My enjoyment of the area requires careful management of the water, so that rivers, fish and wildlife get their share.

I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will NOT adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.

OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.

I would like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.

The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

Sincerely,
/s/

Doug Heiken
909 W. 10th Ave
Eugene, Oregon 97402

MEINZ Kelly A * WRD

From: Earl Bowyer <earlyb100@gmail.com>
Sent: Sunday, October 5, 2025 11:38 AM
To: MEINZ Kelly A * WRD
Cc: Rep Owens
Subject: Fwd: Harney Basin community petition

You don't often get email from earlyb100@gmail.com. Learn why this is important

Begin forwarded message:

Subject: Harney Basin community petition
Date: October 4, 2025 at 6:30:22 PM PDT
To: WRD DL rule-coordinator@water.oregon.gov
Cc: Dad <earlyb100@gmail.com>

While as a Hay Farmer in the Harney Basin, for some time, I always understood that your use of water was always based on your water right date. (Priority)

We find ourselves in a situation where their may not be enough water to satisfy ALL of the demand or need within the Basin.

Due to this I support the Harney Basin community petition that was filed on September 12, of this year for a number of reasons...

For the protection of all (from the financial and economic impact) dividing and viewing as separate water reservoirs will allow a more concentrated basis for individuals to use voluntary actions for the allocation of the water. It will also provide a better result as to how the water table is being maintained by those located within the sub-area.

By being able to monitor the water usage and levels within a sub-area it will provide clarity for all who need water, domestic, livestock and the crop farmer.

Going forward with this petition should prevent lengthy litigation proceedings and hopefully all to have enough Water to maintain the economic and life style that is inherent in the Harney Valley.

Sincerely,

Earl A. Bowyer
Bowyer Peck Ranches, LLC

MEINZ Kelly A * WRD

From: Nellie Franklin <nellie.franklin18@gmail.com>
Sent: Tuesday, October 7, 2025 3:08 PM
To: WRD_DL_rule-coordinator
Subject: support for the petition on Harney Division 512 Rules

Some people who received this message don't often get email from nellie.franklin18@gmail.com. Learn why this is important

10/7/2025

To the Water Resource Dept.,
I'm writing in support of the petition on the Harney Division 512 Rules.
The current proposed 512 Rules would devastate Harney County. It would affect our already depressed economy, from the hay farmers, ranchers, schools and businesses. The petition supports our local farmers & ranchers that have been a steady economic source for our County. At one time our mill and lumber industry was a main economic source and the farmers & ranchers have always been here to support the businesses. If the water is shut off, we will literally be a ghost county & towns. I feel the local population knows what's best for Harney County.
The Water Resource Dept. has been at fault for continuing to let new wells be drilled and water transfers are still happening. Some of these transfers are legitimate, but others do not make sense to me as they are not even in the same aquifer.
Please, seriously consider this petition and don't let Harney County dry up & blow away.
Thank you for letting us comment.

Sincerely,

Ellen "Nellie" Franklin
Burns, OR

DATE: October 1, 2025 VIA EMAIL: mindy.j.lane@water.oregon.gov

TO: Water Resources Commission

RE: Comments on Special Meeting Agenda Item A, Petition for Rulemaking to Amend OAR Chapter 690, Division 512 (Malheur Lake Administrative Basin)

Dear Vice-Chair Smitherman and Members of the Commission,

Environmental Defense Fund (EDF) appreciates this opportunity to provide comment on the Petition for Rulemaking dated September 11, 2025 ("Petition"). **EDF continues to support the science-based proposed rules developed by the Rules Advisory Committee**—rules that address over-extraction of groundwater and return the basin aquifer to stability on a timeline that accounts for aquifer conditions and community needs. EDF also supports minor adjustments to the proposed rules to clarify their applicability to water rights of the Burns Paiute Tribe.

Groundwater is under unprecedented pressure worldwide from overuse, pollution, and climate change. EDF partners with communities across the globe to support their efforts in developing pragmatic approaches to sustainably manage their groundwater resources. We are committed to the principle that sustainable groundwater management is most effective when it is grounded in science and data, tailored to a local context and needs, and supported by accountable authorities that establish and manage within clear guardrails to achieve objectives.

EDF's engagement in the Harney Basin reflects these principles. In 2022, EDF published an analysis of Oregon's voluntary agreement statute in support of and collaboration with the Harney Basin Community-Based Water Planning Collaborative. This effort helped to lay the foundation for the development of the state's first voluntary agreements since adoption of the 1955 Groundwater Act, which are slated for Commission consideration later this year. EDF also helped build and launch OpenET, working alongside a consortium of scientists, government agencies, and farmers. OpenET is a publicly accessible web platform that provides free, scientifically robust evapotranspiration (ET) data which is used for groundwater basin studies and is being considered as a tool to support transparent implementation of the Harney CREP.

EDF supports the proposed rules developed by the Rules Advisory Committee because **they provide a data-driven, science-based pathway to groundwater stability while balancing community and economic needs.** The proposed rules establish a clear and measurable standard: by 2058, groundwater levels across all subareas must achieve durable stability. To meet this standard, permissible total withdrawals (PTWs) were optimized in each subarea to allow the maximum amount of pumping possible without undermining the goal of stability.

The framework established in the proposed rules produces meaningful benefits for people and the aquifer. The proposed rules provide a 30-year glidepath to transition toward sustainable withdrawals, giving producers and communities time and certainty to adapt. Model results show that groundwater levels will be stable by the end of this period. Achieving stable groundwater levels across the basin will reduce the number of domestic wells that go dry,[1] helping avoid hundreds of thousands of dollars in costs for residents and taxpayers.[2] Stability also means less stress on springs, streams, and natural evapotranspiration, protecting ecological values and community water supplies alongside agricultural production.

In short, the proposed rules create a transparent path forward that maximizes economic continuity while securing the basin's groundwater resources for future generations.

Thank you for your consideration of our comments.

Sincerely,

Rachel O'Connor
Director, Climate Resilient Water Systems

Cc:

Kelly Meinz, Rulemaking Coordinator (WRD_DL_rule-coordinator@water.oregon.gov)

[1] Oregon Water Resources Department. (2025, September 30). *Technical Evaluation of Petition to Amend Division 512* (Ben Scandella & Darrick Boschmann, Groundwater Section). https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Documents/Memo%20-%20Technical%20Evaluation%20of%20Petition%20to%20Amend%20Division%20512.pdf ("Overall, an additional 25 domestic wells are modeled as dry in 2058 under the Petition Proposal as compared to the OWRD proposal.")

[2] Oregon Water Resources Department. *Fiscal and economic impacts: Critical Groundwater Area* [PDF]. Retrieved from https://www.oregon.gov/owrd/Documents/CGWA%20Fiscal%20Impact.pdf. ("For a well repair, replacement, and abandonment project in Harney County, the costs were: Average cost of $25K; Maximum cost of $40K; Minimum cost of $8K.")

MEINZ Kelly A * WRD

From: Christy Keerins <christykeerins@yahoo.com>
Sent: Wednesday, October 1, 2025 7:30 AM
To: WRD_DL_rule-coordinator
Subject: Harney Basin Community Petition filed 12 Sep 2025

Some people who received this message don't often get email from christykeerins@yahoo.com. Learn why this is important

Reasons why I support the petition filed September 12, 2025 for Harney County community members are as listed bellow:

• *recognizes that groundwater conditions are different in different parts of the basin. Purchased property in Blitzen-voltage because the department had data supporting additional development.*

• *groundwater will be more effectively managed as separate groundwater reservoirs rather than treating the whole basin as one groundwater reservoir.*
How is the entire basin one reservoir when there are geothermal wells and different mineral contents throughout the basin?

• *focuses regulation in the areas where there are clear problems that meet the thresholds for regulatory action and Critical Ground Water Definition.*

• *encourages voluntary actions in parts of the basin where groundwater levels are reasonably stable and expected to remain reasonably stable. Majority of irrigation wells in Blitzen-Voltage area are drilled to 150ft or less and do not show a cone of depression and justify 39% curtailment. Figure3. Key Finding Harney Basin Ground Water Study November 2022*
https://www.oregon.gov/owrd/Documents/Harney_Basin_Groundwater_Study_OWRD_factsheet_2022NOV06.pdf

• *adjusts proposed boundaries to better reflect our understanding of groundwater conditions in the basin and aligns with known data.*

• *The state is required by law to minimize economic impacts. Harney County residents, businesses, local Native Americans, Malheur National Wildlife Refuge by petition presents an alternative that minimizes economic impacts on the community.*

• *The Harney Basin community cares about our ecosystem. The petition will continue to encourage the collection of information to target actions that restore or maintain the flow of springs important to the Malheur National Wildlife Refuge in partnership with the Refuge and the OO area.*

• *Harney Basin has a track record of working together to solve problems collaboratively. The petition recognizes this history and invites the state to work with us to address the declining water table in portions of the basin. Why have the citizens of the Basin been left to develop a proposal that addresses a known ground water problem from the early*

80's? Lack of Oregon Water Resources Department leadership most likely contributed to Harney County residents' petition. The Water Department's inability to be transparent on both sides of the story shows a breakdown in their ability to enforce or regulate in the future. Best results will be by Basin stakeholders.

•The petition *will allow our community and groundwater users to invest in water conservation instead of litigation and conflict. The 512 rules will likely encourage litigation because they are unfair and the data does not support the high curtailment of water as proposed. Agree, there are cones of depression in the Basin and fair regulation should be implemented, but how were the cones of depression created? …. Leadership? …. Lack of Data? Other factors as well. Cannot change the past, we need to move forward. The Petition allows our community to do just that with regulation where needed and voluntary actions for the rest of the Basin.*

• *The petition provides a pathway through which a critical groundwater area designation could be lifted if groundwater is being sustainably managed thus ensuring the next generation of Farmers/Ranchers an opportunity to fulfill their dreams. Keeps local hay producers in operation, reduces imported hay products, stable jobs, and ensures the Basin does not experience a mass exodus of residents.*

Final thought. I support the Petition and voluntary agreements because they are a better solution than what the Water Department has proposed in the 512 rules.

Respectfully,
Erick and Christy Keerins

MEINZ Kelly A * WRD

From: Christina Keerins <keerins@rural-roots-ranch.com>
Sent: Monday, October 6, 2025 10:51 PM
To: WRD_DL_rule-coordinator
Subject: Rulemaking Petition Comments

Some people who received this message don't often get email from keerins@rural-roots-ranch.com. Learn why this is important

To Commission Members,

Does the Petition model show when the water will run out in the sub areas?
Not at all. Just that there is a downward trend. OWD has accepted a declining water table for years. Why are they wanting to change now?

Model projects 25 more wells going dry from petition implementation. I would like to note The Petition Proposal and the OWRD Proposal are simulated with the HBGM from 2018 to 2098 using mean 1982-2016 recharge for annual recharge in the forward-looking simulations.

What if the Model was initiated with data from 2024 and 2025 when Static Water Levels increased? If the OWD did not use the most current data then what value does the modeling have on projecting PTW's or curtailment. It would be interesting to see the Model initiated with all available data to include 2024 recharge.

What is the Dollar value of drilling deeper? $25,000-80,000 each? $625,000- $2,000,000. How much hay does that equate to? If current average price of $150 per ton 4,166.67-13,333.3 tons. If the average acre produces 5 ton then it would equate to 2667 acres on the high end. Keeping those acres in production would pay for the deepening of the 25 wells. Thus what is the cost of those 25 wells compared to the 512 rules curtailment? Minimal. There are options to help offset costs and hardship already for dry wells.

Bottom line is what is acceptable for continuing to irrigate in Harney Basin? Each stakeholder has a different view. Some groups think no more irrigation and leave all the water in the ground. Community feels differently regarding continuing to irrigate and becoming more efficient. Oregon regulation defining a critical Groundwater Criteria "Groundwater levels have declined excessively (> 50 ft total decline) and are excessively declining (decline > 3ft per year for at least 10 years)" The entire base does not meet the definition.

If the Petition model results of Harney Petition show a decline in all areas, but none of the area's meet critical Groundwater definition then is it an acceptable option?

What if OWD Model gets it wrong and Water tables rise quicker than they modeled?

If Commision goes with 512 rules as proposed. I will be curtailed and will not be able to continue farming and my family will be deprived of the American Dream. Think of how many families the State has authorized to irrigate and with 512 rules they can take those away based on priority date. What are they going to do?

Lastly, The last 4 month I have invested many hours to understand how OWD flipped from a surplus of water in the Southern Region to a 39% curtailment. Approved 10 additional pivots in the Blitzen Subarea that half are still under development. What data OWD used for those pivots to be determined to have adequate water to develelope yet they want to curtail 39%. Questions that are not answered. The amount of time spent dealing with the water situation has taken a toll on my family. I have not been able to spend quality time with them or plan on what we should be doing in the near future because of the unspoken question" DO WE SALE, PACK UP AND MOVE?

The sheer amount of stress OWD has inflicted with the 512 rules is insane. Lack of working to develop voluntary agreements and just resorting to regulation is unacceptable. Additionally, where is the man power to enforce the proposed 512 rules? Do they have the bandwidth to litigate all of the projected law suites which is at a cost to all Oregon residents.

--

Erick and Christy Keerins
Rural Roots Ranch
www.rural-roots-ranch.com

MEINZ Kelly A * WRD

From: Erick Keerins <keerins24@yahoo.com>
Sent: Tuesday, October 7, 2025 4:54 PM
To: WRD_DL_rule-coordinator
Subject: Harney Petition Comments.

Some people who received this message don't often get email from keerins24@yahoo.com. Learn why this is important

Dear Commission,

On a personal note I foresee a cross roads coming in December for my family.

Option A: 512 rules = Put place up FOR SALE and find another State or maybe country to call home.

Option B: Petition = Continue to raise family and build roots in Princeton community. (Blitzen-Voltage)

My last name was Americanized when family immigrated to America in 1878 due to trying to escape potato famine in Ireland. Proved up on homesteads in 1886 and are still in operation at Keerins Junction, Izee, Oregon. Grandmother immigrated in 1956 from war torn Germany. One of her most harped on statements was "the farmers wives were the richest Germans after the war. They had an egg to cook, grain to mill and a meat source." Her words of wisdom was to get land and hold onto it because it provides a bartering source. On my mother's side most of the family immigrated in the late 1800's from France and Germany. Settled in Grizzley, Oregon in 1912. Family is still in operation.

I am a 4th Generation rancher/farmer on both sides, but with no water, what does it matter? I served 22 years in the United Coast Guard and am proud to represent our nation, but today I am fearful that the same democracy that I served for is being attacked. The attacking force is not coming from outside of the lifelines of the Nation, but from the State's Water Department. Was granted to pump water from a stable ground water source. Yet now it is projected to be curtailed when there is a surplus of water for the Southern Region. Things just do not seem to be crystal clear and I do not feel all of the facts are being presented.

If Option A is implemented I will move. Option B is not ideal, but a better solution. I pray God helps guide the Commission in the hard decision that has to be made.

Respectfully,
Erick Keerins

The Harney Basin has An area of 3,350,000 Acres 5,240 sq. miles. Portand, Salem and Eugene has A combined area of 261.8 sq. miles. Groundwater conditions are different in different areas in the basin. Local input is needed for rule making in this matter. We live on A fixed income and the small amount of hay we raise helps pay our property Taxes. We live in an area where ground water is stable. Please do not apply A one size fits all plan.

Thank You, Erick Young

Erich Young
30359 Stanclift Ln.
Burns Or. 97720

PORTLAND OR RPDC 97
3 OCT 2025 PM 1

TO

Division 512 Rules Cordinator
Oregon Water Resources Dept.
725 Summer St. NE. Suite A
Salem Or. 97301-1271

Received
OCT 06 2025
OWRD

MEINZ Kelly A * WRD

From: Erik Steen <ersteen3@gmail.com>
Sent: Tuesday, October 7, 2025 5:00 PM
To: WRD_DL_rule-coordinator
Subject: Public comment Erik steen

Some people who received this message don't often get email from ersteen3@gmail.com. Learn why this is important

Thank you to the commission for taking the time to read, hear and engage with us on this matter. As a user of water in the lower blitzen area, we believe a 39.9 % curtailment goes beyond all sense, data and facts. The water level (by the departments own data) has not declined and is in fact in a surplus. Such harsh cuts will undeniably devastate and bankrupt this community. This sub area has a stable water level (by the departments own data) and should be given the chance to work together to achieve true conservation via voluntary agreement. An entire community's lively hood and future are at stake and should not be taken lightly. Working with the lower blitzen sub area could set a positive and viable precedent moving forward in future department engagements with water users. We beg of you, look at the departments own data on the lower blitzen sub area and reach common ground with us.
Thank you,

Erik & laura steen

MEINZ Kelly A * WRD

From: Fran Recht <franrecht@gmail.com>
Sent: Tuesday, October 7, 2025 2:24 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from franrecht@gmail.com. Learn why this is important

Ms. Meinz:

I would like to comment on both the Division 512 Petition for Rulemaking and the Agency Proposd Rules.

I believe that OWRD needs to strengthen, not weaken, groundwater protections in the Harney Basin to stabilize groundwater levels that have been severly depleted.

The Petition for Rulemaking filed by Senator Owens, weakens these protections by allowing continued over pumping of groundwater. I urge OWRC to deny this petition and adopt the Agency proposed rules which was the result of a long and robust public process.

OWRD has already determined the amount of groundwater pumping in the basin that could occur and still allow for stabilizing groundwater levels. This alternative (Owens) petition would allow pumping that would blow by those amounts.

In fact, I would like to see OWRD strengthen the groundwater rules to stabilized levels faster and to protect streams, wetlands, and riparian vegetation, and then move forward quickly to adopt these rules.

Thank you for your attention.

Sincerely

Fran Recht
PO Box 221
Depoe Bay, OR 97341

Date: October 7, 2025

To: Kelly Meinz – Rulemaking Coordinator

Orego Water Resources Department

725 Summer St. N. Suite A

Salem, OR 97301-1271

Dear Mr. Meinz,

Following are comments I would like you to consider in addition to 4 or 5 other letters not all of which I could find in the public record.

Proposed Division 512 Rules and Petition for Alternative Rules

Summary: The OWRD 512 rules are precedent setting in a number of negative ways for the state and for the integrity of water regulation and water management. The majority of the Harney Basin is not overdrawn and does not come close to meeting critical groundwater area designation criteria required by existing law. The failure to identify and determine specific aquifer parameters, attributes, functions and groundwater recharge areas is the main deficiency of the Groundwater Study and 512 Rule conclusions. Assumed water flow from subarea to subarea was not verified by OWRD or USGS and is the false assumption of both the model and OWRD's conclusions about hydrological relationships to domestic wells, springs, and groundwater dependent vegetation. Well to well comparisons of well drilling logs, water quality attributes, pump test function/response data, water quantity and years of well drilling knowledge indicate an opposite view especially when "substantial, practical, and measurable flows are used as the criteria for groundwater management". OWRD appears to be using a "all water is connected criteria" which may be true if water from our wells travels 70 or more miles through dense lakebed clay over a thousand years to groundwater declining areas to the north. This is not a fair or practical standard!

We support the proposed petition because it is much closer to reality on the ground throughout the area and does not automatically curtail water use in areas that do not have substantial groundwater declines. Although we do not agree with not taking Lower Blitzen, Silver Creek and Silvies out of the Critical Groundwater designation with the establishment of Voluntary Agreements and a process to remove the designation we can live with it. We do not believe Silver Creek or Silvies are about to be overdrawn, nor do we believe Blitzen-Voltage is interfering with a senior surface water appropriator. It is being assumed that pivot irrigation is drying up Sod House Spring but no data exists that the use is from the same aquifer and OWRD and USGS did not try to study nor set up a process to study the potential interference because it apparently dried up during the 21 year drought. Irrigators in the Lower Blitzen have stated they will initiate a process to monitor potential interference with surface water users, domestic wells and groundwater dependent vegetation. Lower Blitzen irrigators working within the proposed petition rule have committed to take static water levels in March and October and work with technical experts to determine functional and substantial groundwater flows to the north if there are any.

Groundwater Level Goal: The Division 512 goal of 0 decline over five years is not reasonable, not fair, nor is it consistent with state law or groundwater levels administered or allowed anywhere else in Oregon. A 0 decline goal is not even in context with other measurable goals or objectives!

The proposed Petition Rules recognizes the variability of groundwater levels (i.e."Dynamic Stability") and focuses on "reasonably stable" which is much more consistent with state law and will work with voluntary efforts to better manage groundwater in a sustainable manner.

Ridiculous 512 Proposed Groundwater Curtailments: OWRD is proposing a 39 percent curtailment in the Lower Blitzen-Voltage subarea groundwater use for irrigation in order to decrease the level of curtailment in the Northeast Crane Area! This is proposed without a study to see if water can even flow from Lower Blitzen north to Crane and beyond. Well logs and years of well drilling and well reconstruction and static water levels give very strong evidence there is no water flow through the very thick lakebed clay in Malheur, Harney, and Mud Lakes nor is there substantial flow north in the Princeton and Windy Point areas. Siver Creek is being proposed for a 25 percent reduction for interference with Double O springs without any data and without any study of water flow from upper Silver Creek to the springs. Silver Creek static groundwater levels are near stable and our

opinion are not about to being overdrawn. *Even if OWRD is right on the above relationships (which they are not) the proposed cuts are arbitrary and not technically defensible!*

But what if the Department is wrong? *Many, many bankruptcies will have occurred with millions of dollars taken away from ranch and farm families and the community with no benefit to the stated objective!!*

Proposed Petition Groundwater Curtailments: Curtailment of groundwater use is directly correlated to groundwater levels and conditions in areas with excessive declines while encouraging groundwater plans for each area to work towards decreasing groundwater rates of declines and resolve conflicts of potential interference among water users, springs, and ecological conditions. *Proposed Petition is reasonable, practical, data driven, technically defensible, legally defensible, fair, and flexible as conditions change.*

Groundwater Model is a Management Tool not an End Point: In past meetings when asked about assumptions by OWRD in the Groundwater Model they explained that they tested hundreds of alternatives in refining the Model. That was not the question – the question was what were the assumptions used in the Model to make different groundwater projections? The answers seemed to always focus on Model outcomes and not functional building blocks of the Model. When the Groundwater Model projects a 39 percent cut to groundwater use in Lower Blitzen to decrease the groundwater decline in Northeast-Crane you need a high confidence level (actually you need certainty) that water can readily move from Buena Vista to Sod House to Black Butte to Princeton to Windy Point and on to Crane and 30 miles beyond? To have a high confidence level that is probable, or even possible, OWRD and USGS needed to test that assumption in the most intensive way which was not done. Further, substantial water flows would have to move readily in an unrestricted way in order for the Groundwater Model's projection to be viable. Therefor it is just another unverified projection! ***The Proposed Petition appropriately appears too not accept the proposition that Lower Blitzen water will fix groundwater declines in other parts of the Malheur Lake Basin because there is no evidence to corroborate that assumption which is the basis of the Groundwater Model projections.***

Our Families Groundwater Situation: I have gone to most of the water meetings for many years and I seldom talked about our family's groundwater situation. We believe we are

irrigating from a small aquifer that is totally separate from the Upper and Lower Blitzen and therefore does not impact anyone else. It is a small groundwater use permit with ten wells that we are monitoring, of which we are primarily using two wells with plans on using five wells when our monitoring of static and pumping levels gives us enough information to determine the most economical and ecological way to improve our infrastructure. Two of the wells we drilled have higher static groundwater levels this year than in previous years while the other wells have fluctuated from high to low of six feet with our poorest well declining .15 to .3 feet per year depending on whether we use the static level when the well is drilled. Our pivots are 9.5 miles from the nearest irrigation well and over 30 – 60 miles to the closest irrigation well with a serious groundwater decline. ***OWRD's proposed 512 rules will cost my family approximately a one-million-dollar equity loss on our investment not to say a major disruption of our livestock ranch business with no benefit to any groundwater user in the basin.*** The two domestic and livestock wells within .7-1.5 miles have not declined one inch while we have irrigated our three small pivots.

Our family has cooperated fully with OWRD and USGS during the last nine years monitoring static levels and opening up our ranch wells for water chemistry studies. The process has been beneficial except when a USGS scientist laughed at me when I presented information about my Uncle Charlie drilling a number of dry wells on Steens Mountain. I have spent the majority of my life working on watershed and ecological issue for the benefit of the environment and the public. We have at least 30 springs and 34 miles of streams and many other wetland/riparian plant communities which we are very proud of our management and our understanding of the groundwater and surface water relationships and sources of water. We hope we can go forward in a positive and beneficial way through the establishment of voluntary agreements, a data driven and cooperative management structure, and a groundwater management system that will get better over time. We implore you to embrace the ***proposed petition*** which we believe is a much better path forward fully utilizing the hard work everyone has put into this process.

Thank you very much!

Sincerely,

Fred I. Otley, President

Otley Bros., Inc.

40644 S Diamond Ln

Diamond, OR 97722

MEINZ Kelly A * WRD

From: Fred Otley <fredotley@hotmail.com>
Sent: Tuesday, October 7, 2025 1:11 PM
To: Erick Keerins; WRD_DL_rule-coordinator
Cc: HUNTINGTON Geoff * GOV; FERRARI Chandra Alene * GOV; Rep Owens; Sen McLane; bill.hart@harneycountyor.gov; rob.frank@harneycountyor.gov; patty.dorroh@harneycountyor.gov; Woody Wolfe; joemollwrc@gmail.com; janleewrc@gmail.com; juliesmithermanwrc@gmail.com; kathykiharawrc@gmail.com; janneumanwrc@gmail.com; jacobdavis12@gmail.com; keerins24@yahoo.com; ersteen3@gmail.com; vinetoandre@gmail.com; ann_gilmour@msn.com; newca_3908@yahoo.com; albrechtfrms@yahoo.com; kerns2873@gmail.com; relderk@yahoo.com; klelder66@gmail.com; davieskerns@yahoo.com; bachmanbaykennels@gmail.com; dkotley7@yahoo.com; goldenrulefarms@gmail.com; maherquarterhorse@gmail.com; harrisranch@yahoo.com; nicholsdan70@gmail.com; martint7758@gmail.com; moosehero@msn.com; jakepotter78@outlook.com
Subject: Re: Harney County Petition Comments Blitzen-Voltage

Some people who received this message don't often get email from fredotley@hotmail.com. Learn why this is important

Very good Erick

Get Outlook for iOS

From: Erick Keerins <keerins24@yahoo.com>
Sent: Tuesday, October 7, 2025 1:05:44 PM
To: WRD_DL_rule-coordinator <wrd_dl_rule-coordinator@water.oregon.gov>
Cc: geoff.HUNTINGTON@oregon.gov <geoff.HUNTINGTON@oregon.gov>; Chandra.Alene.Ferrari@oregon.gov <Chandra.Alene.Ferrari@oregon.gov>; rep.markowens@oregonlegislature.gov <rep.markowens@oregonlegislature.gov>; sen.mikemclane@oregonlegislature.gov <sen.mikemclane@oregonlegislature.gov>; bill.hart@harneycountyor.gov <bill.hart@harneycountyor.gov>; rob.frank@harneycountyor.gov <rob.frank@harneycountyor.gov>; patty.dorroh@harneycountyor.gov <patty.dorroh@harneycountyor.gov>; woodywolfewrc@gmail.com <woodywolfewrc@gmail.com>; joemollwrc@gmail.com <joemollwrc@gmail.com>; janleewrc@gmail.com <janleewrc@gmail.com>; juliesmithermanwrc@gmail.com <juliesmithermanwrc@gmail.com>; kathykiharawrc@gmail.com <kathykiharawrc@gmail.com>; janneumanwrc@gmail.com <janneumanwrc@gmail.com>; jacobdavis12@gmail.com <jacobdavis12@gmail.com>; keerins24@yahoo.com <keerins24@yahoo.com>; ersteen3@gmail.com <ersteen3@gmail.com>; vinetoandre@gmail.com <vinetoandre@gmail.com>; ann_gilmour@msn.com <ann_gilmour@msn.com>; newca_3908@yahoo.com <newca_3908@yahoo.com>; fredotley@hotmail.com <fredotley@hotmail.com>; albrechtfrms@yahoo.com <albrechtfrms@yahoo.com>; kerns2873@gmail.com <kerns2873@gmail.com>; relderk@yahoo.com <relderk@yahoo.com>; klelder66@gmail.com <klelder66@gmail.com>; davieskerns@yahoo.com <davieskerns@yahoo.com>; bachmanbaykennels@gmail.com <bachmanbaykennels@gmail.com>; dkotley7@yahoo.com <dkotley7@yahoo.com>; goldenrulefarms@gmail.com <goldenrulefarms@gmail.com>; maherquarterhorse@gmail.com <maherquarterhorse@gmail.com>; harrisranch@yahoo.com <harrisranch@yahoo.com>; nicholsdan70@gmail.com <nicholsdan70@gmail.com>; martint7758@gmail.com <martint7758@gmail.com>; moosehero@msn.com <moosehero@msn.com>; jakepotter78@outlook.com <jakepotter78@outlook.com>
Subject: Harney County Petition Comments Blitzen-Voltage

Dear Commissioners,

Thank you for taking your time to learn more about conditions in our basin, groundwater policy, and the proposals before you. This letter is sent on behalf of the groundwater users in the Blitzen-Voltage area who are working together on a voluntary agreement. When you are no longer in your positions and when staff and leadership at the Department inevitably move on to other obligations and opportunities, we hope to still be here in Harney Basin, stewarding our land and water resources for current and future generations, for the community and economy of Harney County and Oregon, for our resident fish and wildlife, and for all people of Oregon.

As it currently stands the Department is proposing nearly 40% reductions in pumpage (88% reductions in authorized use) in an area where groundwater levels are reasonably stable and where groundwater is not over-appropriated or overdrawn and shows no evidence of excessive declines. The hypothetical modeled benefit of this extreme proposal is 1 cfs (600 afy) in discharge to springs and streams and 4 shallow domestic wells do not need to deepen. The Department has not meaningfully involved those who will be affected by its rules, has not seriously considered ways to reduce economic impacts, and is being pressured by special interests outside of the basin who will not be harmed by this proposal. You are being asked to reinterpret and rewrite law, not enforce the current law. You are being asked to reallocate legally granted groundwater rights to beneficial uses without groundwater rights.

The Department continues to silence our community members and not take our concerns seriously. You have already caused irreparable harm to our community through a disingenuous public process and extreme and legally unfounded rules being proposed. We are continuing to engage in good faith at significant personal and collective cost. Please choose partnership and collaboration. We stand ready to work with you and are hopeful.

Respectfully,
Erick Keerins &
Blitzen-Voltage Groundwater users

MEINZ Kelly A * WRD

From: Gary S Marshall <brokencirclecompany@gmail.com>
Sent: Tuesday, October 7, 2025 1:03 PM
To: WRD_DL_rule-coordinator
Subject: Fwd: Agency Proposed Rules - Division 512

Some people who received this message don't often get email from brokencirclecompany@gmail.com. Learn why this is important

Sent from my iPad

Begin forwarded message:

From: Gary S Marshall <brokencirclecompany@gmail.com>
Date: October 7, 2025 at 12:39:10 PDT
To: Gary & Georgia Marshall <georgia.marshall@gmail.com>
Subject: Agency Proposed Rules - Division 512

To: OWRD Commission

We support strict groundwater use rules, and enforcement of those rules, that will positively impact the survival and regeneration of the “spring water” in the Warm Springs/Double O Valley, of lower Silver Creek drainage in Harney County Oregon.

This network of springs are vital to the function and the life of this area, both from a domestic and a wildlife perspective. Some of these springs are like “seeps” with no clearly defined spot that water surfaces, making it difficult to monitor flow rates. These springs are immeasurably important to the valley in their consistency and wet lands they provide.

The chain of springs begins at the northern side of Silver Lake, and continues some 10 or 12 miles, along the western and southern perimeter of Warm Springs Valley, to Harney Lake. Some springs are on private or BLM property, and some on Malheur National Wildlife Refuge lands. On BLM and Private lands, they are a critical and dependable source of stock water, and in some cases irrigation. On Refuge lands, they provide ponding for local and migratory birds, as well as great quantities of wetland habitat and nesting.

Silver Creek is an intermittent stream, draining a very large, low elevation watershed. Some years Silver Creek brings a lot of water into the Warm Springs Valley, but there are other years when there is none. Our family has irrigation water rights on Silver Creek, and supplemental water use from Moon Reservoir. We have an understanding of Oregon water rights laws, and the beneficial uses of the waters of Oregon. We also know that these springs have no lawful senior water right, relative to rights on most of the ground water irrigation wells. However the benefit from the springs to the wildlife and indigenous peoples far preceded ground water pumping. Historical importance of these sites is made clear by the abundance of artifacts in close proximity to the springs.

We have lived and Ranched in this valley since 1979, with family members here long before that. We are private landowners, BLM permittees, and Refuge cooperators. Only in recent years have we noticed any change in the output of the springs. Without a reversal of this downward trend soon, the springs will dry up and this rich valley becomes a desert.

We urge you to act without delay for the health and life of these springs of the Warm Springs Valley. This is a vitally important issue for the wildlife, and for this small community in this current and future generations.

Sincerely,

Gary and Georgia Marshall

Princeton, OR
97721

PORTLAND OR RPDC 972
4 OCT 2025 PM 5 L

Division 512 Rules Coordinator
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

97301-126673

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OWRD

October 2, 2025

Division 512 Rules Coordinator
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

RE: Reasons Against 512 Rule

This ruling will not only affect the people and economy of Harney County, but it will also cause financial ruin to the dairies that purchase their hay from this area.

This is a place where a lot of young families can get started farming and ranching. Taking away their livelihood in Harney County will cause banks and loan agencies to go under.

If the state stuck to the rules already in place and enforced them, water could be saved. There are many with wells who should not have been allowed to put them in, given the state's past rules, but the state went ahead and let them. There are pivots that were put in without going through proper channels and yet the state didn't cut them off when they "begged forgiveness." There are pivots where more acreage is being irrigated than they are certificated for; those should be penalized, not the people who are following the rules.

Over and over at the Water Resources meetings I've attended, when the state officials were asked, "Why haven't you followed the rules already set in place?" they would change the subject and not tell us why they have let this happen. Answers would be nice.

If you go with the state's demands, there will be 90% of Harney County who will be resistant and not conform.

If you work with the farmers and ranchers of Harney County and go with their proposal, you will have 90% of the people agree.

The resistance is because you haven't followed through on the rules set forth earlier, and why should anyone follow new rules? Especially ones that will devastate this farming and ranching community.

Sincerely,

Gerrit A. Jager Patricia M. Jager

Gerrit A. Jager & Patricia M. Jager
Princeton, OR

MEINZ Kelly A * WRD

From: Glenn Harris <harrisranch@yahoo.com>
Sent: Tuesday, October 7, 2025 4:07 PM
To: MEINZ Kelly A * WRD
Subject: Proposed cuts of Lower Blitzen water use.

You don't often get email from harrisranch@yahoo.com. Learn why this is important

To Whom It May Concern:

I am writing in response to the Commissioners proposal to cut Lower Blitzens water use by 39%. This area is probably, in my opinion, one of the most stable areas in the county if not the state. It makes absolutely no sense to me that we are targeted for the largest cut simply because we are close to other problem areas. While we are, as a group of irrigators, are willing to work with OWRD in good faith, we can't help but feel we have been unfairly singled by the commissioners.

Another thing I would like to mention is during the virtual meeting with the commissioners the other day, anyone speaking on our behalf was held to the 3 minute limit while others, with other interests, were allowed to ramble on far beyond the limit. This is simply my own observation and complaint.

Glenn Harris
Princeton Irrigator

MEINZ Kelly A * WRD

From: bccorelse@frontiernet.net
Sent: Wednesday, October 1, 2025 9:14 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Hello, and please accept our comments -

- We are commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512."
- We do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- OWRD's proposed rules already contain extensive concessions to irrigators. We urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.
- We would like to see OWRD's proposed rules strengthened to better protect groundwater. We would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. We believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.
- The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

Thank you for your time and consideration of these matters.

Gloria and Bob Ziller
PO Box 419
O'Brien, OR 97534

Pacific Hydro-Geology Inc.
18487 S. Valley Vista Rd.
Mulino, OR 97042
(503) 632-5016

October 1, 2025

Mr. Kelly Meinz
Rules Coordinator
Oregon Water Resources Department
725 Summer St. N.E. Ste. A
Salem, Oregon 97301

RE: Comments in Support of Petition for Rulemaking – Division 512

Dear Mr. Meinz:

We are submitting these comments in support of the Petition for Rulemaking to Amend Oregon Administrative Rules Chapter 690, Division 512 (Petition). We understand that the OWRD has recently completed an evaluation of the Petition and found that the measures proposed in the Petition would not be as effective as the proposed rules in reducing long-term water level declines in the Harney Basin. The OWRD's findings are based on the results from modeling the petitioner's groundwater management scenarios. The Department acknowledges the uncertainties and limitations of groundwater flow models. We concur, and we also have concerns about the OWRD's characterization of the basin hydrogeology and development of the groundwater model, which we have expressed in comments on the rulemaking, previously submitted.

Therefore, we support the Petition because we believe it provides a more balanced approach to addressing the interests of all water users in the basin. More specifically, the Petition focuses on solutions in the areas which are experiencing the greatest groundwater level declines, attempts to minimize the negative impacts to the region's economy, and emphasizes voluntary participation from groundwater users, while allowing for making adjustments in the groundwater management scenarios if the desired results are not being achieved.

Sincerely,

Gregory E. Kupillas, R.G., C.W.R.E.
Malia R. Kupillas, R.G., C.W.R.E.

Side-by-Side Comparison of Proposed Harney Groundwater Policies

The following table includes a side-by-side comparison, at a high level, of the elements included in the OWRD proposed Division 512 rules and the rules proposed by the Petition as requested by several members of the public. This was put together on a rapid timeframe and may contain errors. Please send any corrections to harmony@saltandfresh.solutions.

Topic	OWRD Division 512 Rules[1]	Petition[1] Rules
High-Level Overview of Proposed Critical Groundwater Area Approach	The Harney Basin is one groundwater reservoir and one Critical Groundwater Area (CGWA) and seven subareas. All subareas will receive a "permissible total withdrawal" and groundwater use will be reduced via regulation until a target groundwater level trend of 0 feet of decline ("durable stability") is reached. Reductions vary by subarea.	The Harney Basin includes five groundwater reservoirs and five Critical Groundwater Areas (CGWAs) that are each designated for different reasons. Two areas with evidence of excessive declines will receive a "permissible total withdrawal" with regulatory reductions in these areas to achieve "dynamic stability." The remaining areas will voluntarily reduce groundwater use to maintain "reasonably stable" groundwater levels with additional regulation if a "decline trigger" is met.
Basis of Scenario	Based on "optimized" model scenario developed by OWRD with input from RAC.[2]	Based on Scenario B[3] reviewed by RAC and discussion group with additional revision through petition process.
Groundwater Reservoir(s)[4]	The Harney Basin is one groundwater reservoir.	There are five groundwater reservoirs in the Harney Basin: Silver Creek, Weaver Springs, Silvies River, Northeast-Crane, Blitzen-Voltage
Subareas	Groundwater is managed in 7 subareas: Silver Creek, Weaver Springs, Dog Mountain, Silvies River, Northeast-Crane, Lower Blitzen-Voltage, Upper Blitzen.	Not mentioned (relies on groundwater reservoirs rather than subareas).
Boundaries/ Boundary Adjustments	na	Adjusts boundaries of Weaver Springs to include additional wells from Dog Mountain area (follows groundwater study budget boundary). Adds remaining portions of Dog Mountain to Silvies River. Adjusts boundaries of Blitzen-Voltage north to coincide with Windy Point (follows groundwater study budget boundary). Combines Upper Blitzen and Lower Blitzen-Voltage.

[1] OWRD Proposed Rules and Petition can be found at this website.
[2] For a modeled comparison between the OWRD rules and petition rules see the Technical Memo distributed by the Water Resources Department on September 30, 2025.
[3] See the November 2024 RAC slides and the December 2024 Discussion Group meeting summary.
[4] ORS 537.515 defines groundwater reservoir as a "designated body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred."

Topic	OWRD Division 512 Rules[1]	Petition[1] Rules
Definitions	Includes definitions for the following: "Adaptive Management Checkpoint," "Exempt Groundwater Uses," "Groundwater Level Change Envelope," "Initial Allotment," "Permissible Total Withdrawal," "Public Uses," "Subarea," "Target Groundwater Level Trend," "Totalizing Flow Meter"	Includes definitions for the following: "Annual High Water Level," "Decline Trigger," "Dynamically Stable Groundwater Levels," "Initial Allotment," "Permissible Total Withdrawal," "Reasonably Stable Groundwater Levels," "Target Groundwater Level Trend," "Totalizing Flow Meter"
Critical Groundwater Area Boundary[5]	One critical groundwater area boundary that encompasses all 7 subareas.	Five different critical groundwater area boundaries. Each groundwater reservoir is its own critical groundwater area.
Critical Groundwater Area Designation	The entire basin, as a single groundwater reservoir, has evidence of meeting the criteria for critical groundwater area designation: excessive declines, overdrawn or about to be overdrawn.	Each groundwater reservoir has different criteria for designation as a critical groundwater area. Weaver Springs: excessive declines, overdrawn Northeast Crane: excessive declines, overdrawn Silver Creek: about to be overdrawn Silvies: about to be overdrawn Blitzen-Voltage: wells substantially interfering with senior surface water appropriator
Lifting a Critical Groundwater Area Designation	No language proposed in rules.	Includes a process and criteria for lifting a critical groundwater area designation.
Estimated Percent of Regulatory Reductions in Groundwater Use (Basin-wide)	35% from estimated 2018 usage	20% from estimated 2018 usage. See Department technical memo.[2]
Groundwater Rate of Change in 2034 in Weaver Springs (after reductions)	0 feet of decline, groundwater levels expected to be recovering. See Department technical memo.[2]	0 feet of decline, groundwater levels expected to being recovering. See Department technical memo.[2]

[5] ORS 537.735 states that "a rule adopted by the Water Resources Commission [...] shall define the boundaries of the critical ground water area and shall indicate which of the ground water reservoirs located either in whole or in part within the area in question are included within the critical ground water area. Any number of ground water reservoirs which either wholly or partially overlie one another may be included within the same critical ground water area." OAR 690-010-0130 states that "(3) For the purposes of ORS 537.735(1)(a) the exterior boundaries of a critical groundwater area may be reasonably inferred or ascertained: (a) According to the presence of physical natural boundaries, hydrological conditions, or recharge or discharge areas; or (b) Administratively by defining an affected area that does not have boundaries defined by natural features. (c) Additionally, to the extent that sub-areas wholly contained within the designated critical groundwater area must be defined to allow for implementation of corrective control provisions, these sub-area boundaries will also be reasonably inferred or ascertained as in 690-010-0130 (3)(a) or (3)(b).

Topic	OWRD Division 512 Rules[1]	Petition[1] Rules
Median Groundwater Rate of Change in 2058 in All Other Areas/Reservoirs	0 feet of decline over 6-year period of time ("durably stable") across the entire basin. See Department technical memo.[2]	<0.1 feet of decline across the entire basin. See Department technical memo.[2]
Total Proposed Regulatory Reductions (by area)	Regulatory reductions of groundwater in each subarea as follows (from 2018 estimated pumpage): Weaver Springs: 75% (phased in over 6 years from 2028) Lower Blitzen-Voltage: 39% Northeast Crane: 35% Silver Creek: 28% Silvies River: 15% Dog Mountain: 9% Upper Blitzen: 0% (All phased in over 24 years)	Regulatory reductions of groundwater use in the following groundwater reservoirs with evidence of excessive declines (from 2018 estimated pumpage): Weaver Springs: 54% immediately following contested case Northeast Crane: 30% phased in over 24 years
Permissible Total Withdrawal (PTW)[6] by Area	Each subarea receives a PTW: Dog Mountain: 4,200 afy Weaver Springs: 4,800 afy Northeast Crane: 35,000 afy Silver Creek: 15,200 afy Silvies River: 21,200 afy Lower Blitzen-Voltage: 8,300 afy Upper Blitzen: 76 afy	PTW set for groundwater reservoirs with evidence of excessive declines: Weaver Springs: 9,200 afy Northeast Crane: 37,000 afy PTW will be set for other groundwater reservoirs if/when they meet a "decline trigger" defined as median groundwater levels decline by 25' or 0.6'' per year of decline.
Allocation of PTW	Initial allocation depending on type of water right. For irrigation rights, 2.5 acre feet of wetted acres from 2020-2024. For municipal rights, 110% of highest amount in previous 6 years. For other uses, based on historic use. From there, allocation is by priority.	For areas with PTW, initial allocation for irrigation rights of 2.5 acre feet of wetted acres from 2020-2024. Process to notify watermaster if groundwater will not be used to allow for use by junior rights. From there allocation is by priority.
Timing of PTW Allocation	Regulatory reductions occur in 6-year intervals, with frontloading for areas with a PTW (beginning in 2028 unless groundwater levels show no declines). Regulatory reductions for Weaver Springs complete by 2034. For other areas, regulatory reductions occur until 2052.	Regulatory reductions occur in 2028 for Weaver Springs. For Northeast Crane regulatory reductions occur in 6-year intervals until 2052, with frontloading of regulatory reductions and opportunities to adjust.

[6] ORS 537.735 states that "A rule by the commission under subsection (1) of this section may include any one or more of the following corrective control provisions: [...] (b) A provision determining the permissible total withdrawal of ground water in the critical area each day, month or year."

Topic	OWRD Division 512 Rules[1]	Petition[1] Rules
Voluntary Reductions of Groundwater Use	No language proposed in rules.	Voluntary reductions of groundwater use via voluntary agreements[7] by 2040 in the following groundwater reservoirs and development of sub-basin conservation plan: Silver Creek: 10% Silvies River: 10% Blitzen-Voltage: 10%
Estimated Percent of Voluntary Reductions in Groundwater Use	Voluntary reductions allowed but not mentioned.	Percent reductions achieved voluntarily from 2018 pumpage not modeled – projections not available.
Groundwater Level Goal	"Target groundwater level trend" is the same for every subarea. Set as the median groundwater level decline rate of no more than 0 feet per year over a five-year period when calculated as described in OAR 690-512-0080(7).	"Dynamic stability" in areas with evidence of excessive declines. Defined as annual high-water levels, based on measured and observed data over time, are at and remaining in a consistent range with a median groundwater level showing 0.5 feet per year variability to allow for natural variability around a central tendency. Required if a decline trigger is met. Maintain "reasonably stable" groundwater levels in areas without evidence of excessive declines. Defined as median annual high-water level has not declined more than 25 feet and does not indicate an average rate of decline of more than 0.6 feet per year.
Exemptions	No language proposed in rules.	The following rights are exempt: • Tribal water rights • Municipal water rights • Exempt water rights • Recreation water rights
Transfers	No language proposed in rules.	Each groundwater reservoir would be its own distinct source. Transfers between groundwater reservoirs could not occur without consent to injury of all groundwater users.
Classification[8] (new uses)	Classified for exempt groundwater uses and non-consumptive geothermal uses.	Classified for exempt groundwater uses and non-consumptive geothermal uses. Provides a pathway for new uses and limited licenses where "offset water" in the same groundwater reservoirs can be secured (similar concept to what is currently in Division 512 rules).

[7] ORS 537.745 states that "the Water Resources Commission may encourage, promote and recognize voluntary agreements among ground water users from the same ground water reservoir."
[8] ORS 536.340 states that "(1) the Water Resources Commission: (a) May [...] (2), classify and reclassify the lakes, streams, underground reservoirs or other sources of water supply in this state as to the highest and

Topic	OWRD Division 512 Rules[1]	Petition[1] Rules
Annual Water Use Measurement and Reporting[9]	All permitted groundwater rights must measure and report groundwater use by 2028.	All permitted groundwater rights must measure and report groundwater use by 2028. If flowmeters are not working an exemption with alternate means of measurement can be sought from the watermaster.
Adaptive Management	Provides for schedule of regulatory reductions to PTW for each subarea (except Weaver Springs) that can be adjusted up or down depending on groundwater level trends and "adaptive management checkpoints."	Provides for schedule of regulatory reductions to PTW in Northeast Crane (reductions are immediate in Weaver Springs). Encourages formation of an ongoing adaptive management process to track and advise on effectiveness of regulatory and voluntary reductions.
Cancellation of Unused Water Rights	No language proposed in rules.	Directs OWRD to proceed with process to cancel unused water rights prior to or alongside a contested case process.
Enforcement Against Unauthorized Water Use	No language proposed in rules.	Directs OWRD to monitor and enforce against unauthorized groundwater use.
Programs Encouraging Voluntary Cancellation of Groundwater Rights	No language proposed in rules.	Directs Department to support programs for voluntary cancellation of groundwater rights and compensation of groundwater rights.
Actions to Understand and Restore Spring Discharge	No language proposed in rules.	Voluntary actions promoted and encouraged to improve understanding and actions to restore and protect spring discharge.
Programs for Domestic and Stockwater Impacts	No language proposed in rules.	Directs Department to track impacts to domestic and stock wells and programs for provision of financial and technical assistance to impacted wells.
Implementation of Place-Based Integrated Water Resources Plan	No language proposed in rules.	Directs Department to report biennially on implementation actions contained in the place-based plan it will take or support.
Prioritization of Contested Case Process	No language proposed in rules.	Specifies that contested cases can be sequenced or happen concurrently depending on OWRD resources, with Weaver Springs and Northeast Crane mentioned as high priorities.

best use and quantities of use thereof for the future in aid of an integrated and balanced program for the benefit of the state as a whole."

[9] ORS 540.435 states that "if the commission finds accurate water use information necessary because of serious water management problems created by ground water decline, unresolved user disputes or frequent water shortages, the commission by rule may require a water right owner using any surface or ground water source within the state to install a totalizing measuring device and to submit annually a water use report." The rules for implementation of this statute are contained in OAR 690-085.

Topic	OWRD Division 512 Rules[1]	Petition[1] Rules
Coordination, Collaboration, and Co-Stewardship	No language proposed in rules.	Process for ongoing collaboration with community described. Process for co-stewardship with tribes included. OWRD encouraged to coordinate with federal, state, and local entities
Reporting Requirements	Report developed every 3 years and 10 years with opportunity for public comment.	Report developed every 3 years and 10 years with opportunity for public comment.
Modeled Impacts to Domestic Wells from 2018-2058	+24 wells See Department technical memo.[2]	+49 wells See Department technical memo.[2]
Stream and Spring Discharge from 2018-2058	29,100 afy (reduced from modeled historic estimate of 51,800 afy) See Department technical memo.[2]	26,700 afy (reduced from modeled historic estimate of 51,800 afy) See Department technical memo.[2]
Modeled Impacts to Discharge from Native Vegetation 2018-2058	38,900 afy (reduced from modeled historic estimate of 49,000 afy) See Department technical memo.[2]	32,700 afy (reduced from modeled historic estimate of 49,000 afy) See Department technical memo.[2]
Modeled Economic Impacts[10]	Loss of 320 jobs, loss of $18M in annual labor income, loss of $61M in annual economic output, total taxable assessed value of land decreases by $12M, decreased tax revenue of $146K (impacting schools, hospitals, general fund), 18% increases in electricity costs at 6-year intervals.	Not modeled – expected to be less than OWRD proposed rules due to less regulation and use of voluntary approaches.
Filed By	OWRD (developed in consultation with a rulemaking advisory committee[11])	Petitioners: Representative Mark Owens, Harney County Court, City of Hines, City of Burns, Burns Paiute Tribe, Malheur National Wildlife Refuge, local business owners, local residents, groundwater users, irrigators, others (51 signatories).

[10] Results can be found in the EcoNorthwest Report: https://www.oregon.gov/owrd/Documents/ECO_Harney_County_Report_Final.pdf. Please note that No Action also has significant costs to be considered in any decision.
[11] See Division 512 process for rulemaking process: https://www.oregon.gov/owrd/programs/policylawandrules/oars/pages/division-512-rulemaking.aspx.

Area	OWRD Rule Proposal	Petition Rule Proposal (modeled impacts not available by subarea)
Weaver Springs	**Status**: Subarea within Harney Basin groundwater reservoir and Harney Basin CGWA **Goal**: Target groundwater level trend of 0 ft/yr of decline as soon as possible **Action**: PTW = 4,800 afy / 75% reduction implemented by 2034	**Status**: Designated as it its own groundwater reservoir and CGWA (overdrawn and evidence of excessive declines) **Goal**: Achieve dynamic stability as soon as possible **Action**: PTW = 9,200 afy / 54% regulatory reductions immediately (2028)
Northeast Crane	**Status**: Subarea within Harney Basin groundwater reservoir and Harney Basin CGWA **Goal**: Achieve target groundwater level trend of 0 ft/yr of decline by 2058 (durable stability) **Action**: PTW = 35,000 afy / 34% regulatory reductions implemented in 6-year increments by 2052	**Status**: Designated as it its own groundwater reservoir and CGWA (overdrawn and evidence of excessive declines) **Goal**: Achieve dynamic stability by 2058 **Action**: PTW = 37,000 afy / 30% regulatory reductions by 2052 (30% by 2028, 20% by 2034, 20% by 2040, 20% by 2046, 10% by 2052)
Blitzen-Voltage (Upper and Lower Blitzen-Voltage)	**Status**: Part of overall Harney Basin groundwater reservoir and Harney Basin CGWA **Goal**: Achieve target groundwater level trend of 0 ft/yr of decline by 2058 (durable stability) **Action**: PTW = 8,300 afy / 39% regulatory reductions implemented in 6-year increments by 2052	**Status**: Designated as it its own groundwater reservoir and CGWA (evidence of wells interfering with senior surface water rights) **Goal**: Maintain reasonably stable groundwater levels **Action**: 10% voluntary reductions by 2040 and other voluntary actions
Silver Creek	**Status**: Subarea within Harney Basin groundwater reservoir and Harney Basin CGWA **Goal**: Achieve target groundwater level trend of 0 ft/yr of decline by 2058 (durable stability) **Action**: PTW = 15,200 afy / 28% regulatory reductions implemented in 6-year increments by 2052	**Status**: Designated as it its own groundwater reservoir and CGWA (about to be overdrawn) **Goal**: Maintain reasonably stable groundwater levels **Action**: 10% voluntary reductions by 2040 and other voluntary actions
Silvies River	**Status**: Subarea within Harney Basin groundwater reservoir and Harney Basin CGWA **Goal**: Achieve target groundwater level trend of 0 ft/yr of decline by 2058 (durable stability)) **Action**: 21,200 afy / 15% regulatory reductions implemented in 6 year increments by 2052	**Status**: Designated as it its own groundwater reservoir and CGWA (about to be overdrawn) **Goal**: Maintain reasonably stable groundwater levels **Action**: 10% voluntary reductions by 2040 and other voluntary actions
Dog Mountain	**Status**: Subarea within Harney Basin groundwater reservoir and Harney Basin CGWA **Goal**: Achieve target groundwater level trend of 0 ft/yr of decline by 2058 (durable stability) **Action**: PTW = 4,200 afy / 9% regulatory reductions implemented in 6-year increments by 2052	**Action**: Portions included with Silvies River and Weaver Springs (following USGS groundwater study budget boundaries)

Division 512 Rulemaking - Summary of Modeled Scenarios

There were 12 scenarios that represented different levels of reductions in groundwater use explored in the rulemaking process, 11 of which were modeled. An additional scenario was proposed in the petition. Subareas differed between the different scenarios as well as the proposed amount of reductions for each area and the timing of reductions. The metrics or indicators of success varied for each modeled. The "success" of each scenario depends upon the metrics or indicators for assessment, the spatial and temporal scales, units of measurement, how the information is presented or conveyed, and the personal interests and values of the individual(s) assessing the scenarios. This was put together on a rapid timeframe and may contain errors. Please send any corrections to harmony@saltandfresh.solutions.

Table 1. High-level overview of scenarios

Scenario	Developed by	Date Model Results Presented	Subareas	Basin-wide Reduction %
Baseline Scenario	na	October 2024	1	0%
Scenario A – 15 Subarea Approach	OWRD	October 2024	15	19%
Scenario A – Subbasin Approach[1]	OWRD	Modeled results not presented	5	29%
Scenario B[2]	Discussion Groups and RAC	November 2024	6	22%
Scenario C	Discussion Groups and RAC	November 2024	6	37%
Scenario D	Discussion Groups and RAC	November 2024	6	31%
Scenario B, C, D "optimized"	OWRD	November 2024	6	31%
Scenario E	OWRD	November 2024	1	59%
Scenario F "optimized"	OWRD	January 2025	1	31%
Scenario G "optimized"	OWRD	January 2025	6	48%
Scenario H "optimized"	OWRD	January 2025	7	38%
Scenario I "optimized" - FINAL	OWRD	April 2025	7	35%
Scenario J - Petition	Petitioners	September 2025	5	20%

[1] Members of the RAC asked to look at PTW if subareas were grouped by recharge area (known as the "subbasin" approach), this was prior to the model being made available by USGS. See memo.

[2] Scenarios B, C, and D were developed by the Discussion Groups and RAC for discussion and learning purposes only and were not initially intended to be proposed scenarios so as to maintain open, direct, and honest dialogue about interests and impacts between diverse perspectives. See meeting summary.

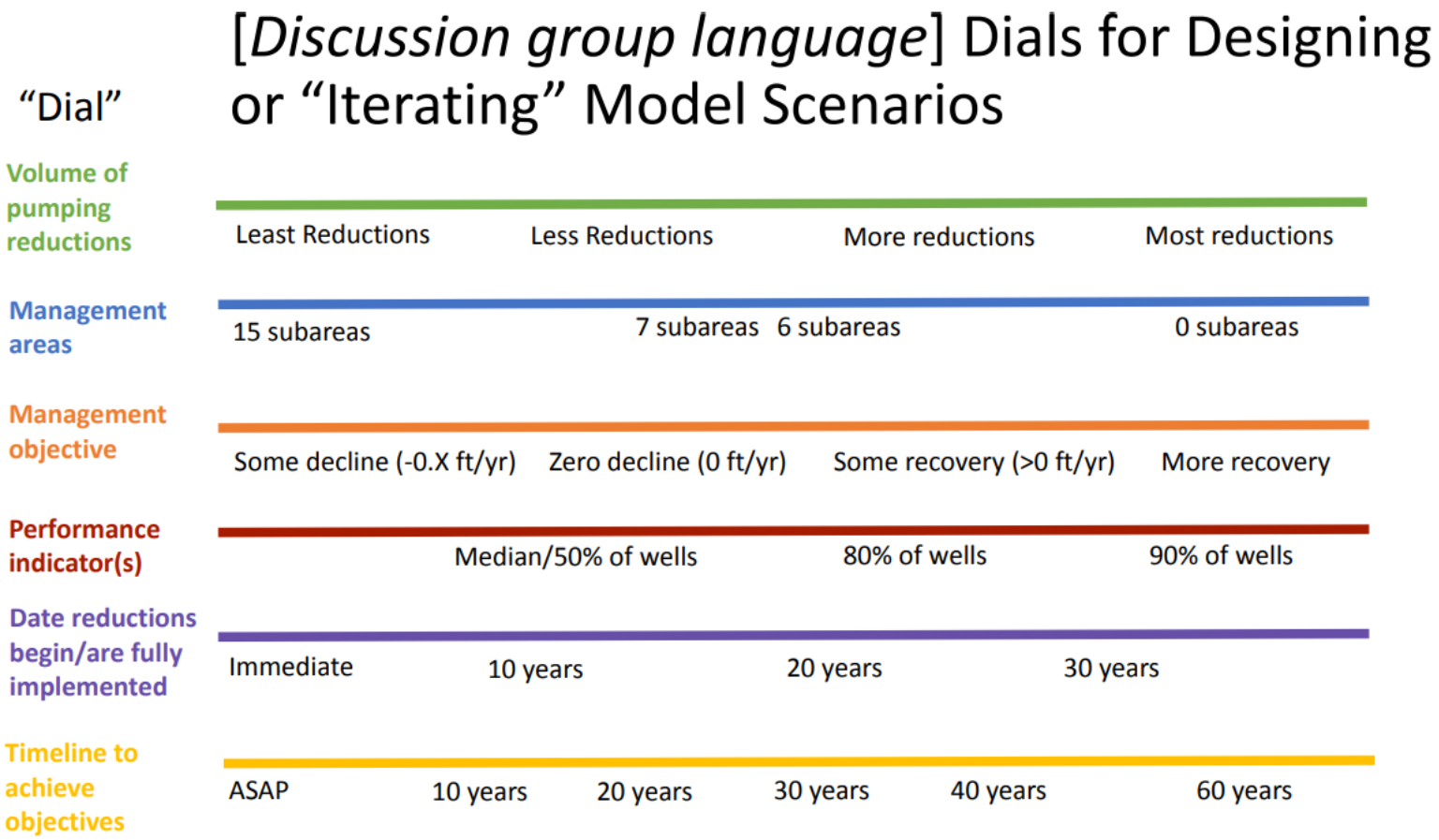

Figure 1. Dials for iterating model scenarios (developed to support discussion group review of model scenarios). See January 2024 meeting summary.

Summary of Scenarios and Metrics in Division 512 Rulemaking – WORKING DRAFT

Table 2. Range of modeled reductions by area

Area	Range of Scenarios Modeled
Weaver Springs / Dog Mountain	Initial proposal = 74% reductions for Weaver Springs / 28% reductions for Dog Mountain OWRD rule proposal = 75% reductions for Weaver Springs / 9% for Dog Mountain Petition proposal = 54% reductions for Weaver Springs/portion of Dog Mountain Modeled reductions for Weaver Springs ranged from 35% to 75% Modeled reductions for Dog Mountain ranged from 9% to 56%
Silver Creek	Initial proposal = 0% reductions OWRD rule proposal = 28% regulatory reductions Petition proposal = 10% voluntary reductions Modeled reductions ranged from 0% to 61%
Silvies	Initial OWRD proposal = 0% reductions for Silvies and Poison Creek-Rattlesnake Slough areas OWRD rule proposal = 15% regulatory reductions for Silvies and western portion of Poison Creek Petition proposal = 10% voluntary reductions for Silvies/western portion of Poison Creek Modeled reductions ranged from 0% to 23%
Northeast Crane	Initial OWRD proposal = ~27% variable reductions across areas (area broken out into 7 different subareas, reductions focused in 6) OWRD rule proposal = 34% reductions for area that includes initial 7 areas grouped along with portion of eastern portion of Poison Creek area Petition proposal = 30% reductions with boundary adjusted to Windy Point (following USGS groundwater study budget regions) Modeled reductions ranged from 27% to 48%
Blitzen-Voltage	Initial OWRD proposal = 0% reductions for Upper & Lower Blitzen-Voltage OWRD rule proposal = 39% regulatory reductions for Lower Blitzen-Voltage, 0% for Upper Blitzen Petition proposal = 10% voluntary reductions for Upper and Lower Blitzen-Voltage combined Modeled reductions ranged from 0% to 56%

Summary of Scenarios and Metrics in Division 512 Rulemaking – WORKING DRAFT

Table 3. Range of metrics used to evaluate various scenarios[3]

Metrics/Indicators of Success
Groundwater Level Change (Magnitude) – first reviewed/discussed in November 2024
Basin-wide change in groundwater storage
Median (50th percentile) groundwater level change (2018-2098)
Median (50th percentile) groundwater level change (2030-2098)
80th percentile groundwater level change (2030-2098)
Scenario water level vs. water level under full pumpage (by 2100)
Magnitude and rate of change in magnitude over time
Difference in groundwater level change in magnitude (comparison between scenarios)
Groundwater level trends in individual wells (across scenarios)
Groundwater Level Change (Rate) – first reviewed/discussed in November 2024
Rate of change in ft/yr at different percentiles at 10 years and 30 years
Timeline for evidence of recovery – date recovery begins
Timeline to achieve "durable stability" (0 ft/yr rate of decline median value) – date durable stability is achieved
Timeline to achieve "near stability" (<-0.1 afy rate of decline) – date "near stability" is achieved
Magnitude and rate of change in rate over time
Difference in groundwater level rate (comparison between scenarios)
Domestic Well Impacts – first reviewed/discussed in December 2024 Discussion Group
Count of domestic wells that lose access to water at current depth (2018-2098 Count)
Count of domestic wells that lose access to water at current depth (2030-2098 Count)
Percent of domestic wells that lose access to water at current depth (% vs. 2018)
Percent of domestic wells that lose access to water at current depth by (% by 2060)
Count of domestic wells pre- and post 2018 until 2058
Change to Spring and Stream Discharge - first reviewed/discussed in December 2024
Groundwater discharge to surface water in AFY by scenario
Percent change to spring and stream discharge (1980-2060)
Percent change to spring and stream discharge (2030-2098)
Percent change to spring and stream discharge (2022-2098)
Spring discharge in thousand acre feet (TAF) pre- and post 2018 until 2058
Change to ET of Native Vegetation – first reviewed/discussed in January 2025
Percent change to native vegetation (2018-2058/2060)
Discharge from native vegetation in thousand acre feet (TAF) pre- and post 2018 until 2058
Economic Impacts – final results presented in May 2025
Jobs lost (by 2058)
Reduction in annual agricultural revenues (by 2058)
Reduction in taxable assessed value (by 2058)
Loss in annual property tax revenue (by 2058)
Loss in annual revenues to county general fund (by 2058)
Loss in annual revenues to hospitals (by 2058)
Loss in annual revenues to local school districts (by 2058)

[3] Metrics were not agreed upon during the RAC process. A wide array of metrics were used to examine scenarios. Each metric can help to understand the relative impacts of each scenario. Use of different metrics across scenarios makes comparison difficult. Metrics may paint a different picture depending on the spatial and temporal scale, the units of measurement, the format and manner in which the information is presented, and the values of the viewer.

MEINZ Kelly A * WRD

From: Harmony Burright <harmony@saltandfresh.solutions>
Sent: Tuesday, October 7, 2025 11:46 AM
To: WRD_DL_rule-coordinator
Subject: Fwd: Questions about Staff Report/Commission Packet and Response to Comments

Please include the following email exchange in the record for the Division 512 rules.

With gratitude,
Harmony

---------- Forwarded message ---------
From: **SPRIET Jason D * WRD** <Jason.D.SPRIET@water.oregon.gov>
Date: Mon, Aug 4, 2025 at 9:16 AM
Subject: RE: Questions about Staff Report/Commission Packet and Response to Comments
To: Harmony Burright <harmony@saltandfresh.solutions>
Cc: MEINZ Kelly A * WRD <Kelly.A.MEINZ@water.oregon.gov>

We did not schedule one-on-one meetings with individual RAC members that I recall (I have had a couple), but we were open to conversations and had many throughout the process with individuals. I don't know that we asked anyone why they dropped out specifically or if they told us they dropped out or just quit coming. Kelly may be able to better answer that question.

Appreciate the list of comments you provided. Some are very fair and reasonable. Good for us to hear and learn from.

J

From: Harmony Burright <harmony@saltandfresh.solutions>
Sent: Friday, August 1, 2025 10:54 AM
To: SPRIET Jason D * WRD <Jason.D.SPRIET@water.oregon.gov>
Cc: MEINZ Kelly A * WRD <Kelly.A.MEINZ@water.oregon.gov>
Subject: Re: Questions about Staff Report/Commission Packet and Response to Comments

Quick question. At any point in the process did anyone at the Department do one-on-ones with RAC members to have an open conversation about how they were feeling about the process? If people dropped out, did you inquire with them why they dropped out?

With gratitude,

Harmony

On Fri, Aug 1, 2025 at 10:51 AM Harmony Burright <harmony@saltandfresh.solutions> wrote:

> Thanks, Jason. Appreciate the follow-up. We're working on transcribing all of the meetings to help facilitate a retrospective on process. We're about half way through. A few things I've heard more specifically are below (all shorthand - none verbatim), some of which I know are outside of the scope of the rules, but matter to people nontheless.
>
> - Lack of reference/effective use of place-based plan ("why did we do all this work if the Department never had an intent to use it" - "they have no interest in actually helping us solve this problem collaboratively")
> - Definition/delineation of "groundwater reservoir" - sticking with the original "one bowl" model rather than providing a more nuanced take based on USGS groundwater study/local perspectives - "why did we waste all that time and money on a study if they weren't going to change how they saw the basin"
> - Discussion/decision regarding definition of "reasonably stable" - management goal and what is "reasonable" (a discussion was promised at the beginning of the process and some feel that the Department decided midway without meaningful engagement) - it was "reasonable stability" and became "durable stability" despite feedback/concern/desire for discussion raised from some
> - Lack of ability for the RAC itself to deliberate and offer up recommendations - felt that they were more in a reactive position and didn't really get to work together to deliberate and develop advice
> - Change in message from being "collaborative" and "seeking consensus" midway through the process - described as a "mistake" by the Department - people weren't surprised but were disappointed
> - Lack of formal consultation/coordination with local governments (notably County Court)
> - Lack of urgent/immediate action/relief in Weaver Springs area for domestic well users - concern that this will get drawn out even longer ("with all the data they had, they should have done something a decade ago")
> - Transfers into Lower Blitzen and lack of Department accountability for making things worse for springs - "if they care about springs, why did they allow that to happen?"
> - Comments on transfers that went unacknowledged and seemed to not matter
> - Lack of budging on certain topics (e.g., no inclusion of OpenET, or other tools for estimating water use)
> - Changing story about what is a problem and why and whether/what needs to be done
> - Lots of questions about boundaries and seeming unwillingness to move them or confusion about how they are drawn/lack of local input or consultation, specifically:
>
>   - No further discussion/consultation on how to treat Dog Mountain boundary (feedback on this is all over the place, but people wanted to have a discussion about this)
>   - One or two wells in Dog Mountain with more significant declines - repeated suggestions that these belong in Weaver Springs but no action

  - No further consultation/discussion on boundary between Silvies and Northeast-Crane area
  - No further consultation/discussion about how the southern boundary for Northeast-Crane was drawn - feeling that some of those wells have more in common with Blitzen-Voltage
  - Confusion about why Upper and Lower Blitzen are two separate areas

- Department emphasis on legal defensibility and their own responsibility/authority rather than local support and sense of shared responsibility
- Feeling like the final numbers popped up out of nowhere and really didn't seem to come from the RAC process
- Some feeling like they were generally looked down upon and that their knowledge/contributions weren't respected or appreciated - "I stopped talking because they just made me feel stupid every time I opened my mouth and eventually I just got so mad I decided to stop going"
- Relying nearly exclusively on the "optimization" of the model rather than working with the RAC to develop scenarios/alternatives and "optimize" approach for the community (this seems to be a turning point)
- Feeling that the Department did a fiscal/economic analysis on their preferred alternative rather than actually exploring ways to meaningfully reduce fiscal/economic impact
- Proposed regulation of areas in the final few RAC meetings where regulatory reductions had not previously been proposed
- Sole focus on regulation in the rules rather than a mix of regulatory and voluntary, despite repeated commitments and requests
- Lack of willingness to really "look under the hood" on the model and talk openly about uncertainties and assumptions in a way that could build confidence in the model
- Lack of follow-up when people offered that they had information/data that could add additional context/information to paint a more complete picture
- Limited engagement on remaining uncertainties in a way that fosters trust in the science and Department's broader desires/intentions (e.g., upland management, updated usage estimates for each area, potential role of faults, how gw level data and quality/chemistry can differ so greatly in wells so close together, well construction issues/cascading water/comingling, etc)
- Inability to clearly track "where did that recommendation come from"? When the Department zigged or zagged, it is not apparent that it was in response to the RAC feedback and many feel that it was not but don't know where it came from
- Feeling like when they raised concerns/questions/suggestions the next proposal seemed to "target" them or propose more punitive actions in their area
- Desire for much more discussion/conversation amongst RAC members rather than just listening/responding to Department proposals/presentations (thinking this was happening/was going to happen and then didn't)

I'm focusing only on the comments I've heard that are the potential source of mistrust...not the positive ones. We can get into it more sometime in the future after this part of the process is behind us if there's interest. Maybe sometime next year before the Department gets going in another basin. I think a lot of it could be addressed through thoughtful process design upfront. People generally understand that this is a difficult process and a lot of work and that something needs to be done and most really want/wanted to be a part of the solution.

With gratitude,

Harmony

On Fri, Aug 1, 2025 at 10:05 AM SPRIET Jason D * WRD <Jason.D.SPRIET@water.oregon.gov> wrote:

Thank you for the detailed response Harmony. I was hoping for specific examples of comments provided by the RAC people feel were unaddressed in that process. We provided a lot of information (understanding it would not all be understood) and changed the process and rules significantly based on feedback from the RAC looking back from the start of this process to today. Even the last two RAC meetings resulted in significant changes to rule language between day 1 and day 2 based on comments. I fail to see where the Department has not been transparent about the decisions that were made in the rules.

The frustration the community is feeling is completely justifiable, this is extremely difficult. The comments you listed below are all a reflection of that frustration and I think it continues to feed on itself within the community. I am not so naive to think there is anything the department can say or provide to make much difference. As you know, we are tasked with protecting the resource and that comes with difficult decisions. What we are proposing in these rules is something new for Oregon and we hope is as flexible and protective of both the resource and local economy as it can be.

We cannot incorporate every comment and still have effective rules, but the Department is very interested in hearing from anyone who would like to participate. The rules are very likely to change as we

Thank you again for this,

J

From: Harmony Burright <harmony@saltandfresh.solutions>
Sent: Friday, August 1, 2025 9:16 AM
To: SPRIET Jason D * WRD <Jason.D.SPRIET@water.oregon.gov>
Cc: MEINZ Kelly A * WRD <Kelly.A.MEINZ@water.oregon.gov>
Subject: Re: Questions about Staff Report/Commission Packet and Response to Comments

Hi Jason,

I'll share some of the questions and statements that I'm hearing from the public.

- "Do my comments even matter?"
- "The Department hasn't listened to me/us before, why would they listen to me/us now?"
- "What difference will it make?"
- "Why should I comment, it never mattered before."
- "The Department is just interested in defending its position, they don't care about us."
- "Why would I submit comments if the Department has already made up its mind?"
- "This is what they wanted to do all along, they don't really care about what the community has to say."
- "The public comment period is just a box checking exercise."
- "They'll only listen and make changes if we agree with them."

I share this not to be discouraging or sensational, but just to convey honestly what I'm hearing. Over the last 1.5 months I've probably interfaced with 100 individuals in the basin (most of whom I had never interacted with before despite my work with place-based planning, the study advisory committee, the watershed council, the SWCD, the ag research station, etc).

As I've encountered these folks I consistently have responded something to the effect - "if you don't say anything then they certainly won't hear you" and informed them that now is the moment to speak if they have something to say (otherwise they will miss the opportunity). I, of course, cannot know whether/how their comments will influence the final rules. I would say that despair and disillusionment are the two most common feelings I'm running into and I'm trying to keep people engaged in a constructive way. Trust is low in government in general and unfortunately trust is increasingly low with the Department for many reasons you know already and for reasons I would be happy to discuss. Some individuals have even expressed that they don't want to make their stance known due to concerns about retribution from the state and others are growing very agitated and some angry. I won't speak to the basis for these feelings and concerns (each person has their own story), but they are real nonetheless and are shaping how people show up and respond.

I have heard concerns from several people now that they are worried that the Department will only "pick and choose" the comments they agree with or summarize comments in such a way as to reinforce the existing proposal rather than seriously engage with concerns/proposals or share the full "story" with Commissioners. I am doing my best to help convey to them that all comments will be captured and available and that the Department will likely have a transparent process for responding to comments without creating unrealistic expectations.

As far as the RAC goes, I would say several of the RAC members I've spoken with grew deeply disillusioned by the process (this is not everyone, but does represent a fair number). I am having to talk many RAC members into engaging in the public comment process because they very much believe that their comments do not matter and will be ignored (because they have been) or because they feel like the rules pit them against others in the basin.

Regardless of the number of meetings and the amount of work, it is at the end of the day all about trust and relationships and whether or not people feel like they were informed, included, and heard. Conveying lots of information does not necessarily ensure people understand and listening to people does not ensure that they are heard. I can understand both perspectives with regards to this.

I know the word is getting around about the public hearing next week. Not sure what to expect in terms of turnout. When is the last time the Department did basin program rules? Was it the SWMPA in the Walla Walla Basin?

With gratitude,

Harmony

On Wed, Jul 30, 2025 at 5:52 PM SPRIET Jason D * WRD <Jason.D.SPRIET@water.oregon.gov> wrote:

> Hi Harmony,
>
> Can you provide specific examples of how or why people are concerned about transparency? Or what comments people feel were not addressed in the RAC process? Is there just a general feeling of mistrust? There were massive amounts of information disseminated by the Division 512 team over the 2 years of RAC process, and I understand how it can be overwhelming and frustrating to the community.
>
> Thanks,
>
> J
>
> **From:** MEINZ Kelly A * WRD <kelly.a.meinz@water.oregon.gov>
> **Sent:** Wednesday, July 30, 2025 3:40 PM
> **To:** Harmony Burright <harmony@saltandfresh.solutions>
> **Subject:** RE: Questions about Staff Report/Commission Packet and Response to Comments
>
> Hi Harmony,

We will compile all comments into a single PDF and make it available on the Division 512 webpage. As part of the Staff Report to the Commission, we summarize comments and respond to those comments, including any changes we made to the Rules. The Staff Report will include comments grouped under a theme, but it will not contain every single comment. So, for example, if three individuals make a public comment in support of the SWMPA, there will only be one summary for those comments and one response.

As far as commenting directly to the Commission. Commissioner Moll will be the public hearing officer during the August 5 public hearing next week. If Harney County residents want to speak directly to the Commission, that would be the time as once the Public Comment Period is over, no further items can be considered under Administrative Procedures Act. During the public hearings, the comments are audio recorded and transcriptions are made available to the Commission before the vote for final adoption. I would suggest directing them to make public comments on the rule language, which would be more constructive.

Take care,

Kelly Meinz, EIT (he/him)

Water Policy Analyst

725 Summer St NE Suite A, Salem OR 97301

Phone: 971-718-7087 | Email: kelly.a.meinz@water.oregon.gov

OREGON WATER RESOURCES DEPARTMENT

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Please Note: under Oregon law, messages to and from this e-mail address may be made available to the public

From: Harmony Burright <harmony@saltandfresh.solutions>
Sent: Tuesday, July 29, 2025 7:57 PM

To: MEINZ Kelly A * WRD <kelly.a.meinz@water.oregon.gov>
Subject: Questions about Staff Report/Commission Packet and Response to Comments

Hi Kelly,

I'm getting questions about what materials will be provided to the Commission with the staff report as well as how comments will be tracked and responded to. Will only a summary developed by the Department be provided to the Commission or will a copy of the comments themselves be provided? I'm hearing a very strong preference for people to be able to connect directly with Commissioners and mistrust for how their comments will be handled and whether they will matter. Folks are digging back into the RAC materials and unable to see a clear record of how the Department responded to RAC comments and arrived at certain decisions. There are concerns I'm hearing regarding transparency of decision-making and what goes into each decision. How will the Department be tracking responses to comments? Will it be clear how public comments influenced the draft rules when it is presented to the Commission? Is the process for responding to comments something people should be providing comments on (seems a little ridiculous to ask, but I'm getting the question)? Can you advise on what the public should expect to see?

Thanks for your help!

Harmony

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Harmony Burright

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High-Level Overview of Written Comments on Division 512 Rules

This document provides a high-level summary of the written public comments provided to the Department during the public comment period from June to August 2025. This does not include an overview of verbal comments. This was put together on a rapid timeframe and may contain errors. Please send any corrections to harmony@saltandfresh.solutions.

Methodology

All written comments posted online were reviewed and sorted using a spreadsheet (available upon request). Where possible those likely to be impacted by the rules, including those residing or owning a business in the Harney Basin, were noted along with the area where they lived or owned a business. The number of signatories were identified for each of the comments submitted, along with the affiliation of the commenter. The general interest of each commenter was identified (where information was available) as well as whether their comments were generally supportive, generally expressed concern and had significant input, or whether the comments were generally mixed, unclear, or neutral.

Overview of Commenters

The following entities and individuals submitted written comments:

- 1 Federal Agency, the US Fish and Wildlife Service
- 1 State Agency, the Department of State Lands
- 1 County Government, Harney County
- 2 City Governments, the City of Burns and the City of Hines
- 1 Public Utility, the Harney Electric Cooperative
- 1 local non-governmental organization, the High Desert Partnership
- 5 statewide organizations submitted written comments – WaterWatch of Oregon, The Nature Conservancy, Oregon Groundwater Association, Oregon Farm Bureau, League of Oregon Cities
- 7 sign-on letters with a total of 179 signatures were submitted for the following areas – Northeast Crane, Silvies, Silver Creek, Blitzen-Voltage, Weaver Springs, basin-wide
- 1 sign-on letter with a total of 48 signatures was submitted by the Harney County Farm Bureau and Harney County Stockgrowers
- 2 statewide water professionals/contractors (representing 3 individuals)
- 72 individuals submitted comments representing themselves, their families, or their businesses, 15 of which appear to be form letters (a total of 85 individuals represented)
    - 53 comments (representing 56 individuals) are from individuals residing in the Harney Basin
    - 21 comments are from individuals residing outside of the Harney Basin (15 appear to be form letters)
    - 10 of the commenters are RAC members
- 15 local businesses or individuals representing specific businesses (a total of 27 individuals represented)

General Nature of Comments

Comments were grouped based on the general nature of those comments using the following three categories: 1) those that generally expressed support, 2) those that generally expressed concern or provided significant input, 3) and those that were mixed, unclear, or neutral. This does not capture support or concern for specific proposals in the rules, but rather the high-level tone of the comment. Of 114 comments submitted 18% generally expressed support, 71% generally expressed concern or provided significant input, and 11% were mixed, unclear, or neutral. Of the 269 signatories 10% generally expressed support, 86% generally expressed concern or provided significant input, and 5% were mixed, unclear, or neutral.

General Support	**General Concern/Significant Input**	**Mixed/Unclear/Neutral**
20 Comments Submitted **26** Signatories	**81** Comments Submitted **230** Signatories	**13** Comments Submitted **13** Signatories
The Nature Conservancy WaterWatch of Oregon Water League Weaver Springs Sign-on Letter (6) Individuals from the Harney Basin (10) Individuals Outside of the Harney Basin (17 comments, 15 form letters)	Department of State Lands Harney County City of Hines City of Burns Harney Electric Cooperative Oregon Groundwater Association Oregon Farm Bureau League of Oregon Cities Harney County Farm Bureau and Harney County Stockgrowers Sign-on Letter (48) Northeast Crane Sign-on Letter (34) Silvies Sign-on Letter (35) Silver Creek Sign-on Letter (37) Blitzen-Voltage Sign-on Letter (54) Windy Point Sign-on Letter (13) Basin-wide Sign-on Letter (9) Pacific Hydrogeology Ken Bierly and Associates Local Businesses (15) Individuals from the Harney Basin (49)	US Fish and Wildlife Service High Desert Partnership Individuals from the Harney Basin (10) Individuals Outside of the Harney Basin (1)

Comments from Impacted Individuals/Entities

All local governments (100%) were generally concerned/provided significant comments.

Of the 84 non-governmental individuals/entities indicating that they lived/owned a business in the Harney Basin, 11 were mixed/unclear/neutral (13%), 11 were generally supportive (13%), 62 were generally concerned/provided significant comments (74%) (not including sign-on letters or signatories of sign-on letters).

Of the 44 non-governmental individuals/entities representing small business in the Harney Basin, 1 was mixed/unclear/neutral (2%) and 43 were generally concerned/provided significant comments (98%).

Of the 66 individuals/entities likely to be impacted by the rules, 5 were mixed/unclear/neutral (8%), 8 were generally supportive (12%), 53 were generally concerned/provided significant comments (80%).

General Support and Considerations for Various Rule Elements

Topic	Support for:	Considerations:
Groundwater Reservoir	Department determinations	The basin is not one groundwater reservoir; there are five groundwater reservoirs that should be managed according to localized conditions
Subarea Delineation	Department delineation of subareas and tailored approaches	Adjustments to boundary between Northeast Crane and Blitzen-Voltage, adjustments to boundary between Weaver Springs and Dog Mountain; adjustments to boundary between Silvies River and Dog Mountain; combine Weaver Springs and Dog Mountain
Critical Groundwater Area Designation	Department determination of critical groundwater area boundary	Each distinct part of the basin should be its own critical groundwater area; criteria for critical groundwater area designation has not been met for Silvies, Silver Creek, and Blitzen-Voltage; criteria for critical groundwater area designation have been met for Weaver Springs and Northeast Crane
Groundwater Level Goal	Department's goal of 0 feet of decline/stabilization	Goal of 0 feet of decline; no definition of reasonably stable; preference to use current definition of reasonably stable; Department's goal sets unrealistic, unprecedented, and inequitable standard for Harney Basin
Regulatory Reductions	Department's currently proposed reductions	Regulatory reductions should be focused in Weaver Springs and Northeast Crane; voluntary reductions should be pursued in other areas; the pace and amount of reductions should be increased to achieve stabilization sooner
Water Use Measurement and Reporting	Broad support for water user measurement and reporting	Provide cost-share/support for installing flowmeters
Classification	Broad support for preventing additional development	Desire for pathway for new uses that do not increase overall groundwater use
Initial Allocation for Irrigation	Initial allocation of 2.5 afy for irrigators and other proposed initial allocations	There should not be any proposed reductions from the certificated duty
Municipal Water Use	The proposed approach for cities makes sense	Municipalities should be exempt; the proposed approach does not make sense and disincentivizes conservation
Domestic Well Impacts	Implementing reductions to limit/prevent impacts to domestic wells	Impacts to wells differs by area (most impacts noted in Weaver Springs, Northeast Crane, Silvies); ongoing tracking and assistance

Topic	Support for:	Considerations:
Impacts to Spring Discharge	Implementing reductions to protect springs	Impacts to springs differs by area (most impacts noted in Silver Creek and Blitzen-Voltage with some amount resulting from decline in Weaver Springs); desire to partner on monitoring, restoration, and protection of springs
Economic Impacts	Considering economic impacts of no action as well as proposed rules	Feedback on how economic impact analysis was performed; need to examine alternatives to reduce economic impact
Impacts to Farms	Regulation is necessary	Impacts to farms differs by area; proposed regulatory reductions are significant, unprecedented and unfounded; preference for voluntary approaches that provide compensation; desire for partnership; desire for some type of accountability and partnership from the state; concern about transfers; concern that rules do not follow prior appropriation; desire to follow prior appropriation only
Public Health, Welfare and Safety	Using need to protect public health, welfare, and safety as the basis for action	Rules are a threat to public health, welfare, safety; rules do not go far enough to protect public health, welfare and safety
Adaptive Management	General support for adaptive management	Greater community involvement in ongoing adaptive management

High-Level Summary of Area-Specific Comments and Considerations

Area	Support for rules:	Concern about/opposition to:
Weaver Springs	Significant and swift regulatory reductions to halt declines and recover groundwater levels; address current or projected impacts to domestic wells	State delayed action for too long; area should be its own groundwater reservoir; transfers that have occurred out of Weaver Springs to other areas; proposed changes to boundary between Dog Mountain and Weaver Springs
Dog Mountain	Address current or projected impacts to domestic wells and support for reductions	Final levels of proposed reductions are too low; proposed changes to boundary between Dog Mountain and Weaver Springs
Northeast Crane	Address current or projected impacts to domestic wells; proposed levels of regulatory reductions; phased approach to regulatory reductions; adaptive management	Area should be its own groundwater reservoir; regulatory reductions should be implemented faster
Silvies	Address current or projected impacts to domestic wells; regulatory reductions to protect domestic wells	Area should be its own groundwater reservoir; should not be a critical groundwater area; no basis for regulatory reductions; regulatory reductions are too high; preference for voluntary joint action; rules do not recognize that groundwater levels are reasonably stable
Blitzen-Voltage	Understanding and addressing impacts to springs; maintaining currently proposed regulatory reductions	Area should be its own groundwater reservoir; criteria for a critical groundwater area are not present; no basis for regulatory reductions; regulatory reductions are too high; preference for voluntary joint action; rules do not recognize that groundwater levels are reasonably stable; proposed changes to boundary between Blitzen-Voltage and Northeast-Crane
Silver Creek	Understanding and addressing impacts to springs; maintain reasonably stable groundwater levels	Area should be its own groundwater reservoir; criteria for a critical groundwater area are not present; no basis for regulatory reductions; regulatory reductions are too high; preference for voluntary joint action; rules do not recognize that groundwater levels are reasonably stable

High-Level Summary of Interest-Specific Comments and Considerations

General Interest	Support for:	Concern about/opposition to:
County	Regulatory reductions in areas with known problems/declines (Weaver Springs and Northeast Crane)	Process (lack of consultation and coordination with County); Harney Basin defined as one groundwater reservoir; designation of critical groundwater areas in Silvies River, Silver Creek and Blitzen-Voltage areas; proposed regulatory reductions in Silvies River, Silver Creek, and Blitzen-Voltage; exclusive focus on regulatory approaches; lack of focus on voluntary approaches/ partnership; extent of economic impacts; lack of consideration of alternatives to reduce economic impacts
Cities	Regulatory reductions in areas with known problems/declines	Process (lack of consultation and coordination with Cities); Harney Basin defined as one groundwater reservoir; proposed allocation for municipal water; designation of the Silvies River area as critical; exclusive focus on regulatory approaches; lack of focus on voluntary approaches/partnership; extent of economic impacts; lack of consideration of alternatives to reduce economic impacts
Local Businesses	Regulatory reductions in areas with known problems/declines	Extent of economic impacts; lack of consideration of alternatives to reduce economic impacts; lack of engagement with local businesses; exclusive focus on regulatory approaches; lack of inclusion of voluntary approaches
Groundwater Users	Regulatory reductions focused in areas with known problems/ declines	Harney Basin defined as one groundwater reservoir; unclear basis for designation of critical groundwater areas in Silvies River, Silver Creek and Blitzen-Voltage areas; proposed regulatory reductions in Silvies River, Silver Creek, and Blitzen-Voltage; exclusive focus on regulatory approaches; lack of focus on voluntary approaches/ partnership; extent of economic impacts; lack of consideration of alternatives to reduce economic impacts; subarea boundaries

General Interest	Support for:	Concern about/opposition to:
Domestic Well Users	Reductions in groundwater use in Weaver Springs, Dog Mountain, Northeast Crane, and Silvies; goal of stabilization/ recovery; preventing or limiting additional impacts to domestic wells users across the basin	Reduced reductions in Dog Mountain area; treating Weaver Springs and Dog Mountain as separate areas; transfers or authorized development that has the potential to affect domestic well users
Environmental/ Conservation NGOs	Process (extensive, robust); basin-wide stabilization of groundwater levels (0 feet a year of decline); desire for recovery; acknowledging historic impacts to the environment; preventing or limiting additional impacts to domestic well users; basin-wide water user measurement and reporting	Length of time for implementing reductions and achieving the goal (too long); lack of monitoring/triggers to address impacts to springs, streams, native vegetation and domestic wells; use of economic impact study
Others (Outside of Harney Basin)	Basin-wide stabilization of groundwater levels; basin-wide measurement and reporting	Length of time for implementing reductions and achieving the goal (too long)

MEINZ Kelly A * WRD

From: hfoster730@gmail.com
Sent: Wednesday, October 1, 2025 11:56 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from hfoster730@gmail.com. Learn why this is important

- I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.
- I would like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.
- The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

Harry L. Foster

MEINZ Kelly A * WRD

From: Emilie Glascock <emglascock@yahoo.com>
Sent: Tuesday, October 7, 2025 3:30 PM
To: WRD_DL_rule-coordinator
Subject: Public Comment in Support of the Harney Basin Groundwater Management Petition

Some people who received this message don't often get email from emglascock@yahoo.com. Learn why this is important

We are emailing in support of the Harney Basin Groundwater Management Petition. We are residents of Harney County and more specifically of the Harney Basin. We support the petition that has been proposed for multiple reasons and believe that it protects our water resources while also preserving the economic stability of the county and the Harney Basin.

This county's economy is mainly supported by agriculture. While we do live in the Harney Basin and have domestic and stock wells that the critical water levels do affect, we also know that hay production is what keeps this county afloat in many different ways. Hay producers employ employees for their own production as well as support the other businesses that make up the county's economy. There are several businesses that depend on the hay producers to support them and their employees, including the repair shops, tractor and farm implement sales, electric companies, schools, etc. The petition protects the whole community from unnecessary disruptions and would have less of a dramatic effect on the county's economy.

We also do not agree with a blanket regulation for the entire Harney Basin. The areas that have more critically low water levels should have different regulatory action than the areas that the water levels are more stable. The petition focuses on the areas that are more critical and clearly meet the thresholds for regulatory action. It also encourages voluntary and cooperative efforts that would be more effective and specific to the problem areas.

As domestic wells near our personal residence have had issues in the past, we understand the need and desire to protect the domestic and stock wells for future generations. This petition continues to provide financial and technical support that home and livestock owners would need to have continued access to safe and reliable water. However the county needs to have a sustainable economy in order to support a population that would need domestic and stock wells.

Overall this petition allows for regulations to less dramatic and harmful to the community, while still preserving the groundwater for future generations. It is a fine line to walk, but this petition would be more effective in that walk.

Thank you for your consideration on this petition and hope that the committee does what is best for the community's economy and livelihood.

Jack and Emilie Glascock
Harney Basin Landowners

MEINZ Kelly A * WRD

From: Jane McCleery <jsmccleery@gmail.com>
Sent: Tuesday, October 7, 2025 1:03 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from jsmccleery@gmail.com. Learn why this is important

- I am commenting on both the "Petition for Rulemaking —Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. The petition will allow continued overpumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- I urge OWRD to first strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.
- I urge OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.

Thank you for your attention to this matter,

Jane McCleery

MEINZ Kelly A * WRD

From: jacobdavis1219@gmail.com
Sent: Monday, October 6, 2025 7:59 AM
To: WRD_DL_rule-coordinator
Subject: Jacob Davis Water user Blitzen

[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]

I've lived here 47 years so all of my life, my dad's lived here all his life for 70 years, my wife and I went out on our own in 2012. It wasn't that we inherited any property we went into debt to get what we have if 5:12 goes through, We will lose everything that we have set out to do from 2012, we have went a couple million in debt to put under production 320 acres. That was Sagebrush when we bought it , we have four kids. I'm wanting them to be a fourth generation in the Blitzen area The petition would allow us to keep running and we could still meet the states goal by 2040. I am in support of the petition , the board allowed an investor to buy water rights in the Weaver Springs and transfer them into our backyard. They did not notify any of us neighbors , when I talk to Jason spirit about it He told me that it wouldn't affect any of us current users, nine months later they're threatening to shut us off while the investor that transferred water rights from another sub area 26 miles away will still get to run because their original Wells had older rights than ours even though we have been using ours every single year for the last 13 years, and they are just now getting all 11 of their pivots still under construction, which started two years ago, you allowed people in our area to get 20 year extensions and they are just now putting water in and they will be allowed to run when my dad's place will be shut off even though he has run every single year for the last 30 years. There is a lot of things that are not fair and the water board is messing with our livelihood and legacy. There has been problems in our county and certain areas going clear back to the early 80s and they did nothing. The reason we're in this mess is because the state did not listen to the community or do their job and now they're wanting to punish everybody. There is no accountability and the people that are making these decisions, do not realize they are ruining careers and generational of families living here.
Sent from my iPhone

MEINZ Kelly A * WRD

From: Kelly.A.MEINZ@water.oregon.gov
Subject: RE: Jacob Davis water users Voltage Blitzen

-----Original Message-----
From: Jacob Davis <jacobdavis1219@gmail.com>
Sent: Tuesday, September 30, 2025 9:45 PM
To: FREDLUND Cassidy A * WRD <cassidy.a.fredlund@water.oregon.gov>
Subject: Jacob Davis water users Voltage Blitzen

I've lived here 47 years my dad for 70 in the voltage Donner Blitzen, I wanna know why the state let golden rule buy Water Right's in Weaver Springs transfer them to the donor Blitzen, and just now start developing them. When I called and talk to Jason spirit, he told me the reason they never let any of us know is because it wouldn't affect any of us currently using ground water not even nine months later, they want us to cut back to 39% Sent from my iPad

MEINZ Kelly A * WRD

From: Jennifer Taynton <jennifer@ecosourceseeds.com>
Sent: Tuesday, September 30, 2025 6:14 PM
To: WRD_DL_rule-coordinator
Cc: Rep Owens; Roger Sheley; EcoSource Support; Rob Sharp; Caryn Burri; Jason Kesling
Subject: Support of the Harney Basin Community Petition filed 9.12.25

To Whom it may Concern,

I am the executive Director for EcoSource Native Seed and Restoration, a small non profit in Harney County. Our Mission is "to increase ecological and economic diversity and resilience through restoration of degraded ecosystems, using genetically appropriate native seeds and vegetation". We achieve this mission by collecting, cleaning, and producing native plant species to combat invasive annual grasses, by restoring the landscapes ravaged by draught, wildfires and over grazing in and around Harney County.
EcoSource is in support of the petition because it focuses regulation in areas where there are clear problems, encourages voluntary actions in parts of the basin where groundwater levels are reasonably stable and expected to remain so, and it protects groundwater rights that were legally granted and the people who have dutifully followed all of the state laws.
Without producers in Harney Basin to grow our native seeds, EcoSource will be adversely affected and unable to grow native vegetation at a landscape scale to increase our seed supply and improve our restoration efforts. Without groundwater rights in the Basin, EcoSource could potentially be crushed and unable to continue our efforts to help the land, improve the landscape and increase public awareness of the need to conserve not only water, but conserve our lands to increase the health of our local ecosystems and the habitats of wildlife that depend on healthy ecosystems for survival.
EcoSource would appreciate being able to work with landowners transitioning current cropping systems to native vegetation which would take considerably less water.
Please work with this petition so we can move forward saving water, saving our economies and rural communities that greatly depend on groundwater for our livelihoods and survival.

Sincerely,

Jennifer Taynton, Executive Director

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Jennifer Taynton, Executive Director
EcoSource Native Seed And Restoration
https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.ecosourcenativeseeds.com%2F&data=05%7C02%7CKelly.A.MEINZ%40water.oregon.gov%7C30f661b83ed64a3d04b008de0087ec0b%7Caa3f6932fa7c47b4a0cea598cad161cf%7C0%7C0%7C638948780946135610%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=6fhPvmdvAEZsl9aJVPIKtEqlJT67Qi%2FLU%2BA3O8kI7a8%3D&reserved=0
(541) 573-SEED (7333) EcoSource Offices
EcoSource Native Seed & Restoration’s mission is to increase ecological and economic diversity and resilience through restoration of degraded ecosystems, using genetically appropriate native seeds and vegetation.

To: Kelly Meinz, OWRD Rule Coordinator

From: Gerald (Jerry) Grondin, retired OWRD hydrogeologist (Oregon Registered Geologist G2162)

Date: 2 October 2025

Subject: Public Comment Regarding the 11 September 2025 Petition by Representative Mark Owens and Harney Basin Stakeholders to Amend the Proposed OAR 690-512 Rule Changes and Additions Presented to the Oregon Water Resources Commission on 12 September 2025

Thank you for the opportunity to provide public comment related to the 11 September 2025 petition by Representative Mark Owens and Harney Basin Stakeholders to amend the proposed OAR 690-512 rule changes and additions that were presented to the Oregon Water Resources Commission by OWRD staff on 12 September 2025.

This memo contains 10 comments and 7 recommendations. The comments are purposely general. Providing detailed comments would require time that exceeds the comment period deadline and the detail would exceed most people's patience. I can provide detailed comments-observations-responses to some or all of the petition as requested and/or needed by the Oregon Water Resources Commission.

Comment Section:

Comment 1: The Petition is a de facto superseding "end run."

The petition is a de facto "end run" that essentially attempts to supersede the results of a very public and transparent technical Harney Basin groundwater investigation and the results of a subsequent very public and transparent administrative public process for OAR 690-512 rule changes and additions. In particular, the petition reinterprets the USGS-OWRD Harney Basin groundwater investigation published results in a manner consistent with locally favored interpretations of basin groundwater occurring within separate, independent, isolated groundwater reservoirs that has been repeatedly advocated since the beginning of the groundwater investigation. The apparent reinterpretation goal is to technically justify creating-establishing separate, independent, isolated administrative groundwater reservoirs for managing and regulating the basin's groundwater. The USGS-OWRD Harney Basin groundwater investigation analyses of the totality of the historic and current data does not technically support the local interpretation of multiple groundwater reservoirs but rather a single groundwater system.

Comment 2: The Petition should request a reconsideration decision based solely upon a public Interest finding, not faulty reinterpreted science.

The superseding hydrogeologic reinterpretations and arguments presented within the petition appears to be a technical guise to justify adopting a superseding administrative framework for managing and regulating the basin's groundwater. The guise is disingenuous. A far more honest, transparent, and genuine petition would simply ask the Oregon Water Resources Commission to make a public interest finding to adopt the petition's proposed superseding administrative framework based solely on socio-economic considerations, not technical considerations. The potential consequences to the basin's hydrologic and other natural resources notwithstanding. The finding would need to include a clarification statement that the proposed groundwater reservoirs are purely administrative, not hydrologic.

Comment 3: The Petition as written may violate Oregon public practice of geology statutes and rules.

The superseding hydrogeologic reinterpretations and arguments presented within the petition may constitute a public practice of geology which is limited to qualified professionals registered in Oregon or those qualified professionals exempted from registration (see ORS 672.525, ORS 672.535, and ORS 672.595). The Oregon Board of Geologist Examiners should be consulted and/or asked to investigate.

Comment 4: The USGS-OWRD Harney Basin groundwater investigation did receive, consider, investigate and assess locally derived hydrogeologic observations and interpretations.

A coordinated Harney Basin groundwater investigation conducted by multiple USGS and OWRD staff included providing updates and presentations and receiving feedback, comments, insights, and recommendations during more than 15 local public meetings of the Harney Basin Groundwater Study Advisory Committee from July 2016 to October 2022. The committee was jointly appointed by the Harney County Court and OWRD. All feedback, comments, insights, and recommendations by the committee and other meeting attendees received serious consideration and evaluation by the USGS and OWRD staff during all phases of the investigation (field work, data collection and analyses, presentations, and writing of multiple reports).

The aggregate data does not support the locally derived hydrogeologic interpretation of Harney Basin groundwater being variously compartmentalized and isolated. The hydrogeologic interpretation by the OWRD-USGS Harney Basin groundwater investigation team of a single groundwater system composed of multiple, hydraulically interconnected hydrogeologic units with varying hydraulic properties as presented in Gingerich and others (2022) and supporting reports can and does account for the various locally derived groundwater occurrence and behavior observations presented to the team. Many of the hydrogeologic units are complex, non-homogenous (heterogenous), but remain hydraulically interconnected internally and with adjoining-neighboring hydrogeologic units. The complexity does not preclude hydraulic interconnection within the Harney Basin groundwater system, but it can-does affect the rate and direction of groundwater flow at various locations and depths within the groundwater system, and it can-does affect how the response to pumping, recharge, and other various groundwater stresses propagates to different locations and depths within the groundwater system.

Geologic structures and their influence on groundwater flow does exist within the Harney Basin as presented in Gingerich and others (2022) and supporting reports. Structure related groundwater flow restrictions appear primarily limited to some basin boundary segments where exposed fault escarpments are present such as the east escarpment of Steens Mountain. Where present, these restrictions limit groundwater flow across the basin boundary (limit flow between the Harney Basin and adjoining basins). Conversely, structure may be responsible for an apparent zone of increased permeability at depth in the Silver Creek Valley from an area north of Moon Reservoir to an area north of Riley and Suntex. The increased permeability can enhance groundwater flow and the propagation of groundwater response to pumping and other stresses within that particular zone. That zone is a hydraulically connected portion of the overall Harney Basin groundwater system.

Comment 5: The internal Harney Basin "boundaries" shown in USGS-OWRD Harney Basin groundwater investigation reports and presentations are not hydrogeologic boundaries but rather convenient divisions for discussion and comparison only.

The USGS-OWRD Harney Basin groundwater investigation team has repeatedly stressed in their reports and presentations that internal Harney Basin "boundaries" shown or noted in report and presentation figures, tables, and text are intended for area-to-area discussion and comparison use only. They are not actual hydrogeologic boundaries. For example, Gingerich and others (2022) notes:

> *Garcia and others (2022) divided the Harney Basin into three analysis regions based on topography of the uplands and groundwater flowpaths near the center of the basin to ease comparison of groundwater recharge and discharge volumes and to evaluate groundwater development through time. The three regions are (1) the northern region, which includes the areas of the Harney Basin lowlands and the uplands north and east of Malheur Lake, including the entire Silvies River drainage, (2) the western region, which includes the lowland and upland areas north, south, and west of Harney Lake, including the entire Silver Creek drainage, and (3) the southern region, which includes the areas south and southeast of Malheur Lake, including all of Steens Mountain, the Donner und Blitzen River drainage, and Virginia Valley (fig. 11).* ***The regions represent generalized connected groundwater recharge and discharge, but should not be considered separate flow systems*** *(Garcia and others, 2022).*

Garcia and others (2022) notes:

> ***For discussion and analysis purposes in this report, the Harney Basin was divided into three regions*** *(northern, southern, and western), each dominated by one of the three major streams and including tributary and similar watersheds (fig. 1). Regions are based on topography in the uplands where only minor groundwater interactions between regions are likely, allowing for evaluation of water resources independently. In the lowlands, regions are based on presumed groundwater- flow paths during 2018 hydrologic conditions (Gingerich and others, 2022).* ***Pumping-induced changes in hydrologic conditions could cause changes in the region boundaries in the lowlands, but they are considered steady for the purposes of water-budget accounting in this report…****For this report, the Harney Basin lowlands (hereinafter referred to as "lowlands" or "lowland areas") refers to the general extent of Quaternary alluvial, lacustrine, and aeolian deposits (about 1,070 mi2) within the center of the basin including the flood- plains of Silver Creek, the Silvies River, and the Donner und Blitzen River and their tributaries (fig. 1). The lowlands generally correspond to the area where groundwater ET occurs (see section "Groundwater Evapotranspiration Area"). The Harney Basin uplands (hereinafter referred to as "uplands" or "upland areas") represent all areas within the Harney Basin that are not within the lowland delineation.*

Although the upland-lowland and regional "boundaries" used in the USGS-OWRD Harney Basin groundwater investigation team reports and presentations are not true hydrogeologic boundaries and are imperfect, they were very useful for the area-to-area discussion-comparison purposes for which they were intended.

Comment 6: The "boundaries" for the original 15 and subsequent 7 proposed Harney Basin Critical Groundwater Area (CGWA) subareas are not hydrogeologic boundaries, but rather administrative boundaries that include hydrogeologic considerations.

The OWRD-USGS Harney Basin groundwater investigation concluded the hydrogeologically complex Harney Basin is hydraulically interconnected, a single groundwater system as presented in Gingerich and others (2022). Therefore, the hydrogeologic and administrative considerations for the originally proposed boundaries for the originally proposed 15 Harney Basin Critical Groundwater Area (CGWA) subareas for OAR 690-512 included but were not limited to the following:

1. Distribution of the basin's hydrogeologic units and their hydraulic properties;
2. Use of the Gingerich and others (2022) water table and potentiometric maps to assess:
   a. Groundwater gradients and flow paths (flow from recharge areas to discharge areas);
   b. Groundwater flow diversion to cones of depression;
   c. The extent and depth of cones of depression;
3. Groundwater level hydrographs per well (groundwater level trends including rates of decline and total decline);
4. Distribution of Public Land Survey System (PLSS) Township, Range, section, and quarter-quarter lines within the basin for readily identifiable boundary lines;
5. An administrative concept of timely and effective that is commonly used by OWRD field staff for enforcement (the time scale used by field staff is often an irrigation season; for the 15 Harney Basin CGWA subarea consideration, the time scale was longer (likely years) but the concept was the same)

Reducing the total number of OAR 690-512 CGWA subareas from the originally proposed 15 CGWA subareas to the currently proposed 7 CGWA subareas loosens the subarea delineation considerations, particularly the concept of timely and effective. OWRD administratively agreed to reducing number of proposed CGWA subareas in response to requests from local stakeholders who sought larger subareas that provide more opportunity for voluntary agreements and/or groundwater right transfers.

Note: the Harney Basin Critical Groundwater Area (CGWA) subarea delineation effort understood the hydraulic considerations for delineating the subarea boundaries may change over time as groundwater pumping changes.

Comment 7: The characteristics of the Harney Basin hydrogeology precludes rather than justify declaring 5 groundwater reservoirs within the Harney Basin as proposed by the 11 September 2025 petition.

The 11 September 2025 petition misunderstands (at best) or purposely misconstrues (at worst) Gingerich and others (2022) to justify declaring 5 groundwater reservoirs within the Harney Basin as defined under ORS 537.515(6) which states:

> *"Ground water reservoir" means a designated body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred.*

The OWRD-USGS Harney Basin groundwater investigation concluded the hydrogeologically complex Harney Basin is hydraulically interconnected, a single groundwater system as presented in Gingerich and others (2022). All "identifiable" hydrogeologic "boundaries" within the Harney Basin are subject to

change as pumping conditions change. Therefore, proper and correct hydrogeologic and administrative considerations consistent with Gingerich and others (2022) best recognizes the Harney Basin as a single hydrologic groundwater reservoir that can be divided into multiple artificial regions and areas for discussion and comparison purposes and into multiple administrative subareas for groundwater management and regulation purposes. All these "boundaries" within the Harney Basin are subject to change as pumping conditions change.

Comment 8: The smaller average and median groundwater level total declines and decline rates in the Upper Silver Creek subarea and the Lower Blitzen-Voltage subarea (original proposed 15 subareas) can be significant in their own right even though they do not meet the "declined excessively" and/or the "excessively declining" threshold as defined in OAR 690-008-0001(5) & (7) and should be assessed using the "Full Pumpage," "OWRD Proposal," and Petition Proposal," "outputs" from the OWRD use of the Gingerich and others (2024) groundwater flow model documented in the Scandella and Boschmann memo dated 30 September 2025.

The 11 September 2025 petition dismissively treats the smaller average and median groundwater level total declines and decline rates in the Upper Silver Creek subarea and the Lower Blitzen-Voltage subarea of the originally proposed 15 subareas as trivial to insignificant, essentially non-consequential. Over time, the total declines can become increasingly consequential even though they do not currently meet the "declined excessively" and/or the "excessively declining" threshold as defined in OAR 690-008-0001(5) & (7). The hydraulic groundwater level flow gradient within both the Upper Silver Creek subarea and the Lower Blitzen-Voltage subarea include a groundwater level flow gradient component to drive groundwater toward the Warm Springs Valley springs and toward Sodhouse Spring respectively. Additionally, both subareas include a broad higher permeability zone: an apparent fractured zone at depth in the Upper Silver Creek subarea and the surficial to near surficial Voltage Lavas in the Lower Blitzen-Voltage subarea. Small groundwater level changes within those broad higher permeability zones can potentially change significantly the horizontal groundwater flow rates within those zones. Additionally in both subareas, the groundwater elevation difference between the broad higher permeability zone to the downgradient spring(s) is relatively small: 15 to 25 feet for the Upper Silver Creek subarea and less than 10 feet for the Lower Blitzen-Voltage subarea. With time, the hydraulic groundwater level flow gradient from these broad higher permeability zones to the downgradient springs can potentially shrink to minimal or to no gradient (no flow to the springs) if left unchecked: within multiple decades for the Upper Silver Creek subarea and within one or two decades for the Lower Blitzen-Voltage subarea assuming the average or median decline rates continue unabated for each subarea.

The potential loss of the groundwater level flow gradient toward the springs must not be dismissed nor trivialized. Instead, this potential loss of the groundwater level flow gradient toward the springs needs to be assessed and compared for at minimum the three different "model runs" ("Full Pumpage," "OWRD Proposal," and "Petition Proposal") OWRD conducted for the comparative analyses presented in the 30 September 2025 memo by Scandella and Boschmann. The output from the three different model runs can be used to produce additional maps and graphs as noted in the tables 1 to 5 that can be useful for assessing and comparing groundwater flow gradient changes with time. The tables are located after the recommendation section and before the reference section.

Comment 9: The 11 September 2025 petition fails to note the anticipated distribution of "stabilized" groundwater level elevations in relation-comparison to the Harney and Malheur Lakes lakebed elevations, the Warm Spring Valley spring elevations, and the approximate root zone depth elevations of groundwater dependent vegetation; these should be assessed using the "Full Pumpage," "OWRD Proposal," and "Petition Proposal" "outputs" from the OWRD use of the Gingerich and others (2024) groundwater flow model documented in the Scandella and Boschmann memo dated 30 September 2025.

The proposed goal (objective) of the currently proposed OAR 690-512 revisions and the 11 September 2025 petition proposed OAR 690-512 revisions is to reduce Harney Basin groundwater use in a manner that can achieve a rule defined groundwater level stability within a 30-year reduction implementation window. The 30-year implementation will likely result in a mix of net groundwater level decline in some areas and net groundwater level recovery in other areas by the end of the 30-year period as noted and shown in the Scandella and Boschmann memo dated 30 September 2025.

A well informed (a properly informed) public interest assessment and determination of the 11 September 2025 petition proposal versus the current OWRD proposal versus the full pumping scenario must be aware of the anticipated distribution of the "stabilized" groundwater level elevations and the anticipated impact on spring discharge in Warm Springs Valley and at Sodhouse Spring, and the anticipated impact on groundwater dependent vegetation. The Scandella and Boschmann memo dated 30 September 2025 Is helpful in this regard. It notes the overall differences of the "stabilized" groundwater level elevations, differences in the annual groundwater discharge to springs and streams, differences in the annual groundwater discharge to evapotranspiration (ET), and additionally differences in wells going dry at the end of a 30-year reduction implementation window (2028 to 2058) using the "Full Pumpage,", "OWRD Proposal," and "Petition Proposal" "outputs from the OWRD use of the Gingerich and others (2024) groundwater flow model. The recommended maps listed in tables 2 and 3 in this memo (particularly for model year 2058) would be additionally useful. The tables are located after the recommendation section and before the reference section.

Comment 10: The 11 September 2025 petition Exhibit B, Table 1 and the accompanying text summarizing seven existing critical groundwater areas established from 1959 through 1986 appears to claim previous critical groundwater area designation processes as precedent and to indirectly and incorrectly imply a hydrogeologic equivalency between those critical groundwater areas and the proposed Harney Basin critical groundwater area to justify favoring the 11 September 2025 petition proposed OAR 690-512 revisions over the current OWRD proposed OAR 690-512 revisions.

Groundwater in the Harney Basin occurs within a single, heterogenous, hydraulically interconnected (laterally and vertically), continuous groundwater flow system composed of multiple hydrogeologic units with varying hydraulic properties as described in Gingerich and others (2022). Conversely, groundwater at the seven existing critical groundwater areas (CGWA) established from 1959 to through 1986 generally occur within discreet, mostly hydraulically disconnected hydrogeologic units. Some of the existing CGWA are for groundwater within one or more units within the Columbia River Basalt Group. At least one existing CGWA is for groundwater within coarse flood deposits overlying the Columbia River Basalt Group. Consequently, caution and skepticism are warranted when hydrogeologically comparing the existing CGWAs to the Harney Basin. Such hydrogeologic comparisons with the Harney Basin are tenuous at best.

Recommendation Section:

Recommendation 1: The Commission should consult with the Oregon Board of Geologist Examiners to determine whether the petition as written violates Oregon statutes and rules for the public practice of geology.

The superseding hydrogeologic reinterpretations and arguments presented within the petition may constitute a public practice of geology which is limited to qualified professionals registered in Oregon or those qualified professionals exempted from registration (see ORS 672.525, ORS 672.535, and ORS 672.595). The Oregon Board of Geologist Examiners should be consulted and/or asked to investigate.

Recommendation 2: The Commission should consult with the Oregon Board of Examiners for Engineering and Land Surveying to determine whether Mario Petrilli has violated Oregon statutes and rules for the public practice of engineering.

Mario Petrilli has boldly presented himself at OAR 690-512 related public meetings and hearings as an engineer duty bound to single-handedly assess and declare technical work as good (valid) or bad (invalid) science. Consequently, he has declared the USGS-OWRD groundwater investigation and subsequent reports as bad (invalid) science, particularly the water budget. Before the Commission accepts his authority to make such declarations, the Oregon Board of Examiners for Engineering and Land Surveying and the Oregon Board of Geologist Examiners should be consulted and/or asked to investigate whether Mr. Petrilli has violated Oregon statutes and rules for the public practice of engineering and/or the public practice of geology or not.

Recommendation 3: The Commission should recognize the petition as solely a public interest finding request to decide what proposed OAR 690-512 revisions are best in the public interest: the petition proposed revisions, the current OWRD proposed revisions, or neither.

The superseding hydrogeologic reinterpretations and arguments presented within the petition appears to be a technical guise to justify adopting a superseding administrative framework for managing and regulating the basin's groundwater. The guise is disingenuous. A far more honest, transparent, and genuine petition would simply ask the Oregon Water Resources Commission to make a public interest finding to adopt the petition's proposed superseding administrative framework based solely on socio-economic considerations, not technical considerations. The potential consequences to the basin's hydrologic and other natural resources notwithstanding. The finding would need to include a clarification statement that the proposed groundwater reservoirs are purely administrative, not hydrologic.

Recommendation 4: The Commission effort to decide what proposed OAR 690-512 revisions are best in the public interest should find the Scandella and Boschmann memo dated 30 September 2025 and the multiple USGS-OWRD Harney Basin groundwater investigation reports are the most complete, accurate, and reliable for assessing and judging the technical components of the public interest evaluation.

The Scandella and Boschmann memo dated 30 September 2025 provides sufficiently usefully thorough, accurate and reliable technical comparison and analysis of the likely Harney Basin groundwater system response to the petition proposed and the current OWRD proposed OAR 690-512 revisions. My written comments suggest additional maps and graphs to further supplement and enhance the memo.

Recommendation 5: The Commission should reject declaring or recognizing separate groundwater reservoirs in the Harney Basin.

The OWRD-USGS Harney Basin groundwater investigation concluded the hydrogeologically complex Harney Basin is hydraulically interconnected, a single groundwater system as presented in Gingerich and others (2022). The totality of the historic and current Harney Basin groundwater data does not support the locally derived hydrogeologic interpretation of Harney Basin groundwater being variously compartmentalized and isolated. The hydrogeologic interpretation by the OWRD-USGS Harney Basin groundwater investigation team of a single groundwater system composed of multiple, hydraulically interconnected hydrogeologic units with varying hydraulic properties as presented in Gingerich and others (2022) and supporting reports can and does account for the various locally derived groundwater occurrence and behavior observations presented to the team. Many of the hydrogeologic units are complex, non-homogenous (heterogenous), but remain hydraulically interconnected internally and with adjoining-neighboring hydrogeologic units. The complexity does not preclude hydraulic interconnection within the Harney Basin groundwater system, but it can-does affect the rate and direction of groundwater flow at various locations and depths within the groundwater system, and it can-does affect how the response to pumping, recharge, and other various groundwater stresses propagates to different locations and depths within the groundwater system.

Additionally, the USGS-OWRD Harney Basin groundwater investigation team has repeatedly stressed in their reports and presentations that internal Harney Basin "boundaries" as shown or noted in report and presentation figures, tables, and text are intended for area-to-area discussion and comparison use only. They are not actual hydrogeologic boundaries. In fact, those "boundaries" are subject to change as pumping conditions change.

Furthermore, the effort to delineate the originally proposed 15 Harney Basin Critical Groundwater Area (CGWA) subareas used both hydrogeologic and non-hydrogeologic considerations:

1. Distribution of the basin's hydrogeologic units and their hydraulic properties;
2. Use of the Gingerich and others (2022) water table and potentiometric maps to assess:
   a. Groundwater gradients and flow paths (flow from recharge areas to discharge areas);
   b. Groundwater flow diversion to cones of depression;
   c. The extent and depth of cones of depression;
3. Groundwater level hydrographs per well (groundwater level trends including rates of decline and total decline);
4. Distribution of Public Land Survey System (PLSS) Township, Range, section, and quarter-quarter lines within the basin for readily identifiable boundary lines;
5. An administrative concept of timely and effective that is commonly used by OWRD field staff for enforcement (the time scale used by field staff is often an irrigation season; for the 15 Harney Basin CGWA subarea consideration, the time scale was longer (likely years) but the concept was the same)

The subarea delineation effort understood the hydraulic considerations for delineating the subarea boundaries may change over time as groundwater pumping changes.

Recommendation 6: The Commission should reject the 11 September 2025 petition implication that the smaller average and median groundwater level total declines and decline rates in the Upper Silver Creek subarea and the Lower Blitzen-Voltage subarea within the currently proposed Harney Basin CGWA are trivial, insignificant, non-consequential.

The 11 September 2025 petition dismissively treats the smaller average and median groundwater level total declines and decline rates in the Upper Silver Creek subarea and the Lower Blitzen-Voltage subarea of the originally proposed 15 subareas as trivial to insignificant, essentially non-consequential. Over time, the total declines can become increasingly consequential even though they do not currently meet the "declined excessively" and/or the "excessively declining" threshold as defined in OAR 690-008-0001(5) & (7). The hydraulic groundwater level flow gradient within both the Upper Silver Creek subarea and the Lower Blitzen-Voltage subarea include a groundwater level flow gradient component to drive groundwater toward the Warm Springs Valley springs and toward Sodhouse Spring respectively. Additionally, both subareas include a broad higher permeability zone: an apparent fractured zone at depth in the Upper Silver Creek subarea and the surficial to near surficial Voltage Lavas in the Lower Blitzen-Voltage subarea. Small groundwater level changes within those broad higher permeability zones can potentially change significantly the horizontal groundwater flow rates within those zones. Additionally in both subareas, the groundwater elevation difference between the broad higher permeability zone to the downgradient spring(s) is relatively small: 15 to 25 feet for the Upper Silver Creek subarea and less than 10 feet for the Lower Blitzen-Voltage subarea. With time, the hydraulic groundwater level flow gradient from these broad higher permeability zones to the downgradient springs can potentially shrink to minimal or to no gradient (no flow to the springs) if left unchecked: within multiple decades for the Upper Silver Creek subarea and within one or two decades for the Lower Blitzen-Voltage subarea assuming the average or median decline rates continue unabated for each subarea. Therefore, the potential loss of the groundwater level flow gradient toward the springs must not be dismissed nor trivialized. Instead, this potential loss of the groundwater level flow gradient toward the springs needs to be recognized and assessed.

Recommendation 7: The Commission should be very wary of technical hydrogeologic comparisons between the Harney Basin and the current 7 CGWA established from 1959 through 1986.

Groundwater in the Harney Basin occurs within a single, heterogenous, hydraulically interconnected (laterally and vertically), continuous groundwater flow system composed of multiple hydrogeologic units with varying hydraulic properties as described in Gingerich and others (2022). Conversely, groundwater at the seven existing critical groundwater areas (CGWA) established from 1959 to through 1986 generally occur within discreet, mostly hydraulically disconnected hydrogeologic units. Some of the existing CGWA are for groundwater within one or more units within the Columbia River Basalt Group. At least one existing CGWA is for groundwater within coarse flood deposits overlying the Columbia River Basalt Group. Consequently, caution and skepticism are warranted when comparing the hydrogeology of the existing CGWAs to the Harney Basin.

Tables:

Table 1. Recommended maps to show the groundwater model calculated groundwater elevation per model cell for the model years 1990, 2018, 2028, and 2058 using the output from the three different "model runs" ("Full Pumpage," "OWRD Proposal," and "Petition Proposal") noted in the 30 September 2025 memo by Scandella and Boschmann.

Geographic Area	Model Run	Model Year	Model Layer	Map Showing
GHVGAC	Full	1990	1	Model GW elevation per model cell
GHVGAC	Full	1990	2	Model GW elevation per model cell
GHVGAC	Full	1990	3	Model GW elevation per model cell
GHVGAC	Full	1990	4	Model GW elevation per model cell
GHVGAC	Full	1990	5	Model GW elevation per model cell
GHVGAC	Full	1990	6	Model GW elevation per model cell
GHVGAC	Full	2018	1	Model GW elevation per model cell
GHVGAC	Full	2018	2	Model GW elevation per model cell
GHVGAC	Full	2018	3	Model GW elevation per model cell
GHVGAC	Full	2018	4	Model GW elevation per model cell
GHVGAC	Full	2018	5	Model GW elevation per model cell
GHVGAC	Full	2018	6	Model GW elevation per model cell
GHVGAC	Full	2028	1	Model GW elevation per model cell
GHVGAC	Full	2028	2	Model GW elevation per model cell
GHVGAC	Full	2028	3	Model GW elevation per model cell
GHVGAC	Full	2028	4	Model GW elevation per model cell
GHVGAC	Full	2028	5	Model GW elevation per model cell
GHVGAC	Full	2028	6	Model GW elevation per model cell
GHVGAC	Full	2058	1	Model GW elevation per model cell
GHVGAC	Full	2058	2	Model GW elevation per model cell
GHVGAC	Full	2058	3	Model GW elevation per model cell
GHVGAC	Full	2058	4	Model GW elevation per model cell
GHVGAC	Full	2058	5	Model GW elevation per model cell
GHVGAC	Full	2058	6	Model GW elevation per model cell
GHVGAC	OWRD	2058	1	Model GW elevation per model cell
GHVGAC	OWRD	2058	2	Model GW elevation per model cell
GHVGAC	OWRD	2058	3	Model GW elevation per model cell
GHVGAC	OWRD	2058	4	Model GW elevation per model cell
GHVGAC	OWRD	2058	5	Model GW elevation per model cell
GHVGAC	OWRD	2058	6	Model GW elevation per model cell
GHVGAC	Petition	2058	1	Model GW elevation per model cell
GHVGAC	Petition	2058	2	Model GW elevation per model cell
GHVGAC	Petition	2058	3	Model GW elevation per model cell
GHVGAC	Petition	2058	4	Model GW elevation per model cell
GHVGAC	Petition	2058	5	Model GW elevation per model cell
GHVGAC	Petition	2058	6	Model GW elevation per model cell
36 maps total Recommend displaying a full set of 6 maps per model layer on a single page, one page per model layer Recommend using a graduated color scale for the range of groundwater elevations				

Table 2. Recommended maps to show the elevation difference between the groundwater model calculated groundwater elevation per model cell and the approximate elevation of Warm Springs Valley springs (4125 ft. alsd) for the years 1990, 2018, 2028, and 2058 using the output from the three different "model runs" ("Full Pumpage," "OWRD Proposal," and "Petition Proposal") noted in the 30 September 2025 memo by Scandella and Boschmann.

Geographic Area	Model Run	Model Year	Model Layer	Map Showing
GHVGAC	Full	1990	1	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	1990	2	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	1990	3	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	1990	4	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	1990	5	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	1990	6	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2018	1	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2018	2	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2018	3	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2018	4	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2018	5	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2018	6	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2028	1	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2028	2	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2028	3	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2028	4	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2028	5	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2028	6	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2058	1	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2058	2	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2058	3	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2058	4	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2058	5	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2058	6	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	OWRD	2058	1	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	OWRD	2058	2	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	OWRD	2058	3	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	OWRD	2058	4	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	OWRD	2058	5	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	OWRD	2058	6	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Petition	2058	1	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Petition	2058	2	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Petition	2058	3	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Petition	2058	4	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Petition	2058	5	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Petition	2058	6	Model GW elevation per model cell minus 4125 ft alsd
36 maps total Recommend displaying a full set of 6 maps per model layer on a single page, one page per model layer Recommend using a graduated color scale for the range of groundwater elevation differences				

Table 3. Recommended maps to show the elevation difference between the groundwater model calculated groundwater elevation per model cell and the approximate elevation of Sodhouse Spring (4100 ft. alsd) for the years 1990, 2018, 2028, and 2058 using the output from the three different "model runs" ("Full Pumpage," "OWRD Proposal," and "Petition Proposal") noted in the 30 September 2025 memo by Scandella and Boschmann.

Geographic Area	Model Run	Model Year	Model Layer	Map Showing
GHVGAC	Full	1990	1	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	1990	2	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	1990	3	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	1990	4	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	1990	5	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	1990	6	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2018	1	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2018	2	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2018	3	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2018	4	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2018	5	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2018	6	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2028	1	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2028	2	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2028	3	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2028	4	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2028	5	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2028	6	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2058	1	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2058	2	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2058	3	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2058	4	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2058	5	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Full	2058	6	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	OWRD	2058	1	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	OWRD	2058	2	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	OWRD	2058	3	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	OWRD	2058	4	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	OWRD	2058	5	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	OWRD	2058	6	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Petition	2058	1	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Petition	2058	2	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Petition	2058	3	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Petition	2058	4	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Petition	2058	5	Model GW elevation per model cell minus 4125 ft alsd
GHVGAC	Petition	2058	6	Model GW elevation per model cell minus 4125 ft alsd
36 maps total Recommend displaying a full set of 6 maps per model layer on a single page, one page per model layer Recommend using a graduated color scale for the range of groundwater elevation differences				

Table 4. Recommended groundwater level cross-sections showing the groundwater level gradient from Camp Curry Spring to the Warm Springs Valley springs using the groundwater model calculated groundwater elevation per model cell per model layer for the years 1990, 2018, 2028, and 2058 using the output from the three different "model runs" ("Full Pumpage," "OWRD Proposal," and "Petition Proposal") noted in the 30 September 2025 memo by Scandella and Boschmann.

CGWA Sub-Area	Model Run	Model Year	Model Layer	Graph Showing
Silver Creek	Full	1990	1	Model GW elevation per model cell along a GW flowpath cross-section from Camp Curry Spring to Suntex to Riley to Moon Reservoir to the Warm Springs Valley springs
			2	
			3	
			4	
			5	
			6	
Silver Creek	Full	2018	1	Model GW elevation per model cell along a GW flowpath cross-section from Camp Curry Spring to Suntex to Riley to Moon Reservoir to the Warm Springs Valley springs
			2	
			3	
			4	
			5	
			6	
Silver Creek	Full	2028	1	Model GW elevation per model cell along a GW flowpath cross-section from Camp Curry Spring to Suntex to Riley to Moon Reservoir to the Warm Springs Valley springs
			2	
			3	
			4	
			5	
			6	
Silver Creek	Full	2058	1	Model GW elevation per model cell along a GW flowpath cross-section from Camp Curry Spring to Suntex to Riley to Moon Reservoir to the Warm Springs Valley springs
			2	
			3	
			4	
			5	
			6	
Silver Creek	OWRD	2058	1	Model GW elevation per model cell along a GW flowpath cross-section from Camp Curry Spring to Suntex to Riley to Moon Reservoir to the Warm Springs Valley springs
			2	
			3	
			4	
			5	
			6	
Silver Creek	Petition	2058	1	Model GW elevation per model cell along a GW flowpath cross-section from Camp Curry Spring to Suntex to Riley to Moon Reservoir to the Warm Springs Valley springs
			2	
			3	
			4	
			5	
			6	
6 graphs total Recommend displaying all 6 graphs on a single page Graph Y-axis = GW elevation Graph X-axis = GW flowpath cross-section distance from Camp Curry Spring				

Table 5. Recommended groundwater level cross-sections showing the groundwater level gradient from Diamond Craters (Malheur Maar) to Sodhouse Spring (Malheur Lake) using the groundwater model calculated groundwater elevation per model cell per model layer for the years 1990, 2018, 2028, and 2058 using the output from the three different "model runs" ("Full Pumpage," "OWRD Proposal," and "Petition Proposal") noted in the 30 September 2025 memo by Scandella and Boschmann.

CGWA Sub-Area	Model Run	Model Year	Model Layer	Graph Showing
Lower Blitzen-Voltage	Full	1990	1	Model GW elevation per model cell along a GW flowpath cross-section from Diamond Craters (Malheur Maar) to Sodhouse Spring (Malheur Lake)
			2	
			3	
			4	
			5	
			6	
Lower Blitzen-Voltage	Full	2018	1	Model GW elevation per model cell along a GW flowpath cross-section from Diamond Craters (Malheur Maar) to Sodhouse Spring (Malheur Lake)
			2	
			3	
			4	
			5	
			6	
Lower Blitzen-Voltage	Full	2028	1	Model GW elevation per model cell along a GW flowpath cross-section from Diamond Craters (Malheur Maar) to Sodhouse Spring (Malheur Lake)
			2	
			3	
			4	
			5	
			6	
Lower Blitzen-Voltage	Full	2058	1	Model GW elevation per model cell along a GW flowpath cross-section from Diamond Craters (Malheur Maar) to Sodhouse Spring (Malheur Lake)
			2	
			3	
			4	
			5	
			6	
Lower Blitzen-Voltage	OWRD	2058	1	Model GW elevation per model cell along a GW flowpath cross-section from Diamond Craters (Malheur Maar) to Sodhouse Spring (Malheur Lake)
			2	
			3	
			4	
			5	
			6	
Lower Blitzen-Voltage	Petition	2058	1	Model GW elevation per model cell along a GW flowpath cross-section from Diamond Craters (Malheur Maar) to Sodhouse Spring (Malheur Lake)
			2	
			3	
			4	
			5	
			6	
6 graphs total Recommend displaying all 6 graphs on a single page Graph Y-axis = GW elevation Graph X-axis = GW flowpath cross-section distance from Camp Curry Spring				

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MEINZ Kelly A * WRD

From: Jesse Svejcar <svejcaj@eou.edu>
Sent: Wednesday, October 1, 2025 7:55 PM
To: WRD_DL_rule-coordinator
Subject: Letter of support for

Some people who received this message don't often get email from svejcaj@eou.edu. Learn why this is important

To whom it may concern,

I am writing to express my support for the Harney basin community petition filed September 12th. I'm a water right holder in harney county and it is clear to me that the current actions proposed by the state are harmful and likely ineffective. I've gone to water meetings for years and it has become obvious that the so-called experts in this matter have no idea how the groundwater works in the Harney basin. They are essentially making it all up as they go and ignoring all contrary evidence.

Please consider all the points in this petition and do not continue on a path that will destroy the economy of Harney County. Thank you for your attention in this matter.

Sincerely

Jesse Svejcar
67442 reno rd.
Hines or 97738

Bachman Bay Farms

Malheur Gap Farm
Dominic & Jill Bachman

51789 highway 78, Princeton, OR 97738

Bachmanbayfarms@gmail.com

October 1, 2025

Division 512 Rules Coordinator
Oregon Water Resources Department
725 Summer St. N. E. Suite A
Salem, OR 97301-1271
WRD_DL_rule-coordinator@water.oregon.gov

Subject: Dominic and Jill Bachman comments on the Harney Basin community petition filed September 12

We are first generation farmers. We recently put our life's savings into owning a hay and cattle farm in Princeton, Oregon at the far southeastern edge of the current 512 rule critical groundwater area. We believe in the American dream of owning a farm. Of course, we don't own our farm the bank does, and we purchased at a time of high interest rates and low hay value. That may not have been the smartest move however, we specifically chose the location of this farm based on the seniority of its water rights and a location known for excellent quality and quantity of groundwater. As of May 2025, we learned that the Windy Point Subarea had been removed, and we are now part of the Northeast Crane subarea if the 512 rule goes through as proposed. The petition moves us to the blitzen voltage groundwater reservoir and that makes so much more sense based on usgs science and our own knowledge of what wells are similar.

On a scale of Harney basin, we are a small operation. However, if we lose our water rights, our bankruptcy will hurt just as much as it would for anyone. Our retirement, our children's inheritance and our ability to own a piece of the

American dream is at risk here. If we don't feel the department is taking our concerns seriously, we will be one of many in this county taking legal action against the OWRD over these new rules. If the petition were adopted as proposed, we would be much less likely to be taking legal action.

The state has been over-allocating water and allowing transfers that didn't make sense for decades and now wants to come down on this basin much harder than it has ever done anywhere in the state. This feels very unfair and puts us into defensive mode. We are frustrated with the fact that we have legal state allocated water rights being used lawfully and it feels like the state is missing a huge opportunity to collaborate and conserve resources in the Harney Basin.

As new farmers in the area our neighbors have greeted us with open arms helping us at much cost to themselves without asking for anything. When a pickup or tractor drives by our farm, we wave, and folks wave back, and we know those people are our friends. When our neighbor's hay bailer caught fire this July, another neighbor was immediately there with a plan to help them get hay done before the fire was even put out! We have always wanted to live in a place where neighbors truly take care of each other, and we have found that place. We would give everything we have to protect our farm and our community.

We currently irrigate with two agricultural wells using four, older wheel lines some of them over ¼ mile long and about a dozen handline sections. We move water twice and sometimes three times a day. It is exhausting work. We grow alfalfa, grass hay and have leased out our land to fall cattle grazing. Although we have only owned this farm for three years, we talked extensively with the previous owners who lived and farmed here for 26 years, as well as talking to two different farmers who leased this property. They all said the same thing. They have not seen any major drops in water well levels and even on the driest of years this place has had more than enough water for irrigation needs.

We spent many years living in the Weaver Springs area, and we saw firsthand the impacts of groundwater static levels going down drying out the land, neighbors having to drill deeper and deeper for domestic wells. We specifically moved to Princeton because the area is known to have lots of high-quality groundwater and few problems with wells.

We believe in water conservation and feel flow meters should be installed on every ag well and those meters should be checked and quantified by a third party and all costs associated with this should be paid for by the department.

We are worried about groundwater and surface water in the basin and would like to see the department focus on positive ways to improve the position they have put us all in. The petition is a much better way to do this than the 512 rules proposed by the state.

1- Our farm is at the far eastern edge of what the state 512 is calling the critical groundwater boundary. Our eastern boundary is the end of the boundary and any farm east of us has no water curtailment. We are within one mile of a farm south of us in the Malheur gap that is not even considered in the same basin as us according to the department and it is facing no water restrictions. If our farm was on the other side of Highway 78 we would be in a different subarea as the farms directly across the road from us are all in the Lower Blitzen-Voltage subarea. Does the department believe highway 78 somehow effects groundwater?
2- We agree with the petition boundary and feel our farm should be in the Lower Blitzen-Voltage Groundwater Reservoir, all our wells and water and well drillers and geology seem to fit with that. We can easily see the north Steens across the road from our house that is our watershed. There is no cone of depression in our area. Contour maps show how we are so different that some of the areas in the Crane subarea. The geologic feature of windy point seems pretty obvious as a separation and that the state 512 rules were are in the wrong area. We believe all the irrigated lands south of windy point including farms owned by Thompson, Wilson, Potter and Otley should all be in the Blitzen-Voltage groundwater reservoir.

    - In the 2022 USGS hydrologic budget for the basins groundwater they clearly delineated the southern region of the basin as everything south of windy point and based that line of major geographic and cultural features. See map from page 20 of SIR 2021-5128: Hydrologic budget of the Harney Basin groundwater system, southeastern Oregon (usgs.gov))

- On page 8-9 in the 2024 Groundwater Level Trends in the Proposed Harney Basin Critical Groundwater Area report it appears to us that all the wells that are reported on south of windy point are similar to the wells of the lower Blitzen-Voltage Subarea. Further evidence that this area is more like that subarea than to the Northeastern Crane Subarea.

- We feel that the department proposing 39% decrease in the L. Blitzen-Voltage Subarea is not founded in science and they failed to show us how this level of cuts make any sense in this area. Especially when other subareas with much more widespread water losses are receiving less curtailments and currently many pivots are being transferred into the lower Blitzen subarea. Just today we drove by and saw a new pivot being constructed on what has historically been sage steppe habitat. How does this make any sense? How can the department justify cutting an area with very little water loss more than they are cutting some of the areas with extensive water loss? How can the department justify the need to cut an area 39% (the second highest curtailment of all subareas) and yet allow water rights and new pivots to be transferred into this area? The petition would put us in the Blitzen voltage groundwater reservoir and puts us in an area with a 10% voluntary reduction which is very doable in our area.
- We question the departments believe of hydrologic connection and everything being one groundwater reservoir. Why are wells near each other so different? Why are many wells not losing water if everything is connected? The petition's five groundwater reservoirs seem much more logical and make sense based on local knowledge of groundwater.
- We believe the departments job is to protect our water rights, and the department should be using the existing definition of "reasonably stable" consistent with current law.

- The department has known about water issues in the basin for decades yet is still allowing water rights to be transferred from areas such as weaver springs how is this protecting water rights? We believe the framework should be flexible if groundwater losses in some areas are reduced those areas should receive less cuts.
- We believe this petition will pair extremely well with the voluntary agreements, which many of us feel are the only reasonable options available to irrigators and the department should do everything in its power to support and take seriously any local voluntary agreements that are created by the water users.

The department should be doing all it can to create programs within the department, FSA and NRCS to reduce water use and help irrigators transition ground out of irrigation or to more efficient systems instead of focusing on policies that will shut off irrigators. We don't understand why this has not been the focus of the department's efforts in the first place. The department should be funneling conservation assistance expertise and money into programs to help with the situation they created. The current FSA program and state department conservation programs do not work for us and need significant modification.

The department should also assess the viability of utilizing and funding the High Desert Partnership to find creative ways to assist the farming and ranching community as we transition to reduced water use. We should find a way for funds to hire Harmony Burright

The petition recognizes that groundwater conditions are different in different parts of the basin and that groundwater will be more effectively managed as separate groundwater reservoirs rather than treating the whole basin as one groundwater reservoir.

• The petition focuses regulation in the areas where there are clear problems that meet the thresholds for regulatory action.

• The petition encourages voluntary actions in parts of the basin where groundwater levels are reasonably stable and expected to remain reasonably stable.

• The petition adjusts proposed boundaries to better reflect our understanding of groundwater conditions in the basin.

• The petition will continue to encourage the collection of information to target actions that restore or maintain the flow of springs important to the Malheur National Wildlife Refuge in partnership with the Refuge.

• The petition does a better job of protecting groundwater rights that were legally granted and the people who have dutifully followed all of the state laws.

• In the Harney Basin we have a track record of working together to solve problems collaboratively. The petition recognizes this history and invites the state to work with us.

• We believe the petition encourages programs that will fairly compensate groundwater rights holders who voluntarily cancel their groundwater rights or can no longer use their water right due to regulation. Without this our basin's economy will collapse and we will all be stuck in litigation for decades.

• We believe the petition will reduce conflict, and the costs associated with litigation and will allow our community and groundwater users to invest in water conservation instead.

Thank you for the opportunity to provide comments on the proposed petition. I hope that the department will seriously consider our comments.

Sincerely,

Dominic & Jill Bachman

MEINZ Kelly A * WRD

From: Jim Coverdell <jimcoverdell8688@gmail.com>
Sent: Wednesday, October 1, 2025 10:10 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from jimcoverdell8688@gmail.com. Learn why this is important

- I am commenting on both the "Petition for Rulemaking —Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.
- I would like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.
- The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

Thank you for hearing me,

Jim-

MEINZ Kelly A * WRD

From: Joan Suther <jsuther10@gmail.com>
Sent: Tuesday, October 7, 2025 12:20 PM
To: WRD_DL_rule-coordinator
Cc: Joan Suther
Subject: Submitting comments on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules —Division 512." Attn: Kelly Meinz

Some people who received this message don't often get email from jsuther10@gmail.com. Learn why this is important

Attention Kelly Meinz:

Please let me know when these comments have been received.

Thank you for accepting these comments regarding water resources in Harney County, Oregon. If you have any questions, please call, text or email.

- I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules —Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater, land values or wildlife habitat in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition. His petition amounts to the fox guarding the henhouse. Owens wrongly claims historical farming would be negatively impacted by OWRD's proposed rules, when in fact, much of the draw down of aquifers has occurred in recent years, commensurate with a few large landowners converting thousands of acres of sagebrush habitat to alfalfa fields.
- OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater and continue to create hardship for rural residents who cannot afford to put in costly new (and much deeper) wells.
- I would like to see OWRD's proposed rules strengthened to better protect groundwater. I believe the proposed rules' schedule allowing such a large amount of additional pumping to occur that groundwater levels are not "stabilized" for 30 more years favors irrigation and a handful of farmers in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years. In addition, the "stabilization" level is a far cry from replenishing aquifers. However, I support the OWRD plan over Owens' proposal.
- The Commission should outright reject Owens, et al promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless and self serving approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

Sincerely,

Joan Suther

Harney County Resident
Retired Bureau of Land Management

Sent from Joan's iPhone
jsuther10@gmail.com
541-589-1087

MEINZ Kelly A * WRD

From: Jocelyn Hough <jocelynhough@gmail.com>
Sent: Friday, October 3, 2025 4:46 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

You don't often get email from jocelynhough@gmail.com. Learn why this is important

Attention: Kelly Meinz

- I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.
- I would like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.
- The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

Thank you!
Jocelyn Hough
15340 SW Village Lane
Beaverton OR 97007
jocelynhough@gmail.com

MEINZ Kelly A * WRD

From: Joe Moore <j.fiddle.moore@gmail.com>
Sent: Tuesday, October 7, 2025 3:26 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from j.fiddle.moore@gmail.com. Learn why this is important

I am writing to the attention of Kelly Meinz:

My name is Joe Moore, I'm a registered voter in Washington County Oregon. I'm writing regarding both Petition for Rulemaking — Division 512" and "Agency Proposed Rules — Division 512.

I have recently been reminded of the groundwater usage issue in the Harney Basin by both WaterWatch of Oregon and Oregon Public Broadcasting.

I had a wonderful visit to Steens Mountain a number of years ago; watched the Refuge Takeover in shock; and have read the book Sagebrush Collaboration by Peter Walker, about that incident.

I grew up in west Mississippi County Arkansas. Cotton country. The income from a cotton field put me through college.

I realize none of that makes me an expert on the issues in the Harney Basin. But I do have some experience and knowledge of farming issues and environmental issues.

Cotton was not irrigated when I was coming up. After I left Arkansas, farmers began irrigating cotton, as well as soybeans. My sister worked for a large farm, and in the town built by this farm, all the houses began to warp and crack. The land was sinking because so much water had been pumped out of the ground. The roads began to warp. And wells began to dry up.

It sounds as if the Harney Basin is having similar issues. Unlike the Mississippi Delta, the Harney Basin has been slowly drying out since the ice from the last Ice Age melted. Given human nature, I don't think we can count on "voluntary" measures to keep the groundwater in the ground, enough so that the snowmelt from the mountains can replenish it on a yearly basis.

So I'm asking you to deny Representative Owens' petition. I'm also asking you to strengthen the groundwater protection in your proposed rules, put in rules to strengthen protections for groundwater dependent natural areas and the birds and wildlife and humans that depend on them, then put all those rules into effect.

Society really needs to start moving beyond extraction economies. Adopting groundwater protections that are strong enough to allow groundwater to replenish itself naturally is a way to start.

thank you for your consideration.

MEINZ Kelly A * WRD

From: John Oconnor <johnoc49@gmail.com>
Sent: Tuesday, October 7, 2025 3:50 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from johnoc49@gmail.com. Learn why this is important

Also , I have lowered my pump 2 times & one well is DRY? IRRIGATION Pumps are failing

MEINZ Kelly A * WRD

From: John Oconnor <johnoc49@gmail.com>
Sent: Tuesday, October 7, 2025 3:46 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from johnoc49@gmail.com. Learn why this is important

Thanks for the opportunity to comment, Republicans Owen's playing politics, he fears he has to look good orlose his job !?? We need to stick with the Science & I'm sure Rep Owen's will go along with it , so on with it ! Thanks again John

MEINZ Kelly A * WRD

From: fordkong (null) <fordkong@aol.com>
Sent: Tuesday, October 7, 2025 3:51 PM
To: WRD_DL_rule-coordinator
Subject: Fwd: Division 512 rules Harney County

Some people who received this message don't often get email from fordkong@aol.com. Learn why this is important

Begin forwarded message:

From: "fordkong (null)" <fordkong@aol.com>
Date: October 7, 2025 at 1:58:13 PM PDT
To: WRD_DL_rule-coordination@water.oregon.gov
Subject: Division 512 rules Harney County

Hello,

I am writing this in regards to the Harney County Water issue.

First off I would like to say that your department has helped create this problem in Harney County by continuing to issue water rights to people KNOWING that this was occurring. And your department continues to this date to issue water right certificates, with no guidelines set in place or a second thought that new water rights will continue to add to the situation at hand.

Second —— I do not know if anyone has ever mentioned this so I will. With the proposed cut backs in water, How do plan to address the "LEGALITY'' of the current certificates. Example if the first water cut back happens then ALL water certificates are no longer valid. That now puts your department in a breach of contract situation and it also creates a problem with the certificates that property owners have. So this being said is your department going to re-issue "EVERY SINGLE" water certificate with the new water cut back amounts EVERYTIME there is a cut back in water. I am asking for the whole state.. That will be a lot of certificates to be re-issued.

Third —— With the RAC meetings I have attended I do think the information you gave was correct or current. I do believe your department did not do sufficient research before creating this explosion of bickering back and forth and getting nowhere on either end. With no possibility of agreement. But I have seen lack of motivation from your department when they have been here.. They have the " I don't want to be here " look. I am also very angry that with the meeting you request to have ALL questions, comments, and concerns by a certain date, but when you come to address Harney county you can last minute change or add things to the agenda. That is unfair to us as a town let alone to the property owners that depend on their water to make a PAYCHECK.

Fourth —— I am pretty sure this has been talked about but I am going to say this. The water cut backs you want to impose will affect the property value in Harney County and

elsewhere in the state. Harney county right now is a hay and cattle area, and it is hard for us to sell our crops or cattle easily. We (being the residents) have to drive to Madras or Vale to sell our livestock.. That is over 200 miles round trip just to do that. Let alone to sell our crops. We all know that agriculture is tough lifestyle already, then the added stress of water cutbacks that will make things harder.

Here is EXAMPLE to think about... Your department wants to issue a 15% cutback in water. So that will mean less tonnage on hay crops, because we need the water to irrigate the crops. Less tonnage in the crop means less money when the crop is sold. Now farmers who made less tonnage because of your decision, now have make pivot payment, property taxes, irrigation bills, fuel bills, mortgage payments, tractor payments, and trucking to move the hay from their place to the next, that is not including what they need for personal finances. Now here is MY question to you... Can you live your life if you were told that you were getting a 15% pay cut.. And I would like you look at YOUR lifestyle. Your car payments, fuel bill, YOUR mortgage payment and anything else in your life. You also have to remember that your LITTLE PAYMENTS are nothing compared to what we take on as payments in an agriculture lifestyle.

I am not going to say thank you for anything, because this has caused nothing but chaos and uncertainty in a lifestyle that is already filled with uncertainties and hope that will be able to get paid at the end of the year. But I am going to say that I hope you listen to every comment and read everything that comes your way in regard to this.

Jolene Gouveia

MEINZ Kelly A * WRD

From: JULIE RIEL <julieriel@msn.com>
Sent: Saturday, October 4, 2025 11:10 AM
To: WRD_DL_rule-coordinator
Subject: Harney Basic Community Petition

Some people who received this message don't often get email from julieriel@msn.com. Learn why this is important

Division 512 Rules Coordinator:

I am hereby adding my voice to support the Harney Basin community petition, which was filed on September 12, 2025, and objects to the heavy-handed regulation for our community in regulating ground water usage. Specifically, this petition recognizes that groundwater conditions are different in different parts of the basin and that groundwater will be more effectively managed as separate groundwater reservoirs rather than treating the WHOLE basin as one groundwater reservoir. The petition focuses on regulation in the areas where there are CLEAR problems that meet the thresholds for regulatory action and encourages voluntary actions in parts of the basin where groundwater levels are reasonably stable and expected to remain stable. As the State of Oregon is required by law to minimize economic impacts, this petition presents an alternative that minimizes economic impacts on the small business and the community in whole.

Everyone in Harney Basin relies on groundwater for drinking water. The petition will assure that there are adequate and safe supplies of groundwater for people and livestock. The petition also recognizes the need for ongoing financial and technical assistance for shallow domestic wells that may be impacted by declines. The Harney Basin community cares about our ecosystem. The petition will continue to encourage the collection of information to target actions that restore or maintain the flow of springs in partnership with the Malheur National Wildlife Refuge.

The petition does a better job of protecting groundwater rights that were legally granted and the people who have dutifully followed all of the state laws for generation and have a track record of working together to solve problems collaboratively. The petition recognizes this history and invites the state to work with us. The petition encourages programs that will fairly compensate groundwater rights holders who voluntarily cancel their groundwater rights or can no longer use their water right due to regulation.

Since agriculture is a large part of our community, the petition will minimize the likelihood of having to import hay from other places for Harney Basin ranches and will minimize the likelihood of having to increase electricity rates to homes across the basin. The petition also protects public health, welfare, and safety, by preserving jobs, minimizing cuts to public services, protecting municipal water supplies, focusing regulation where domestic and stock wells have been most impacted, and allowing for an economic transition to absorb the impacts of cuts in groundwater use.

Finally, the petition will reduce conflict and the costs associated with litigation and will allow our community and groundwater users to invest in water conservation instead. Since the state is required by Jaw to seek public input to the maximum extent possible on rulemaking, especially input from those likely to be affected by the rule. The petition incorporates public input from those who are likely to be affected by the rule.

With respect, please accept this as a sign of support for adding reason to this difficult issue.

Signed,

Julie A. Riel
106 Roosevelt Ln.
Hines, OR 97738

MEINZ Kelly A * WRD

From: Julie Weikel <jweikeldvm@yahoo.com>
Sent: Tuesday, October 7, 2025 2:23 PM
To: WRD_DL_rule-coordinator
Subject: OWRD Division 512 Rules comment

Thank you for inviting comment.
I would like to express support for OWRD's proposed Division 512 Rules. OWRD has been thorough and transparent throughout this very protracted process. While a good deal of pain is inherent in the implementation of the proposed rules, NOTHING is gained by the proposed petition except for a protraction of the pain. That said, there is much ambiguity in the petition proposals in addition to the extended timeline. The reliance the petition places on voluntary actions is an open invitation to continued community trauma. Excessive extraction of precious desert water for the benefit of relatively few individuals is not a recipe for a strong sustainable community. We must step up for the reasonable and responsible guidelines provided by OWRD.

Julie Weikel
RAC
Sent from my iPhone

In support of the proposed petition to the new Division 512 rules.

My name is Kacie Otley. I have lived in Harney County since 2022. My husband was the 6th generation to be raised in agriculture in this county. I also have a long history in agriculture, as I was raised on my family's grain and hay farming operation in Wallowa County. I was raised around many sustainable agriculture practices, many of them having to do with water conservation. I obtained a degree in crop and soil science from Oregon State University in 2021. I worked for the Natural Resources Conservation Service following my graduation from Oregon State University until my husband and I had our first child. We decided to return to his family ranch, one of the reasons for doing so was to raise our family here. Since moving to Harney County, we have also added another child to our family.

To say that I am concerned about the new Division 512 rules would be an understatement. These rules will impact many families in Harney County, including mine. It will also be a blow to the local economy. The Division 512 rules should not be so radical, and the proposed petition reflects common sense. The petition would allow more people to continue their livelihoods. I hope that we will have many future generations to continue in agriculture in Harney County. The proposed petition would allow this to happen. Thank you for your consideration to my comments.

Oregon Environmental Council

PO Box 14822
Portland, OR 97239
503.222.1963
OEConline.org | @OEConline

October 5, 2025

To: Water Resources Commission

From: Karen Lewotsky, PhD, JD
Water Program Director & Rural Partnership Lead
Oregon Environmental Council

Re: Comments supporting agency-proposed rules for Division 512

Founded in 1968, the Oregon Environmental Council (OEC) is a nonprofit, nonpartisan, membership-based organization. We advance innovative, collaborative and equitable solutions to Oregon's environmental challenges for today and future generations.

Dear members of the Commission,

Oregon Environmental Council works to ensure that our state uses an integrated, sustainable approach to water management. We were a member of the 2024 Division 10 rulemaking advisory committee, we worked closely with the Governor's Office of Natural Resources on SB 1154, we currently sit on ODA's nitrate reduction plan RAC, and have a long history of working collaboratively with Oregon's water management agencies on issues related to water quantity, water quality and safe drinking water. We are particularly interested in protecting Oregon's groundwater resources from overallocation, contamination and the impacts of climate-change.

OEC strongly supports the agency-proposed rules for Division 512. These proposed rules, the first Critical Groundwater Area rulemaking since the Div 10 rules were revised, set multiple precedents for good groundwater management that can be incorporated across the state – for example, they are the first basin rules that include Adaptive Management and the first basin rules that use a hydrogeologic model to inform sustainable pumping limits.

The proposed rules are the result of an inclusive, two-and-a-half-year process, and have a high likelihood of success. Community engagement is essential to the success of natural resource management. Employing a neutral, third-party facilitator to guide the rulemaking process, and gathering public feedback through three separate routes (the rulemaking committee, the public comment process, and the parallel 'community discussion' groups held by High Desert Partnership), OWRD ensured that all voices were heard and all perspectives were acknowledged.

We support these proposed rules because they are:

- **Evidence-based and founded on best available science;**
- **Incorporate an adaptive management framework; and**
- **Limit economic harm while ensuring long-term sustainability.**

The rules for groundwater management must be science-based and geographically specific. The proposed rules use multiple lines of evidence to understand the groundwater reservoir and determine permissible total withdrawals. The rules benefited from field measurements, recent published studies, and a modern groundwater model with results from dozens of scenarios.*

Adaptive management is an iterative approach that ensures we learn from our mistakes as well as our successes. The proposed rules are the first basin rules in Oregon to directly incorporate a transparent and flexible Adaptive Management Framework. This is an important precedent to set: it empowers the community to take voluntary action (because if voluntary action is successful, aquifer conditions will be *better* than expected, and the AMF allows OWRD to avoid curtailment), and it also ensures a responsible transition to sustainability (because if aquifer conditions are *worse* than expected, the AMF allows OWRD to accelerate the pace of curtailment). Adaptive management is key to a responsive management strategy, and responsive management strategies are essential in this time of climate-driven changes in temperature and precipitation patterns.

The proposed rules mitigate economic damage in many ways, but the two most obvious are: (1) a 30-year glidepath to achieve final permissible total withdrawals, and (2) determining permissible total withdrawals by optimizing a model to *minimize* the amount of curtailment needed to achieve stability. The long glidepath provides transparency and certainty for those making business decisions and for informing the transition to a more sustainable natural resource economy. Setting permissible total withdrawals by optimizing the model to minimize curtailment means that the proposed rules allow as much pumping—and therefore agricultural production—as mathematically possible while still achieving rulemaking goals. A sustainable economy must operate within the parameters of the resource, resisting the temptation to exploit the resource beyond recovery in the interests of short-term financial gains.

OEC urges the Commission to adopt these rules.

Sincerely,

Karen Lewotsky, PhD, JD
Oregon Environmental Council
karenl@oeconline.org

* Specific references include Garcia et al. 2022 which describes the groundwater budget; Gingerich et al. 2022 which characterizes the groundwater reservoir and groundwater flow system; and Gingerich et al. 2024 which provides a numerical model.

MEINZ Kelly A * WRD

From: Kathleen McNeill <mchar5@msn.com>
Sent: Tuesday, October 7, 2025 4:02 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments Reject the counter rulemaking petition

Some people who received this message don't often get email from mchar5@msn.com. Learn why this is important

I am a resident of Southern Oregon who has traveled extensively in Eastern Oregon including Harney county to visit the Steens Mountains, the Hart Mountain and Malheur Wildlife Refuges and the Blitzen River Basin. My husband and I have been avid birders and fly fishers. I have seen the damage that has accumulated over the years of drought and overuse of ground water in Harney County and surrounding areas. Streams and rivers that depend on groundwater for a portion of their flow have been reduced, impacting water-quality and water availability for people and habitats in the region.

Please reject Representative Mark Owens counter rulemaking petition asking the Oregon Water Resources Commission to reject the state's proposed rules and allow for significantly more groundwater pumping in the Harney Basin.

The proposed rules have been developed over many years with wide input from the public, please do not allow this last-minute petition to overturn those efforts to be successful; reject Rep. Mark Owens counter rulemaking petition.

Sincerely,
Kathleen McNeill
d

MEINZ Kelly A * WRD

From: katie baltzor <katie.baltzor@gmail.com>
Sent: Monday, October 6, 2025 9:06 PM
To: WRD_DL_rule-coordinator
Subject: Fwd: Support for Harney Co Petition

Some people who received this message don't often get email from katie.baltzor@gmail.com. Learn why this is important

---------- Forwarded message ---------
From: **katie baltzor** <katie.baltzor@gmail.com>
Date: Mon, Oct 6, 2025 at 7:42 PM
Subject: Support for Harney Co Petition
To: <WD_DL_rule-coordinator@water.oregon.gov>

My name is Katie Baltzor and I utilize surface water for irrigation purposes and groundwater for livestock wells and domestic wells within Harney County. I am writing in support of the petition set forth that requests amendments to the proposed Division 512 rules.

I have lived and ranched in Harney County my whole life and am familiar with the issues surrounding water in the Harney Basin. I understand the need to make significant changes in groundwater regulation due to over-allocation by OWRD and inadequate recharge. However, I also understand it does not make sense to lump all of the Harney Basin into one critical groundwater area. This area is very unique and diverse, and therefore, it is imperative the Harney Basin have designated subareas, such as the five outlined in the petition. This will allow more flexibility in the management of the water and will not create extreme regulation in subareas where levels are not critical and can be kept at appropriate levels through voluntary actions.

The petition better protects legal groundwater rights and those individuals who have complied with state laws. It will also reduce conflict and potential litigation, which proves costly to the right holder and the state of Oregon.

Water affects all of us in the Harney Basin in a variety of ways. The petition is a more favorable alternative for economic stability. If Division 512 is implemented as written, our county will lose jobs and businesses. While our ranching operation may not rely on groundwater for irrigation, we would experience a negative impact, as electrical rates would increase, as would many other costs our business naturally incurs.

The State is required to seek public input, yet many feel our input has been ignored. This community has been working on a plan to reduce water usage for almost ten years. I implore you to seriously consider the petition to amend Division 512 rules so our community does not lose a large portion of its economic base.

In closing, the petition provides a route through which a critical groundwater area designation could be lifted if groundwater is being sustainably managed. Give us a chance to do so.

I thank you for your consideration and the opportunity to voice my support and concerns.

Katie Baltzor

MEINZ Kelly A * WRD

From: Kelly.A.MEINZ@water.oregon.gov
To: WATERLEVELREPORTING Owrd * WRD
Subject: RE: Harney Basin Community petition

From: Katie Otley <dkotley7@yahoo.com>
Sent: Tuesday, October 7, 2025 9:30 AM
To: WATERLEVELREPORTING Owrd * WRD <owrd.waterlevelreporting@water.oregon.gov>
Subject: Harney Basin Community petition

My name is Katie Otley. I support the community petition. I'm a mother, wife, part-time state employee, and business owner. I live in the Harney basin. Agriculture is my livelihood. I grew up here and raised my 5 sons on this land. I would like to see my sons have a chance to raise their family's here if they choose.
This petition focuses regulation in problem areas and encourages voluntary actions in the rest of the basin where groundwater levels are reasonably stable. The petition has support from the people actually affected by the governing rule that will be adopted. It is a collaboration the state should join. Please adopt the community petition.

Katie Otley
dkotley7@yahoo.com

MEINZ Kelly A * WRD

From: Katy Mcfadden <katytmcfadden@gmail.com>
Sent: Wednesday, October 1, 2025 9:03 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from katytmcfadden@gmail.com. Learn why this is important

protect the water for the future.

MEINZ Kelly A * WRD

From: Kelly Singhose <kelly.singhose@harneycountyOR.gov>
Sent: Tuesday, October 7, 2025 4:59 PM
To: WRD_DL_rule-coordinator
Subject: Comment on Petition for Rulemaking to Amend OAR Chapter 690, Division 512 – Harney County Water Use Area

Some people who received this message don't often get email from kelly.singhose@harneycountyor.gov. Learn why this is important

Kelly Singhose
29327 Weaver Springs Lane
PO Box 816
Burns, Or. 97720
October 10th, 2025

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

Re: Comment on Petition for Rulemaking to Amend OAR Chapter 690, Division 512 – Harney County Water Use Area

To Whom It May Concern,

I, Kelly Singhose, am writing to provide a comment during the open comment period regarding the petition for rulemaking to amend Oregon Administrative Rules (OAR) Chapter 690, Division 512 for the Harney County Water Use Area.

I am in full support of this petition due to the following reasons:

1. **Recognition of varied groundwater conditions:** The petition acknowledges that groundwater conditions differ across the basin and proposes managing groundwater as separate reservoirs, rather than treating the entire basin as a single reservoir. This approach will allow for more accurate and effective management of our water resources.

2. **Targeted regulatory focus:** The petition prioritizes regulation in areas where clear groundwater problems exist and meet the thresholds for regulatory action. This ensures that resources are focused where they are most needed.

3. **Encouragement of voluntary conservation:** The petition promotes voluntary conservation measures in areas where groundwater levels are stable or expected to remain stable, supporting proactive stewardship while minimizing unnecessary regulatory burden.

4. **Minimizing economic impacts:** The state is required by law to minimize economic impacts, and this petition presents an approach that reduces economic hardship on small businesses and the local community.

5. **My family's personal financial impact:** The Oregon Water Resources Department's continued issuance of new, junior groundwater rights in our area — even as existing senior rights were unable to exercise their full allocations — has caused severe personal and financial hardship to my family. Our senior water rights have been rendered largely unusable due to declining groundwater levels, yet junior permits were still granted, further depleting the resource. As a result, our farmland has become non-productive, leading to significant economic losses from failed crops, lost income, and the devaluation of our property. We have invested years of work and resources into this land, and the Department's permitting decisions have directly contributed to the loss of our livelihood and the economic stability of our community.

6. I am requesting that a **Voluntary Use Agreement** be established for our property located on Weaver Springs Lane, which has been designated as a critical water area. The cap on landowner CREP enrollment should be lifted to allow us to enroll as many acres as necessary to reduce groundwater use in this area in a meaningful way. Our family moved to Harney County 21 years ago and built our livelihood producing alfalfa hay and raising cattle. However, our farm has suffered severe financial hardship due to the Oregon Water Resources Department's continued permitting of junior groundwater rights without adequate regulation. As senior water right holders, we have been unable to irrigate our land because of the prohibitive costs of lowering pumps and drilling deeper wells to reach a declining water table. Consequently, our land can no longer produce hay, its value has fallen by approximately 75%, and it has become effectively unsellable.

I recognize that the Weaver Springs area requires targeted reductions in water use and that Voluntary Use Agreements could provide a balanced approach — protecting both groundwater and the agricultural economy. However, this requires meaningful state and federal support for producers willing to enroll in programs such as CREP in exchange for reduced water use. If the state fails to fund or implement such programs, the Oregon Water Resources Department must take responsibility for the economic damage and loss of land value its actions have caused. We expect appropriate compensation for the full value of our land and hay production losses sustained over the past decade as a direct result of these management failures.

I believe that supporting this petition will promote fair, effective, and sustainable groundwater management in Harney County, while also reducing economic hardship for affected landowners.

Thank you for the opportunity to provide input on this critical matter.

Respectfully,

Kelly Singhose

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October 7, 2025

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

RE: Comments on the Petition to Amend Administrative Rules for Chapter 690, Division 512 concerning the Harney Basin, Oregon

Dear Commissioners:

I have been involved in the Harney Basin place-based planning effort for a decade. I have provided grant application development and technical writing services to the planning effort. **The comments I made at the October 3, 2025 hearing are my personal comments and should not be considered in any way as representing the collaborative that has been working for that time to address some of the water resource management issues in the basin.** The comments were offered in response to the Petition to Amend Administrative Rules at Chapter 690 Division 512.

One of the purposes of my comments was to point out that many of the concepts embodied in the petition were discussed by the collaborative, not as regulatory requirements but as concepts and/or programs to address the overallocation and overuse of groundwater in the basin. For example, the use of Voluntary Agreements was a significant topic of discussion. The Collaborative had a presentation by Michelle Smith, University of Oregon Environmental and Natural Resources Law Center in 2019 and production and presentation of a report by Environmental Defense Fund and Culp and Kelly law firm in 2022 before the RAC was established and was used to identify the strategy of ".Build Understanding of Voluntary Agreements" that was a part of the Groundwater Plan.

The message I tried to convey at the October 3rd meeting is that there could be an opportunity for the staff to continue to work with the community to identify an approach that better reflects the local understanding of groundwater conditions and their regulation. I have provided input earlier pointing out how the department has treated other areas very differently, adding adjacent areas to critical groundwater areas as they meet criteria rather than developing what appears to many as an overbroad definition of the policy term "reservoir" to cover the entire groundwater system. Even the USGS report indicates that the groundwater system joins the Malheur River basin by groundwater movement through Virginia Valley into the Malheur River Basin. It is not clear whether the Brothers Fault transmits groundwater into the basin from the northwest or not. The delineation of the closed basin as a single reservoir is a convenience and probably accounts for the vast majority of groundwater, however the linkages across the basin, especially north to south is not apparent to the public nor groundwater users.

If the Commission is serious about balancing voluntary and regulatory approaches, such

an approach should be a significant part of any decision. Voluntary Agreements outside of the establishment of Permissible Total Withdrawal determinations will provide the user public an opportunity to identify what they view as achievable reductions in use. The single most important feature of voluntary reductions is that users can determine **how** to achieve them. Curtailment has one tool, prior appropriation, which may not be the most productive or efficient way to accomplish reductions.

In closing I would ask the Commission to help the Department make the groundwater model a tool that the community can use and embrace for evaluating other approaches rather than as it is seen now as a tool to be used against the community.

I urge you to consider these concerns before taking final action in December. If there is any interest in further discussion about the issues raised, I would be glad to engage in any conversations necessary to clarify my thought process.

Sincerely

Kenneth F. Bierly

Kenneth Bierly
2308 Ptarmigan St. NW
Salem, OR 97304

MEINZ Kelly A * WRD

From: Kirby Isaac <kirbyisaac1977@gmail.com>
Sent: Tuesday, October 7, 2025 3:37 PM
To: WRD_DL_rule-coordinator
Subject: Water Rights Petition

Dear Sir ,

I am writing to you today because of our interest in the current water situation. I and my family are local farmers and ranchers who are depending upon water rights for our livelihood. I am raising hay cattle and commodities to take a living from the land .

I understand the necessity of corrective measures to help stabilize the dropping water levels . As Christians my family and I are not interested in pursuing any type of legal action . I am thankful for the opportunity to raise my family on Oregon , and would like to leave my thoughts along with the voices of our community.

My concern is that the water rights curtailment , is only implemented to the extent of remedying our local groundwater problems . I fell the basis of the management systems need to be based upon reduction of water usage and prior appropriate. I am open to the possibility of a reduction of my water usage to remedy the problem as opposed to the curtailment of my water rights .

I realize there are other options that can make a large difference as well . The LESA (Low Energy Spray Application) packages operate well at lower pressures . Practices such as keeping the soil covered and reducing the usage of big end guns can all help with evaporation.

Another thing I would appreciate you taking into consideration is splitting the North End of the Basin from the Crane area district. I feel the Crane district is in worse water depletion than the North End of the Basin . I feel we should on the water rights that our out of compliance rather than give everyone the same treatment . I am doing my best to conserve my water usage even now . By my knowledge the Model 512 is made up of false information and is unfair to the wells that are not a problem . I am in full support of the Petition. We are a valley full of people and that care for one another and all have the best in mind for the land and water .And we that live here have acquired a lot more knowledge on where the problems lie and we would like to work together with you to fix it . If you are just cutting water rights there will have to be compensation, if not , it will be devastating.

Thankyou for your time and consideration. The loss of our water rights would be devastating to our family operation.

Sincerely ,The Kirby Isaac Family - Broken Box Ranch

MEINZ Kelly A * WRD

From: Kristopher Robbins <kris@robbinsfarmeq.com>
Sent: Monday, October 6, 2025 5:20 PM
To: WRD_DL_rule-coordinator
Subject: "Harney Basin community petition filed September 12 ".

Some people who received this message don't often get email from kris@robbinsfarmeq.com. Learn why this is important

Robbins Equipment-Burns a local farm equipment dealer supports the "Harney Basin community petition filed September 12 ".

Drastic changes in water rights will negatively & directly affect the livelihoods of our business, local farmers & ranchers, and our employees. We are immediate suppliers for equipment, service and parts to the local ranchers & farmers who depend on us to keep them up and running during hot crucial summer days for harvest on time sensitive crops and cold winter days to keep their livestock fed. These same farmers and ranchers also depend on water rights to maintain their businesses and help them thrive. We have been an active part in the success of our local farmers and ranchers for the past 20+ years and care deeply about their livelihoods. We currently employ 20 employees and are afraid these changes would drastically reduce the number of employees we would need to operate the business as we see these water cuts would immensely reduce traffic through our doors. Burns and the immediate surrounding areas depend wholeheartedly on our farming and ag community to keep many businesses afloat; these cuts would be extremely detrimental to our small community. We have gained great relationships with our farm & ranch customers. We would hate to see some of them lose everything they have ever worked for going back generations. Done correctly and gradually we all can adapt to the new norm. Done in haste, this has the potential to endanger the very survival of our community as we know it and the ability of future generations to call Harney County home. There is no facet of our community that goes unaffected by this.

*The petition incorporates public input from those who are likely to be affected by the rule.
*The petition protects public health, welfare, and safety, by preserving jobs, minimizing cuts to public services, protecting municipal water supplies, focusing regulations where domestic and stock wells have been most impacted, and allowing for an economic transition to absorb the impacts of cuts in groundwater use. Everyone in Harney Basin relies on groundwater for drinking water.
*The petition will ensure that there are adequate and safe supplies of groundwater for people and livestock.
*The petition also recognizes the need for ongoing financial and technical assistance for shallow domestic wells that may be impacted by declines. The state is required by law to minimize economic impacts.
*The petition presents an alternative that minimizes economic impacts on small businesses and the community.
*The petition recognizes that groundwater conditions are different in different parts of the basin and that groundwater will be more effectively managed as separate groundwater reservoirs rather than treating the whole basin as one groundwater reservoir.

The petition has been thoughtfully prepared, and I believe is in the best interest of everyone in our community. It allows the best opportunity of all residents of Harney County to adapt to the new norm.

Thank you for the consideration.

Kristopher Robbins
Robbins Equipment-Burns/CV
1160 South Egan
Burns, OR 97720

541-573-6377x6
www.robbinsfarmeq.com

MEINZ Kelly A * WRD

From: Kyla Potter <kykytrey23@gmail.com>
Sent: Tuesday, September 30, 2025 10:17 AM
To: WRD_DL_rule-coordinator
Subject: I support the Harney Basin community Petition filed on September 12th 2025.

Some people who received this message don't often get email from kykytrey23@gmail.com. Learn why this is important

I am writing to express my deep concern regarding the current conditions of the underground water basin in Harney County, specifically in relation to the Harney Basin water petition. As a resident of this community, having attended Crane School from preschool until my graduation in 2006, I have witnessed firsthand the vital role that water resources play in sustaining our local economy and community.

My family has been a part of this region since 1968, dedicating nearly 60 years to improving our land and nurturing our community. The potential damage resulting from the proposed alterations to the water basin would not only jeopardize the livelihoods of individual ranching families but also threaten the very existence of Crane School. The displacement of these families could lead to the vulnerability of our school and ultimately its closure.

Moreover, the attraction of teachers and staff to our rural community would diminish significantly in the absence of a robust and supportive local environment. I urge you to consider the long-term impacts on our community's future and to advocate for solutions that protect our precious water resources for generations to come.

I support the Harney Basin community Petition filed on September 12th 2025.

Sincerely,
Kyla Lafferty

MEINZ Kelly A * WRD

From: Susan Otley <lsotley0924@gmail.com>
Sent: Tuesday, October 7, 2025 12:01 PM
To: WRD_DL_rule-coordinator
Subject: Harney Basin Community Petition

Some people who received this message don't often get email from lsotley0924@gmail.com. Learn why this is important

I Larry Otley support the Harney Basin Community Petition. It is a more true analogy of the hydrology of the Harney Basin. My knowledge is more focused on south of Windy Point in the Princeton area. Riddle Ranch has wells in this area that have stable ground water levels. This petition puts our wells in a subarea where groundwater levels are reasonably stable and expected to remain reasonably stable, which coincides with our wells.
I have lived all my eighty years in Harney County and its land, water, and my community are very important to me.

MEINZ Kelly A * WRD

From: Robert Bernstein <bobbo1946@yahoo.com>
Sent: Tuesday, October 7, 2025 12:10 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from bobbo1946@yahoo.com. Learn why this is important

We have allowed this very serious issue to fester too long..Water needs to be protected and not squandered w last minute 'hail mary's'..

- I am commenting on both the "Petition for Rulemaking —Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. The petition will allow continued overpumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- I urge OWRD to first strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.
- I urge OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.

Robert B Bernstein
Laura Webb

MEINZ Kelly A * WRD

From: Laurie O'Connor <laurieoc53@gmail.com>
Sent: Tuesday, October 7, 2025 4:48 PM
To: WRD_DL_rule-coordinator
Subject: OWRD 512 rulemaking and related petition

Some people who received this message don't often get email from laurieoc53@gmail.com. Learn why this is important

Thank you for giving the public yet again chances to comment on the critical 512 Rulemaking process. Living in the Harney Basin, and having already experienced severe drawdowns in our residential and our stock wells over the past 15 years, the need for increased oversight on the part of someone, some entity, has been obvious, even preceding the declaration of serious aquifer decline in 2016. Please, honor the known science and begin charting a way to some semblance of sustainability in the Harney Basin, and hopefully using the same science and improved regulatory guidelines to prevent similar injuries throughout the state.

The local petition requesting reduced regulations and slower implementation is not based on the overall community's well being and most certainly is not beneficial to reaching a sustainable plan for our already injured aquifer(s). There is so much misinformation and manipulation being spread through this petition drive! None of us want our local farmers and ranchers to fail. But it is clear that the RAC worked hard to avoid as much financial injury as possible, granting a very gradual reduction, over 30 years in most areas, and furthermore finding financial assistance for volunteer reductions by irrigators. The forces driving the petition to reduce the effectiveness of the Proposed 512 Rules are fanning unreasonable fear, and possibly being outright deceptive. The rumors flying out here are outrageous! The proposed rules are reasonable.

If anything, the proposed 512 Rules are already, in my opinion, much too generous to commercial overuse of our common water, and will take much too long to begin most reductions, and much, much too long to reach stable water levels (30 years!!!) If even more concessions are granted to the agricultural overuse of OUR water due to adjustments from the proposed petition, then it would seem the whole RAC and Rulemaking should be opened up so that non-commercial users have a chance to take back some of the over generous concessions already given to irrigators. In fact, if the commercial users are requesting more leniency, I propose OWRD must consider adding reductions that will actually work toward restoration of our water levels to pre-2000 conditions.

But, in the name of beginning this long overdue oversight and control of our water, please do proceed to implement the proposed 512 Rules!

Thank you all for your serious dedication to Oregon waters, now and into the future.

Laurie O'Connor
Rural Harney County Resident

MEINZ Kelly A * WRD

From: Laurie O'Connor <laurieoc53@gmail.com>
Sent: Wednesday, October 1, 2025 3:45 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from laurieoc53@gmail.com. Learn why this is important

Commissioners,

It is with a heavy heart that I find all of us being pulled into yet another review of OWRD regulatory changes, following nearly ten years of "collaborative" discussions and scientific reviews. Aside from thousands of hours donated by volunteers, how many millions of dollars went into the Harney County Water Collaborative and the scientific research, all aimed to reach a scientific path to sustainable water use?

One of the key spokespersons in this process was Mark Owens, who initially served as a Harney County Commissioner and became our regional Representative in the Oregon Legislature. He worked with OWRD, the Legislature, and in local groups of Harney County to get legislation passed to reform OWRD regulations, claiming he understood the critical need for serious reductions in Basin water usage. Now, he is claiming neither he nor the local community has had ANY SAY in forming the new regulations, and he apparently now feels the science gathered was faulty.Yet, he of all people was in the room with direct access and large influence through the whole process. By circulating the 512 Petition, he is insulting the process, the volunteers, the legislature, the scientists, and the oversight of OWRD through your Commission.

As I read the 512 Petition, if effective it will seriously undermine any serious improvements to reaching a sustainable level of water usage in the Harney Basin. It is based on hearsay science claiming current water allocations and even more development in certain areas will not further reduce our water levels. The petition also claims that the local community can monitor and improve our water stability. If that is the case, how did we get in this mess? Without regulatory oversight, commercial exploitation of our common resource will only worsen.

The proposed 512 Rulemaking is already much too lenient toward commercial allocation of Harney Basin water. The reductions are slow in coming, allowing up to thirty years to reach only "sustainable" aquifers. There is no intention of restoring the Harney Basin aquifers to a reasonable time and level, which in my opinion should be in the thirty year plan, and restoration should be based in the pre-development era, at least before the year 2000. But in the name of expedience and with generous compromise, many of us have supported the current science and guidelines for 512 Rulemaking, in spite of its generous allowances toward commercial extraction.

If this suspect petition to undermine 512 Rulemaking is successful in undermining the process, I propose the whole study and discussion must start over from the very beginning. Throw it all out. Call for a special legislative session reviewing the petitioners' "new science" and their actual motivations. Give the majority, if silent citizens, time to really hear what is at stake for them and for this community.

But, time is money, and in this case, it is also our future water. Please uphold the 512 Rules as they stand. Let the ongoing review allowances be applied if and when the science indicates that is in order. Please support the best interests of Harney County citizens, now and into the future, with responsible regulations.

Sincerely,
Laurie O'Connor
Rural Resident North Harney Lake
Weaver Springs and Silver Creek

MEINZ Kelly A * WRD

From: Leon Werdinger <leon@leonwerdinger.com>
Sent: Tuesday, October 7, 2025 2:17 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from leon@leonwerdinger.com. Learn why this is important

Hello,

This I urge you to play it safe and reject the Petition for Rulemaking Division 512 filed by Representative Mark Owens. It imperils both the ecosystem and the long term viability of agriculture in the Harney Basin.

Thank you.

Leon Werdinger

1200 S. Main St.
Joseph, OR 97846
email: leon@leonwerdinger.com

MEINZ Kelly A * WRD

From: Lesley Richman <lesleyrichman@gmail.com>
Sent: Sunday, October 5, 2025 10:06 PM
To: WRD_DL_rule-coordinator
Cc: Matt Bixby
Subject: Support for the Harney Basin Community Petition

Some people who received this message don't often get email from lesleyrichman@gmail.com. Learn why this is important

We support the Harney Basin Community Petition filed September 12, 2025.

The petition recognizes that groundwater conditions are different in different parts of the basin and that groundwater will be more effectively managed as separate groundwater reservoirs than treating the whole basin as one big groundwater reservoir.
Our farm is within the Silvies Subarea. We have been measuring our water levels since we purchased the farm in June of 2022 and have not seen any reduction in the static water level. We believe that groundwater in our Subarea is currently reasonably stable and that the conditions do not exist for regulatory action if the Department adheres to its own policies for groundwater allocation.

We acknowledge that there are problem areas within the Harney Basin. The petition focuses regulation in those areas where there are clear problems that meet the thresholds for regulatory action.
The petition encourages voluntary actions where groundwater levels are reasonably stable and expected to remain so. The Silvies SubArea is reasonably stable and we manage our farm to conserve water as much as possible. We believe that voluntary actions will be much more effective at conserving groundwater than regulatory actions where they are not called for by the OWRD's own definitions and statutes.

The petition adjusts the proposed boundaries to reflect some of the initial boundaries that did not make sense as drawn.

We have been involved in the Community Groundwater Planning Process for the past 5+ years and as part of that group have spent a lot of time and energy looking for ways to encourage voluntary actions to reduce water use in a collaborative, comprehensive way. We believe that the petition reflects the recommendations of the Comprehensive Community Water Plan, addresses the concerns that were brought up during those long years of planning and incorporates the public input from those members of our community most likely to be affected by the rule.

We hope that you will consider and incorporate the recommendations of the petition in the development of the Division 512 Rules for the Harney Basin.

Thank you for the opportunity to weigh in on this critical issue for the Harney Basin.
Lesley Richman and Matthew Bixby
Silvies SubArea Irrigators

MEINZ Kelly A * WRD

From: Linda Greenman <lgreenman@comcast.net>
Sent: Tuesday, October 7, 2025 1:12 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments - Attn: Kelly Meinz, OWRD

[Some people who received this message don't often get email from lgreenman@comcast.net. Learn why this is important at https://aka.ms/LearnAboutSenderIdentification]

Attn: Kelly Meinz, OWRD
I am commenting on both the "Petition for Rulemaking —Division 512" and the "Agency Proposed Rules — Division 512."
I do not support the Petition for Rulemaking filed by Representative Mark Owens. The petition will allow continued overpumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
I urge OWRD to first strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.
I urge OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.
Thank you,
Linda Greenman
4000 SW Condor Avenue
Portland, OR 97239

MEINZ Kelly A * WRD

From: Linda Greenman <lgreenman@comcast.net>
Sent: Wednesday, October 1, 2025 9:31 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from lgreenman@comcast.net. Learn why this is important

- I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.
- I would like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.
- The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

Thank you,
Linda Greenman
4000 SW Condor Avenue
Portland, OR 97239

MEINZ Kelly A * WRD

From: Loren Fennell <loren.fennell@gmail.com>
Sent: Monday, October 6, 2025 8:33 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from loren.fennell@gmail.com. Learn why this is important

To the Oregon Water Resources Department (OWRD), **the Harney Basin** in the high desert of southeast Oregon is a "critical groundwater area" keeping groundwater levels where they belong, not to be exploited by corporations and for the profits for the few. STOP the exploitation of the aquifers, our last underground flowing water…

Loren Fennell
620 Railroad Ave. #552
Myrtle Point, OR.
97458

October 6, 2025

Oregon Water Resource Department

725 Summer Street, Suite A

Salem, OR 97301

RE: Comments on the Petition Division 512 rules and the proposed Division 512 rules.

My name is Lorissa Singhose I am a Farmer and Rancher in Riley, OR. I am in the Silver Creek Subarea of the Harney Basin. We are third generation farmers, with the fourth generation working the farm, and putting down roots for many generations to come.

I support the petition and feel the petition better represents the steps needed to manage the water reservoirs of the Harney basin.

The petition recognizes the different water conditions in different parts of the basin and manages them according to their specific conditions. While the departments proposal takes a few focused critical areas to use against the rest of the basin to justify regulating the whole basin. The petition recognizes the problem areas and addressed them according to conditions.

The petition encourages voluntary agreements in areas that are reasonably stable and do not meet the critical designation. The departments proposal is a stretch of their regulatory authority and legal definition to designate an area critical without the defined criteria being met.

The petition protects Water rights as required by law better than the departments proposed rules. The petition better protects the public health welfare and safety. It minimized economic impacts to the community. Which minimizes loses to jobs and public services. The departments proposed rules increase economic impacts by overreaching regulations.

The Blitzen-Voltage, Silvies and Silver Creek subareas do not the meet the statutory requirements to be designated a Critical Groundwater Management area.

The Harney Basin as a whole does not meet the criteria of being overdrawn. Estimated pumpage is 144,800 ac/ft a year, estimated discharge is 173,000 ac/ft a year. By definition the basin is not over drawn. The Western Water budget region also does not meet the definition of overdrawn.

Western Recharge Basin Recharge Estimate 47,000 ac/ft a year

Silver Creek subarea Western recharge basin	Authorized GW use in 2023	Authorized Use with Petition *	Authorized Use with OWRD proposal **		
Riley Upper Silver Creek	31,488 ac/ft	31,488 ac/ft	31,488 ac/ft		
Harney lake- OO Lower Silver Creek	3,731 ac/ft	3,731 ac/ft	3,731 ac/ft		
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Total		44,419 ac/ft	40,019 ac/ft		
Amount of pumping < recharge		+2,581 ac/ft	+6,981 ac/ft		

The chart above is to show that the Western recharge region cannot be overdrawn. The western region is not overdrawn, but the department has insisted that Silver Creek subarea meets the Critical Designation because it is about to be overdrawn. The chart above is from OWRD numbers that the department provided to the RAC. The numbers clearly show that if the full allotment of water rights was used in the Silver Creek subarea (which included Riley and the Harney Lake area) with the regulated use in Weaver Springs the water could never be overdrawn. Therefore, the Silver Creek Subarea in not about to be overdrawn and does not meet the criteria of a Critical Groundwater designation.

I propose that the Silver Creek Subarea not be designated as a Critical Groundwater Area.

The actual use in Silver Creek subarea is below the authorized use. This is to shows that we could not be overdrawn even if all authorized use was fulling implemented. There are no new permit or water rights that can be developed in the Silver Creek Subarea.

The farmers in Riley, Upper silver creek, are working on a voluntary agreement to manage the water resource. We feel this is a better approach than a legal battle in a contested case. The Departments proposal is leading us to a contested case legal battle, because it is not supported by a technical or legal basis. The proposed rules by the department would have such devastating consequences that would destroy the family farms in the area. To reduce a reasonably stable area by 28% is unprecedent and unfounded by the technical data. In our estimates the proposed rule would actually reduce the Upper Silver Creek area by 40%. To reduce by 40% would bankrupt the entire family farming community. A 40% reduction in Riley is about 4,000 acres, the economic impact report shows a loss of $1,280 an acre/year, which is a loss just to the Riley community of $5,120,000 a year. How does a family farm make its mortgage to the bank with this much financial lose? This is not a justified outcome for an area that has a groundwater level trend with a median overall decline of -2.5 to -3.5 ft and a median rate of decline at -.4 ft/yr. We are reasonably stable, yet we are being treated as thou we are declining excessively. The department has a responsibility to the people; to protect our legal water rights they gave us, and ensure our small family businesses are not substantially financially impacted.

The reason the department proposal is actually reducing the Silver Creek by 40 % is because the starting/ baseline usage estimates are low. The Beamer report, “Historical Irrigation water uses and the Groundwater pumpage estimates in the Harney Basin, Oregon, 1991-2018, was used for the estimated usage. In the report it said “Regional groundwater pumpage rates for fields irrigated with the primary groundwater rights average 2.16 acre-feet” show that a **basin average** was used to estimate use for all subareas of the basin. This average included areas that pumped from 0 to over 2 ac/ft. The average included the bad areas in with the good areas, which then under estimated the good areas. If you look at the ET maps included with that report, (see attached map) you will see that the rates are represented by color. Red being 0 and blue being the highest usage at +2. If you look across the basin you will notice some areas that have light blue mixed with green and yellow, these areas make sense that the average would be 2.16 ac/ft. If you look at the Riley, Upper Silver Creek Subarea, you will notice that all the pivots are a dark blue with a few light blues. The data used was not specific to our area, and is not an accurate representation on the actual use. I asked the department if they could give me the number of acres they figures was in the Riley area, but they said they did not separate out the acres for subareas. I believe the acres are needed to double check their work to make sure each areas usage is accurately represented, before regulations are based on it.

I propose that the department work with the community to reexamine and figure out the actual usage for each subarea. The starting number is very crucial to base regulations and Voluntary

agreements from. Example of how the starting numbers can change the amount of regulation that is actually being applied to subareas.

10,000 irrigated acres estimated use at 2.16 ac/ft = 21,600 ac/ft reduce 30% = 15,120 ac/ft

10,000 irrigated acres estimated use at 2.5 ac/ft = 25,000 ac/ft reduce 30% = 17,500 ac/ft

10,000 irrigated acres estimated use at 3 ac/ft =30,000 ac/ ft reduce 30 % =21,000 ac/ft

In this example, almost 6,000 ac/ft difference is made by under estimating use.

If the usage estimate is low then, the farmer is being reduced what he was actually using before the regulated reductions are being applied. This is why the Riley area is being proposed a 28% reduction, but is actually being regulated to a 40% reduction.

It is also worth noting that there is different water use estimates being used. In the Western region for example, USGS study estimated use at 42,500 ac/ft. Beamer report estimated use at 41,000 ac/ft. The Department modeled 40,200 ac/ft.

I propose that a more comprehensive and complete study of site-specific data be used for the starting/ baseline usage numbers for each subarea.

In RAC #14 April of 2025 on pg. 36 of the OWRD provided packet, under the heading “What we learned: impacts” it was stated, “Silver Creek, Silvies, and Dog Mountain subareas supply groundwater to the Weaver Springs subarea.” The department has shown us they believe that not all the recharge to Weaver Springs is coming from the Western Region, but also from the Northern region. We have not seen updated recharge numbers to support this statement. This would give more recharge to the Western Region. I would like to see updated numbers, to better inform our voluntary agreements.

In the Departments proposed rules they have set a PTW for the northern region that is 77% of recharge. In the Southern region the PTW is 18% of recharge. In the Western Region the PTW is 43% of recharge. Why are the PTW not set on a consistent amount. If 77% of recharge is acceptable to the department, then that should be applied consistently to the entire basin. Especially since most of the PTW that are below 77% are in reasonably stable areas. The precedent/ standard that the department has established for setting PTW in other Critical areas of the state has been 100% of recharge.

I propose that we have a discussion with the department on why we are being held to unprecedented higher standards/ regulations than the rest of the state. Why are parts of the basin being held to a higher standard/ regulation than other parts of the basin. Why?

The Departments proposed rules will have a devastating impact to the Harney Basin. First you will see the devastating economic impact to the entire community, then you will see a mental health crisis in our community.

To be noted that the Economic impact report is missing irrigated acres in the Silver Creek Subarea by +3,000 acres. Which if added would increase the income amount by +$3,840,000. It would also increase the loss of income with regulations. The numbers that were used were provided by the Department. They were wrong because the starting numbers from the department are underestimated, as suggested above. I believe that if the estimates for the Silver Creek area are off, then it is reasonable to think that the other subarea estimates are off.

The departments model of the petition does show that the petition does meet the statutory requirements for perpetual use. Three of the subareas (Silvies, Silver Creek, and Blitzen-Voltage) never near the 25' decline. These three subareas are reasonably stable at full pumping and remain reasonably stable. The model predicts that at full pumpage in the Silver Creek Subarea the overall decline could be 13' by 2098. The model predicts that with OWRD proposed regulations the NE Crane will have an overall decline of 15.6' by 2098. In this 80 year time frame the department has acknowledged (because it is their proposed regulations) that 15.6' of decline is acceptable. Then why is Silver Creek being held to a different standard. With no regulation Silver Creek has less decline than NE Crane with regulations. The modeled decline for the Silvies subarea is 4' by 2098. The Blitzen-Voltage subarea is modeled at 16' declines by 2098, almost equal to that allowed in NE Crane. The department shows no consistency with the regulations they have proposed.

The Department seem to be relying mostly on an unproven Model to regulate the Basin. A model is not a legally binding tool, and cannot be used as "substantial evidence". This unproven model is like any model; it has its limitations and does not fully account for the water conditions is subareas of the Basin. The model was designed to be a tool to help understand the water conditions, not to make regulations from. Regulations are to be guided by a legal and technical basis. The regulations should be guided by law and backed by "substantial evidence". If the department was doing that then they would have no legal or technical basis to designate the whole basin as Critical.

There are many questions around spring data and assumption the department has used in the Model runs. It seems the model projections of spring discharge in the Silver Creek Subarea (Warm Spring Valley springs) is not consistent with the measured spring discharge in USGS reports. A model is proven or disproven by actual data measurements. The modeled spring

projected discharge in the Silver Creek Basin for the year 1980 was 17,800 ac/ft a year. The measurements taken in 2017 by the USGS was 23,500 ac/ft a year. The USGS report showed an 11% decline in springs in 2017(23,500 ac/ft) from the 1931 measurement (26,500 ac/ft) in the Piper report. How does a model then predict spring discharge in 1980 to be 17,800 ac/ft, which is a 33% decline from the 1931 measurements? What assumptions were made to arrive at this, because the data does not support this projection. If the model is to be trusted, then it would appear that the spring discharge has increased by 25% in 37 years (1980-2017). The model then should project a continued increase in discharge through the modeled year of 2098, especially after 2028, when regulations would have been projected to occur. I Believe that the modeled spring discharge numbers are overexaggerated to mislead the real impacts to springs to further the departments position and the position of their “water partners”.

I propose an outside neutral source be brought in to validate the model. If that is not possible, then I suggest that model runs/ projections are not considered to guide regulations, and should not further be a part of the discussion, or used as data or evidence to regulate.

I greatly appreciate the extra time the commission has taken to listen to the people of Harney basin and how these decisions will impact their lives. During the commission meeting on October 3, 2025, it was hard to miss the obvious special concessions that certain groups/ general public were given during the meeting. The department gave special concessions to who they called their “water partners”, and explained it was because they were apart of the RAC. Why weren’t all RAC members given this special opportunity to speak for as long as they wanted without time limits and interruption. Why aren’t all RAC members considered “water partners”, how does one get this status? Many RAC members, including myself, have dedicated the past 10 years of our lives to this process. We have put in hundreds of unpaid hours in meetings and hundreds of more hours of our own time, taken form work and family time, to study, learn and further educate ourselves about water issues and water laws. Why are the other RAC members voices less important than the chosen “water partners”, who got unlimited, uninterrupted time to present their view? Those that do not have an invested interest in the community, and do not rely on the outcome of the rules for their livelihood, why are they the chosen “water partners”? It was an obvious blatant in our face show of the special relationship the department has with outside groups. This should be viewed as a conflict of interest. All people or groups outside of the department should be considered general public. They are not to be a source or consultant on water issues, but have the same equal treatment as the general public. Obviously, they were not given special concessions because they were RAC members, because no other RAC member was given this concession. Five of the “water partners” gave comments, two were on the RAC while 3 were not on the RAC. The rest of the RAC members were treated as general public, as it should be, and their voices where physically silenced (muted) when their time was up.

The petition supports and promotes the use of Voluntary agreements to move the basin in a sustainable path toward water management. The Upper Silver Creek subarea, Riley, is working on a voluntary agreement as a way to responsible manage the groundwater. We want to work with the department and commission to make this happen. We believe this is a better way forward than a costly contested case. The department's proposed rules do not lead us in that direction, but may leave us no choice but to defend our livelihood and our rights in court. We much prefer to work together. The process of creating a voluntary agreement has and will take hundreds of hours of our unpaid time, and is going to cost the Riley community thousands of dollars in professional fees to complete. Which shows that the Riley community does not take this lightly and are committed to bring forth the best technical and legal water management approach. The petition best supports this approach. The community will succeed in sustainable water management. Our Children's future depends on it! We are a multigenerational community and are here for today, tomorrow and many generations to come.

Thank you for considering my comments

Lorissa Singhose

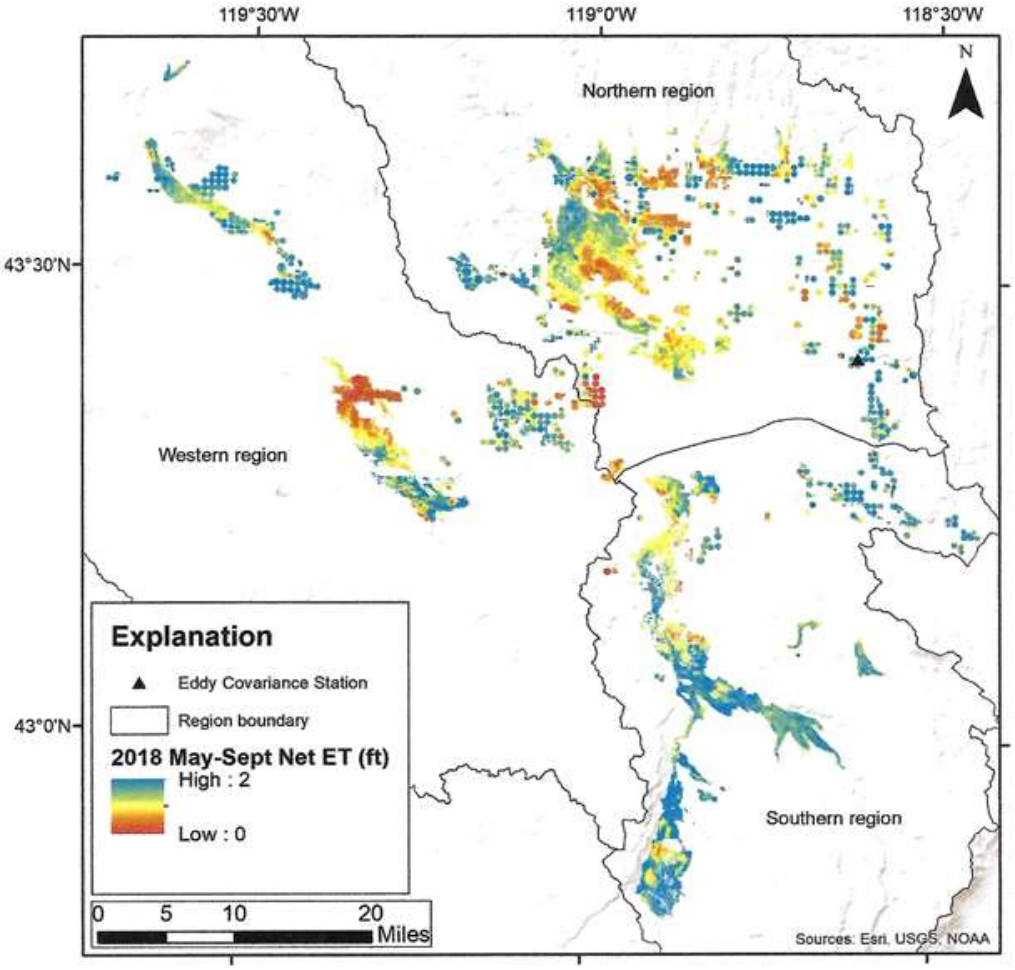

Figure 12. Net ET for Harney Basin and location of ET station, May-September 2018.

October 2, 2025

Oregon Water Resource Department

725 Summer Street, Suite A

Salem, OR 97301

RE: Questions about Memorandum – Technical Evaluation the Petition to Amend Division 512

Dear Commissioners

Below are a few questions I have about the evaluation of the petition the Department did. I do not know if the department is going to allow us to ask questions or discuss the information. So, I wanted to reach out to the commissioners and see if you could ask the department some clarifying questions. I want a good understanding of all the data. I believe that having a clear understanding of the information will help us with our voluntary agreement. Thank you for the time you have taken to hear from the people of Harney Basin.

Questions about Impacts to Dry Domestic wells

1. Can each subareas get a list of the projected domestic wells that could go dry?

Questions about the springs and streams

1. Where did the numbers for the 1980 historical model come from?
2. How did it model less discharge in the Silver Creek subarea in 1980 than the discharge reported in the 2017 USGS study? 2017 USGs measured discharge at 23,500ac/ft. 1980 model projected 17,800 ac/ft.
3. What information/ data was used to get the 1980 number? What assumptions where made?
4. USGS reported in 2017 showed a 11% decline in springs from 1931 measurements? The model shows a 33% decline in 1980 from the 1931 measurements. Why and how is this possible?

Questions about Impacts to Natural ET

1. How do you differentiate surface water from Groundwater ET in a flood plain? The Lowland ET map show only to be in the flooded areas, which are mostly from creek runoff in the Silver Creek Subarea.

Thank you for your time and consideration,

Lorissa Singhose

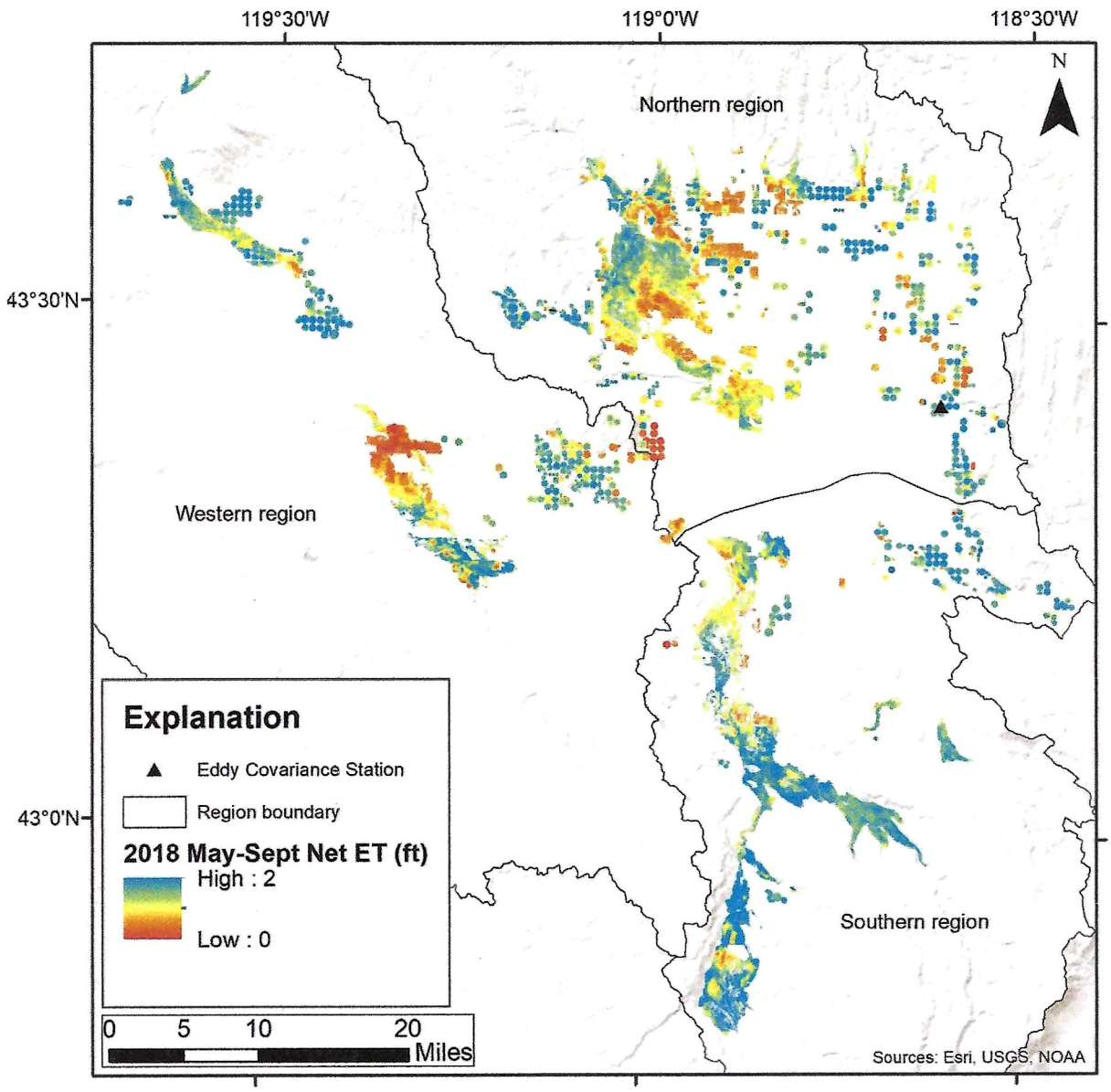

Figure 12. Net ET for Harney Basin and location of ET station, May-September 2018.

October 1, 2025

Oregon Water Resource Department

725 Summer Street, Suite A

Salem, OR 97301

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10,000 irrigated acres estimated use at 2.16 ac/ft = 21,600 ac/ft reduce 30% = 15,120 ac/ft

10,000 irrigated acres estimated use at 2.5 ac/ft = 25,000 ac/ft reduce 30% = 17,500 ac/ft

10,000 irrigated acres estimated use at 3 ac/ft =30,000 ac/ ft reduce 30 % =21,000 ac/ft

In this example, almost 6,000 ac/ft difference is made by under estimating use.

If the usage estimate is low then, the farmer is being reduced what he was actually using before the regulated reductions are being applied. This is why the Riley area is being proposed a 28% reduction, but is actually being regulated to a 40% reduction.

It is also worth noting that there are different water use estimates being used. In the Western region for example, USGS study estimated use at 42,500 ac/ft. Beamer report estimated use at 41,000 ac/ft. The Department modeled 40,200 ac/ft.

I propose that a more comprehensive and complete study of site-specific data be used for the starting/ baseline usage numbers.

In RAC #14 April of 2025 on pg 36 of the OWRD provided packet, under the heading “What we learned: impacts” it was stated, “Silver Creek, Silvies, and Dog Mountain subareas supply groundwater to the Weaver Springs subarea.” The department has shown us they believe that not all the recharge to Weaver Springs is coming from the Western Region, but also from the Northern region. We have not seen updated recharge numbers to support this statement. This would give more recharge to the Western Region. I would like to see updated numbers, to better inform our voluntary agreements.

In the Departments proposed rules they have set a PTW for the northern region that is 77% of recharge. In the Southern region the PTW is 18% of recharge. In the Western Region the PTW is 43% of recharge. Why are the PTW not set on a consistent amount. If 77% of recharge is acceptable to the department, then that should be applied consistently to the entire basin. Especially since most of the PTW below 77% are in reasonably stable areas. The precedent/ standard that the department has established for setting PTW in the rest of the state has been 100% of recharge.

I propose that we can have a discussion with the department on why we are being held to unprecedented higher standards/ regulations than the rest of the state. Why are parts of the basin being held to a higher standard/ regulation than other parts of the basin. Why?

The Departments proposed rules will have a devastating impact to the Harney Basin. First you will see the devastating economic impact to the entire community, then you could see the mental health crisis escalate in our community.

To be noted that the Economic impact report is missing irrigated acres in the Silver Creek Subarea by +3,000 acres. Which if added would increase the income amount by +3,840,000. It would also increase the lose of income with regulations. The numbers that were used were provided by the Department. They were wrong because the starting numbers from the department are underestimated, as suggested above. I believe that if the estimates for the Silver Creek area are off, then it is reasonable to think that the other subarea estimates are off.

The petition supports and promotes the use of Voluntary agreements to move the basin in a sustainable path toward water management. The Upper Silver Creek subarea, Riley, is working on a voluntary agreement as a way to responsible manage the groundwater. We want to work with the department and commission to make this happen. We believe this is a better way forward than a costly contested case. The department's proposed rules do not lead us in that direction, but may leave us no choice but to defend our livelihood and our rights in court. We much prefer to work together. The process of creating a voluntary agreement has and will take hundred of hours of our unpaid time, and is going to cost the Riley community thousands of dollars in professional fees to complete. Which shows that the Riley community does not take this lightly and are committed to bring forth the best technical and legal water management approach. The petition best supports this approach. The community will succeed in sustainable water management. Our Children's future depends on it! We are a multigenerational community and are here for today, tomorrow and many generations to come.

Thank you for considering my comments

Lorissa Singhose

MEINZ Kelly A * WRD

From: Lou Davies <davieslou196@gmail.com>
Sent: Thursday, October 2, 2025 8:38 AM
To: WRD_DL_rule-coordinator
Subject: Petition

Some people who received this message don't often get email from davieslou196@gmail.com. Learn why this is important

I support Representative Mark Owens' petition. Thank you.

October 7, 2025

To: The Water Resources Commissioners

From: Groundwater Users in the Blitzen-Voltage Area

Subject: Policy Questions and Considerations for Voluntary and Regulatory Actions in the Blitzen-Voltage Area

Thank you for taking your time to learn more about conditions in our basin, groundwater policy, and the proposals before you. This letter is sent on behalf of the groundwater users in the Blitzen-Voltage area who are working together on a voluntary agreement. When you are no longer in your positions and when staff and leadership at the Department inevitably move on to other obligations and opportunities, we hope to still be here in Harney Basin, stewarding our land and water resources for current and future generations, for the community and economy of Harney County and Oregon, for our resident fish and wildlife, and for all people of Oregon.

We recognize the difficulty of your decision, especially given that, despite many presentations on this topic, you are just now hearing from those of us that will be personally impacted by your decisions. This is a high stakes decision and many of us feel out of our realm engaging in these policy discussions. Most of us have never engaged in policymaking processes and we have struggled to be and remain engaged due to the many demands of our work and personal lives and the fact that when we engage in public process, it is oftentimes at significant expense to us. That being said, we believe that people who are affected by decisions should be meaningfully involved and considered.

At the beginning of the rulemaking process the Department's initial proposal was that our part of the basin would not be regulated and that they would establish a trigger for regulatory action. Many of us were given to believe through public and private communication with the Department that there was not a problem in our area, which was consistent with our individual observations and experiences. We have not had issues with declining groundwater levels in our wells and our data and experience show us that our groundwater levels are relatively stable.

The first time that we really heard that the Department believed we had a problem in our area was relatively late in the rulemaking process. Some of us heard it in April 2025, some in May 2025 and some of us learned about it during the public comment period in June and July 2025. This has put us in a reactive position, grappling to understand the basis for the significant regulatory reductions that are being proposed. We are doing our best to be constructive rather than reactive.

Based on the presentations from the Department during the public comment period, it is still not clear what problems the Department is trying to solve in our part of the basin. In their presentations the Department communicated that our part of the basin (the

"Southern" region) was neither overappropriated nor overdrawn and still has recharge available. Our water rights and the water we are pumping is less than available recharge – we are not overpumping our groundwater reservoir as has been suggested. This is good news. The groundwater level trends report developed by the Department showed that the median magnitude of decline in our area is less than -3 feet and the median rate of decline is -0.3 feet. The evidence presented to us showed that there were problems in Weaver Springs and Northeast Crane, but that there were not problems in the Southern region. The Department went from 0% reductions in our area at the beginning of the process to 39% proposed reductions after using the model. We still do not understand what went into the Department's proposal.

Prior to April and May 2025 we did not know about the provisions in law to allow for voluntary agreements and we also did not know that there were impairments in our groundwater reservoir that the Commission and Department needed or wanted to work with us to address. We are committed to learning more about the issues in front of us and partnering with the Commission on a path forward that addresses all of the things we all care about – sustainable drinking water supplies, a sustainable agricultural footprint, sustainable discharge to springs, and resolution of any identified impairments.

It is only through our work on voluntary agreements and the petition that many of learned that Sodhouse Springs stopped flowing and many of us are only now coming to understand that these changes in spring discharge may be related to the amount of pumping in our area. The Malheur National Wildlife Refuge is an important partner in our basin and as we are building awareness about who needs water in our area and how we share it, we see that there is more work to do here. Contrary to what you may be led to believe, we do care about the environment and we do care about springs. Many of us are intergenerational farming families and we have established a deep love of this place and this landscape. We are invested in preserving what is special about this place, and that includes the environment. Most of us are small family farmers. We are driven by love of place, community, and this line of work, not by profit.

We want to emphasize that up until May 2025 of this year, most of us did not know that the state thought we had a problem. We still do not know the problem they are trying to solve in our area through excessive regulation. We would like to partner with you to develop a shared understanding of the problem. Once we have a shared understanding of the problem we would also like to work with you to identify management goals for our area and an effective pathway to achieve those goals. What does success look like? How will we know we've achieved it? Is success to the Department and Commission only measured in amount of regulatory reductions in irrigated acres? Is the purpose of the rules to remove groundwater irrigated agriculture from the landscape?

Through our voluntary agreements we are engaging seriously in conversations about what success could look like in the Blitzen-Voltage area and how we can work collectively to get there. The petition proposes 10% voluntary reductions by 2040, but we would like to explore the possibility of achieving these reductions sooner. There are many farms in our area that could achieve significant reductions in use through upgrades to irrigation infrastructure (from hand and wheel lines) to pivots. Making a living on the land is hard work and we would appreciate support as we work to care for our groundwater. Regulation will introduce rigidity and uncertainty and tends to put people in an adversarial position. In our part of the basin we would like to see the Department pursue sustainable groundwater management through Partnership. We would also appreciate that our intentions be regarded as sincere and our efforts not be dismissed or disregarded by those who do not know us in service to an unfair narrative about people who work the land. We are deserving of your respect, just as you are deserving of ours.

We ask that you give us time to prove our sincerity and our effectiveness before rushing to make conclusions and consequential decisions. We have never met several of the individuals that spoke to you quite forcefully about us and our basin on October 3. We invite them to get to know us before speaking about us just as we invite you to involve us before making decisions that will profoundly affect our lives and community.

We live here day in and day out. We live with the land. Without sustainably managing our groundwater, we have nothing. We are not destroying the commons as one commenter suggested, we have been caring for our commons. We want our children and our children's children to walk these watersheds with the same care and attention as our ancestors. We hope that you will afford the people who live here with an equal amount of consideration as lawyers and scientists who live outside of our basin. Before you deny us the ability to live in our place, our home, and make a living from this land and sustain our community, please take a moment to reflect on the fact that we are people, same as you, who care deeply about groundwater. We will be committed to this place long after those advocating for protection through regulation turn their attention elsewhere. We are inviting protection through partnership.

Please look at our part of the basin as its own distinct area. While all of our groundwater may drain to the same places, there are many distinguishing factors that make our area different from the areas where there are known problems and that warrant a different management strategy. Our water comes from the Steens mountain and from the Donner Und Blitzen river. Our water does not come from Silver Creek or the Silvies River. Please work with us so that we might develop a shared understanding of the problem and commitment to groundwater management goals.

As you deliberate with the Department over the next two months, we invite you to ask and reflect on these questions.

- How have groundwater users, local groundwater professionals, and the public been included and considered in the delineation of groundwater reservoirs? What criteria should be taken into consideration in the delineation of groundwater reservoirs in addition to hydraulic connectivity? How is hydraulic connectivity being defined and used to justify the Department's position? Is this appropriate?
- How have groundwater users, groundwater professionals outside of the Department, and the public been included and considered in the designation of critical groundwater areas? Does this designation reflect conditions in the areas in question?
- If the Blitzen-Voltage area, as an area in question, is not overappropriated or overdrawn and does not have evidence of excessive declines, what is the basis for designating it as a critical groundwater area and proposing regulatory reductions? Is the Commission and Department utilizing the current law as the legislature intended for it to be used?
- What is the problem that the Department is trying to solve in the Blitzen-Voltage area? Should there be any effort to develop a shared understanding of that problem with groundwater users in that area before pursuing regulation?
- What are the groundwater management goals for the Blitzen-Voltage area? Should there be any effort to develop a shared understanding of those goals with groundwater users in that area before pursuing regulation?
- What is the appropriate role of regulation in achieving desired outcomes? If the Department and Commission have not previously tried to achieve outcomes through voluntary action with groundwater users in the area, is it appropriate to pursue regulatory enforcement? Is this consistent with current policy, plans, and programs of the Department and Commission? What are the actual costs of pursuing regulation over partnership?

It would appear that the Department believes they are making less work for themselves by lumping us all together and proposing significant and unsubstantiated regulatory reductions in rule for our area. We question that belief and we question whether their proposal will result in a responsible use of public resources. It is clear that the Department is responding primarily to interest groups that live outside of the basin and who will not be affected by this decision. We believe partnership and collaboration will result in a better outcome for our community and the public. We look forward to bringing a voluntary agreement before the Commission in December so that we may continue this very important dialogue about the best path forward for the Blitzen-Voltage area.

Respectfully,

Jacob Davis and family, family farmers and domestic well users

Erick Keerins and family, family farmers and domestic well users

Erik Steen and family, family farmers and domestic well users

Vin Andre and family, family farmers and domestic well users

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October 7, 2025

To: The Water Resources Commissioners

From: Groundwater Users in the Blitzen-Voltage Area

Subject: Technical Considerations and Questions in Response to the Department's Technical Memo dated September 30, 2025

Thank you for the time to review the technical memo provided by the Water Resources Department comparing the Department's proposed Division 512 rules and the proposed petition and provide comments. We understand that the USGS groundwater study reports and model constitute the best available science, but we also hope that the Department and Commission will consider local knowledge and expertise as we continue to develop a shared understanding of the groundwater system in our basin. Our knowledge should not be casually disregarded or dismissed. We request that you engage us in making determinations about what is representative for our area. We would like to see genuine and authentic engagement around the science and data that makes space for inquiry and conversation, especially where our knowledge or observations may not match conclusions being drawn by the Department. We hope you will not receive this as criticism of the Department or the USGS, but rather as an opportunity to build trust and a shared understanding around the data and science. There are many unanswered questions and we would like to work as partners to answer these questions.

We also want to note that we are not disputing the science or data as has been suggested. Much of what the Department has shown corresponds, in part, with our observations and experiences. We are primarily concerned with how the data is being interpreted by the Department, how it is being presented to the Commission, and the fact that it is being used to defend the state's position rather than to truly engage the affected public. Representatives from our area who have been involved in this process for the last decade have consistently expressed greater concern about how the science is interpreted and used rather than with the science itself. We are concerned that the science is being used against us rather than with us.

As it currently stands the Department is proposing nearly 40% reductions in pumpage (88% reductions in authorized use) in an area where groundwater levels are reasonably stable and where groundwater is not over-appropriated or overdrawn and shows no evidence of excessive declines. The hypothetical modeled benefit of this extreme proposal is 1 cfs (600 afy) in discharge to springs and streams and 4 shallow domestic wells do not need to deepen. The Department has not meaningfully involved those who will be affected by its rules, has not seriously considered ways to reduce economic impacts, and is being pressured by special interests outside of the basin who will not be harmed by this proposal.

Available Recharge, Authorized Use, and Pumpage Estimates

Key Takeaway: Available recharge in our area exceeds authorized use and pumpage.

The Blitzen-Voltage area comprises 510 square miles in the Southern part of the basin and is predominantly recharged from the Donner Und Blitzen river and runoff from the Steens Mountain. Within the "Southern" Region the USGS groundwater budget study reports estimate that our area receives 48,000 acre feet per year in recharge with a margin of error of +/- 23%. The Department's Division 10 report states that the authorized amount of groundwater use from authorized places of use in 2024 is 37,443 acre feet per year, which is 10,557 acre feet less than recharge. Authorized use is 78% of available recharge. The 2017-2018 mean estimated groundwater use in our part of the basin was shown as 21,600 acre feet per year, which is 26,400 acre feet less than recharge. Estimated pumpage from 2017-2018 was 45% of natural recharge. Actual pumpage in our part of the basin is LESS than authorized use and LESS than recharge.

We want to reiterate that the data and information presented by the Department during the public hearings on the Division 512 rules, as corroborated by the USGS reports, shows that our part of the basin, the "Southern" region, is not overappropriated, not overdrawn, not about to be overdrawn, and there is no evidence of excessive declines. Both authorized use and estimated pumpage are less than natural recharge.

Measured Groundwater Level Trends

Key Takeaway: Groundwater levels in our area are reasonably stable and there is no evidence of excessive declines.

Median groundwater level trends provided by the Department show 3 feet of decline with a rate of decline of 0.3 ft/yr, and this was during a historic megadrought in Oregon. Many of us have noted to the Department that our wells are relatively stable or that groundwater levels have actually started to come up in the past two years. In the Department's groundwater level trends analysis show one well that has shown more significant declines, but we want to note that this well is on the west side of the Donner Und Blitzen floodplain and water quantity and well yield is notably different in that area. We believe that the wells east of the Donner Und Blitzen floodplain are more representative of groundwater level trends in our area.

Modeled Magnitude of Declines

Key Takeaway: With 10% reductions, previous model runs show that our area stabilizes and begins to recover and never reaches 25 feet of declines.

Scenario C from November and December 2024 is closer to the proposal in the petition for voluntary agreements for our area, so that is the Scenario we are looking at alongside information from the technical memo provided on September 30, 2025. Scenario C

showed a 9% reduction in our area phased in over 30 years (3% in 2030, 3% in 2040, 3% in 2050). The petition includes a 10% reduction by 2040. The proposed rules include a 39% reduction with phased in reductions and frontloading of reductions. The results for Scenario C show the modeled magnitude of decline in median wells from 2018-2058 as well as 2030-2058 so that you can see historic impacts as well as projected future impacts. The technical memo only shows impacts from 2018. From 2018-2058 the modeled magnitude of decline for Scenario C is -9 feet. From 2030-2058 the modeled magnitude of decline for Scenario C is -4 feet, meaning that the model projects 5 feet of declines occur prior to 2030 and 4 feet of declines occur after 2030. The technical memo provided to the Commission shows declines from 2018 rather than the present or the date from which reductions might begin. Regardless, the results for the petition generally correspond with Scenario C, with some key differences noted below.

	Scenario B 0% reductions	Scenario C 9% reductions by 2060	Petition 10% reductions by 2040	OWRD Rules 39% reductions by 2052
Median Magnitude of Decline (2018-2030)	-6 feet	-5 feet		
Median Magnitude of Decline (2030-2098)	-7 feet	-4 feet		
Median Magnitude of Decline (2018-2098)	-13 feet	-9 feet	-12 feet	-5 feet

We would like to emphasize that these are *modeled* projections and the USGS groundwater study report notes “few long-term groundwater-level records exist” in our area (Gingerich, et al 2022 pg. 70). The Department and USGS consistently noted the limited data in this area and indicated that this area was not a primary focus for data collection due, in part, to the stated lack of concern as well as the lack of readily accessible data. Also, according to the study, “during 2015–19, wells east of the floodplain (for example, HARN0050728 in fig. 38), nearer to areas with more deep irrigation wells, have declined 3–6 ft. Seasonal fluctuations are about 2–5 ft/yr, and the limited records indicate annual trends in late winter groundwater levels might correspond to nearby pumpage and to fluctuations in the water level of Malheur Lake (fig. 38).” Is durably stable a reasonable goal in an area where declines during a drought were 3 ft/yr and seasonal fluctuations are 2-5 ft/yr?

Groundwater users have noted that water levels generally increase in May, which is attributed to the late spring recharge from the Steens Mountain. This would not be captured in March groundwater level measurements. Given the limited records we would like the opportunity to corroborate model results prior to it being used as the sole piece of evidence to justify regulation in our area. All available data suggests that our area is reasonably stable and will sustain perpetual use of the reservoir.

Modeled Rate of Decline

Key Takeaway: Without any reductions, the model shows that groundwater level trends will achieve "near stability" and will not come close to a 25 foot decline trigger.

The technical memo shows the modeled rate of decline. Without any reductions, modeled results presented in October 2024 showed this area would achieve "near-stable" groundwater level trends (less than 0.1 feet of decline) without any regulatory reductions in our area (reductions focused in Weaver Springs and Northeast Crane). The results from Scenario C presented in November and December 2024 showed that after 40 years groundwater levels in median wells would stabilize and begin to recover. The modeled petition results from the memo show that after 30 years the Department expects our area to be declining less than 0.1 feet per year. The modeled Division 512 results show that our groundwater levels stabilize in the mid-2030s and begin to recover in 2040 rather than 2058 as the Department has suggested. This same result is not shown in the technical memo. We question why these modeled results differ. Again, we want to note that both the Department and USGS have noted the lack of long-term records from our region and have not partnered extensively with us to increase data collection and reduce remaining uncertainties.

Discharge to Springs and Streams

Key Takeaway: The proposed reductions by the Department would only yield a hypothetical increase of 1 cfs (600 afy) with no plan to monitor impacts.

We understand that the Department and Commission are increasingly interested in and concerned about springs in the basin and want to show that they are being protective of the environment. We are just now, during the public comment period, being made aware of this interest and concern and are committed to learning more and working on this issue through voluntary joint action as we too care about the environment. The modeled difference between the two scenarios (Division 512 and the petition) as presented in the technical memo is 600-acre feet per year, which is less than 1 cfs. Please note that this is the impact from 2018 onward. We ask you to reflect on what amount of potential conflict, litigation, and economic damage is worth a hypothetical 1 cfs of water? Those of us who have been lawfully using water within the terms of our state granted rights are partners in this, we are not the problem. What is the outcome that the Department and Commission are hoping for with 39% reductions in our area? How many family farms are you willing to put out of business? We believe we could accomplish more meaningful action by working together. We also respectfully request that you please help us counter the narrative that we do not care about our home and the environment. It is inaccurate, offensive, and harmful.

Impacts to Domestic Wells

Key Takeaway: The proposed reductions by the Department would only yield a hypothetical reduction of impact to 4 shallow domestic wells.

We are a very rural community and it is worth noting that most of the domestic well users in our area are also farmers and ranchers. We are motivated to sustainably manage groundwater resources for drinking water and stockwater. The model suggests that 7 wells in our area lost access to groundwater in our area at their current depth. We are not aware of these 7 wells. Through the review of available public comments we are now aware of one well in our area that has experienced issues.

The difference between the modeled results for the Department's rules and the petition show a difference of 4 wells for our area under the petition (9 impacted wells under the Department's scenario and 13 under the petition scenario). The results for Scenario C show that 2 wells would be impacted between 2018 and 2023 and 3 of these wells would be impacted after 2030. Again, these are *modeled* results. We do not know the depth of these wells. Is the Department and Commission proposing that groundwater should be guaranteed at the current depth of the well, regardless of how deep the well is? We fully support the policy objective of assuring groundwater supplies for drinking water as our lives and livelihoods depend on it. Suggestions from commenters that we do not care about drinking water and stockwater are untrue and paint a negative and inaccurate picture of our community. Please help us counter the narrative that people who work the land do not care about our own drinking water and the wellbeing of our neighbors.

We ask the Commission and Department, please stop sensationalizing issues in our part of the basin. Please communicate clearly what you believe the problem is in our part of the basin. We are not Weaver Springs. We ask for your leadership in setting a tone for constructive and honest dialogue. The public is not served by false narratives about crisis to justify excessive regulatory reductions. This is not a responsible use of science, this is not an appropriate way to engage the affected public, this is not a constructive way to build trust and relationships with the people who co-manage this precious shared resource. We will not argue with the data and science as we believe that an unbiased review of available data and science would clearly show that there is not a sound basis for regulatory action in our part of the basin, which is why we will advocate for the petition and continue to focus our efforts on voluntary agreements. We ask you to please do your own review and not rely on carefully selected information that may not paint an accurate picture of current conditions or projected impacts. We look forward to working with you to improve upon the science for our area and to work together to responsibly manage groundwater resources.

Respectfully,

Jacob Davis and family, family farmers and domestic well users

Erick Keerins and family, family farmers and domestic well users

Erik Steen and family, family farmers and domestic well users

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Table 5: Mean annual recharge, mean annual groundwater pumpage, and authorized irrigation use by water budget region. Regions and lowland boundary are shown on Figure 5.

Water Budget Region	Mean annual lowland recharge (acre-feet)*	2017-2018 mean groundwater pumpage (acre-feet)**	Difference between lowland recharge and 2017-18 mean pumpage (acre-feet)	Authorized use (acre-ft/yr)***	Difference between lowland recharge and authorized use (acre-feet/yr)
Northern region	78,000	80,700	-2,700	174,454	-96,454
Southern region	48,000	21,600	26,400	37,443	10,557
Western region	47,000	42,500	4,500	65,204	-18,204
Harney Basin	173,000	144,800	28,200	277,101	-104,101

*Estimated mean annual lowland groundwater recharge by region 1982-2016. From Garcia and others, 2022.

**From Garcia and others, 2022.

***Authorized primary and supplemental irrigation use assuming 3 acre-feet per acre duty.
Does not include municipal, commercial, and other authorized non-irrigation uses.
Does not include exempt uses.
Authorized acres calculated from mapped places of use April 5, 2024.

Recharge is greater than authorized use and pumpage

Figure 1. Division 10 groundwater study report showing that authorized use and pumpage is less than recharge in the Southern region.

Table 7. Lowe Blitzen Subarea Model Results

Lower Blitzen Subarea Model Results (Scenarios A-E)						
Scenario/Result	**Full Pumpage (no reductions)**	**A (15 subareas)**	**B (6 subareas)**	**C (6 subareas)**	**D (6 subareas)**	**E (1 subarea)**
Allowable use (amount [kaf/yr])	14	14	14	13	13	Not specified by subarea
Reductions in use (from modeled 2018 levels)	0%	0%	0%	9%	5%	59% over GHVGAC
Was stability achieved between 2030 and 2098? If so, when did it begin? - median (50th percentile) value	No, not by 2098	No, not by 2098	No, not by 2098	Yes after about 40 years	No, not by 2098	Yes, immediately
Was there evidence of recovery between 2030 and 2098? If so, when did it begin? - median (50th percentile) value	No	No	No	Yes after about 40 years	No	Yes, immediately
Magnitude of change in groundwater level from 2030 to 2098: median (50th percentile) in each subarea (feet)	-11	-7	-7	-4	-4	6
Magnitude of change in groundwater level from 2018 to 2098: median (50th percentile) in each subarea (feet)	-17	-13	-13	-9	-9	0
Magnitude of change in groundwater level from 2030 to 2098: 80th percentile decline in each subarea (feet)	-14	-10	-9	-4	-4	2
Change in number of wells between 2030 and 2098 that have access to water at their current depth	-6	-5	-5	-3	-3	2
Change in number of wells between 2018 and 2098 that have access to water at their current depth	-8	-7	-7	-5	-5	0
Change in natural discharge (flow from springs and streams) from 2030 to 2098 (in %)	-26.3	-18	-20.3	-6	-5.7	32.7
Change in irrigated acres	0	Percentage reduction in irrigated acres approximately matches percent reduction in allowable use				
Priority date for regulation	Will provide this information from optimization results when available					

Previous model runs show stability is achieved and recovery begins in 2070 with only 5 feet of *modeled* decline after 2030 (only 0.125 ft/yr of decline)

Figure 2. Modeled results for "Scenario C"

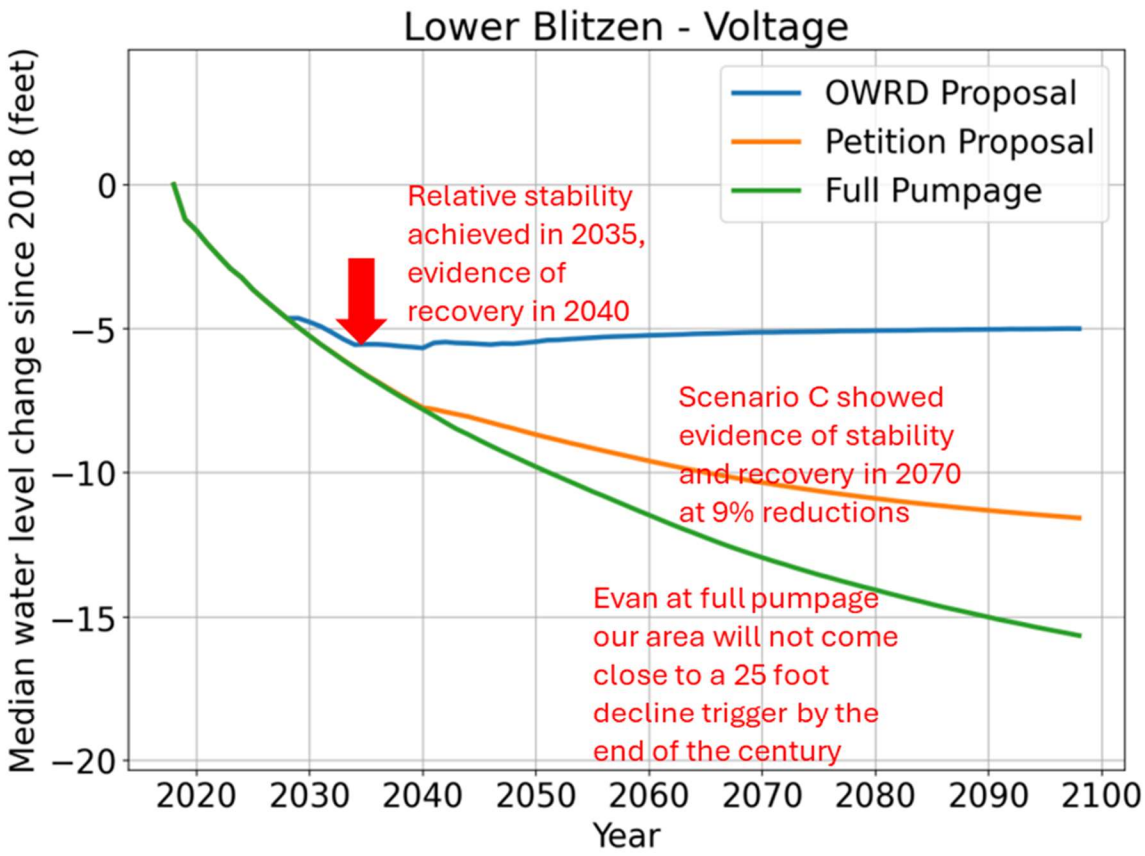

Figure 5: Time-series of median water level change since 2018 in the OWRD Proposal Lower Blitzen-Voltage Subarea under the OWRD Proposal, Petition Proposal, and Full Pumpage scenario. The results of the petition proposal are aggregated over the OWRD Proposal subarea for comparison.

Figure 3. Modeled difference in groundwater rate of decline between Department rules and petition.

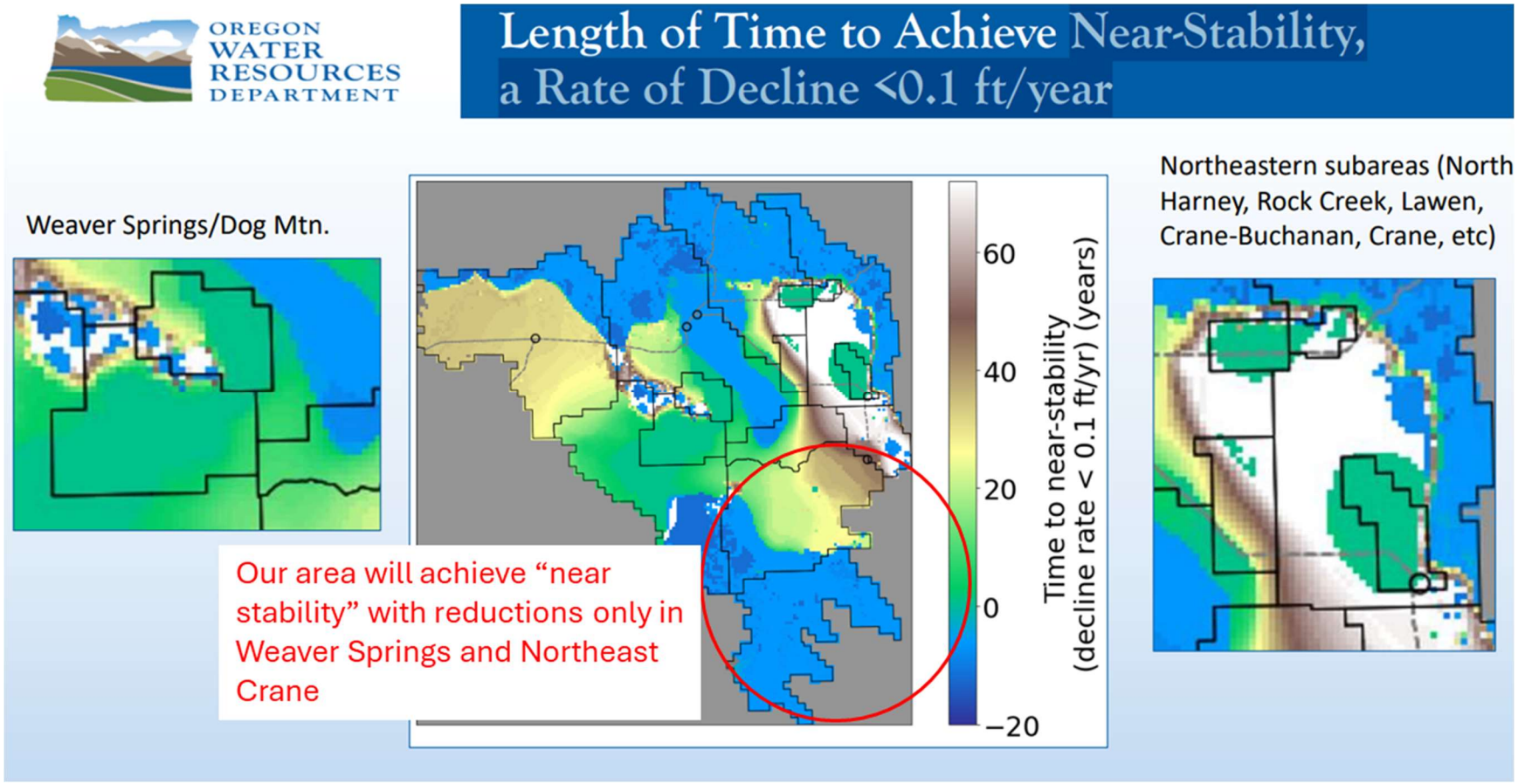

Figure 4. Time to achieve "near stable" groundwater levels

September 8, 2025

To the Water Resources Commission;

Thank you for the opportunity to speak with you regarding the forthcoming voluntary agreements for Blitzen-Voltage area. As requested by the Commission, we will not remark upon the specific policy proposals contained in the Division 512 rules, the place-based integrated water resources plan for our community, or the Department's guidance for voluntary agreements. We understand that our comments on those topics are not invited and will not be considered by the Commission at this time. Instead, we will take this opportunity to share information with you about our efforts to develop voluntary agreements to sustainably manage groundwater in the Blitzen-Voltage area of the Harney Basin.

Most importantly we want to inform you that we anticipate bringing voluntary agreements before the Commission in December for a decision consistent with ORS 537.745 and intend to coordinate with the Department prior to that. Since this process has never been done before, we wanted to make you aware of our intentions well in advance of asking you to make a decision. We look forward to working with the Department and Commission to ensure that you have sufficient information upon which to base your decision.

First, we would like to provide a little bit of information about who we are since we have not previously had the opportunity to speak to the Commission directly. We are here as representatives of groundwater users in our area, but it is important to note that we are working collectively on a voluntary agreement with other groundwater users and no single person can effectively speak on behalf of all of us. We take this responsibility seriously and need to be mindful of not speaking or making commitments for other groundwater users in our area.

My name is Jacob Davis and I have lived in the Donner Blitzen for 47 years – my whole life. I'm a third generation farmer in the Donner Und Blitzen area. my grandpa come to the Donner Blitzen in the 50s and he raised my dad and his siblings. My dad has lived here in the Donner Blitzen for 70 years – his whole life. My parents went out on their own in 1997 instead of being in the partnership with my grandpa and my uncle. He started developing where they currently live, my wife and I come back to work for my parents in 2002 and in 2012 we went out on our own and started developing from scratch. I am the father of four kids that I would like to pass our place on to. My parents would also like to keep their farm in our family. I've been married to my wife for 21 years now. We help out in kids ministry because our faith is very important to us. I also serve on the Crane grade school board and I am involved in helping out with 4-H and the youth livestock show in our county, all four of

our kids are involved with 4-H and the youth livestock show and they're all four involved with the day-to-day operations on our farm and our ranch. We are irrigating around 1000 acres between hay ground and irrigated pasture pivots with ground water , my parents are a little bigger than we are ,our children help us put up pay farm and work cows we rely on our children real heavily, especially in the summertime. I said I was a third generation farmer rancher in the Donner Blitzen, but I'm actually a fourth generation farmer rancher total my great granddad ranch in Idaho ,It is not a job for us. It's a livelihood at least that's what it is for my dad and for me, when you asked me when I was a little kid what I wanted to be I wanted to be just like my dad I wanted to farm and Ranch. I'm getting to live out my dreams. I'm really hoping that Whatever four of my kids wanna come back or if they all want to. come back they will get the same opportunity to live their dream like I have

I am Erick Keerins, a 4th generation rancher's son who grew up in Izee, Oregon on a century farm established in 1886 in Grant County. My wife, Christy, is a 3rd generation USA farmer's daughter who grew up in Terrebonne, Oregon. In 2018, we purchased property in Princeton, Blitzen-Voltage area with the intention of settling down, starting a second career and establishing some roots near family. Due to being Active Duty Coast Guard, we moved about every two years on average and wanted to establish a home for our children, place to come back to with lasting memories, connection and a connection to a rural small community. In 2021, after 22 years of service, I retired from the US Coast Guard and began working along with my wife and six children to fulfill the dreams and goals we had established. We raise hay, cows, pasture pigs, chickens and other livestock. I have not been as involved in the community as Christy, due to dedicating majority of my time to establishing fields, building a home, and all associated home base operation infrastructure. I support Christy in her endeavors as small animal 4-H leader, 4-H livestock committee member, Food Systems member, and local raw milk producer. She participates in the local Hines and Burns farmers markets, Fall/Christmas bazars and is active with the Chamber of Commerce events sponsored though out the year.

My name is Erik Steen and my wife Laura and son Aksel run and operate on my wife's 5th generation family farm/ranch in the Diamond and Princeton area. The ranch was established in the 1890's and is a listed century farm. We are in our late 30's and have taken over the operation with all the expenses 5 years ago. Just last year we purchased two more pivots in the Blitzen area. My wife is a valued employee of the Harney district hospital, in the surgery department. My son is a first grader in Diamond elementary school. As a family operation we raise hay and cattle. Last year I was awarded young farmer/rancher of the year by the Harney County chamber of commerce. We, as a family, greatly appreciate the land and its resources. We work tirelessly to apply conservation methods wherever is needed and preventively to insure a strong ecological foundation for the next generation.

We appreciate your time and effort, and we will always remain stewards of the land and water resources.

Groundwater in our portion of the basin is primarily recharged through the Donner Und Blitzen River, precipitation and snowpack on the Steens mountain, and tributaries from the southern portion of the basin. Our groundwater is distinct from the groundwater recharging the Silvies, Northeast-Crane, Silver Creek, and Weaver Springs portions of the basin and the geology, well yield, water chemistry, and groundwater levels are different from other parts of the basin. Our area comprises the “southern region” of the USGS groundwater budget study. We still have many questions about groundwater sources and flow paths in our part of the basin and we look forward to partnering with the Department and other scientific experts to answer these outstanding questions.

For nearly a decade the Department has been expressing interest in voluntary joint action with groundwater users in our basin, including in areas where groundwater levels are reasonably stable, like the Blitzen-Voltage area. ORS 537.525 states a preference for voluntary joint action between the Commission and groundwater users. It is with knowledge of that statutory preference that we are embarking on this important effort. As a reminder for all of us, the Department and Commission have the responsibility to adhere to and achieve the following substantive goals contained in ORS 537.525:

1. Provision be made for the final determination of relative rights to appropriate ground water everywhere within this state and of other matters with regard thereto through a system of registration, permits and adjudication.
2. 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.
3. Beneficial use without waste, within the capacity of available sources, be the basis, measure and extent of the right to appropriate ground water.
4. All claims to rights to appropriate ground water be made a matter of public record.
5. Adequate 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.
6. The location, extent, capacity, quality and other characteristics of particular sources of ground water be determined.
7. Reasonably stable ground water levels be determined and maintained.
8. Depletion of ground water supplies below economic levels, impairment of natural quality of ground water by pollution and wasteful practices in connection with ground water be prevented or controlled within practicable limits.

9. Whenever wasteful use of ground water, impairment of or interference with existing rights to appropriate surface water, declining ground water levels, alteration of ground water temperatures that may adversely affect priorities or impair the long-term stability of the thermal properties of the ground water, interference among wells, thermal interference among wells, overdrawing of ground water supplies or pollution of ground water exists or impends, controlled use of the ground water concerned be authorized and imposed under voluntary joint action by the Water Resources Commission and the ground water users concerned whenever possible, but by the commission under the police power of the state except as specified in ORS 537.796 (Rules regarding low temperature geothermal appropriations), when such voluntary joint action is not taken or is ineffective.
10. Location, construction, depth, capacity, yield and other characteristics of and matters in connection with wells be controlled in accordance with the purposes set forth in this section.
11. All activities in the state that affect the quality or quantity of ground water shall be consistent with the goal set forth in ORS 468B.155 (State goal to prevent ground water contamination).

Groundwater users in our area assembled for the first time in May to talk about and work on voluntary agreements and have met two times since then. Most of the groundwater users in our area had not heard of voluntary agreements before we met in May. Prior to April of this year most of us had the expectation that the Department would not propose regulation in our area based on existing data, previous communications between Department staff, and what was communicated publicly in meetings. The process has been difficult to follow, but we believe that we can bring a cohesive and cooperative strategy with the support of groundwater users in our area.

What we intend to bring to you in December is a voluntary agreement for the Blitzen-Voltage area, or the “southern region” as it is called in the USGS groundwater budget report. We will detail how these voluntary agreements are consistent with state law and policy and how they will contribute to a truly integrated and coordinated approach that achieves the substantive goals of the Commission and Department. Most groundwater users in our area were not consulted in the drafting of the voluntary agreement guidance, but we will refrain from speaking about the contents of the guidance as requested. We understand that this is a new opportunity for Oregon and there are a lot of questions about how this will work.

We sincerely look forward to partnering with the Commission and Department to maintain reasonably stable groundwater levels, balance different beneficial uses of groundwater, and ensure perpetual use of the Blitzen-Voltage groundwater reservoir. We sincerely believe that voluntary joint action with the Commission will ensure consistency with state law and policy, the Integrated Water Resources Strategy, the place-based integrated water resources plan, and the Department's new strategic plan. The forthcoming voluntary agreements will foster a cooperative approach with groundwater users and will lead towards a truly integrated and coordinated approach for sustainable and adaptive groundwater management in the Blitzen-Voltage groundwater reservoir. We hope to become a model for other parts of the state and across the West.

Attached to these comments are the following documents:

- A "situation assessment" assessing the possibility of developing voluntary agreements for the Blitzen-Voltage drainage area;
- The results of the independent assessment of the opportunities and barriers for voluntary agreements, including a review by legal professionals about key policy questions.

Sincerely,

Jacob Davis

Erick Keerins

Erik Steen

MEINZ Kelly A * WRD

From: Erick Keerins <keerins24@yahoo.com>
Sent: Tuesday, October 7, 2025 1:06 PM
To: WRD_DL_rule-coordinator
Cc: HUNTINGTON Geoff * GOV; FERRARI Chandra Alene * GOV; Rep Owens; Sen McLane; bill.hart@harneycountyor.gov; rob.frank@harneycountyor.gov; patty.dorroh@harneycountyor.gov; Woody Wolfe; joemollwrc@gmail.com; janleewrc@gmail.com; juliesmithermanwrc@gmail.com; kathykiharawrc@gmail.com; janneumanwrc@gmail.com; jacobdavis12@gmail.com; keerins24@yahoo.com; ersteen3@gmail.com; vinetoandre@gmail.com; ann_gilmour@msn.com; newca_3908@yahoo.com; fredotley@hotmail.com; albrechtfrms@yahoo.com; kerns2873@gmail.com; relderk@yahoo.com; klelder66@gmail.com; davieskerns@yahoo.com; bachmanbaykennels@gmail.com; dkotley7@yahoo.com; goldenrulefarms@gmail.com; maherquarterhorse@gmail.com; harrisranch@yahoo.com; nicholsdan70@gmail.com; martint7758@gmail.com; moosehero@msn.com; jakepotter78@outlook.com
Subject: Harney County Petition Comments Blitzen-Voltage
Attachments: Commission Comments Blitzen Voltage Voluntary Agreement_FINAL_09.09.25.pdf; Situation Assessment for Lower Blitzen Voltage Subarea_Final_07.10.25_Unredacted.pdf; Blitzen-Voltage Policy Questions and Comments_10.07.25.docx; Blitzen-Voltage Technical Questions and Comments_10.07.25.docx; Voluntary Agreements Analysis - 09-2022_3.pdf

Some people who received this message don't often get email from keerins24@yahoo.com. Learn why this is important

Dear Commissioners,

Thank you for taking your time to learn more about conditions in our basin, groundwater policy, and the proposals before you. This letter is sent on behalf of the groundwater users in the Blitzen-Voltage area who are working together on a voluntary agreement. When you are no longer in your positions and when staff and leadership at the Department inevitably move on to other obligations and opportunities, we hope to still be here in Harney Basin, stewarding our land and water resources for current and future generations, for the community and economy of Harney County and Oregon, for our resident fish and wildlife, and for all people of Oregon.

As it currently stands the Department is proposing nearly 40% reductions in pumpage (88% reductions in authorized use) in an area where groundwater levels are reasonably stable and where groundwater is not over-appropriated or overdrawn and shows no evidence of excessive declines. The hypothetical modeled benefit of this extreme proposal is 1 cfs (600 afy) in discharge to springs and streams and 4 shallow domestic wells do not need to deepen. The Department has not meaningfully involved those who will be affected by its rules, has not seriously considered ways to reduce economic impacts, and is being pressured by special interests outside of the basin who will not be harmed by this proposal. You are being asked to reinterpret and rewrite law, not enforce the current law. You are being asked to reallocate legally granted groundwater rights to beneficial uses without groundwater rights.

The Department continues to silence our community members and not take our concerns seriously. You have already caused irreparable harm to our community through a disingenuous public process and extreme and legally unfounded rules being proposed. We

are continuing to engage in good faith at significant personal and collective cost. Please choose partnership and collaboration. We stand ready to work with you and are hopeful.

Respectfully,
Erick Keerins &
Blitzen-Voltage Groundwater users

Potential for Voluntary Agreements: Situation Assessment for the Blitzen Voltage Subarea

Background

Between January and June 2025 a situation assessment was performed to understand the potential for voluntary agreements in the Blitzen Voltage Subarea. As a part of this situation assessment, 9 landowners in the Blitzen Voltage Subarea were interviewed to gather observations on groundwater conditions in their subarea, better understand their irrigation operations and opportunities for voluntarily reducing water use, elicit their feedback on the draft rules, and to assess their interest in forming a voluntary agreement. Information was also gathered from meetings of the Rulemaking Advisory Committee, public hearings, and available written materials. Three initial meetings have been held with groundwater users in this area and a first draft of a voluntary agreement has been drafted for the Blitzen Voltage Area. A draft of the voluntary agreement for the Blitzen Voltage Area is expected in September 2025 with a desire to bring it before the Water Resources Commission in December. A summary of the key takeaways is included here. Identifying information about the interviewees has been removed. All information collected from interviewees is kept confidential. The groundwater users have requested that no drafts of voluntary agreements be shared without their unanimous consent.

Interest in Forming a Voluntary Agreement

- Nearly all groundwater users interviewed in the Blitzen Voltage Subarea are strongly interested in entering into a voluntary agreement. There may be an interest in forming a separate or connected voluntary agreement for the former Windy Point area. See below for the proposed process.

Groundwater Conditions in the Blitzen Voltage Subarea

- Groundwater users would like to delineate the Blitzen Voltage Subarea as a distinct groundwater management area for purposes of forming a voluntary agreement. This area may include a small portion of the Northeast-Crane area south of Windy Point. This area may also include the Upper Blitzen Subarea. The boundaries are actively being discussed. Generally there is support for inclusion of the entire “southern region” of the USGS groundwater budget, though individuals near boundary lines would like to invite further discussion.
- There are approximately 16-24 groundwater users in the Blitzen Voltage Subarea.
- The Blitzen Voltage Area is recharged by precipitation in the uplands and recharge from Donner Und Blitzen River. This area is distinct from the Silvies River and Silver Creek areas. There is variability in the subsurface, with many different theories and questions about the directional flow of groundwater, the saturated thickness and yield of the various aquifers, recharge potential of Steens Mountain, the hydraulic connection with other parts of the basin, the role of faults in the flow of water, and many other things. Some groundwater in this area is believed to be fairly modern. Generally well yield is very good and high yield wells are completed at relatively shallow depths. Some believe that the Voltage Basalts are highly transmissive and receive a significant amount of recharge from the Steens Mountain.

- Groundwater users interviewed did not express concern about groundwater level declines in this area. Groundwater level declines have been minimal and are not uniform across the this area. Some wells have increased during their period of record. Some wells have risen above reference levels set by the Department. Some wells chosen by the Department to be representative appear to be anomalous and are not considered representative by groundwater users interviewed. There are questions about the Department's selection process and concern that it might be biased towards inclusion of concerning data with the purposes of reinforcing certain narratives about this part of the basin.
- There is a desire to better understand hydraulic connection between the Blitzen Voltage Subarea, Weaver Springs, the Warm Springs Valley, and the Northeast Crane Subarea. The link between these areas is not understood or supported by groundwater users in this area and more discussion is warranted. There are questions about the extensive clay layers in the center of the basin and how they affect flow from south to north.
- Without the declines in the Weaver Springs Subarea or the Northeast-Crane Subarea and the determination that this is all one groundwater reservoir it does not appear to groundwater users interviewed that there would be problems in the Blitzen Voltage area. Some believe that the west side of the "southern region" (the area west of the Donner Und Blitzen floodplain and west of 205 belongs in a separate area given differences in water quantity and quality. Wells west of the Donner Und Blitzen River are expected to be part of a different system given that water quantity is known to be poor and is not expected to receive significant recharge from the Steens Mountain or Donner Und Blitzen river. There are questions about the connection between the Blitzen Voltage area and the Warm Springs Valley.
- Groundwater users interviewed are not aware of any domestic well users in the immediate area who have observed concerning declines, had to deepen their well due to declines, or expressed concern. There is a strong interest in ensuring adequate and safe supplies for human and livestock consumption because they all rely on groundwater for their homes and livestock. No concerns were expressed about the groundwater quantity or quality for Blitzen Voltage area, with the exception of "pockets" of water close to and west of 205.
- Groundwater users believe that groundwater in this area is generally stable, with some pockets of water that did not appear to have a sustainable yield and questions about the differences in groundwater quantity and quality in different portions of the Subarea.
- There is a desire to engage with groundwater scientists to better understand aquifer properties in the Blitzen Voltage area, especially where claims made by scientists do not correspond with local ecological knowledge. This presents an opportunity for partnership to better understand the groundwater system, but groundwater users sense a hesitance from the Department to actively engage them on their outstanding questions or uncertainties. They feel that their contributions and questions have largely been ignored or that Department staff spend most of their time defending the science or defending their decisions rather than engaging groundwater users to develop a shared understanding.
- Groundwater users expressed an interest in retroactively and proactively addressing other known issues in some aquifers, including well construction issues as well as water quality issues. They wondered if the Department had an interest and willingness to partner on other issues or if the Department was only focused on regulating groundwater users. By focusing

just on regulation of irrigators, some groundwater users expressed that the State did not actually seem interested and invested in holistic water management in this area to ensure the long-term health of the groundwater system and groundwater users.

Agricultural Operations and Opportunities for Voluntary Water Reductions

- Groundwater use varies from groundwater user to groundwater user depending on their soil, where they are located, interannual variability in weather, microclimate, irrigation technology, level of experience, capacity, crops, proximity to surface water, and many other factors. All groundwater users report being able to grow their crops with 2.5 acre feet, though sometimes they need or want the flexiblity to go above this amount. They expressed an ongoing need for flexiblity. Groundwater users are concerned about losing their rights if they do not use the full duty allocated, especially if they are publicly reporting groundwater use to the state. They are concerned that information they share will be used against them.
- The irrigation infrastructure amongst groundwater users varies in this area, though most are using pivots. There are some groundwater users who are still on wheel lines and have the opportunity to upgrade irrigation infrastructure, but some are hesitant to make costly upgrades without a sense of certainty that they will not be regulated off and lose those investments.
- Groundwater users expressed interest and excitement about joining together, being more connected to one another and exchanging ideas about how to better manage groundwater. Groundwater users see a lot of opportunity to effectively manage the resource and look forward to working together and learning from one another, but also see that it will require a lot of active effort given that farmers and ranchers are historically pretty independent.
- Groundwater users expressed the desire for greater flexibility in how and where they use their water and indicated many opportunities to reduce groundwater use with greater flexibility.
- Some groundwater users grow crops and have livestock, some just grow crops. Some groundwater users primarily use what they grow for their own livestock and would have to purchase feed if they were not producing it. Much of what is produced stays within the local, state, and regional economy and is important source of high-quality feed for local ranching communities.
- Everyone interviewed is deeply rooted in the community. Most groundwater users have a desire to include their children and grandchildren in their operations and to have the younger generations inherit their operations. They are concerned that this may no longer be possible with the proposed regulations. They expressed an appreciation and respect for their neighbors and the culture in this part of the basin that prioritizes looking out for one another and supporting one another.
- Groundwater users noted that their operations not only provide for them and their families, but also contribute to their identity and sense of belonging in their community. They feel a strong sense of duty to contribute to regional, national, and international food security. They are proud of the contributions they make to the local community and economy. They believe they are good stewards of the land and water resources and are open and willing to improve their practices. For most groundwater users working on their farms is how they spend all of their time and they are deeply dedicated to the agricultural way of life. It is

more than a way to make a living, it is their full-time job, their hobby, their social life, their home, and their family life. Most of them have not considered other lines of work and do not have an interest or desire in pursuing opportunities outside of their current operations as it provides a sense of fulfillment and purpose and they are good at what they do.

- Groundwater users offered up the following actions for reducing water use:
    - Temporary fallowing
    - Crop rotations / delayed planting
    - Alternate crops
    - Irrigation technology / sprinkler packages
    - Temporarily or permanently reducing acreage
    - Data driven management/more active management
    - Experimentation
    - Deficit irrigation
- Having security and flexibility would allow groundwater users to implement water savings measures. Groundwater users are generally motivated to improve their operations to maximize yield with the least amount of water, but would benefit from support from the state and other partnres.

Feedback on Proposed Rules

- The groundwater users that participated in or tracked the rulemaking effort expressed dismay at the process. They felt that the there was very little opportunity to effectively engage in the process and that most of their questions or contributions were dismissed or ignored. Groundwater users questioned whether their input or feedback on the rules would even matter and expressed that the Department does not appear to be open to receiving feedback. They did not feel like they were treated as partners in the rulemaking effort and instead felt like targets.
- Groundwater users question the determination that the entire Harney Basin is a single groundwater reservoir given the different areas of recharge and discharge, different water quality and chemistry, different aquifer characteristics, different hydraulic gradients, the travel time of groundwater through the subsurface, well yield, and the geographic distribution of irrigation. Groundwater users are generally in agreement that there a different aquifers that produce differing amounts of water with differing quality and chemistry. There is a desire to drill into the definition of groundwater reservoir and come up with more site-specific determinations based on more criteria. This is an area where groundwater users invite partnership, especially around opportunities to improve the collective understanding of groundwater in this area.
- Groundwater users do not feel that the Department has substantial site-specific evidence to include the Blitzen Voltage Subarea in a critical groundwater area designation. They noted that no wells have excessively declined or are declining excessively. This area is not overdrawn or about to be overdrawn according to the Department's own definition.
- Groundwater users indicated that they had been tracking the process of the rulemaking up until recently and were surprised at the changes that had been made over the last few months. Several groundwater users expressed a preference for the boundaries that had been previously proposed (Windy Point) or adjusting the current boundaries so that the area

south of Windy Point is in the Blitzen Voltage Subarea. They indicated that these wells had more in common with the wells in the Blitzen Voltage Subarea than they did with the Northeast-Crane Subarea.

- Groundwater users are confused by the significant reductions being proposed for the Blitzen Voltage Subarea. Earlier proposals from the Department showed that no reductions were being proposed in the Blitzen Voltage Subarea due to the lack of concerning data. The proposed rules are now showing that the Blitzen Voltage area is facing significant regulatory reductions despite the fact that groundwater levels are relatively stable. Some groundwater users who were tracking the process in the beginning have been taken by surprise by this new proposal, which emerged in the last few months of the RAC. They question how the Department arrived at these reductions given the earlier messages and proposals.
- Groundwater users wanted to better understand how the permissible total withdrawal was set and believed that it was set much too low. They offered to work with the Department to develop a reasonable permissible total withdrawal that accounts for all users once there is agreement on a problem and a goal for this area. They did not understand the basis for the proposed permissible total withdrawal.
- Groundwater users indicated that the initial allocation seemed arbitrary and had questions about how this initial allocation would affect their underlying right. While they generally believe they can grow a crop with 2.5 afy, they do not support reducing flexiblity for farmers.
- Groundwater users had questions about the Department's ability to track groundwater use and effectively regulate groundwater use given an inconsistent track record in the past with data collection and analysis and regulation.
- Groundwater users had questions about the contested case process and how they are expected to engage in that process and how they could advocate for themselves in that process.
- Groundwater users believe that groundwater in this area is already stable and they do not understand how the Department can justify any regulatory reductions. Numerous groundwater users noted that groundwater levels have shown minimal declines, have remained stable, or have actually increased. They noted that the basin had been in a long-term drought and wondered at the effect of the drought on groundwater level trends.
- Groundwater users question the underlying data and assumptions upon which the Department is basing its decisions. They characterize the Department's position as largely defensive and unwilling to account for local knowledge. It has been difficult to engage the Department on the scientific and legal basis for their decisions. Rather than being invited to work with the Department to identify and resolve problems, the groundwater users feel that they have been put in a reactive position whereby they are reacting to what the Department wants.
- Groundwater users do not agree with the determination that their groundwater use has an effect on groundwater level declines north of Malheur Lake in the Northeast-Crane area. They do not understand how the Department has determined hydraulic connection with this area.
- Groundwater users are concerned about transfers and how they will be handled in the future. There have recently been transfers into the Blitzen Voltage area from the Weaver Springs area that may "reprioritize" water rights to make some users more junior to the

transferred rights. There are questions about the Department's processes and ongoing concerns about fairness.

- Groundwater users expressed interest in and concern for springs, but also questioned whether the Department actually had an intent to monitor and manage for springs. Other than implementing regulatory reductions, there are questions about what the Department can or will do to actually understand the springs in this area and work with groundwater users on effective monitoring and management.
- Groundwater users are interested in exploring voluntary reductions to groundwater use and improving their operations over time.

Requests for Technical Information

Groundwater users requested the following information to aid in their development and implementation of a voluntary agreement:

- What data will the Department use to analyze groundwater level trends? How does it make a determination that a well is "representative"? What if we have additional data that tells a different story? What if we believe that some of the wells that have been chosen as representative are not actually representative?
- What can the Department share about the spring discharge at Sodhouse Springs and how it might be affected by historic groundwater use and recent transfers into this area?
- What are the legal and technical bases for including the Donner Und Blitzen Subarea in the critical groundwater area and enforcing significant reductions? Request for this in writing.
- Why did the Department say that things were fine in this area and were not proposing any reductions and now they are proposing 39% reductions? What happened? Where can the basis for this decision be found?
- Why did the Department change the boundaries? Why isn't Windy Point its own separate area or included in the Blitzen Voltage area? What is the rationale for separating the Upper Blitzen area from the Blitzen Voltage area?
- What does the Department know about the boundary between the Blitzen Voltage area and the Silver Creek area? What is happening on the west side of this area?
- What is known about the actual hydraulic connection between the Blitzen Voltage area and the Northeast-Crane area? What is the data and information the Department is using to support this conclusion? Request to talk with the Department about their data and parameters in the model.
- What is known about the hydraulic connection between the Blitzen Voltage area and the Weaver Springs area? What is the data and information the Department is using to support this conclusion? Request to talk with the Department about their data and parameters in the model.

Voluntary Agreement Process Overview

October-December 2024	Review OWRD guidance; collect contact information and begin outreach; research voluntary agreements and develop templates; develop materials to support development of voluntary agreements; review and summarize relevant information from RAC meetings;

	gauge landowner interest in voluntary agreements; identify 2-3 subareas for development of voluntary agreements.
January-June 2025	Conduct outreach and organize groundwater users, conduct a situation assessment for the Blitzen Voltage Subarea, including one-on-one interviews with groundwater users; host scoping meetings to begin drafting of voluntary agreements; develop initial draft of voluntary agreements.
June-September 2025	Review, revise, and refine voluntary agreements; continue outreach to groundwater users; connect groundwater users with resources to continue drafting a voluntary agreement; work with groundwater users to present intent to file a voluntary agreement to the Water Resources Commission at their September meeting.
September-December 2025	Initiate coordination with the Water Resources Department to review the voluntary agreement and proactively work through any issues; prepare for presentation to the Water Resources Commission at their December meeting.
December 2025-Onward	Assuming adoption at the December Commission meeting, support ongoing implementation and coordination of the Voluntary Agreement.

Voluntary Agreements Analysis

A Review of Oregon's Voluntary Agreements Statute for the Harney Community-Based Water Planning Collaborative

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September 2022

About Environmental Defense Fund

One of the world's leading international nonprofit organizations, Environmental Defense Fund (edf.org) creates transformational solutions to the most serious environmental problems. To do so, EDF links science, economics, law, and innovative private-sector partnerships. With more than 3 million members and offices in the United States, China, Mexico, Indonesia and the European Union, EDF's scientists, economists, attorneys and policy experts are working in 28 countries to turn our solutions into action.

About Culp & Kelly, LLP

Culp & Kelly, LLP is a mission-driven law and policy firm that is focused on supporting innovation and change in western natural resources management, serving the communities, industries, NGOs, farmers, ranchers, and entrepreneurs that are leading the way to a more vibrant, resilient, sustainable American West.

Purpose and Scope of Analysis

Environmental Defense Fund engaged Culp & Kelly, LLP to provide research, analysis and support services related to collaborative groundwater management strategies and policies relevant to the Harney Basin in Oregon. Directed by EDF staff and informed by the Harney Community-Based Water Planning (CBWP) Collaborative, this work consisted of an analysis of Oregon Revised Statute 537.745, which authorizes the use of voluntary agreements, and analysis and review of how such agreements might be developed and implemented in the Harney Basin to address groundwater overdraft.

Disclaimer

The information provided in this report is for general informational purposes only. This information does not, and is not intended to, constitute legal advice. Readers of this report should contact their attorney to obtain advice with respect to the application of any particular legal interpretation, policy, or concept discussed in this report related to Harney CBWP Collaborative strategies.

Acknowledgements

The report authors are grateful for the participation of Harney CBWP Collaborative members and other water experts in the development and review of this report.

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Executive Summary

The Harney Basin in southeastern Oregon is roughly 5,240 square miles and is characterized by a semi-arid climate, with mountainous areas receiving greater than 30 inches of precipitation per year, while parts of the valley receive less than 10 inches. Groundwater development in the lowlands has increased substantially over the past few decades, creating an imbalance in the region's water budget.

Where needed to ensure sustained water supplies for existing users and protection of important natural resources, the Water Resources Commission adopts basin programs to set policies for managing administrative basins. Restrictions are typically limited to new uses, except in very severe situations such as critical groundwater areas. Within the Malheur Lake administrative basin, the Commission established the Greater Harney Valley Groundwater Area of Concern (GHVGAC) "to ensure that groundwater in the GHVGAC is appropriated within the capacity of the resource and that new appropriations of groundwater assure the maintenance of reasonably stable groundwater levels and prevent depletion of the groundwater resource."[1] Due to continued overdraft and groundwater level declines in many parts of the GHVGAC, additional regulatory measures, restrictive/corrective controls, and other management options are being considered.

There are two approaches under Oregon law for instituting controls for groundwater use: (1) area designations (Groundwater Administrative Areas / Critical Groundwater Areas) and commission rulemaking, and (2) joint action with groundwater users through "voluntary agreements."[2] Both approaches are being considered within the GHVGAC to address groundwater declines and overdraft issues. The use of voluntary agreements is still untested in Oregon, however, so there are significant uncertainties related to how voluntary agreements would be developed, implemented and what they should contain.

O.R.S. § 537.745 authorizes the Water Resources Commission to "encourage, promote and recognize voluntary agreements among ground water users from the same ground water reservoir." The statute creates an opportunity for groundwater users to implement locally defined measures to manage groundwater use, so long as those measures are consistent with the intent, purposes, and requirements of Oregon's Groundwater Act.

The statute provides minimal guidance for the process and substantive requirements for voluntary agreements. In basic terms, a voluntary agreement must (1) be between groundwater users of the same groundwater reservoir, (2) be consistent with Oregon's groundwater laws and policies and (3) be in writing and filed with the Commission. Upon approval, the agreement controls in lieu of a formal order or rule of the Commission until terminated pursuant to (a) agreement terms, (b) the consent of the agreement parties or (c) an order of the Commission if the Commission finds that the agreement is not being substantially complied with or that changed conditions make continuance of the agreement a detriment to the public welfare,

[1] OAR 690-512-0020(1).

[2] ORS §§ 537.525, 537.745

safety, or health, or contrary to the intent, purposes, and requirements of Oregon's Groundwater Act.

Within these basic requirements, there is likely a wide variety of options as to the geographic scope and subject matter scope of a specific voluntary agreement. A voluntary agreement could, for example, establish management objectives for specific areas of concern, informed by relevant statutory management objectives and local hydrologic, environment, and community considerations. A voluntary agreement could also potentially integrate restrictive/corrective controls on water use, mechanisms for compensating economic hardship associated with water use restrictions, and flexible, incentive-based options in a combined package to balance hydrologic, community, and economic impacts and encourage groundwater user buy-in. (Agreements undertaken in specific basins in Nevada and California could provide model terms.)

However, given the uncertainties around substantive content and procedures for implementing a voluntary agreement, there are a variety of legal risks that an agreement may face. On one hand, voluntary agreements may face challenges from groundwater pumpers that have elected not to join a voluntary agreement. This occurred in basins in Nevada and California, with the agreements and plans ultimately upheld by the reviewing court.[3] On the other hand, the Commission must be able to approve a filed voluntary agreement based on the statutory criteria, and it must have a sufficient basis for that approval or it may face a challenge from the Attorney General's office or another branch of government. There is also likely to be counterpressure around the robustness of a voluntary agreement — some stakeholders may challenge an agreement for going too far, while others may challenge it for not going far enough to satisfy statutory requirements and management obligations.

There are several open questions about how far a voluntary agreement in Oregon could potentially go in relation to Oregon's groundwater laws and regulatory structure. However, a voluntary agreement is in the best position possible to be legally supportable and successful if it does the following:

- Defines a specific management area, thoroughly explaining how it is based primarily on hydrogeologic characteristics, and, as applicable, explaining how/why other factors inform the boundaries.

- Includes as parties to the agreement all groundwater users within the defined area that will be affected by any new water use requirements or restrictions.

- Includes actions and commitments that will make a measurable improvement or arrest any further decline in groundwater levels over a specified period of time.

[3] In Nevada, based on specific aspects of Nevada law, the court determined that the non-joining groundwater users were subject to the terms of the management plan. In California, the court determined that the non-joining groundwater users must be exempted from the terms of the management agreement; however, because of the incentives offered as part of the agreement, all of the non-joining groundwater users eventually opted into the agreement over the following two decades of implementation. More information about each of these case studies is available in **Appendix B**.

- Includes a thorough explanation of how the terms of the agreement (area boundary and actions and commitments of the parties) are consistent with the state's groundwater laws and policies and how they will advance overarching management objectives of assuring maintenance of reasonably stable groundwater levels and preventing depletion of the groundwater resource.

The details of these components are hydrologically and legally technical and involve consideration of a variety of highly local values. Identifying and evaluating priority locations, strategies, and hydrologic, social, and environmental values will be an important next step in exploring the possibility of using voluntary agreements to implement management strategies in the Harney Basin.

Introduction

The Harney Community-Based Water Planning Collaborative is currently undertaking a place-based approach to water planning.[4] The Collaborative has been working together to gather information, identify strategies, and determine in-stream and out-of-stream water needs to help develop solutions to help meet the area's water needs now and into the future.[5] As part of this effort, the Collaborative is exploring how one or more voluntary agreements under Oregon Revised Statutes (O.R.S.) § 537.745 might be utilized to implement the identified strategies for groundwater management. O.R.S. § 537.745 authorizes the Water Resources Commission to "encourage, promote and recognize voluntary agreements among ground water users from the same ground water reservoir." The statute creates an opportunity for groundwater users to implement locally defined measures to manage groundwater use, as long as those measures are consistent with the intent, purposes, and requirements of Oregon's Groundwater Act. However, the use of voluntary agreements in this context is still untested. Consequently, there are significant uncertainties related to development and implementation of voluntary agreements for the purpose of groundwater management.

Several questions and concerns were raised by Collaborative stakeholders regarding voluntary agreements, from the development and approval of voluntary agreements to the different types of strategies and stakeholder roles that could be included in a voluntary agreement. Some of those questions are addressed in this report. However, many of those questions depend on the specific location, types of uses, groundwater users and other stakeholders that may be included in a specific agreement, so are not addressed in detail here. Stakeholder questions that were raised for the report team, along with initial responses, considerations and/or potential next steps are summarized in **Appendix C**.

Oregon Water Policy and Management Entities

Oregon State Legislature: sets water use management and policies.

Water Resources Commission: sets water policies and regulations in accordance with state laws. Oregon statute also authorizes voluntary joint action by the Water Resources Commission and groundwater users to address declining groundwater levels, overdrawing groundwater supplies and other specific groundwater management issues.

Water Resources Department: administers the state's laws, regulations, and policies allocating water resources and managing supplies within the state.

[4] "Place-based integrated water resources planning (also known as place-based water planning) is a voluntary, locally initiated and led effort, in which a balanced representation of water interests work in partnership with the state to understand and meet their instream and out-of-stream water supply needs." The Oregon Water Resources Department provides guidance for and partners with local communities in these planning efforts and provides financial, technical, and planning assistance. Oregon Water Resources Dept., *Place-Based Integrated Water Resources Planning*, https://www.oregon.gov/owrd/programs/planning/placebasedplanning/pages/default.aspx.

[5] HC Watershed Council, CBWP, http://hcwatershedcouncil.com/community-based-water-planning/

To provide foundational context on voluntary agreements and how they might be an approach to implementing management strategies in the Harney Basin, this report provides a high-level overview of the current management framework in the region, the voluntary agreements statute O.R.S. § 537.745, and discusses application of the statute in the context of Harney Basin CWBP Collaborative's planning effort and recommended management actions. While this report does not provide specific recommendations related to implementing any given strategy or actions, it does identify legal considerations related to specific elements that might be incorporated into a potential future voluntary agreement and discusses ways to mitigate the various legal uncertainties/risks.

Additionally, there are several examples of voluntary agreements and other collaborative groundwater planning and management efforts around the West that may provide useful lessons and examples for implementing Harney strategies. Various examples are discussed throughout this report where specific elements are relevant to the Harney planning context. Additional case study information, along with links to the full example agreements and plans where available, is in **Appendix B**.

O.R.S. § 537.745
Voluntary agreements among ground water users from same reservoir

(1) In the administration of ORS 537.505 to 537.795 and 537.992, the Water Resources Commission may encourage, promote and recognize voluntary agreements among groundwater users from the same groundwater reservoir. When the commission finds that any such agreement, executed in writing and filed with the commission, is consistent with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992, and in particular ORS 537.525, 537.730 to 537.740 and 537.780, the Commission shall approve the agreement. Thereafter, the agreement, until terminated as provided in this subsection, shall control in lieu of a formal order or rule of the commission under ORS 537.505 to 537.795 and 537.992. Any agreement approved by the Commission may be terminated by the lapse of time as provided in the agreement, by consent of the parties to the agreement or by order of the commission if the commission finds, after investigation and a public hearing upon adequate notice, that the agreement is not being substantially complied with by the parties thereto or that changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992.

(2) When any irrigation district, drainage district, other district organized for public purposes or other public corporation or political subdivision of this state is authorized by law to enter into agreements of the kind referred to in subsection (1) of this section, the commission may approve such agreements as provided in subsection (1) of this section. Any such agreement approved by the commission shall have the same effect and shall be subject to termination in the same manner and for the same reasons set forth in subsection (1) of this section.

This report does not contain a specific proposal for a Harney Basin voluntary agreement. It provides an overview of how a voluntary agreement could potentially incorporate groundwater management strategies being considered by stakeholders in the Harney Basin and discusses legal considerations that will be important in the future if/when groundwater users determine a voluntary agreement is a preferred approach for implementing one or more groundwater management strategies.

Groundwater Management in the Harney Basin

Oregon's Groundwater Act of 1955 governs the use and management of groundwater within the state. Except for certain exempt uses, water users must obtain a permit or license from the Water Resources Department to use water from any source, whether surface water from lakes or streams or from groundwater. The Water Resources Commission adopts basin programs to set policies for managing administrative basins where restrictions on uses are needed to ensure sustained supplies for existing users and protection of important natural resources. Restrictions are typically limited to new uses, except in very severe situations such as critical groundwater areas.

This section provides a high-level overview of the statutory management standards and basin program rules relevant to the Harney Basin.

Management Goals and Objectives

A variety of increasingly specific management goals and objectives govern the appropriation, use and management of water resources in basins around Oregon. The following statutory, regulatory, and planning goals and objectives apply to the Greater Harney Valley Groundwater Area of Concern:

Statutory

The following policies are set in statute and apply statewide. As discussed further below, any voluntary agreement must be consistent with these and other statutory policies.[6] The general policy of the Groundwater Act is "that there be reasonable public control of all water in the state for the preservation of the 'public welfare, safety and health.'"[7] That general policy is accomplished through:

- The beneficial use of ground water without waste, within the capacity of available sources (O.R.S. § 537.525(3));
- The preservation of adequate and safe supplies of ground water for human consumption (O.R.S. § 537.525(5));
- The preservation of reasonably stable ground water levels (O.R.S. §537.525(7));

[6] O.R.S. § 537.525(2), (3), (5), (6), (7), (8) (*note:* summarized/restated from statutory provisions).

[7] *Doherty v. Oregon Water Resources Director*, 308 Ore. 543 (1989) (citing O.R.S. § 537.525).

- The prevention of the depletion of ground water supplies below economic levels, the impairment of natural water quality, and wasteful practices (O.R.S. § 537.525(8)).

These statutory policies and terms are interpreted and applied by the Director of the Water Resources Department through regulations and department orders.

Regulatory

The Director of the Water Resources Department has the authority to promulgate rules to carry out their functions (which may apply statewide or within specific areas within the state) and may determine on a case-by-case basis if groundwater supply is overdrawn (or about to be overdrawn) or groundwater levels are declining excessively.[8] The department has adopted definitions for these terms, which apply statewide (see call-out box).

The determination of what constitutes excessive declines and/or overdraw in a given basin is based on "the exercise of administrative expertise and judgment based on information derived from experts."[9] and what is ultimately determined to be the "capacity of available sources" or "reasonably stable" may include consideration of both local hydrologic conditions and community-specific values.[10]

The management goals and objectives specific to the Greater Harney Valley Groundwater Area of Concern are:[11]

- Ensure that groundwater in the GHVGAC is appropriated within the capacity of the resource; and,
- New appropriations of groundwater assure the maintenance of reasonably stable groundwater levels and prevent depletion of the groundwater resource.

It is important to note that quantitative standards for both the *capacity of the available resources* and *reasonably stable groundwater levels* have not been determined for the GHGAC. Voluntary agreement terms may supplement regulations that apply to the area covered by the voluntary agreement, and they may override/change regulations upon Commission review of rules and promulgation of new rules, as applicable.

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[8] O.R.S. § 537.730(1); *see also*, *Doherty v. Oregon Water Resources Director*, 308 Ore. 543 (1989) (stating that "Overdrafting of available ground water supply is legislatively declared to affect public health, safety, and welfare. Excessive decline in ground water levels or interference between wells are also legislatively declared to affect public health, safety and welfare.")

[9] Doherty v. Oregon Water Resources Director, 308 Ore. 543 (1989).

[10] CBWP Collaborative Meeting Discussion with Justin Iverson (May 2022).

[11] OAR § 690-512-0020(1) (*note:* summarized/restated from regulatory provisions).

OAR § 690-008-0001
Definition and Policy Statements

(4) "***Declined Excessively***" means any cumulative lowering of the water levels in a ground water reservoir or a part thereof which:

(a) Precludes, or could preclude, the perpetual use of the reservoir; or
(b) Exceeds the economic pumping level; or
(c) Constitutes a decline determined to be interfering with [senior surface water]; or
(d) Constitutes a lowering of the annual high water level within a ground water reservoir, or part thereof, greater than 50 feet below the highest known water level; or
(e) Results in ground water pollution; or
(f) Constitutes a lowering of the annual high water level greater than 15% of the greatest known saturated thickness of the ground water reservoir. the saturated thickness shall be calculated using pre-development water levels and the bottom of the ground water reservoir, or the economic pumping level, whichever is shallower.

...

(6) "***Excessively Declining Water Levels***" means any ongoing lowering of the water level in a ground water reservoir or part thereof which:

(a) Precludes, or could preclude, the perpetual us of the reservoir; or
(b) Represents an average downward trend of three or more feet per year for at least 10 years; or
(c) Represents, over a five year period, an average annual lowering of the water level by 1% or more of the initial saturated thickness as determined by observation or investigation in the affected area; or
(d) Results in water quality deterioration.

(7) "***Overdraw***" means to artificially produce water, in any one-year period, from a ground water reservoir, or part thereof, at an annual rate that:

(a) Exceeds the average annual recharge to that ground water supply over the period of record; or,
(b) Reduces surface water availability resulting in:
  (A) One or more senior appropriators being unable to use either their permitted or customary quantity of surface water, whichever is less; or
  (B) Failure to satisfy an adopted minimum streamflow or instream water right with an effective date senior to the causative ground water appropriation(s).
(c) Reduces the availability of surface waters that have been:
  (A) Withdrawn with an effective date senior to the priority dates of the causative ground water appropriations; or
  (B) Restrictively classified with an effective date senior to the priority date(s) of the causative ground water appropriations.

Planning – Desired Conditions (Draft Harney Basin Groundwater Portion of Integrated Water Plan, Draft 5)

Collaborative planning efforts may also establish area-specific management goals and objectives. Collaborative planning can define additional/more specific goals and objectives for a region, which can guide cooperative efforts. Collaborative plans, unless accompanied by implementing regulations or agreements, do not have the force of law. Voluntary agreement terms could integrate all or some of the planning goals and desired conditions identified in a region-specific collaborative plan, which could provide a way to implement and enforce actions to achieve the Desired Conditions.

The Draft Harney Basin Groundwater Portion of the Integrated Water Plan (currently in development through the Harney Community-Based Water Planning Collaborative effort) includes the following desired conditions:[12]

- Sustainably managed supply of quality water for people, the economy, and the environment.

Groundwater Supply

- Recharge: Rebalance the groundwater budget by reducing the groundwater deficit (recharge is currently less than discharge by approximately 110,000 afy).
- Groundwater storage: Reduce the draw on storage by adjusting agricultural groundwater use (which use dominates discharge of groundwater, much of which was stored in the aquifer millennia ago).
- Groundwater level change: Help stabilize deep and shallow groundwater (recognizing that desired conditions for groundwater level changes depend entirely on location in the basin since changes are variable).

Groundwater Quality:

- Groundwater is of adequate quality for municipal, domestic, irrigation and stockwater purposes and to support groundwater dependent ecosystems and species.

Groundwater Uses:

- Out-of-stream groundwater uses.
- Agricultural Irrigation Use: Agricultural users reduce their groundwater use considerably, with more significant reductions in the area(s) of acute decline, while maintaining a vibrant agriculture community.
- Domestic Use: Domestic water is available at depths that are affordable to drill to assured water production, and water quality meets drinking water standards.

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[12] Harney Community-Based Water Planning Collaborative, Harney Basin Groundwater Portion of Integrated Water Plan, Draft 5 (Jun. 2022), https://docs.google.com/document/d/1QR1VklV24u5gYa85d9mEhD8m1ZCpHMMZ/edit?usp=sharing&ouid=100956322340406543697&rtpof=true&sd=true (***Note*** some of the desired conditions are summarized or restated from the Draft Plan)

- Stockwater Use: Stockwater wells have adequate quantity and quality of groundwater on a year-round basis.
- Municipal Use: The towns of Burns and Hines can maintain their consistent, safe supply of quality drinking water and ensure that supply meets both present and future needs of residences and businesses within their jurisdictions. In unincorporated areas, alternative domestic water supplies (i.e., community wells or connection to municipal supplies) does not result in increased groundwater use. *[combined/restated from Plan description]*
- Commercial and Industrial Use: Maintain sufficient supply for future commercial and industrial uses. *[restated in goal form from Plan description]*
- Burns Paiute Tribal Uses: Assure supply of groundwater quality and quantity for the Tribe.

Instream groundwater uses:

- Groundwater Dependent Ecosystems and Species: GDEs are protected, restored and maintained now and in the future by reducing the decline of groundwater and monitoring spring discharge in a consistent manner.

Management Strategies

To achieve these statutory, regulatory, and planning goals and objectives, the Harney Community-Based Water Planning Collaborative is exploring several strategies and actions. Voluntary agreements have been identified as one approach to implement some of these actions. A full list of the recommended actions that may be feasible through voluntary agreements, along with notes and considerations related to including them in a voluntary agreement, is in **Appendix A**.

The main types of actions that the Collaborative is exploring that could potentially be integrated into a voluntary agreement include:

- Data collection, monitoring, and reporting protocols and standards, and a process to review the data sources and standards and update protocols, e.g., standards, roles/responsibilities, funding, and procedures related to water rights information, groundwater diversion and use data, OpenET, hydrologic conditions, drought information, and use of information in decision-making, monitoring progress, and determining when/what additional actions may be needed.

- Enforcing existing well construction standards, groundwater use permits standards, water use limits, and other regulatory controls.

- Implementing water use limitations for existing uses, e.g., encouraging conservation measures across sectors, implementing irrigation conservation, utilizing incentives for conservation.

- Identifying and collaboratively seeking supportive funding sources for ongoing monitoring, assessment of management approaches, and implementing management strategies like alternative water delivery mechanisms, support for domestic well owners, and financial support to incentivize/offset economic impacts of reductions in groundwater use.

Voluntary Agreements

Voluntary agreements are authorized in Oregon's groundwater laws as a way to take joint actions between groundwater users in the same reservoir and the Commission to address declining groundwater levels and overdrawing of groundwater supplies.

Overview of O.R.S. §537.745

Oregon's statutory groundwater policy authorizes voluntary joint actions between groundwater users from the same groundwater reservoir and the Water Resources Commission to address impending or existing declining groundwater level decline and overdrawing of groundwater supply overdraft, whenever possible, with the Commission having authority to control groundwater use whenever such voluntary joint action is not taken or is ineffective.[13] The formal mechanism to implement such voluntary joint actions is through a voluntary agreement

[13] "Whenever wasteful use of ground water, impairment of or interference with existing rights to appropriate surface water, declining ground water levels, alteration of ground water temperatures that may adversely affect priorities or impair the long-term stability of the thermal properties of the ground water, interference among wells, thermal interference among wells, overdrawing of ground water supplies or pollution of ground water exists or impends, controlled use of the ground water concerned be authorized and imposed under voluntary joint action by the Water Resources Commission and the ground water users concerned whenever possible, but by the Commission under the police power of the state except as specified in ORS 537.796, when such voluntary joint action is not taken or is ineffective." ORS 537.525(9).

among groundwater users that is reviewed and approved by the Water Resources Commission.[14] The Commission must approve filed agreements that are "consistent with the intent, purposes and requirements" of Oregon's Groundwater Act of 1955 (O.R.S. §§ 537.505 - 537.795 and 537.992), and enforcement/civil penalties authorities and limitations (O.R.S. § 537.992), and in particular the following statutory sections:

- The Legislature's groundwater policy (O.R.S. § 537.525).
- Critical groundwater area statutes (O.R.S. §§ 537.730 - 537.740).
- Water Resources Commission powers, rules, and limitations on authority (O.R.S. § 537.780).

Read together, these three statutory references promote management of Oregon's groundwater in a manner that avoids overdrawing the resource and causing groundwater level declines. A voluntary agreement is an approach that gives local groundwater users a role in determining the methods to do so, in joint action with the Commission.

Upon approval, the agreement controls for the relevant aspects of administration and management of groundwater resources in the defined area "in lieu of a formal order or rule of the commission" until terminated. Termination may occur by lapse of time as provided in the agreement, by consent of the parties to the agreement, or by order of the Commission if the Commission finds (1) that the agreement is not being substantially complied with by the parties or (2) that changed conditions have made the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of the Groundwater Act of 1955.[15] However, if joint voluntary action either is not taken or it is ineffective at maintaining reasonably stable groundwater levels or achieving the other stated management policies, the Commission may control the use of groundwater via regulatory actions undertaken through a rulemaking process.[16] For example, regulatory actions may include designating a critical groundwater area and adopting rules to restrict/limit existing and future uses to stabilize the resource, prescribe a preference for certain uses over others, etc.[17]

Note that the Water Resources Commission has not promulgated rules to implement O.R.S. § 537.745 nor provided any other formal policy statements or guidance.

[14] ORS 537.745(1) authorizes the Commission to "encourage, promote and recognize voluntary agreements among ground water users from the same ground water reservoir."
[15] ORS 537.745(1).

[16] ORS 537.525(9), 537.730, 537.735, 537.745(1).

[17] ORS 537.730, 537.735. *See also* OWRD 2010, Water Rights in Oregon - An Introduction to Oregon's Water Laws; OWRD, Justin Iverson, *Presentation to Harney CBWP Collaborative, Groundwater Statutes and Rules* (Sept. 2020). Critical Groundwater Areas may be designated where the Commission finds certain groundwater conditions exist; notably, where groundwater levels are declining or have declined excessively in the area; there is a pattern of substantial interference between wells and/or surface water rights; or available groundwater supply is being or is about to be overdrawn.

Potential Scope and Approach Options for Voluntary Agreements

Within these guiding management policies, voluntary agreements are typically discussed as a substitute for, or supplement to, a CGWA designation and rules. Thus, existing CGWA rules can be looked to as a possible template for scope and content of a voluntary agreement. Such an agreement might include:

- Subbasin or subarea objectives, agreement purpose (i.e., to achieve reasonably stable water levels and prevent the aquifer from excessively declining)[18]
- Definitions and general requirements (i.e., what does 'reasonably stable water level' mean within the specific subbasin/subarea? What water budget/sustainable annual yield will achieve reasonably stable water level in the subbasin/subarea?)
- General requirements (i.e., defines total annual yield limitation, irrigation season limitations, restrictions on new applications for appropriation from certain areas/reservoirs within the subbasin/subarea)
- Subarea boundaries, objectives/limitations (i.e., definition of subareas within the subbasin, subarea annual yield limitations and methodologies)
- Exemptions (i.e., O.R.S. § 537.545 exempt uses, other exempt uses like schools)
- Requirements, duties, standards for existing water uses (i.e., limitations or conditions on certain existing uses like annual allotments, flow meters, uniform standards for flow meter specifications/installation/maintenance, water use reporting)
- Distribution of available annual yield (i.e., determining annual allocation based on the annual available resource, considering factors such as priority, type of use, etc.)
- Adaptive management (i.e., periodic review of progress, yield limitation, effectiveness of tools)
- Partnerships with state or federal agency programs to address economic impacts of reduced rates of groundwater pumping
- Alternative water management strategies such as increasing groundwater recharge or increasing irrigation efficiency
- Enforcement/Violation policy and procedures

A potentially important distinction between the voluntary agreements approach and the more traditional CGWA rulemaking approach that imposes regulatory requirements is the

[18] As noted above, quantitative standards for reasonably stable water levels have not been defined within the area.

ability of the voluntary agreement to bundle water management strategies. This means that a voluntary agreement can bundle regulatory curtailment of groundwater pumping with strategies to help off-set either the need for--or the economic impact of--reduced groundwater pumping. Such strategies may range from increasing groundwater recharge in hydrologically-appropriate areas to transitioning some irrigated lands to other income-producing or productive uses compatible with a water-secure and robust agricultural operation. These types of decisions regarding what are appropriate strategies to include in a voluntary agreement are necessarily determined by local hydrologic conditions, the needs and preferences of water users, and the collaborative work and dialogue among the community of people engaged in creating the voluntary agreement.

While much of the discussion related to voluntary agreements has typically centered around regulatory requirements because a voluntary agreement must meet the minimum floor of reversing groundwater decline, a voluntary agreement can also create a powerful vehicle for marshalling state and federal resources to address water data shortcomings, economic impacts on agricultural irrigators, or other community needs. Voluntary agreements simply provide a locally-driven approach to developing the requirements as an alternative to the traditional, narrower Commission rulemaking process. In either approach, the requirements are implemented and enforced by the Department upon approval (of a voluntary agreement) or promulgation (of regulatory restrictions). The opportunity that a voluntary agreement presents is to bundle water management strategies informed by water data with a variety of locally-developed approaches to implement reduced groundwater pumping in ways that can maintain agricultural incomes and sustain rural communities.

Bundling a set of actions together, even where one action may not otherwise require Commission approval, could help identify and coordinate funding and technical assistance among state and federal agencies, local communities, and affected agricultural producers. In the case of the San Pedro Riparian National Conservation Area, faced with significant water management challenges but no specific driving regulatory requirement, local governments and

federal agencies agreed to a coordinated monitoring and adaptive management process to plan, fund, and implement actions to meet shared water objectives. In the case of Mojave Basin, stakeholders were able to develop and implement a groundwater allocation marketing framework that facilitated new water uses with water right changes in a flexible way without increasing water demand, resulting in a more workable process that the state was otherwise not authorized to do itself. (See Appendix B for additional information on these case studies.) A voluntary agreement that includes a suite of programs or strategies to help address the economic impacts on agricultural irrigators or rural communities, bundled with regulatory tools that do require Commission approval could not only help transition to sustainable groundwater use, but may be persuasive that further Commission-driven regulatory action is not needed.

Legal Elements, Constraints and Considerations

Geographic Scope

Many stakeholders have raised the question of the appropriate and legally supportable geographic scope for a potential voluntary agreement under O.R.S. § 537.745. The statute states that "[t]he voluntary agreement must be among users of the *same ground water reservoir*."[19] *Ground water reservoir* is defined within the same chapter to mean "a designated body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred."[20] This statutory term is arguably inexact, given the uncertainties inherent in defining boundaries for hydrogeological systems, particularly those without clear structural boundaries.

Interpretation of this term could potentially generate different boundaries for defining ground water reservoirs. Boundaries could potentially involve a mix of hydrologic, geologic, and administrative factors (i.e., areas of high concentrations of groundwater withdrawals), but they should have a firm basis in hydrogeologic or physical boundaries to be the most legally supportable. The context of the Groundwater Act, legislative history and general maxims of statutory construction may be looked to in interpreting the intended legislative intent and meaning of the term "ground water reservoirs". Elsewhere in the Groundwater Act, the term "ground water reservoir" is used to refer to a distinct source of groundwater, typically for the purposes of determining and administering the relative rights from each distinct source.[21] Throughout Oregon's water laws and regulations there are other terms also used to refer to distinct sources of groundwater or areas of groundwater use, such as "aquifer" [22] and "ground water basin or reservoir."[23]

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[19] ORS 537.745(1) (emphasis added)
[20] ORS 537.515(6)
[21] See, i.e., ORS §§ 537.665 (Investigation of ground water reservoirs; defining characteristics and assigning names and numbers); 537.675 (determination of rights in several reservoirs or of critical ground water area in same proceeding).
[22] See, i.e., OAR 690-200-0050. Note that this section specifically only applies to well construction standards in Chapter 690, Division 200, but is provided here as an example of a general definition used by the Department in other contexts. See also, Water Resources Commission Order 55-1088, *In the Matter of the Withdrawal of Aquifers Within the Designated Woodland, Edison, Victor Point Area* (2001).
[23] See, i.e., ORS 537.135 (relating to the use of water stored/recharged in any "ground water basin or reservoir")

Use of these various terms over time follows our growing understanding of groundwater science. Groundwater is not confined in perfectly contained underground 'rivers,' or 'reservoirs' as we think of them in the surface water context. Groundwater and surface water are different parts of a hydrological cycle which involves "the continuous movement of water above, on, and below the surface of the Earth."[24] This matters because it supports a variety of considerations being incorporated into the determination of the boundaries for a groundwater reservoir — not only one type of hydrogeologic boundary matters, but also other hydrologic, geologic and administrative considerations.

Defining a smaller boundary area for the ground water reservoir in a given voluntary agreement could help address very localized areas of concern. Smaller boundaries can have the dual benefit of limiting the number of parties that would be required to participate in the voluntary agreement and limit the number of restrictions placed on other parties around the broader basin or area. (See the Kansas Sheridan LEMA case study in **Appendix B**.)

To provide legal support for a limited, sub-area geographic scope, there should be a strong basis in hydrogeologic considerations, but other factors could also be used, such as hydrogeologic areas with different responses to groundwater pumping.[25] All factors influencing the definition of the groundwater reservoir for purposes of a voluntary agreement should be thoroughly explained, particularly how they relate to and advance the Groundwater Act policies and any relevant overarching basin- or area-specific management objectives.

The case studies in **Appendix B** describe a variety of approaches to geographic scope taken in other places, noting relevant lessons of the approach in relation to Oregon's regulatory framework and the Harney Collaborative's identified strategies.

Although a variety of different groundwater reservoir boundary options may potentially be legally supportable, there could still be some risk of a legal challenge. Ensuring that the voluntary agreement and the order approving the agreement include a thorough description of how the agreement (and the boundary definition) are consistent with and advance the statutory policy for voluntary agreements, the overarching GHVGAC management objective, and the state's groundwater policies — importantly, how it addresses overdraw and/or groundwater level declines — should help mitigate the risk of a successful challenge on this point.

Subject-Matter Scope

Another common question is about the appropriate and legally supportable subject-matter scope for a potential voluntary agreement. The statute does not define or limit the potential subject matter scope of voluntary agreements, rather the statute provides open-ended guidance that the "Commission may encourage, promote and recognize voluntary agreements

[24] Winter, T.C., Harvey, J.W., Franke, O.L., and Alley, W.M., 1998, *Ground water and surface water—A single resource*: U.S. Geological Survey Circular 1139, 79 p. 3.

[25] For a description of the groundwater-related physical characteristics of the Harney Basin area, see generally Gingerich, S.B., Johnson, H.M., Boschmann, D.E., Grondin, G.H., and Garcia, C.A., 2022, Groundwater resources of the Harney Basin, southeastern Oregon: U.S. Geological Survey Scientific Investigations Report 2021–5103, 118 p., https://doi.org/10.3133/sir20215103.

among ground water users," the "Commission shall approve the agreement" if it is executed in writing, filed with the Commission, and is "consistent with the intent, purposes and requirements" of Oregon's groundwater laws, and that such approved agreements "shall control in lieu of a formal order or rule of the commission."[26]

These statutory sections allow for a variety of different water management strategies, groundwater recharge elements, community water system planning and management, and agricultural irrigation transition support in a voluntary agreement. These programs and strategies can be bundled in a voluntary agreement with different types of restrictive/corrective control measures that are used in regulations for other basins. Commission approval would be needed for voluntary agreements with these types of bundled water management strategies and regulatory controls because they have implications for how OWRD administers and enforces its Groundwater Act authorities. These "safe bet" options, or time-tested regulatory/restrictive controls already implemented in other parts of Oregon, include:

- Defining specific management objectives, i.e., sustainable annual yield or reasonably stable aquifer levels, and methodology for determining[27]
- Defining certain uses exempt from corrective controls[28]
- Limiting irrigation use to a maximum annual acre-foot per acre duty[29]
- Limiting or restricting existing uses based on a sustainable annual yield allocation[30]
- Establishing mitigation requirements to offset impacts of groundwater pumping[31]
- Requiring water meters, withdrawal records, and reporting by existing users to OWRD[32]

Appendix B describes some other approaches implemented outside of Oregon, such as the groundwater trading framework used in the Mojave Basin. A voluntary agreement could also include a variation on restrictive controls already used in Oregon.

A variety of actions to help support the transition to sustainable groundwater use for both rural communities and agricultural irrigators could be implemented by a voluntary agreement do not require Commission approval under O.R.S. § 537.525 because they do not require OWRD's Groundwater Act authorities to administer. However, they may be useful to

[26] ORS 537.745(1).
[27] i.e., Butter Creek Critical Ground Water Area, OAR 690-507-0650; 690-507-0660
[28] i.e., Stage Gulch Critical Ground Water Area, OAR 690-507-0775
[29] i.e., Amity Hills/Walnut Hill Ground Water Limited Area, OAR 690-502-0210; Chehalem Mountain, Eola Hills and South Salem Hills Ground Water Limited Areas, OAR 690-502-0200; others
[30] i.e., Butter Creek Critical Ground Water Area, OAR 690-507-0670
[31] i.e., Deschutes Basin Groundwater Mitigation Rules, OAR 690-505-0605 (note, however, that this example only contemplates credit generation through surface water conservation; conservation of groundwater in-place is an outstanding question).
[32] i.e., Water Resources Commission Special Order Vol 10 Pg 216, Cow Valley (1959)

include in a voluntary agreement pursuant to O.R.S. § 537.525 as a way to help transition to the groundwater sustainability underpinning the regulatory requirements. Some examples of state and federal programs, action, and transition support could include:

- Conservation Stewardship Program enrollment for payments for practices that reduce reliance on groundwater pumping while increasing soil health, establishing native grasses, enhancing bird habitat or other conservation outcomes.

- Enrollment of some irrigated acres into a Conservation Reserve Enhancement Program that could provide a per-acre payment for transition to a non-agricultural use such as enhanced fish or wildlife habitat or for reduced irrigation (i.e., CREP program eligibility requirement that participant must be a party to the voluntary agreement that also institutes some level of regulatory corrective control)/

- Rural Development programs to support transition to less water-intensive crops such as lentils or barley, or generation of renewable energy compatible with agricultural operations/

- Town or county residential, building and/or industrial water conservation programs (e.g., parties agree to jointly seek funding for and encourage conservation upgrades).

- Stormwater and/or wastewater management and recharge projects (i.e., consolidating seasonal stormflows for recharge in target impact areas, with coordinated funding and implementation between the parties).

As discussed above, there are benefits and challenges to the different subject-matter scope options for a potential voluntary agreement. Determining the appropriate subject-matter scope will involve weighing legal as well as other interrelated factors, i.e.:

- Legal supportability/challenge risk. (Are the actions well-understood, already utilized in other places? Are they controversial?)

- Stakeholder willingness. (Is there enough financial support and technical assistance available to transition to agricultural operations built on groundwater sustainability?)

- Ease of administration. (Are the actions new, complicated, expensive?)

The case studies in **Appendix B** describe a variety of approaches to subject-matter scope taken in other places. The discussion of the case studies in Appendix B note relevant lessons of the approach in relation to Oregon's regulatory framework and call out parallels to the Harney Collaborative's identified strategies.

Although Oregon's groundwater statutes authorize a wide variety of different actions that could potentially be included in a voluntary agreement, there could still be some risk of challenge to a voluntary agreement. To help insulate a voluntary agreement from the risk of a legal challenge, the voluntary agreement and the order approving the agreement should include a thorough description of how the agreement (and the specific actions included) are consistent with and advance the statutory policy for voluntary agreements, the overarching GHVGAC management objective and the state's groundwater policies. This means that the voluntary agreement should be able to demonstrate that its particular combination of water management strategies, agricultural transition support, water data collection and analysis, rural community water system modernization, groundwater recharge actions, restrictive/corrective controls, and monitoring and enforcement protocols together show a likelihood of addressing overdraw and groundwater level declines across the basin.

Parties

The voluntary agreement statute is not explicit regarding the required parties to a voluntary agreement. The statute generally refers to voluntary agreements as being "among ground water users from the same ground water reservoir."[33] Stakeholders have asked whether agreement among *all* ground water users is required or if it may be some other number, e.g., a majority. Given that the statute does not specifically state the required parties, the element is arguably inexact and open to agency interpretation of the legislative policy.

Considering the text and context of the statute and constitutional due process considerations, the most legally supportable interpretation of the required parties is likely *all* ground water users within the defined area. However, it could potentially also be legally supportable to interpret the requirement to be *all interested/affected* ground water users. Depending on the subject-matter scope of the agreement, that interpretation could mean that a subset of ground water users within the area could join as parties to a voluntary agreement if the terms of the agreement do not affect (place new regulatory restrictions on) other ground water users.

Due process requires that a person be given the opportunity to be heard before being deprived of a property or liberty interest.[34] Although there is no set rule for how the opportunity to be heard should be given,[35] there should be some level of notice and opportunity to participate before restrictive/corrective controls are instituted. In the context of a voluntary agreement, voluntarily signing onto the agreement is likely sufficient to assure a court that a groundwater user has had sufficient notice and opportunity to be heard. However, if the terms of the agreement could affect/injure the water rights of an individual that has not signed onto the agreement, there are likely due process issues.

There potentially is some flexibility to develop voluntary agreements that only apply to certain groundwater users. One hypothetical example could be implementing more stringent water use restrictions only on irrigation water users within a certain geographic area that is

[33] ORS 537.745(1)
[34] *See generally, Matthews v. Eldridge*, 424 US 319 (1976); *Skinner v. Jordan Valley Irr. Dist.*, 137 Ore. 480, 300 P. 499 (1931) (internal citations omitted).
[35] *Matthews v. Eldridge*, 424 US 319 (1976).

experiencing high rates of drawdown due primarily to irrigation. The geographic and subject matter scope would limit the number of impacted groundwater users who would be required parties (e.g., excluding domestic and municipal uses inside the area of high drawdown, as well as irrigation uses outside the area of high drawdown).

Voluntary agreements could potentially take a "management framework" approach as another way to implement limited-applicability tools. Through agreement of as many groundwater users as possible, a voluntary agreement could be developed that incorporates the management objective and a framework for taking subsequent management actions. For example, an agreement could (1) establish the area target for reduced water use (explaining how the target advances the broader GHVGAC management objective) and (2) establish a procedure to review and approve exhibits to the agreement for participation in an agreement-defined conservation program. The agreement could lay out conservation program eligibility and participation requirements; participants must agree to the regulatory requirement (e.g., an annual irrigation limit) but may choose a variety of methods to achieve it (rotational or seasonal fallowing, changes to crops that require less irrigation, offset generated by converting from septic to consolidated wastewater treatment with effluent recharge, etc.) and may access incentives to do so (i.e., CREP, ability to do year-to-year storage/carry over unused water to the next year, supportive funding for septic conversion, etc.).[36]

These types of limited-applicability tools could be a way to pilot voluntary agreements by working within a smaller group of people to reach consensus. The case studies in **Appendix B** describe a variety of approaches to determining the appropriate required parties taken in other places, noting relevant lessons of the approach in relation to Oregon's regulatory framework and the Harney Collaborative's identified strategies.

A voluntary agreement could potentially include a variety of non-regulatory management tools in combination with regulatory requirements, in which case relevant other parties might also need to be involved. As a hypothetical example, an agreement might include both new water conservation requirements and regional recharge infrastructure. The combination of discharge and recharge actions together could address overdraft issues and reduce the demand management burden on groundwater users. In this example, groundwater users are required parties under the statute, and optional parties for implementing recharge infrastructure might include sewer/wastewater providers and county flood control districts. Where a nonprofit or other party is committing to contribute technical and/or financial support for implementing any aspect of the monitoring or management actions, those parties may be required parties in the voluntary agreement (or a supplement thereto).

Many stakeholders can potentially be involved in the *development* of a voluntary agreement; however, the required signatory parties will be those entities that are *subject to the terms and obligations* contained in the voluntary agreement.

[36] One example which relates to a very different regulatory context and source of water is the Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement. Water rights holders agreed to allow others to leave water unused and each would forbear on their right to take any unused amount. The conserving party must meet certain requirements to participate, and are incentivized to participate because of the management flexibility value in being able to store water from year to year without risk of a junior or other downstream water user taking the unused water.

Even with wide support and participation of groundwater users as parties in a voluntary agreement, there could still be some risk of challenge. The risk of a successful challenge may be mitigated by ensuring that the voluntary agreement and the order approving the agreement each include a thorough description of how the agreement (and determination of appropriate parties thereto) is consistent with and advances the statutory policy for voluntary agreements, the overarching GHVGAC management objective, and the state's groundwater policies. This means that a voluntary agreement should be able to demonstrate that its particular combination of groundwater users and other parties and the actions they are agreeing to undertake together show a likelihood of addressing overdraw and groundwater level declines across the basin.

Procedure

The voluntary agreement statute includes limited description of the procedures for submission and review of a voluntary agreement. The statute requires that an agreement be "executed [by ground water users] in writing and filed with the commission."[37] Once filed, the Commission "*shall* approve the agreement" if it meets those form requirements (groundwater users execute the agreement in writing and file with the Commission) and if it "is consistent with the intent, purposes and requirements of [the Groundwater Act], and in particular O.R.S. §§ 537.525, 537.730 to 537.740 and 537.780."[38] These call-out provisions include:

- Oregon's statutory groundwater policy (O.R.S. § 537.525).
- Critical ground water area designation, rules and notice (O.R.S. § 537.730).
- Rules designating critical ground water area (O.R.S. § 537.735).
- Filing rules designating critical ground water area (O.R.S. § 537.740).
- Powers of Water Resources Commission; rules; limitations on authority (O.R.S. § 537.780).

Given that the statute does not specifically describe any other details of review, approval or implementation, the element is arguably inexact and open to agency interpretation of the legislative policy. Text, context, and legislative history give little additional guidance on procedure. Unlike agency rulemaking proceedings, which are legislative in nature, the voluntary agreements statute is structured like an administrative decision with its "check-the-box" requirements. However, each of the elements involve substantive determinations, requiring the Commission to determine consistency of a voluntary agreement with all aspects of Oregon groundwater law and policy. If the Commission finds that the voluntary agreement is not consistent in one or more ways with Oregon groundwater policy, it must explain its reasoning and reject the agreement.

A challenge of the Commission's decision to approve or disapprove an agreement would be likely to be based on an argument that the Commission did not adequately explain its

[37] ORS 537.745(1)
[38] ORS 537.745(1) (emphasis added).

decision.[39] To mitigate the risk of such challenges, the Commission could undertake a rulemaking in advance of considering any particular voluntary agreement in order to clarify and provide additional detail to ensure that a voluntary agreement meets the form and consistency requirements of the statute. However, even with additional regulatory procedures for review, approval and implementation of a voluntary agreement, there could still be some risk of challenge. The risk of a successful challenge may be mitigated by ensuring that the voluntary agreement and the order approving the agreement each include a thorough description of how the agreement (and the process for review, approving, and implementing it) is consistent with and advances the statutory policy for voluntary agreements, the basin-specific management objective (here, the GHVGAC objective), the state's groundwater policies (specifically, addressing overdraft and groundwater level declines), and the Administrative Procedures Act.

Effect and Term

The statute states that an approved voluntary agreement "shall control in lieu of a formal order or rule of the Commission" under the Groundwater Act.[40] The agreement will remain in force until:

- Terminated by the lapse of time as provided in the terms of the agreement; or
- By consent of the parties to the agreement; or
- By order of the Commission if the Commission finds, after investigation and public hearing upon adequate notice, that the agreement is not being substantially complied with by the parties thereto or that changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of [the Groundwater Act].[41]

In other words, a voluntary agreement can define a specific term of years for which it governs groundwater management or it can be structured to continue indefinitely unless terminated by the parties. The Commission can also terminate the voluntary agreement (after investigation, a hearing and notice) if the voluntary agreement is not fulfilling its stated purpose of leading to sustainable groundwater management. The terms of the agreement will apply to all signatory parties throughout the term of the agreement.[42]

Including clear indicators of progress in relation to the management objectives, with procedures for monitoring, reporting, and assessing when and what additional actions may be needed, with clearly defined roles and responsibilities related to carrying out those procedures,

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[39] ORS 183.482(c) ("The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.")

[40] ORS 537.745(1)
[41] ORS 537.745(1)

[42] If there is a change in land/water rights ownership, the new owner of the water rights would likely need to join the Voluntary Agreement to be subject to its terms and benefits. Additional research and analysis could be undertaken related to other potential options for addressing succession in interests.

can provide a means to demonstrate whether the agreement is being complied with and is continuing to meet the intent of the agreement and the Groundwater Act.[43]

Conclusions

The voluntary agreements statute provides minimal, formal requirements for the process and substance of voluntary agreements. In basic terms, a voluntary agreement must (1) be between groundwater users of the same groundwater reservoir, (2) be consistent with Oregon's groundwater laws and policies, and (3) be in writing and filed with the Commission. Upon approval, the agreement controls in lieu of a formal order or rule of the Commission until terminated pursuant to (a) agreement terms, (b) the consent of the agreement parties, or (c) an order of the Commission if the Commission finds that the agreement is not working to achieve its purpose.

Within these basic requirements, there is likely a wide variety of options as to the geographic scope and subject matter scope of a specific voluntary agreement. A voluntary agreement could, for example, establish management objectives for specific areas of concern, informed by relevant statutory management objectives and local hydrologic, environment and community considerations. (Agreements undertaken in specific basins in Arizona, Nevada and California could provide model terms.) A voluntary agreement could also potentially integrate both restrictive/corrective controls and flexible, incentive-based options in a combined package to balance hydrologic, community and economic impacts and encourage groundwater user buy-in. (Agreements undertaken in specific basins in Nevada and California could provide model terms.)

Given the uncertainties around substantive content and procedures for implementing a voluntary agreement, there are a variety of legal risks that an agreement may face. On one hand,

[43] The SPRNCA case study in **Appendix B** provides an example of detailed adaptive management procedures, defined indicators to measure progress, and commitments to continue joint monitoring and modeling activities to ensure effectiveness of the collaborative plan.

voluntary agreements may face challenges from groundwater pumpers that have elected not to join a voluntary agreement. This occurred in basins in Nevada and California, with the agreements and plans ultimately upheld by the reviewing court.[44] On the other hand, the Commission must be able to approve a filed voluntary agreement based on the statutory criteria requiring a voluntary agreement to address overuse and groundwater declines, and the Commission's approval has to have a sufficient basis or it may face a challenge from the Attorney General's office or another branch of government. There is also likely to be counterpressure around the robustness of a voluntary agreement — some stakeholders may challenge an agreement for going too far, while others may challenge it for not going far enough to satisfy statutory requirements and management obligations.

There are several open questions about how far a voluntary agreement in Oregon could potentially go in relation to Oregon's groundwater laws and regulatory structure. However, a voluntary agreement is in the best position possible to be legally supportable and successful if it does the following things:

- Defines a specific management area, thoroughly explaining how it is based primarily on hydrogeologic characteristics and explaining how/why other factors inform the boundaries, as applicable.

- Includes as parties to the agreement all groundwater users within the defined area that will be affected by any restrictive requirements.

- Includes actions and commitments that will make an improvement in the hydrologic trend line over time.

- Includes a thorough explanation of how the terms of the agreement (area boundary and actions and commitments of the parties) are consistent with the state's groundwater laws and policies, how they will advance overarching management objectives of assuring maintenance of reasonably stable groundwater levels and preventing depletion of the groundwater resource.

The details of these components are hydrologically and legally technical and involve consideration of a variety of highly local values. While this report suggests consideration of a broad range of restriction controls bundled with different approaches for supporting agricultural transitions, community water system modernization and groundwater recharge strategies, in the end local water users and community members will determine what path forward works for their basin. Identifying and evaluating priority locations; strategies; and hydrologic, social and environmental values will be important next steps in exploring the use of voluntary agreements to implement management strategies in the Harney Basin.

[44] In Nevada, based on specific aspects of Nevada law, the court determined that the non-joining groundwater users were subject to the terms of the management plan. In California, the court determined that the non-joining groundwater users must be exempted from the terms of the management agreement; however, because of the incentives offered as part of the agreement, all of the non-joining groundwater users eventually opted into the agreement over the following two decades of implementation. More information about each of these case studies is available in **Appendix B**.

Appendix A - List of Potential Harney Basin Strategies

The table below contains recommended actions put forward by the Harney Community-Based Water Planning Collaborative in the fifth Draft Groundwater Plan Appendix F: Implementation Framework. The table has been modified to only include Recommended Actions that were noted as "yes," "possibly" or "?" for "Feasible Through a VA" (voluntary agreement) and includes the respective Management Concerns, Strategy to Address Critical Issues and Critical Issues. Comments are from the report authors and are related to the potential implementation of the Recommended Action through a voluntary agreement approach.

Recommended Action*	Management Concerns	Strategy to Address Critical Issue	Critical Issues**	Feasible Through a VA	Comments***
Ask OWRD if there are short-horizon actions that can be taken as a priority to reduce water use in areas of serious groundwater decline	Overallocation / Groundwater Level Declines, Water Security for Groundwater Users	Recommend to OWRD that it take actions in the short term to reduce the amount of groundwater being pumped for irrigation, including permit compliance	1, 11	?	VAs could be used for implementing short-term actions to reduce groundwater pumping for participating groundwater users.
Ask OWRD if there are short-horizon actions that can be taken to reduce water use	Overallocation / Groundwater Level Declines, Water Security for Groundwater Users	Recommend to OWRD that it take actions in the short term to reduce the amount of groundwater being pumped for irrigation, including permit compliance	1, 11	?	VAs could be used for implementing short-term actions to reduce water use for participating groundwater users.
Ask OWRD to add metering and reporting requirement as rule	Overallocation / Groundwater Level Declines, Water Security for Groundwater Users	Recommend to OWRD that it take actions in the short term to reduce the amount of groundwater being pumped for irrigation, including permit compliance	1, 11	yes?	VAs could be used for implementing metering and reporting standards for participating groundwater users.
Ask OWRD to enforce existing permit conditions	Overallocation / Groundwater Level Declines, Water Security for Groundwater Users	Recommend to OWRD that it take actions in the short term to reduce the amount of groundwater being pumped for irrigation, including permit compliance	1, 11	yes	Enforcement of permit conditions is an existing OWRD authority. VAs could be used for encouraging OWRD to exercise this existing authority.
CBWP Collaborative advocate for OWRD to interpret groundwater use data, report to the community and interested stakeholders, and utilize information in management actions	Groundwater Governance and Accountability, Data and Information Gaps	Install accountable water measurement devices on all non-exempt groundwater points of diversion; To develop appropriate reporting procedures for metered non-exempt groundwater points of diversion	6, 8, 9, 10, 14, 15	yes	VAs could be used for defining and implementing data collection and reporting and ensuring information is used to inform management actions.
CBWP partners, such as The Nature Conservancy, secure funding for a scoping assessment to determine potential implementation pathways of a voluntary	Overallocation / Groundwater Level Declines	Explore and consider a voluntary groundwater market approach; Review feasibility study (Upon review, the	1, 2, 3	possibly	VAs could be a groundwater-user-led mechanism for bringing in additional partners and funding for actions that could advance VA and area management goals.

* The first five columns (Recommended Action, Management Concerns, Strategy to Address Critical Issue, Critical Issues, and Feasible Through a VA) are from the Draft Groundwater Plan Appendix F: Implementation Framework. This table only contains the Recommended Actions identified in the Implementation Framework with the following answers to Feasible Through a VA: yes, possibly/possible, and ?

** Critical Issues are listed by number at the end of Appendix A

*** Comments from the report authors related to potential implementation of the Recommended Action through a Voluntary Agreement.

Recommended Action*	Management Concerns	Strategy to Address Critical Issue	Critical Issues**	Feasible Through a VA	Comments***
groundwater market approach in the Harney Basin		Collaborative should make a recommendation to implement or not)			
Collect and summarize information to help understand how the Harney Basin is affected by and responds to the impacts of drought events, as related to water supply and use.	Overallocation / Groundwater Level Declines, Data and Information Gaps, Climate Change Effects on Groundwater	Develop a plan to help mitigate and respond to the impacts of drought on the basin's groundwater.	2, 25, 30, 31	possibly	VAs could be a groundwater-user-led approach for defining and implementing data collection and analyses supportive for informing water use context and management actions.
Compare OpenET data with OWRD-approved water meter information to assess the effectiveness of OpenET, to potentially monitor water use in fields that are irrigated by temporarily broken meters, and to potentially monitor water use for points of diversion that did not have appropriate plumbing (in consultation with a technical committee described in Section 1, Strategy 11). Assess the ability of OpenET to measure water use of unmetered PODs adjacent to metered PODs; use that information to adaptively manage the implementation of the metering and reporting strategy.	Overallocation / Groundwater Level Declines	Explore how OpenET or other remote-sensing applications could be used as a tool to assess water use	2	possibly	VAs could be used for defining and implementing data collection for informing water use context and management actions.
Demonstrate successes of irrigators reducing groundwater use for others to learn and to be encouraged (e.g., "demonstration farms").	Overallocation / Groundwater Level Declines	Implement irrigation conservation measures to help slow the rate of decline and assist in achieving reasonably stable groundwater levels	1	yes	VAs could be used for implementing smaller-scale demonstration projects.
Develop a basin plan with specific actions and tools to help mitigate and respond to meteorological drought impacts. Develop this plan in conjunction with, or as part of, the Harney County's Natural Hazards Mitigation Plan, based on the Harney Community-Based Water Plan, and in consideration of other drought plans from similar basins (e.g., temporary fallowing programs for groundwater irrigated fields during times of drought).	Overallocation / Groundwater Level Declines, Data and Information Gaps, Climate Change Effects on Groundwater	Develop a plan to help mitigate and respond to the impacts of drought on the basin's groundwater.	2, 25, 30, 31	possibly	VAs could be used for implementing a basin plan with specific actions and tools.
Develop a strategy and pursue funding with community support for alternative water delivery mechanisms where feasible	Water Security for Groundwater Users	Identify feasible alternative water delivery mechanisms to meet exempt water supply needs of rural residents	11	possibly	VAs could be a groundwater-user-led mechanism for bringing in additional partners and funding for actions that could advance VA and area management goals.
Enforce well construction standards	Overallocation / Groundwater Level Declines, Groundwater	Work with OWRD to enact improvements in its enforcements of water rights and well	1, 2, 8, 9, 10, 22, 26, 27	yes	Enforcement of well construction standards is an existing OWRD authority. VAs could include

Recommended Action*	Management Concerns	Strategy to Address Critical Issue	Critical Issues**	Feasible Through a VA	Comments***
	Governance and Accountability, Data and Information Gaps	construction standards in a publicly transparent manner			provisions for encouraging OWRD to exercise this authority.
Ensure all permits conditions and water use limits are met	Overallocation / Groundwater Level Declines, Groundwater Governance and Accountability, Data and Information Gaps	Work with OWRD to enact improvements in its enforcements of water rights and well construction standards in a publicly transparent manner	1, 2, 8, 9, 10, 22, 26, 27	possibly	Enforcement of permit conditions and water use limits is an existing OWRD authority. VAs could include provisions for encouraging OWRD to exercise this authority.
Ensure all water right data, including water use data as required, is up to date and publicly available	Overallocation / Groundwater Level Declines, Groundwater Governance and Accountability, Data and Information Gaps	Work with OWRD to enact improvements in its enforcements of water rights and well construction standards in a publicly transparent manner	1, 2, 8, 9, 10, 22, 26, 27	yes	VAs could be used for establishing data collection and reporting protocols.
Ensure the water use information reported to OWRD is available to the certificate/permit-holder	Groundwater Governance and Accountability, Data and Information Gaps	Install accountable water measurement devices on all non-exempt groundwater points of diversion; To develop appropriate reporting procedures for metered non-exempt groundwater points of diversion	6, 8, 9, 10, 14, 15	yes	VAs could be used for establishing data reporting protocols.
Explore ways to generate funding for domestic well owners such as how an insurance fund, where users pay a fee, that could be administered locally	Overallocation / Groundwater Level Declines	Provide financial and technical solutions to domestic well users experiencing declines in groundwater quantity/quality due to declining groundwater levels	2	yes	VAs could be a mechanism for funding and implementing solutions that support domestic well owners.
Identify and prioritize incentives (like CREP) to reduce groundwater use in areas where it would otherwise impact GDEs	Overallocation / Groundwater Level Declines, Ecosystem Health and Protection	Implement actions that protect and conserve GDEs	2, 4, 5	possibly	A VA is likely not required to implement this action. However, VAs could be a mechanism for implementing incentives to reduce groundwater use. Packaging incentives and/or compensation options to mitigate economic hardship for groundwater users can help balance restrictive measures that may also be included in a VA.
Identify and prioritize strategies and approaches to managing groundwater and present them to the RAC	Groundwater Governance and Accountability	Work with OWRD to ensure that Collaborative members are represented and Collaborative developed strategies are presented to the RAC when considering groundwater management rulemaking	7	yes	VAs could be used to implement strategies in addition to or in lieu of groundwater management rulemaking.
Identify funding sources to conduct an inventory of unused wells	Groundwater Governance and Accountability, Data and Information Gaps	Develop a well clean up and safe harbor program	8, 9, 10, 22	yes	VAs could be a mechanism for collaboratively working to identify funding for and implement an unused well inventory.

Recommended Action*	Management Concerns	Strategy to Address Critical Issue	Critical Issues**	Feasible Through a VA	Comments***
Identify incentives for adopting more efficient technology (e.g., finding equipment grants to help convert to more efficient technology, such as Natural Resources Conservation Service's Environmental Quality Incentives Program, Bonneville Power Administration/Harney Electric Cooperative, Oregon Trail Electric Co-Op).	Overallocation / Groundwater Level Declines	Increase use of efficient irrigation technology	1	yes	A VA is likely not required to implement this action. However, VAs could be a mechanism for implementing incentives for adopting efficient technology. Packaging incentives and/or compensation options to mitigate economic hardship for groundwater users can help balance restrictive measures that may also be included in a VA.
If it is confirmed by the appropriate technical agency experts that metering data is unreliable for determining water use from a specific well, convene a technical committee of technical agency experts and stakeholders (i.e., OpenET founders, OWRD, USGS, others). The technical committee will determine a process to achieve water use measurement either through requiring changes in plumbing or through other water use measurement (such as OpenET) that meets the purpose of the data; for any PODs determined by the committee to use a significant amount of water, require changes in plumbing and installation of a meter. Sources of cost-share and incentive funding will be sought for cases requiring changes in plumbing.	Groundwater Governance and Accountability, Data and Information Gaps	Install accountable water measurement devices on all non-exempt groundwater points of diversion; To develop appropriate reporting procedures for metered non-exempt groundwater points of diversion	6, 8, 9, 10, 14, 15	yes	VAs could be used for establishing a technical committee and process to review and update (as needed) data collection protocols.
Implement the conservation implementation strategy by NRCS to reduce groundwater use by 3000 acre-feet/year.	Overallocation / Groundwater Level Declines	Implement irrigation conservation measures to help slow the rate of decline and assist in achieving reasonably stable groundwater levels	1	yes	VAs could be a mechanism for funding and implementing solutions to conserve groundwater.
Improve water resource data collection, interpretation, and information sharing in the Harney Basin	Water Security for Groundwater Users, Data and Information Gaps	Build community understanding of water resource conditions in the Harney Basin	11, 12, 16	yes	VAs could be used can be a groundwater-user-led approach for defining and implementing data collection and reporting protocols and a process for utilizing information to inform water use context and management actions.
In the GHVGAC, require near-real-time, accurate, OWRD-approved groundwater meters be installed on all groundwater points of diversion, except for exempt uses, and report water use from each meter annually to OWRD. Meters should utilize digital data loggers (e.g., USB-compatible) to reduce reporting burden on water users and ensure consistency.	Groundwater Governance and Accountability, Data and Information Gaps	Install accountable water measurement devices on all non-exempt groundwater points of diversion; To develop appropriate reporting procedures for metered non-exempt groundwater points of diversion	6, 8, 9, 10, 14, 15	yes	Establishment of metering/measuring and reporting standards is an existing OWRD authority. VAs could include provisions for encouraging OWRD to exercise this existing authority.

Recommended Action*	Management Concerns	Strategy to Address Critical Issue	Critical Issues**	Feasible Through a VA	Comments***
a) For all those areas where near-real-time meters will not be practical due to technological limitations, the department will be requested to provide a list of approved alternative meters/approaches that could be implemented.					
Include a recommendation for enforcement in the integrated plan	Overallocation / Groundwater Level Declines, Groundwater Governance and Accountability, Data and Information Gaps	Work with OWRD to enact improvements in its enforcements of water rights and well construction standards in a publicly transparent manner	1, 2, 8, 9, 10, 22, 26, 27	yes	Enforcement of well construction standards and permit conditions is an existing OWRD authority. VAs could include provisions for encouraging OWRD to exercise this existing authority.
Local-scale planning protections for conserved water, such as voluntary agreements and/or contractual obligations, are established for water users in the Harney Basin. These agreements or contracts could be entered into between or among private parties, OWRD, and/or a local governance body.	Overallocation / Groundwater Level Declines, Water Security for Groundwater Users	Research policy or planning mechanisms to ensure that conserved water remains in the ground	1, 2, 13?	possible	VAs could potentially be a mechanism for protecting conserved water; however, because conserved water has implications related to statutory provisions and consequences of 'nonuse' of a water right, additional research and analysis is likely needed to develop a legally appropriate approach to doing so.
Provide incentives for irrigators who can prove reduction in their groundwater use.	Overallocation / Groundwater Level Declines	Implement irrigation conservation measures to help slow the rate of decline and assist in achieving reasonably stable groundwater levels	1	yes	VAs could be a mechanism for providing incentives to reduce groundwater use. A voluntary agreement could bundle regulatory curtailment of groundwater pumping with strategies to help off-set either the need for--or the economic impact of--reduced groundwater pumping.
Request OWRD collect data on illegal water use and produce an annual report regarding progress/implementation of RA above	Overallocation / Groundwater Level Declines, Groundwater Governance and Accountability, Data and Information Gaps	Work with OWRD to enact improvements in its enforcements of water rights and well construction standards in a publicly transparent manner	1, 2, 8, 9, 10, 22, 26, 27	yes	Prohibiting illegal water use is an existing OWRD authority. VAs could include provisions for encouraging OWRD to exercise this existing authority.
Request that OWRD collect information on groundwater use, initiate a continuous cancellation process for expired permits and water rights that haven't been used in 5 years, and share information on their findings with the public	Groundwater Governance and Accountability, Data and Information Gaps	OWRD initiate cancellation of all known expired permits and water rights that haven't been beneficially used in 5 years in the Harney Basin and develop a plan to systematically identify those permits that may be subject to forfeit	6, 8, 9, 10, 22	yes	Conducting various water resources investigations, surveys, and studies and enforcing water permits and rights are existing OWRD authorities. VAs could include provisions for encouraging OWRD to exercise these existing authorities.
Set benchmarks and timelines for reducing groundwater use.	Overallocation / Groundwater Level Declines	Implement irrigation conservation measures to help slow the rate of decline and assist in achieving reasonably stable groundwater levels	1	yes	VAs could be used for defining benchmarks and timelines for reducing groundwater use. A VA should explain how the benchmarks and timelines address overdraw and groundwater level declines

Recommended Action*	Management Concerns	Strategy to Address Critical Issue	Critical Issues**	Feasible Through a VA	Comments***
					across the basin consistent with the state and basin policies.
Support OWRD in ensuring that all illegal water use ceases	Overallocation / Groundwater Level Declines	Work with OWRD to enact improvements in its enforcements of water rights and well construction standards in a publicly transparent manner	1	yes	Prohibiting illegal water use is an existing OWRD authority. VAs could include provisions for encouraging OWRD to exercise this existing authority.
The CBWP Collaborative reviews the results of the assessment and evaluates different approaches	Overallocation / Groundwater Level Declines	Explore and consider a voluntary groundwater market approach; Review feasibility study (Upon review, the Collaborative should make a recommendation to implement or not)	1, 2, 3	possibly	A VA could potentially be a mechanism for implementing a voluntary groundwater market. A market approach would likely require an OWRD role related to allocating the available resource (i.e., annual allocations or shares) and processing marketing (i.e., procedures and criteria for evaluating temporary and permanent transfers and/or changes in use, tailored to meet area/sub-area management objectives). Because a market approach has implications related to statutory provisions around transfers, additional research and analysis is likely needed to develop a legally appropriate approach for a market framework.
The interagency team convened by the Oregon Watershed Enhancement Board (OWEB) develops a draft groundwater CREP proposal to be reviewed by Harney Basin stakeholders. The draft proposal should: a) meet federal requirements, including stewardship of enrolled lands (e.g., crop-cover and weed-management requirements), and b) have state willingness to participate. If the proposal lacks buy-in from stakeholders, the interagency team should create an avenue for further stakeholder input for improvement.	Overallocation / Groundwater Level Declines	Support, as a Collaborative, the CREP program described in the application to FSA and encourage voluntary enrollment by water users	1, 2, 3	yes	VAs could be a mechanism for providing incentives to reduce groundwater use, including the CREP program. A voluntary agreement could bundle regulatory curtailment of groundwater pumping with strategies to help off-set either the need for--or the economic impact of--reduced groundwater pumping.

Critical Issues List:

Critical Issue 1	There are declining groundwater levels in the Greater Harney Valley Groundwater Area of Concern (GHVGAC) due to cumulative groundwater discharge, including both human uses (predominantly irrigation) and natural discharge, exceeding recharge.
Critical Issue 2	Many groundwater users are being affected by seasonal and long-term declines in available water, which has unknown impacts on groundwater dependent ecosystems.
Critical Issue 3	Groundwater declines are not uniform across the basin or between shallow and deep groundwater, which can lead to management challenges.
Critical Issue 4	There are limited legal protections for springs.
Critical Issue 5	Declining groundwater levels negatively affect springs, wetlands, cold water inputs to streams, riparian areas, other groundwater dependent ecosystems, and lakes as well as the native flora and fauna associated with these groundwater dependent ecosystems.
Critical Issue 6	There is lack of accountability regarding the use of groundwater for irrigation. Groundwater used by irrigators is reported by only some of the permit holders but is not uniformly measured and reported.
Critical Issue 7	There are limited public participation opportunities and barriers to participation in the water permitting and permit transfer process, which can lead to decisions that do not fully consider potential impacts to the local environment, community, and economy and potentially produce outcomes that lead to disproportionate impacts on people who have not been engaged or represented.
Critical Issue 8	Failure to remove water rights for abandonment or non-use results in inaccurate accounting of valid water rights volume and inaccurate accounting of water availability if based on permitted volume.
Critical Issue 9	Failure to remove water rights for abandonment or non-use allows those water rights to continue to be subject to transfer applications and/or to be reactivated instead of removing those acre feet from permitted volumes and reflecting that removal in stats of water availability.
Critical Issue 10	Failure to remove water rights for abandonment or non-use allows those water rights to be reactivated which creates further draws on already depleted groundwater reservoirs.
Critical Issue 11	The current and potential negative effects of declining groundwater levels on domestic and stock water wells - including lack of water and declining water quality - is having a negative impact on the quality of life and economic security of rural inhabitants of the Harney Basin.
Critical Issue 12	The impact of declining groundwater levels on the water supply for the cities of Burns and Hines is unknown and are not currently monitored.
Critical Issue 13	The community of Burns and Hines have the need to invest in infrastructure to provide water service to their citizens. Ongoing infrastructure updates and funding will likely be needed in the future.
Critical Issue 13	There is limited legal protection for exempt groundwater uses.
Critical Issue 14	There is limited or no baseline information about the condition and location of groundwater-dependent ecosystems and limited or no monitoring to determine the impacts of groundwater declines now and in the future.
Critical Issue 15	The total amount of groundwater pumped in the basin is unknown, which can lead to issues with accurate allocation regimes.
Critical Issue 16	There is limited information about water use from domestic and stock water wells and historic well conditions.

Critical Issue 17	Incomplete information on potential economic impacts of lowering groundwater levels in agricultural and domestic wells.
Critical Issue 18	Incomplete information on potential economic impacts of voluntary curtailment and CREP payments.
Critical Issue 19	Incomplete information on potential economic impacts of curtailment from the State.
Critical Issue 20	Incomplete information on potential economic impacts from ecological impacts of groundwater declines.
Critical Issue 21	Incomplete information on the impacts from continued development in the GHVGAC.
Critical Issue 22	Lack of information about occurrence, distribution, and potential impacts of both unpermitted and poorly constructed wells and impacts on groundwater quality/quantity.
Critical Issue 23	There is a need for better understanding of the effects and amount of supplemental groundwater used.
Critical Issue 24	Previous groundwater data for the basin has been inconclusive. Site-specific groundwater data, such as designation of certain areas for targeted CREP outreach, groundwater markets, etc., might be useful for effective groundwater management as well as ongoing data gathering and collection by the Department.
Critical Issue 25	Incomplete information on the effects of climate change on groundwater resources in the Harney Basin.
Critical Issue 26	There is uncertainty about whether co-mingling between shallow and deep groundwater systems is occurring due to well construction issues in some parts of the basin.
Critical Issue 27	There is an unknown number of undocumented wells in the basin that may not have been properly constructed and have not been inspected or maintained over time. For instance, there are many uncapped wells in the basin that could negatively impact groundwater quality.
Critical Issue 28	Groundwater quality monitoring in the basin is not done on a regular basis, which causes difficulty in understanding changes overtime.
Critical Issue 29	Arsenic is a documented water quality issue in the basin. Arsenic exceeds human health standards in some wells across the basin that provide drinking water. Water quality is an issue in the basin. (Do not have consensus on this language change yet)
Critical Issue 30	Future climate conditions in the Harney Basin are likely to be warmer and drier than current ones, which will likely impact groundwater resources.
Critical Issue 31	Lack of a drought contingency plan

Appendix B - Case Studies

San Pedro Riparian National Conservation Area MOU and Cooperative Monitoring and Adaptive Management Plan (Arizona)

The MOU is designed to achieve a series of shared goals to ensure a healthy San Pedro River and ecologically viable San Pedro Riparian National Conservation Area; adequate long-term water supplies to meet the reasonable needs of the area's current and future residents and property owners as well as the SPRNCA; opportunities for continued economic growth and development in Cochise County and Sierra Vista; and an operationally secure Fort Huachuca that can accomplish its national defense missions, have a safe and adequate water supply, and comply with all obligations under the Endangered Species Act.

The *geographic scope* of the agreement is based on the U.S. boundaries of the hydrologic subbasin, which aids administration of the actions in the agreement by including the hydrologic areas of concern and the specific entities within the region with jurisdiction to undertake relevant actions. Monitoring and adaptive management indicators are based on 14 defined zones within the subbasin area with distinct hydrogeologic characteristics, resource concerns, and/or jurisdictional considerations.

The *subject matter scope* of the agreement is confined to monitoring actions and establishment of an adaptive management process for cooperative management of water resources in the region. The MOU and plan coordinate monitoring activities, create adaptive management framework to track indicators (riparian health trends) and triggers for additional management, and create a process for the parties to determine when/what additional management actions should be taken.

The *parties* to the MOU are the government entities and federal agencies with authority to implement the monitoring and adaptive management actions included in the MOU.

There are important *distinguishing elements* from the Harney context to consider related to this example. The MOU does not identify nor implement specific management strategies. It also does not provide an explicit way to manage/reduce current uses or limit new uses.

The potentially *informative elements* of this agreement for the Harney context include:

- Monitoring framework with defined, trend-based indicators and triggers for when additional management actions are needed.
- Commitments by the parties to collaboratively plan, evaluate, fund and implement ongoing monitoring and management actions.
- Planned management actions to reduce use and bolster aquifer levels that do not place new requirements on existing water users.

Resources

- SPRNCA MOU and Cooperative Plan
- *Agreement gives county a seat at San Pedro conservation discussions* (Herald Review, Sept. 16, 2021)
- *Agencies affirm their commitment to address water and ecological conservation near the San Pedro River in Southeast Arizona* (Sierra Vista, Sept. 21, 2021)

Mojave Basin Settlement (California)

As an alternative to continued litigation initiated by ongoing overdraft issues, a committee representing a variety of water users and interests in the Mojave Basin worked together to develop a groundwater allocation system, management zones and tools, and supply augmentation options.

The *geographic scope* of the agreement is based on the hydrologic basin and defines four subbasins with unique management objectives, which aids administration of the actions in the agreement by including the hydrologic areas of concern and defining areas based on specific hydrogeologic characteristics, resource concerns, and jurisdictional/ implementation considerations. The *subject matter scope* of the agreement is based on the underlying litigated matter, which was to adjudicate all of the water rights within the hydrologic basin. The agreement established a system for monitoring and management within and among subbasins to meet downstream water rights obligations, address changes in use, address conjunctive management issues, and protect special-status species.

The *parties* to the settlement agreement were most of the water users within the hydrologic basin. The agreement defined a "de minimis" category to exempt certain smaller water users. Nine water rights users did not join the settlement agreement. The stipulated judgment filed with the court included over 75% of the parties.

There are important *distinguishing elements* from the Harney context to consider related to this example. Water users in the Mojave Basin had a 'backstop' to help mitigate overuse (imported surface water). This arguably created a softer landing for reducing overuse: Water users can use more than their annual allocation, but they must pay a fee based on the cost

of imported surface water in the overage amount. Additionally, judicial settlement provides an arguably greater degree of legal cover for the implementing agencies because the management plan is approved by the court and has the force of law.

The potentially *informative elements* of this agreement for the Harney context include:

- Subbasin-based management objectives to address localized hydrologic issues.
- Ramp down schedule reduces overuse over time.
- Incorporates a 'water market' management element, which creates a balancing mechanism to allow new uses or changes in use while maintaining the water budget defined as part of the settlement.
- Incorporates environmental values into management goals and subbasin objectives.

There are also potentially *informative process lessons* for the Harney context:

- Defining 'de minimis' uses helped simplify the agreement negotiation process and minimize the required parties.
- If potentially impacted parties do not voluntarily participate, there is risk of a successful legal challenge. However, a successful challenge does not necessarily mean that the agreement is not otherwise supportable and valuable. Nine senior water rights holders did not join the stipulated agreement. They successfully challenged and were exempted from the terms of the agreement, which was otherwise upheld as to the stipulating parties. This meant that those non-stipulating parties were not subject to the water use restrictions agreed to within the agreement but were subject to the general state laws applicable (in California in that region, right to pump water under their lands for current and prospective reasonable and beneficial need for use on their respective properties). Most of the non-joining parties eventually opted into the agreement due to the benefits of participating, notably, the settlement agreement's marketing framework for temporary or permanent transfers of annual allocations, which provides management/operational flexibility and financial support that otherwise is unavailable or burdensome.

Resources

- Mojave River Decree, (Superior Court, State of California, County of Riverside, January 10, 1996)
- *History of the Adjudication*, *Judgement after Trial*, (Mojave Water Agency)

Groundwater Management District 4 / Sheridan 6 Locally Enhanced Management Area (Kansas)

Kansas law enables the creation of local groundwater management districts to help manage and conserve groundwater and prevent economic deterioration. Districts, which are initiated and approved by local petition and vote, are governed by locally elected boards and charged with creating management programs for conservation and management of groundwater within the district that are reviewed and approved by the Division of Water Resources. To implement the approved management program, the Division of Water Resources may establish rules and regulations applicable to the specific district.

Certain designations allow for additional management measures to address groundwater declines and other conditions of concern in certain areas. Intensive groundwater use control areas (IGUCAs) and local enhanced management areas (LEMAs) may be designated on the request of a groundwater management district or a majority of local water users, following reviews, hearings and a determination by the chief engineer. LEMA plans must include goals and corrective control provisions adequate to meet the management problems/goals identified as part of the area designation. The plan may include corrective control provisions that are defined in statute:

- Closing the local enhanced management area to any further appropriation of groundwater;
- Determining the permissible total withdrawal of groundwater in the local enhanced management area each day, month or year, and apportioning the total quantity among groundwater right holders according to priority;
- Reducing the permissible withdrawal of groundwater by any one or more appropriators or by wells in the LEMA;

- Requiring and specifying a system of rotation of groundwater use in the LEMA; or
- Any other additional requirements as are necessary to protect the public interest.

The Sheridan 6 LEMA was designated within Kansas' Groundwater Management District 4 in 2013 on petition of the district and following review and approval by the chief engineer. GMD 4's Management Program defines seven overarching management problems, including groundwater depletion issues. To address localized areas of impact for depletion within the broader district, the Sheridan 6 LEMA program established a limit on total permissible water use from within the area over the five-year LEMA period.

There are important *distinguishing elements* from the Harney context to consider related to this example. This plan is not explicitly a "voluntary agreement," but it does require a majority of groundwater users to support the petition for designation of the area. The authorizing statute sets the standard for required parties and the types of corrective actions that may be incorporated into a plan.

The potentially *informative elements* of this management plan for the Harney context include:

- Subbasin-based management objectives and corrective actions within a broader regulated basin to address localized hydrologic issues.
- Ramp down schedule to bring down overuse over time.
- Incorporates economic, environmental, and community values into management goals and subbasin objectives.

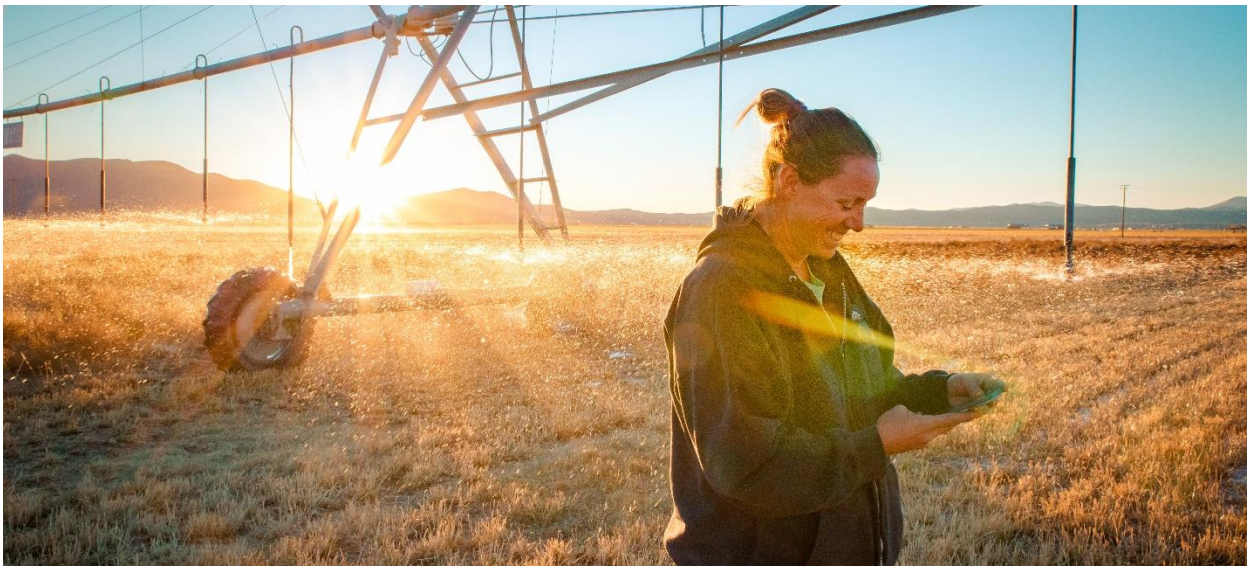
There are also potentially *informative process lessons* for the Harney context:

- The localized approach taken with the Sheridan 6 LEMA appears to have generated less conflict/more buy-in than a district-level LEMA approach, allowing implementation to proceed without/with less legal challenge.

Resources

- Groundwater Management District Act, K.S.A. §§ 82a-1020 – 82a-1042 (Nov. 2018)
- K.S.A. § 82a-1041 Local enhanced management areas
- Order of Designation Approving the Sheridan 6 Local Enhanced Management Area within Groundwater Management District No. 4 (Division of Water Resources, 4/17/2013)
- Northwest Kansas Groundwater Management District No. 4: Revised Management Plan (Adopted by GMD 4 Board and approved by the Chief Engineer 2016)
- Lessons from Kansas: A More Sustainable Groundwater Approach (Stanford Water in the West)
- Fact Sheet: Intensive Groundwater Use Control Areas (Kansas Department of Agriculture)

Diamond Valley Groundwater Management Plan (Nevada)



Recognizing the need to stabilize groundwater declines and in anticipation of a critical management area designation, the local community and stakeholders in Diamond Valley came together to develop a local groundwater management plan. The locally developed plan was approved by a majority of groundwater users in the Valley and approved by the state engineer in 2019. The plan was recently upheld by the Nevada Supreme Court following several years of judicial review.[45]

The *geographic scope* of the agreement is based on the hydrologic basin. The *subject matter scope* of the agreement is limited to managing irrigation water uses within the basin. It establishes a shares-based system based on existing water rights, defines a 'ramp down' schedule to reduce use over time, allows for 'storage' of unused shares for use in later years, and allows trading of shares to manage new and changes in uses.

The *parties* were a majority of groundwater users in the Basin who joined the petition submitted to the state engineer in support of the plan (a standard for approval set by Nevada statute).

There are important *distinguishing elements* from the Harney context to consider related to this example. This plan is not explicitly a "voluntary agreement," but as noted above, it does require a majority of groundwater users to support the petition for approval of the plan. The authorizing statute sets the standard for required parties.

The potentially *informative elements* of this agreement for the Harney context include:

- Ramp down schedule brings down overuse over time.

[45] Diamond Natural Resources Protection and Conservation Assoc. v. Diamond Valley Ranch, LLC, 138 Nev. Adv. Op. 43 (2022).

- Incorporates a 'water market' management element, which creates a balancing mechanism to allow new uses or changes in use while maintaining the water budget.

- Incorporates environmental, social, and economic community values into management objectives.

The potentially *informative legal considerations* of this plan for the Harney context include:

- Whether the relevant state agency can approve a voluntary agreement/plan that includes management tools that the state itself doesn't have the legal authority to implement? [46]

- Whether instituting a voluntary shares-based system is a legally supportable approach to recognize water rights yet manage water use outside of the prior appropriation system? [47]

- What is a reasonable timeline for a ramp down schedule? What if conflicts with senior water rights are already occurring? [48]

- What data and information are necessary to satisfy a 'substantial evidence' standard to legally support an agency determination? [49]

Resources

- Diamond Valley Groundwater Management Plan
- Order #1302 Granting Petition to Adopt a Groundwater Management Plan for the Diamond Valley Hydrographic Basin (Nevada State Engineer, 2019)
- Diamond Valley GMP FAQ (Nevada Division of Water Resources)
- Case Information for Case No. 81224, DIAMOND NAT. RES. PROT. AND CONSERVATION ASS'N VS. DIAMOND VALLEY RANCH, LLC (Nevada Supreme Court, for the Court's Final Opinion, see Document 22-19127)
- *In Diamond Valley farmers are looking to protect their future and testing the limits of Nevada's water laws* (The Nevada Independent, Oct. 28, 2020)
- *Justices uphold groundwater plan in ruling that could 'significantly affect water management'* (The Nevada Independent, Jun. 22, 2022)

[46] The Nevada Supreme Court determined that, based on the specific Nevada laws that applied, the State Engineer had discretion to approve a groundwater management plan that does not strictly comply with Nevada's statutory water laws or strictly adhere to the doctrine of prior appropriation.

[47] As noted above, based on the specific Nevada laws that applied, the Nevada Supreme Court determined that the State Engineer had discretion to approve a plan that does not strictly adhere to the doctrine of prior appropriation.

[48] In Nevada, the Supreme Court deferred to the State Engineer in determining a reasonable timeline, so long as the State Engineer concluded that the plan set forth the necessary steps to remove the basin's critical management area designation and was warranted under statutory factors.)

[49] In Nevada, the Supreme Court looked to the State Engineer's methodical consideration of statutory factors and extensive scientific findings in concluding whether the plan would balance the Basin back to its perennial yield.

Appendix C - Questions and Initial Responses/Considerations

Stakeholder Questions	Comments / Page Reference
What is the appropriate scope of a voluntary agreement? Is there an umbrella agreement or should there be separate agreements to address specific strategies?	The scope of any given voluntary agreement will vary based on the specific management objective it is targeted to address, the geographic scope, and the management tools/actions included. For example, one voluntary agreement might include general, basinwide use limitations (i.e., basinwide limitations on certain type of use), while another agreement might include targeted use limitations (i.e., more restrictive irrigation water duties in an area seeing high rates of groundwater decline). An umbrella agreement could provide a useful regional framework but would include more parties and may be more difficult to develop. Separate agreements for specific strategies and/or targeted issue areas could ease development by limiting parties and scope. Separate agreements could reference and incorporate the Groundwater Plan and/or other planning resources to explain and link the individual voluntary agreement to the comprehensive regional framework and goals. For the Harney Basin context, this question could be explored further in next steps. See pages 15-19 for a general discussion of voluntary agreement geographic scope and subject matter scope.
How can voluntary agreements make things more equitable and improve conditions for all water users, particularly considering the water needs of exempt well users and groundwater-dependent ecosystems, which have been detrimentally impacted?	It will be important in any management approach to consider equitable solutions that improve conditions for all water users and avoid detrimental outcomes. A voluntary agreement approach could potentially provide a collaborative forum and integrate a broader array of management objectives and tools than would otherwise be considered or available through Commission rulemaking. This question will also depend on the specific management objectives (hydrologic, community, and environment), geographic scope, and management tools/actions included in a specific voluntary agreement. For the Harney Basin context, this question could be explored further in next steps.
Are other places dealing with groundwater depletion using voluntary agreements? And if so, how?	Yes. See Case Studies in Appendix B.
Which strategies might require a voluntary agreement vs. which might be amenable to such an agreement?	New requirements and restrictions (i.e., measuring and annual reporting, pumping limitations) for existing uses would require a voluntary agreement (or Commission rulemaking). Many other types of tools could potentially be amenable for inclusion in a voluntary agreement.

Stakeholder Questions	Comments / Page Reference
	For the Harney Basin context, this question could be explored further in next steps. See pages 16-19 for a general discussion of voluntary agreement subject-matter scope and **Appendix A** for notes on Harney strategies and recommended actions.
Could a voluntary agreement be used to execute a transfer between two people, as part of a pilot demonstration for building up to a water market?	Water rights transfers are governed by Oregon law. Voluntary agreements cannot conflict with state statutes. However, it might be possible to include supplemental transfer considerations/procedures in an agreement that are consistent with Oregon's transfer laws. In some places outside of Oregon, for management purposes, groundwater rights have been converted into groundwater "shares" or "allowances" with annual allocations and transfer rules that apply to the annual allocation as opposed to the underlying water right. However, such share transfers would likely implicate POD or POU elements of the underlying water right. For the Harney Basin and broader Oregon contexts, additional legal analysis and outreach with OWRD could be undertaken in next steps. See Case Studies in Appendix B for Diamond Valley (Nevada) and Mojave Basin (California) for examples from other states.
Should and how would supplemental water use be factored into a voluntary agreement?	How and whether to factor in supplemental water use will depend on the specific management objectives (hydrologic, community, and environment), geographic scope, and management tools/actions included in a specific voluntary agreement. For the Harney Basin context, this question could be explored further in next steps.
How can voluntary agreements be used in conjunction with any rulemakings on designations from OWRD to address groundwater issues? Can we have a regulatory structure in the areas with the most acute issues and voluntary agreement(s) in other parts of the basin to address overdraft?	Voluntary agreements are an *approach* to implementing management actions as an alternative or supplement to Commission rulemakings. Voluntary agreements can supplement existing rules and/or change/override existing rules upon review by the Commission and promulgation of new rules. Voluntary agreements could potentially provide an approach to addressing overdraft in certain areas within the broader basin, so long as they are consistent with the broader basin policies and Oregon's groundwater laws. How a voluntary agreement can/should be used in conjunction with rulemakings will depend on specific management objectives (hydrologic, community, and environment), geographic scope of acute issues, preferred management tools/actions, and community buy-in. For the Harney Basin context, this question could be explored further in next steps. See pages 16-19 for a general discussion of voluntary agreement subject-matter scope.
What happens to the agreement if there is a change in landownership? Does the county have a role in ensuring	Voluntary agreements are entered into "among ground water users from the same ground water reservoir." In general terms, any individual groundwater user that is affected by a new requirement or restriction in a voluntary agreement is a required party for an

Stakeholder Questions	Comments / Page Reference
the agreement remains if land ownership changes?	agreement. If there is a change in landownership, the new groundwater user will need to become a party to the agreement. Once a voluntary agreement is approved by the Commission, there could be an important county role in notifying the Commission of relevant changes in landownership and the new landowner of the existence of and terms of the agreement, and potentially providing outreach and education to the new landowner to encourage participation. For the Harney Basin and broader Oregon contexts, additional research and outreach with OWRD could be undertaken in next steps. See pages 19-21 for a general discussion of voluntary agreement parties.
Who are the parties involved in a voluntary agreement?	Voluntary agreements are entered into "among ground water users from the same ground water reservoir." In general terms, any individual groundwater user that is affected by a restrictive requirement in a voluntary agreement is a required party for a voluntary agreement. A voluntary agreement could potentially include a variety of management tools in combination with regulatory requirements, in which case relevant other parties might also be involved. As a hypothetical example, an agreement might include new water conservation requirements (demand management) and regional recharge infrastructure (supply augmentation). The balance between discharge and recharge actions make it so that groundwater users do not have to bear as much of a demand management burden. Groundwater users are required parties, and optional parties for implementing conservation incentives and recharge infrastructure might include sewer/wastewater providers, county flood control districts, and/or NGOs. This question will depend on the specific management objectives (hydrologic, community, and environment), geographic scope, and management tools/actions included in a specific voluntary agreement. For the Harney Basin, this question could be explored further in next steps. See pages 19-21 for a general discussion of voluntary agreement parties.
Who needs to approve of the agreement and who is responsible for ensuring it is carried out? What are the roles of the landowners, the county, and the state in an agreement?	Voluntary agreements are reviewed and approved by the Commission. New requirements and restrictions would likely be implemented and enforced by the Department. Any non-regulatory requirements included in the agreement are implemented according to the terms of the agreement. The agreement could define indicators for measuring progress towards the management objectives, with procedures for monitoring, reporting, and assessing when and/or what additional actions may be needed, with clearly defined roles and responsibilities related to carrying out those procedures. This question will depend on the specific management objectives (hydrologic, community, and environment), geographic scope, and management tools/actions included in a specific agreement. In general:

Stakeholder Questions	Comments / Page Reference
	Landowners can be involved in the development of the voluntary agreement. They will be considered necessary parties to sign onto the agreement if they are also interested and affected groundwater users or otherwise subject to the terms and obligations of the voluntary agreement. *Counties* may participate in the development of a VA, but they are not necessary parties to the agreement unless they are also an interested and affected groundwater user within the scope of the agreement or are otherwise subject to the terms and obligations of the voluntary agreements. Counties could potentially participate in agreements related to non-regulatory terms of the voluntary agreement (i.e., related to actions supportive of the agreement management objective like related land use / development policies, regional recharge infrastructure, etc.). They could potentially provide additional roles in providing notices, education, and outreach to landowners about the voluntary agreement terms. *State* roles include: The Commission will review voluntary agreements for consistency with the statute and Oregon's groundwater laws. The Commission may also promulgate rules to implement terms of an approved voluntary agreement as necessary. The Department will implement and enforce restrictive requirements included in an approved agreement. For the Harney Basin and broader Oregon contexts, additional research and outreach with the Commission and OWRD could be undertaken in next steps.
What level of participation is needed in order to successfully implement a voluntary agreement be successful? Is it 100%?	Voluntary agreements are entered into "among ground water users from the same ground water reservoir." In general terms, any individual groundwater user that is affected by a regulatory requirement in a voluntary agreement is a required party for an agreement. The state likely cannot approve nor enforce a voluntary agreement with a regulatory requirement where 100% of affected groundwater users are not parties. A voluntary agreement could potentially include non-regulatory management actions as well, in which case any individual or entity with authority to undertake that action should be included. This question will depend on the specific management objectives (hydrologic, community, and environment), geographic scope, and management tools/actions included in a specific voluntary agreement. For the Harney Basin and broader Oregon contexts, additional research and outreach with the Commission and OWRD could be undertaken in next steps. See pages 19-21 for a general discussion of voluntary agreement parties.

Stakeholder Questions	Comments / Page Reference
What metrics do you use to evaluate the agreement and how do you ensure that the goals are being met?	This question will depend on the specific management objectives (hydrologic, community, and environment), geographic scope, and management tools/actions included in a specific voluntary agreement. For the Harney Basin context, next steps could involve: evaluating desired outcomes specific to the voluntary agreement objective/scope and overarching basin plan; assessing ongoing monitoring relevant to those outcomes and identifying monitoring/ information gaps; and defining indicators and a process to evaluate progress. See Case Studies for San Pedro Riparian National Conservation Area (Arizona).

123 Mission St, 28th Floor
San Francisco, California 94105
(415) 293-6050
edf.org

MEINZ Kelly A * WRD

From: Lydia Garvey <wolfhowlmama@yahoo.com>
Sent: Wednesday, October 1, 2025 4:17 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

You don't often get email from wolfhowlmama@yahoo.com. Learn why this is important

- I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.
- I would like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.
- The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.
- TY
- Lydia Garvey Public Health Nurse
- 429 S 24th st Clinton OK 73601

MEINZ Kelly A * WRD

From: Marjorie Stuart <marjorie.stuart@gmail.com>
Sent: Wednesday, October 1, 2025 3:10 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from marjorie.stuart@gmail.com. Learn why this is important

To the attention of Kelly Mainz:

- I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.
- I would like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.
- The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool

Marjorie Stuart
Corvallis, OR

Sent from my iPad

MEINZ Kelly A * WRD

From: Margaret Swoboda <mbswoboda6179@gmail.com>
Sent: Thursday, October 2, 2025 12:39 PM
To: WRD_DL_rule-coordinator
Subject: Harney Basin community petition support

Some people who received this message don't often get email from mbswoboda6179@gmail.com. Learn why this is important

I support the Harney Basin community petition filed September 12.

--

Margaret Swoboda

MEINZ Kelly A * WRD

From: M Zimmerman <bellesfolk@yahoo.com>
Sent: Thursday, September 25, 2025 7:41 PM
To: WRD_DL_rule-coordinator
Subject: Harney Basin Community Petition of September 12th - Letter of Support

Some people who received this message don't often get email from bellesfolk@yahoo.com. Learn why this is important

Hello.

I write to voice my support of the Harney Basin community petition filed on September 12, 2025.

I have lived in Harney County for twenty-eight years. My husband and I worked here and are now retired and remain active in the community. We enjoy the small-town culture, the authentic character and the 'can-do' mindset of the varied populaces in this 10,000 square mile county. The frontier spirit of working together is alive and well here.

The Harney Basin is a vast geographical area, and groundwater conditions vary accordingly. Effective management recognizes the groundwater system as distinct reservoirs and utilizes applicable tools and resources. Designation of the Harney Basin as one reservoir would overlook the diverse nature of this unique environment.

The community petition encourages continuing collection of information and actions targeted to restore or maintain springs important to our treasured Malheur National Wildlife Refuge in partnership with the Refuge.

As well, the petition preserves jobs, protects municipal water supplies, focuses regulation where domestic and stock wells have most been affected and gives us room for an economic transition to absorb impacts where groundwater use is cut, minimizing economic impacts on small businesses vital to our agri-based economy.

The petition focuses on the areas where clear problems exist that will best respond to regulatory action. It better reflects our community's "up close and personal" understanding of groundwater conditions in the basin. Also, it promotes voluntary stewardship to maintain stable groundwater levels and cooperative efforts to protect the community's ecosystem.

The frontier's collaborative spirit, working together to solve problems, is alive and well here. The Harney Basin community petition invites the state to work with us in creative, sustainable solutions to our groundwater management.

Thank you,

Margaret Wallis
R.N., retired
Burns, Oregon

Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

1 October 2025

Thank you, Board Members:

I am Mario Petrili. A newbie and a townie. Been here 5 3/4 years. Love it. Also a retired engineer. Did statistical analysis of Harney County meterology and flow from 1924 to 2023. 2020 US Census. 2022 USDA Census. Meteorology and flow in the Bear and Silvies valleys. No one has done one and because RULE 512 starts there. Found 50% over consumption and 75% over retention of surface water above the 1924-26 Silvies River Water Decree. Silvies River is now tributary to Emigrant Creek. Refuge wants its 20% back.

I'm a surface water guy. Somehow I got sucked down into the ground water numbers. They don't add up. Can't have a factor be the sum. Department over estimates GW discharge and under estimates historic recharge. But, by how much?

Think I now understand how Garcia et al came up with most of those GW larger than actual discharge rates for all three areas under their analysis. It's the WRIS numbers. Oregon uses unique catalog methodologies over time than its neighbor states which makes this problem "weird". A 2022 USDA survey of ground water resource record management by states ranks Oregon 49th due to the unknown numbers of defunct and abandoned wells. I call the HARN _log byzantine. And USGS uses these numbers.

The POD totals, POU acres and rates include some duplication. A GW right may have two or more wells attached and a well may have two or more GW rights attached. A few as many as seven according the the GWIS log. Among the three sub-areas, the northern region has the highest number of co-mingling rights and wells. Hence this region has the largest estimated negative allocations and withdrawals.

Parsing PODs and POUs, or more correctly assigning actual wells to actual acres, will take time, large computers and subjective imagination. There are assignment errors. There are many permit and certificate transfers logged into HARN well event log (not a catalog, not a registry) whose transfer paperwork can be a bit "messy" and differ from the primary WRIS Log.

WRIS tends to accumulate GW rights to a well. There are five known farms which use a relative small number of wells inter-connected to irrigate a large number of acres for operational efficiency. These farms are in the three RULE 512 identified critical groundwater problem areas; Rattlesnake, Crane and Weaver Springs. Amounts of over-consumption is amplified by the over assignment of PODs. Gee, I don't know. Let's assign this GW right to the nearest well. Yes, there are well owners with POUs owned by another within the WRIS Log when compared to the HARN_log.

There are numbers of PODs and POUs not in use which are included in the acre/feet and cubici feet per second totals.

Division locus is on the GW allocation of "paper" acres. It is a convenient measure of maximum allocated usage. And those rights are now over-allocated for the volumes of GW available. A more clear answer as to by how much may be derived by reducing the acknowledged POU numbers using actual drill records (and notes) and permit paperwork (and notations). There are POD multiplicities and POU location errors. Such as transfers with assigned latitudes and longitudes of the ODWD North Mall Office Building in Salem.

I'm double checking and grading their homework. So far, it's a "B".

The HARN_log spreedshet is humongous, With 3,072 well events within the GHVGAC thus far identified (rows) and now 48 columns of well and GW data (columns), database is query-able to identify specific characteristics within more and smaller hydrostatic (water below ground) provinces.

More work and time is needed. Now half way through the accumulation process, a synopsis of what well driller reports say about ground water levels, temperatures, chemistries and volumes for areas outside and in the GHVGAC: Virginia Valley, Happy Valley, Princeton, the Upper Blitzen (Frenchglen), Northeast – Crane and Silver Creek. An independent very preliminary technical analysis for your perusal of RULE 512 and the local "Plan B" Petition ground water availability and allocation estimates.

Collaboration, please!

Thank you for your time and consideration of the "rush job" on this matter.

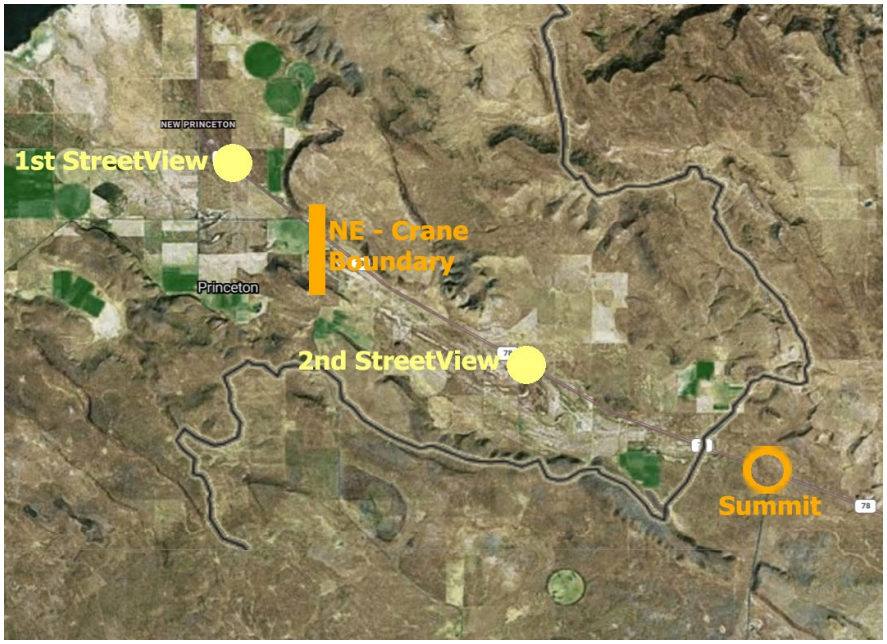
Mario Petrilli
Burns, OR
cbatavelli@mail.com
425.205.3300

RULE 512 omits two ground water [GW] areas of concern, Virginia and Happy valleys. Understandable. Division uses the 1966 USGS designated Malheur Lake Administrative District boundary as the Greater Harney Valley Groundwater Area of Concern [GHVGAC]. Not the 2018-2023 USGS Harney Basin Study Area which includes the USGS designated Malheur Lake Hydrologic Unit [HUC 8-171200001]. It contains two separate hydrologic sub-units, HUC 10-171200010302 which contains the Virginia Valley surface drainage area and HUC 10-17120001060301-5 which contains the Riddle Creek surface drainage areas.

VIRGINIA VALLEY

GHVGAC and the Serious Water Management Problem Area (SWMPA) boundaries exclude most of Virginia Valley with its 19 irrigation right holders, three are not in use, and their significant GW consumption. The Valley is over the southeastern edge of the largest known aquifer in the Basin. What little precipitation it receives percolates and enters this aquifer. Well characteristics, when drilled, are similar to the Princeton sub-area in depth and output. Water chemistry records do not exist. But valley floor drill records have the same lacrustine lake sediments as those nearer to the Lake. Virginia Valley surface hydrologic area and underground hydrostatic province are the same. Both are within the Northeast – Crane sub-Area.

The reason(s) why most of Virginia Valley is exempt from RULE 512 is also understandable. B

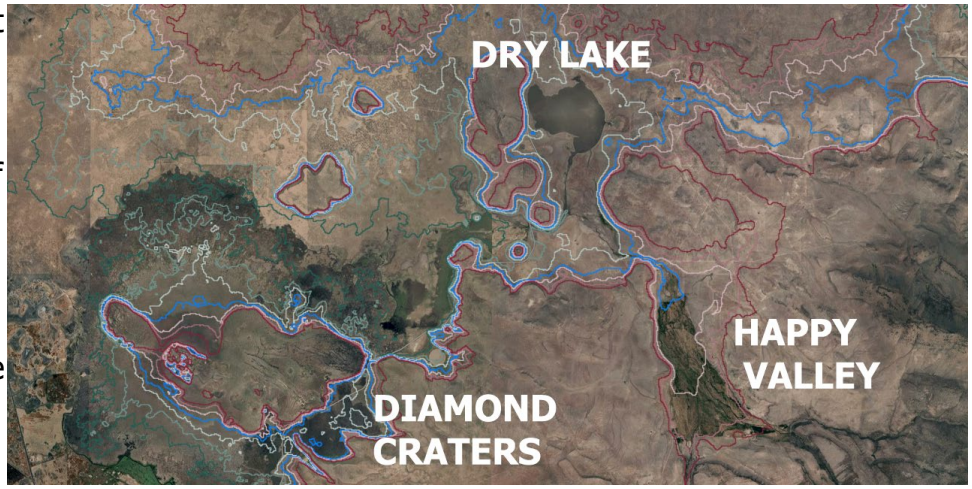


Technically, there is no reason not to include Virginia Valley into the SWMPA.

HAPPY VALLEY

The aptly named Happy Valley, from the Riddle Creek watershed to Dry Lake / Barton Reservoir, is enclosed in a rare separate hydrologic sub-basin within the Harney Basin. Surface flows do not contact the lakes and terminate at the reservoir. DOGAMI OPEN FILE REPORT 0-80-7 identifes a small conical depression, a dimple, under it. Drainage area is over the northeastern edge of the second largest known aquifer. GHVGAC boundary includes a small creek section between the Valley and reservoir but excludes both. Happy Valley surface irrigates. While there may be two supplemental GW rights granted, near all wells are livestock and domestic.

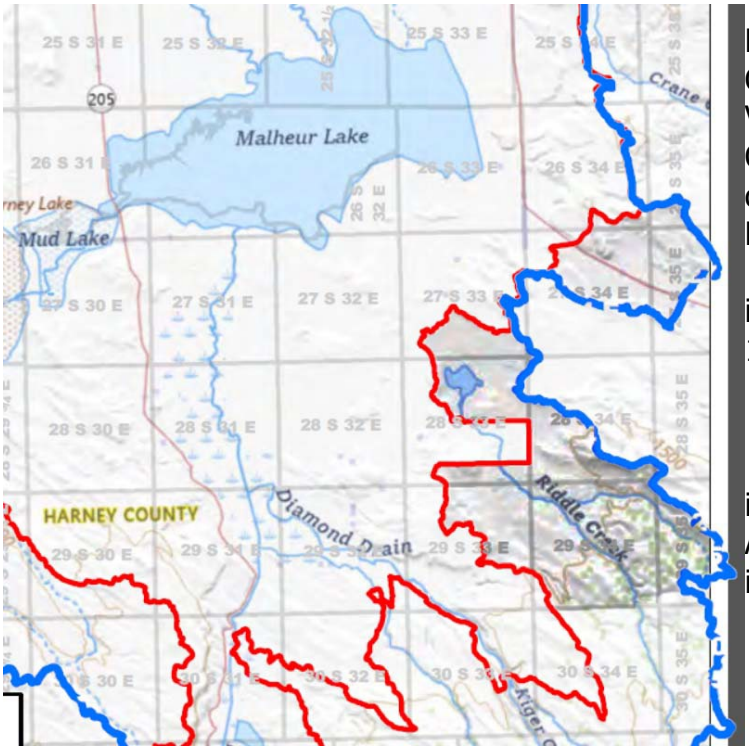
White line marks 4200 feet elevation, blue line is 10 feet lower and red is 10 feet higher.



Riddle Creek terminus at Barton is 88 feet higher than Malheur Lake and is near 12 miles to the southeast. No evidence of alkali and salts. There are a large number of fractures and crevices between the valley and the reservoir / lake. There is physical evidence the lower valley and reservoir percolate sub-surface flows toward the Diamond Crater Complex then toward the Lake as sub-surface via fractures and faults under Voltage.

Distance between where Riddle and Paul creeks enter Happy Valley and the Dry Lake center point is approx. 6.25 straight miles. Elevation between points are 4,246 and 4,188 feet. Elevation of the actual Barton Lake, just east of the Diamond Craters Outstanding Natural Area boundary, which seems more perennial than ephemeral Dry Lake – Barton Reservoir, is lower at 4,153 feet.

HUCs are similar in character to the other major Steens Mountain drainages which are included in the GHVGAC. Happy Valley is within the Lower Blitzen - Voltage sub-Area.

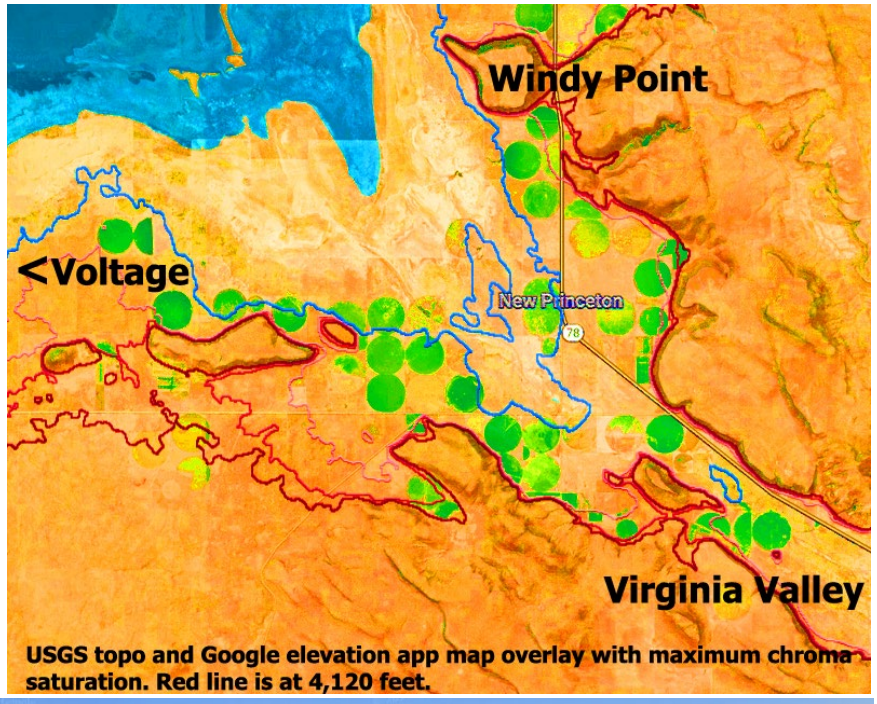


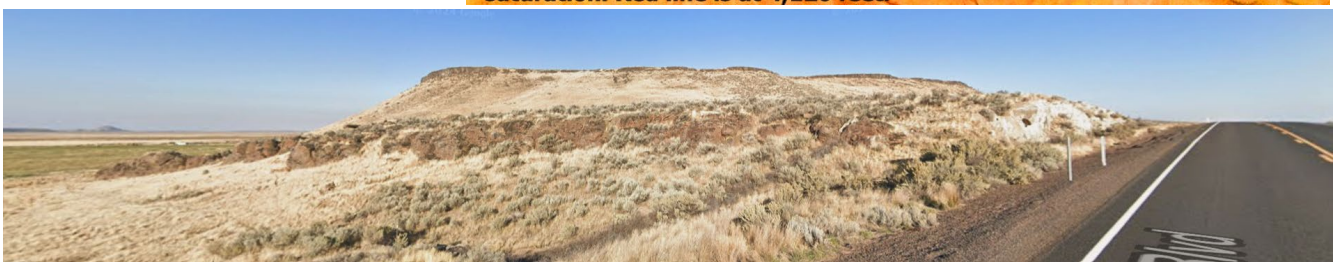
Map is a fast overlay of the USGS Harney Basin boundary in blue over the GHVAC map boundary in red. Virginia Valley watershed and the lower Riddle Creek drainage area are in darker contrast. Source maps are from the Department.

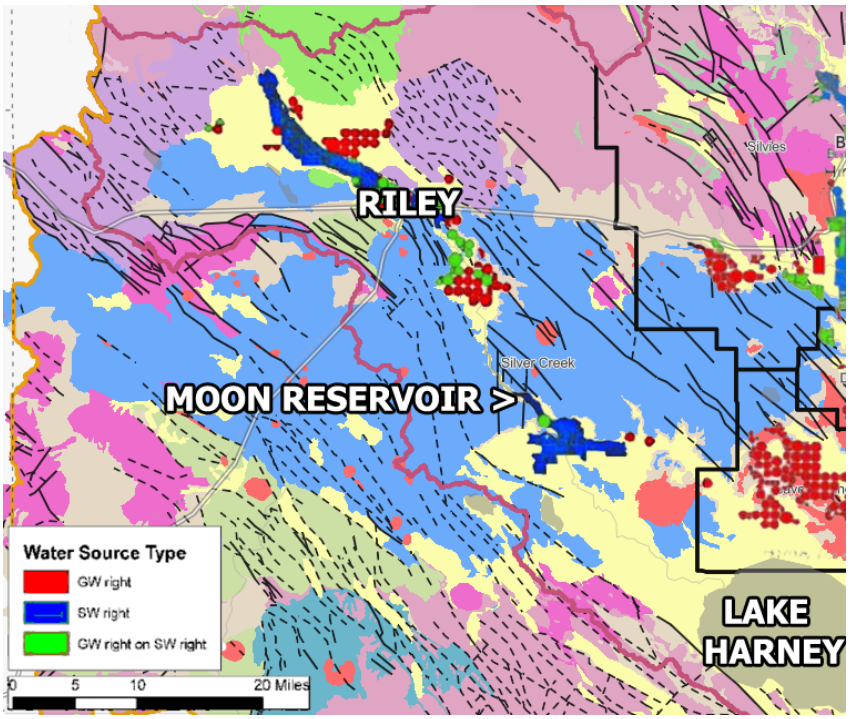
Technically, there is little reason not to include Happy Valley (HUC-12120000 10601-2, 4-6) into the SWMPA.

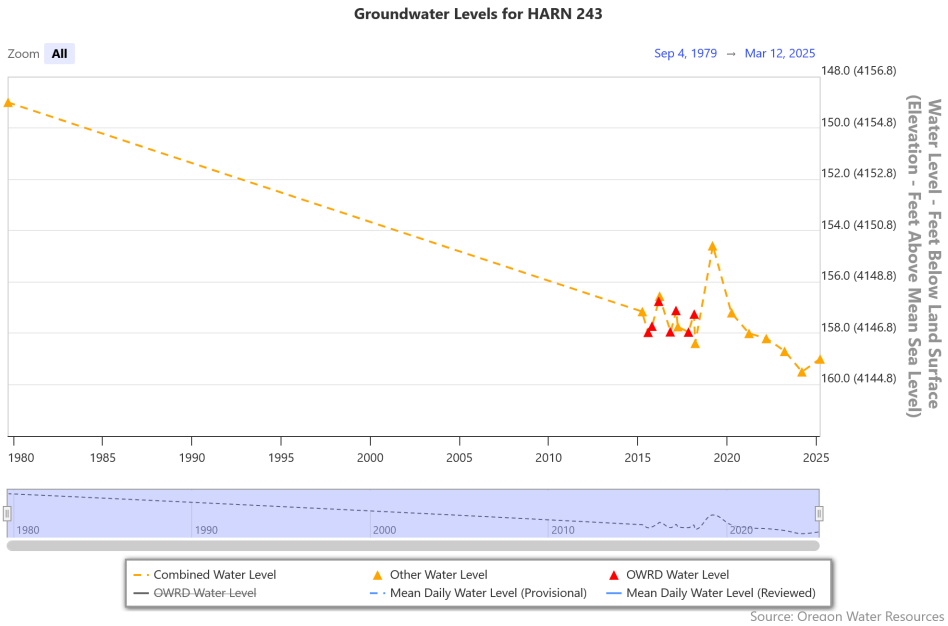
NEW PRINCETON

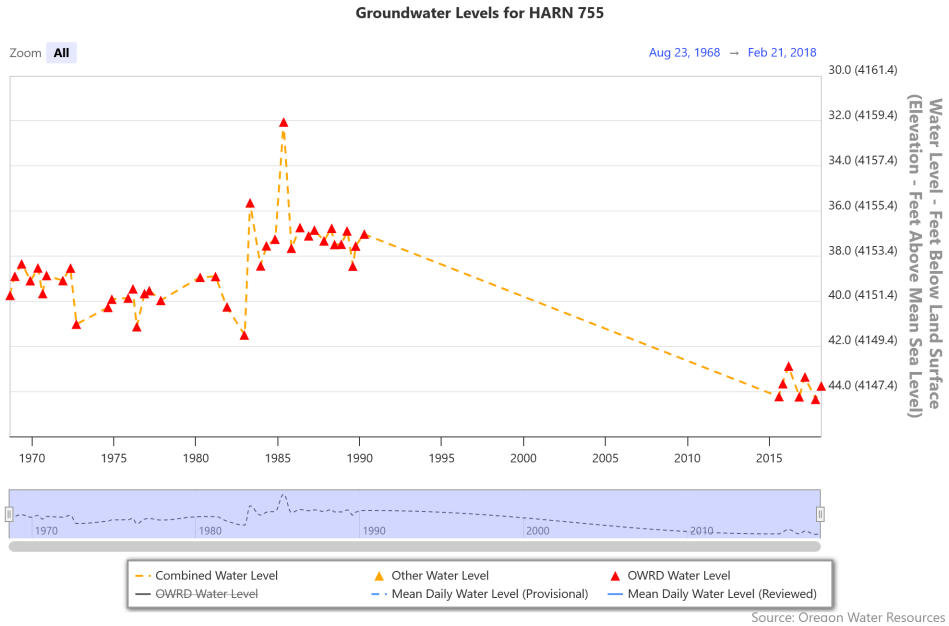
Between the two valleys and the Lake is New Princeton or the Windy Point sub-Area early in the RAC process. It is now in the SWMPA NE-Crane sub-Area.


Windy Point
<Voltage
New Princeton
78
Virginia Valley
USGS topo and Google elevation app map overlay with maximum chroma saturation. Red line is at 4,120 feet.




RILEY
MOON RESERVOIR >
Silver Creek
Silvies
LAKE HARNEY
Water Source Type
GW right
SW right
GW right on SW right
0
5
10
20 Miles


Groundwater Levels for HARN 243
Zoom All
Sep 4, 1979 → Mar 12, 2025
148.0 (4156.8)
150.0 (4154.8)
152.0 (4152.8)
154.0 (4150.8)
156.0 (4148.8)
158.0 (4146.8)
160.0 (4144.8)
Water Level - Feet Below Land Surface (Elevation - Feet Above Mean Sea Level)
1980
1985
1990
1995
2000
2005
2010
2015
2020
2025
Combined Water Level
Other Water Level
OWRD Water Level
OWRD Water Level
Mean Daily Water Level (Provisional)
Mean Daily Water Level (Reviewed)
Source: Oregon Water Resources


Groundwater Levels for HARN 755
Zoom All
Aug 23, 1968 → Feb 21, 2018
30.0 (4161.4)
32.0 (4159.4)
34.0 (4157.4)
36.0 (4155.4)
38.0 (4153.4)
40.0 (4151.4)
42.0 (4149.4)
44.0 (4147.4)
Water Level - Feet Below Land Surface (Elevation - Feet Above Mean Sea Level)
1970
1975
1980
1985
1990
1995
2000
2005
2010
2015
Combined Water Level
Other Water Level
OWRD Water Level
OWRD Water Level
Mean Daily Water Level (Provisional)
Mean Daily Water Level (Reviewed)
Source: Oregon Water Resources

725 Summer St. NE, Suite A
Salem, OR 97301-1271

This is the script of verbal comments given on 3 October 2025 at the Water Commission Hearing which was abridged due to the 3:12 time limit:

Think I now understand how the USGS Garcia et al research came up with most of those GW larger than actual discharge rates for all three areas under their analysis which guided the model. It's the WRIS numbers. Oregon uses unique catalog methodologies over time than its neighbor states which makes this problem "weird". A 2022 USDA survey of ground water resource records management by states ranks Oregon 49th due to the unknown numbers of defunct and abandoned wells. I call the HARN well log byzantine. And USGS uses these numbers.

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WRIS tends to accumulate GW rights to a well. There are five known farm operators which use a relative small number of wells inter-connected to irrigate a large number of acres for operational efficiency. These farms are in the three RULE 512 identified critical groundwater problem areas; Rattlesnake-Buchanan, Crane and Weaver Springs. Amounts of over-consumption are amplified by the over assignment of PODs. Gee, I don't know. Let's assign this GW right to the nearest well. Yes, there are POD well owners with POU farms owned by another within the WRIS Log when compared to the HARN_log.

There are numbers of PODs and POUs not in use which are included in the acre/feet and cubic feet per second totals. The problem gets worse. For example, a transfer with a well or wells assigned will have a well with a max cfs rate of one with 7/10ths allocated to one pivot and 3/10ths to another. GWIS and WRIS record both pivots have the max 1 cfs “paper” rate.

The HARN_log, the mother of all other Department databases, is somewhat chronological beginning in 1883. Currently, I’m accumulating around the year 2002. Thus far, I finding an 8% error rate or difference between the log and the GWIS and WRIS databases and a 2.5 to 3% entry error rate. I cannot say if these error rates will be finals. There are far more transfers between 2002 and 2025 which may muddy the waters more.

The use of “paper” acres and acre feet is convenient. They are from the GWIS database. But these numbers are not accurate. I'm double checking and grading the Division’s homework. So far, it's a "B".

The “Plan B” Petition suffers from the same issues. It also relies on the GWIS consumption numbers and WRIS assignment errors. However, its proposed reduction rates are more real when compared to the RULE 512 estimated consumption rates. The signatories live here. They know better.

In order to know where we are on GW over-consumption is to know where we have been. I have gathered static water table measurements starting from 1916 (so far)

and now most irrigators have their own. I’m gonna pull the pin on this hand grenade and roll it across the shop floor to see what happens. RULE 512 appears headed to litigation which may delay implementation beyond 2028. In the meantime, the Department may want to consider mandating non-exempt well annual reports as soon as possible before the RULE requirement does. With this new data, the Division can identify the draw downs over time in the different aquifers, their boundaries and have more accurate estimates of their current volumes.

I know I will.

Thank you for your time and consideration on this matter.

Mario Petrilli
Burns, OR
cbatavelli@mail.com
425.205.3300

MEINZ Kelly A * WRD

From: Mary Jo Davies <maryjodavies@hotmail.com>
Sent: Tuesday, October 7, 2025 3:23 PM
To: WRD_DL_rule-coordinator
Subject: support for petition amendment to Div 512 rules

Some people who received this message don't often get email from maryjodavies@hotmail.com. Learn why this is important

I am writing in support of the petition amendment to Division 512 rules for Harney County groundwater. The OWRD rules as proposed will be devastating to our county . Yes we need to realize we have some water issues. These need to be dealt with in a sustainable way . The petition has a better pathway than the Div.512 rules. I encourage OWRD to adapt the amended rules in the petition for moving forward. Thank you for the opportunity to respond.
Mary Jo Davies

MEINZ Kelly A * WRD

From: Matt Stashin <Matt@gomortgage.com>
Sent: Friday, October 3, 2025 7:06 PM
To: WRD_DL_rule-coordinator
Subject: My comments re: Harney Basin Community Petition

Some people who received this message don't often get email from matt@gomortgage.com. Learn why this is important

To Whom It May Concern,

It is my desire to share with you my comments. I have invested a substantial amount of money across my three hay farms in the area close to Crane, OR. My family and I depend on income we receive to help offset the very large, to us anyway, amount of money we've invested in perfecting our water rights, drilling irrigation wells, buying pivots for watering the crops etc. We depend on being able to get our money back out of these farms at some point in the not-to- distant future because we are not that far from retirement age. If you take away our water rights, you will render our farms almost worthless resulting in substantial, meaningful losses from which we will not recover. I've never seen a plan from the government that would fairly compensate people like us for what we've put into this land.

It is important that we all try to work together to come up with a suitable, multi-pronged approach that is fair and equitable. Toward this goal, I'd like to declare my support for the Petition put forth by Rep. Mark Owens. There are many reasons for my support; here are a few:

• *The petition recognizes that groundwater conditions are different in different parts of the basin and that groundwater will be more effectively managed as separate groundwater reservoirs rather than treating the whole basin as one groundwater reservoir.*

• *The petition focuses regulation in the areas where there are clear problems that meet the thresholds for regulatory action.*

• *The petition encourages voluntary actions in parts of the basin where groundwater levels are reasonably stable and expected to remain reasonably stable.*

• *The petition adjusts proposed boundaries to better reflect our understanding of groundwater conditions in the basin.*

• *The state is required by law to minimize economic impacts. The petition presents an alternative that minimizes economic impacts on small businesses and the community.*

• *Everyone in Harney Basin relies on groundwater for drinking water. The petition will assure that there are adequate and safe supplies of groundwater for people and livestock. The petition also recognizes the need for ongoing financial and technical assistance for shallow domestic wells that may be impacted by declines.*

• *The Harney Basin community cares about our ecosystem. The petition will continue to encourage the collection of information to target actions that restore or maintain the flow of springs important to the Malheur National Wildlife Refuge in partnership with the Refuge.*

• *The petition does a better job of protecting groundwater rights that were legally granted and the people who have dutifully followed all of the state laws.*

• *In the Harney Basin we have a track record of working together to solve problems collaboratively. The petition recognizes this history and invites the state to work with us.*

• *The petition encourages programs that will fairly compensate groundwater rights holders who voluntarily cancel their groundwater rights or can no longer use their water right due to regulation.*

• *The petition will minimize the likelihood of having to import hay from other places for Harney Basin ranches and will minimize the likelihood of having to increase electricity rates to homes across the basin.*

• *The petition protects public health, welfare, and safety, by preserving jobs, minimizing cuts to public services, protecting municipal water supplies, focusing regulation where domestic and stock wells have been most impacted, and allowing for an economic transition to absorb the impacts of cuts in groundwater use.*

• *The petition will reduce conflict and the costs associated with litigation and will allow our community and groundwater users to invest in water conservation instead.*

• *The state is required by law to seek public input to the maximum extent possible on rulemaking, especially input from those likely to be affected by the rule. The petition incorporates public input from those who are likely to be affected by the rule.*

• *The petition provides a pathway through which a critical groundwater area designation could be lifted if groundwater is being sustainably managed.*

Respectfully,
Matt Stashin

MEINZ Kelly A * WRD

From: Melissa Brown <troutscale@gmail.com>
Sent: Tuesday, October 7, 2025 3:54 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from troutscale@gmail.com. Learn why this is important

- I am commenting on both the "Petition for Rulemaking —Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. The petition will allow continued overpumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- I urge OWRD to first strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.
- I urge OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.

Melissa Brown
503-867-6260

MEINZ Kelly A * WRD

From: Melodi Molt <melodimolt1972@gmail.com>
Sent: Tuesday, September 23, 2025 5:54 PM
To: WRD_DL_rule-coordinator
Subject: WRD DL rule coordinator

Some people who received this message don't often get email from melodimolt1972@gmail.com. Learn why this is important

I support the:

Harney Basin community petition filed September 12—

I am a farmer. I produce the food you purchase at the grocery store. Yup, food comes from farms, not the store. I have many senior water rights, some of these rights are in areas that are not in critical areas. You cannot treat all water users the same. Water use is not the same and has not been for over 100 years.

Melodi Molt
Burns, OR 97720

MEINZ Kelly A * WRD

From: Melodi Molt <melodimolt1972@gmail.com>
Sent: Tuesday, September 30, 2025 2:33 PM
To: WRD_DL_rule-coordinator
Subject: Fwd: Harney Basin Water Management Petition

Some people who received this message don't often get email from melodimolt1972@gmail.com. Learn why this is important

---------- Forwarded message ---------
From: **Melodi Molt** <melodimolt1972@gmail.com>
Date: Tue, Sep 30, 2025 at 1:15 PM
Subject: Harney Basin Water Management Petition
To: <wrd_dl-rule_coordinator@water.oregon.gov>

I am in full support of The Harney Basin Community Petition.

It is a community brought forth petition that will help minimize the Economic destruction of our community.

Agriculture is the mainstream of income of this community. Agriculture is our family's only source of income.

As you read through the petition it allows OWRD to continue to monitor the areas that show declines along with the areas that are stable or showing increases in water tables.

Only some areas have met the criteria for ground water decline. Others have not. The petition recognizes that.

Let the Community Petition fix our problem that the OWRD has created through its mismanagement of over apportioning our ground water resources in some areas.

The petition works collaboratively within the community and OWRD without as much economic downturn.

Louis Molt

RAC Member, farmer & irrigator

MEINZ Kelly A * WRD

From: Michael T Williams <mtwilliams@nu-world.com>
Sent: Tuesday, October 7, 2025 12:21 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Please reject the attempt to undermine responsible ground water conservation.
Michael T Williams
2687 3rd street
Springfield, Oregon
97477. 541-968-7778
Oregon resident since 1944

Sent from my iPhone

MEINZ Kelly A * WRD

From: Mike Dahlstrom <mjdahl0750@gmail.com>
Sent: Tuesday, October 7, 2025 1:45 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from mjdahl0750@gmail.com. Learn why this is important

Kelly Meinz
I am commenting on both Petition for Rulemaking — Division 512 and Agency Proposed Rules — Division 512.
As a 50+ year Oregonian, I value the resources of this incredible state. I urge you to move forward on the current proposed rulemaking to protect the Harney Basin groundwater and deny the counter proposal of Representative Owen.
The Representative has a clear individual interest in not only maintaining existing withdrawals but his proposal to increase an already over-demanded resource seems unrealistic.
I am grateful for the work OWRD does throughout the state to protect critical water resources so that future generations can have opportunities.
Respectfully
Mike Dahlstrom

JORDAN RAMIS

Marika E. Sitz
Marika.Sitz@jordanramis.com
Direct Dial: 541-797-2078

360 SW Bond St., Ste. 510
Bend, OR 97702
T (541) 550-7900
F (503) 598-7373

October 7, 2025

VIA EMAIL ONLY

Kelly Meinz
Division 512 Rulemaking Coordinator
Oregon Water Resources Department
725 Summer St. NE Suite A
Salem, OR 97301
E-Mail: WRD_DL_rule-coordinator@water.oregon.gov

Re: ***Petition for Rulemaking – Division 512: Peila Comments***
Agency Proposed Rules – Division 512: Peila Additional Comments
Our File No. 57406-83078

Dear Mr. Meinz:

I am submitting the attached comments on behalf of Mike Peila. Mr. Peila and his family run a farming and ranching operation in the Harney Basin. Mr. Peila submitted comments in response to the Oregon Water Resources Department's ("Department") proposed rules ("Agency Proposed Rules") on August 7, 2025 ("Initial Comment Letter"). Following submission of the Initial Comment Letter, Mr. Peila signed the Petition for Rulemaking to Amend Oregon Administrative Rules (OAR) Chapter 690, Division 512 ("Petition") to show his support for the Petition's community-driven approach and for various provisions set forth in the Petition's proposed Division 512 rules ("Petition Proposed Rules").

The attached comments do not substantially restate the comments Mr. Peila already made in the Initial Comment Letter, nor do they substantially restate the purpose and goals of the Petition Proposed Rules as outlined in the Petition. The purpose of these comments is to highlight two specific provisions of the Petition Proposed Rules that present a direct resolution to the key issues Mr. Peila identified in the Initial Comment Letter, and we ask that the Department, in accordance with its stated approach, enter these comments onto the record for both the *Petition for Rulemaking – Division 512* and the *Agency Proposed Rules – Division 512* as an addendum to the Initial Comment Letter.

We appreciate the Department's ongoing work to coordinate the Division 512 rulemaking process. Please do not hesitate to reach out if you have any questions.

Sincerely,

JORDAN RAMIS PC

Marika E. Sitz
Admitted in Oregon and Washington

Cc: Mike and Sallie Peila

October 7, 2025

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

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

Kelly Meinz, Division 512 Rulemaking Coordinator
Oregon Water Resources Department
725 Summer St. NE Suite A
Salem, OR 97301
E-Mail: WRD_DL_rule-coordinator@water.oregon.gov

Re: ***Petition for Rulemaking – Division 512: Peila Comments***
Agency Proposed Rules – Division 512: Peila Addendum Comments

Director Gall, Vice-Chair Smitherman and Commissioners, and Mr. Meinz:

My name is Mike Peila. My family and I run a fourth generation farming and ranching business in the Harney Basin ("Basin"). I have been actively monitoring the Division 512 rulemaking process over the past two years, and I submitted a letter on August 7, 2025 ("Initial Comment Letter") in response to the Oregon Water Resources Department's ("Department") proposed Division 512 rules ("Agency Proposed Rules"). After I submitted the Initial Comment Letter, I had the opportunity to review the Petition for Rulemaking to Amend Oregon Administrative Rules (OAR) Chapter 690, Division 512 ("Petition"). The Petition, along with its proposed Division 512 rules ("Petition Proposed Rules"), represents a community-driven approach to address the groundwater declines in the Basin, and it showcases the willingness of individuals and entities who live and work in the Basin to find solutions that are rooted in science and informed by local knowledge and needs. The Petition Proposed Rules recognize a crucial fact: while some parts of the Basin have experienced excessive groundwater declines, other parts of the Basin have not experienced declines of a similar magnitude. The Petition Proposed Rules balance this reality in a more practical way than the Agency Proposed Rules. I signed the Petition to show my support for this approach, particularly my support for (i) the characterization of the Silvies River groundwater reservoir administrative boundary, and (ii) the promotion of voluntary agreements as set forth in the Petition Proposed Rules.

Like many Harney Basin residents, I watched the Oregon Water Resources Commission's ("Commission") October 3, 2025, special meeting ("Commission Meeting") to discuss the Petition and the Petition Proposed Rules. At the conclusion of the meeting, Vice-Chair Smitherman urged Department staff to consider the comments presented during the meeting as the Department prepares the final Division 512 rules that the Commission will review later this year (Commission Meeting 03:26:32-03:26:45). Earlier in the meeting, Commissioner Lee commented that a solution [for the Basin] lies between the Agency Proposed Rules and the Petition Proposed Rules (Commission Meeting 01:59:25-01:59:35). Commissioner Lee noted that she was looking forward to seeing the Agency Proposed Rules address voluntary agreements, and she expected to see changes that would bring the Division 512 rules closer to a "mutual outcome" (Commission Meeting 01:59:32-01:59:58).

As the Department works to address the Commissioners' directives, comments on the Agency Proposed Rules, and comments on the Petition Proposed Rules, I would like to highlight two specific sections from the Petition Proposed Rules that directly address the concerns I raised in my Initial Comment Letter and present sound, science-based solutions that will improve outcomes for the groundwater resource and for the Basin community as a whole. I request that the Department add this letter to the record for the *Petition for Rulemaking – Division 512,* as these comments highlight two approaches from the Petition Proposed Rules that the Department should carefully consider. I also request that the Department treat the comments set forth in this letter as an addendum to my Initial Comment Letter and add them to the record for the *Agency Proposed Rules – Division 512* accordingly.

A. Silvies River Administrative Area Boundary Adjustment to Reflect U.S. Geological Survey Groundwater Study

In my Initial Comment Letter, I discussed my concern that the boundaries for the Dog Mountain Subarea and the Silvies River Subarea as set forth in the Agency Proposed Rules do not reflect the U.S. Geological Survey Groundwater Study boundaries and noted that the arbitrary placement of the boundaries will result in operational inefficiencies and unnecessary complications for our farming activities.

The Petition Proposed Rules propose a set of administrative boundaries for the Silvies River area that better align with the U.S. Geological Survey Groundwater Study findings and address the concerns that I set forth in the Initial Comment Letter. OAR 690-512-0030(6) of the Petition Proposed Rules recognizes five distinct groundwater reservoirs based on "distinguishing and unique hydraulic, geologic, water quality, water levels, and groundwater use characteristics." Notably, the proposed OAR 690-512-0030(6) and its accompanying exhibits do not recognize "Dog Mountain" as a standalone groundwater reservoir or as a standalone administrative area of any kind. Instead, the administrative boundaries in the Petition Proposed Rules remove any administrative area for Dog River entirely, and instead divide the Agency Proposed Rules' proposed Dog River subarea between the Silvies River administrative area and Weaver Springs administrative area. This approach better reflects the unique attributes of groundwater in the Silvies River floodplain and the Poison Creek floodplain.

The Petition Proposed Rules proposes an approach whereby each groundwater reservoir identified in OAR 690-512-0030(6) is a separate critical groundwater area ("CGA"). By contrast, the Agency Proposed Rules have identified various subareas within one broad CGA. Even if the Department does not adopt the multi-CGA approach as set forth in the Petition Proposed Rules, we encourage it to amend its proposed subarea boundaries to reflect the administrative groundwater reservoirs set forth in OAR 690-512-0030(6) of the Petition Proposed Rules to resolve the issues I identified in my Initial Comment letter. These proposed boundaries are supported by the U.S. Geological Survey Groundwater Study and reflect the distinct nature of the Silvies River area, including the minimal groundwater level declines that this area has experienced as compared to the areas south of Wright's Point.

B. Promoting Voluntary Agreements to Enhance Collaboration and Sustain the Groundwater Resource

I discussed the importance of voluntary actions in my Initial Comment Letter to promote collaboration and reduce costly and time consuming litigation, while protecting the groundwater resource that we rely upon. As noted above, the Silvies River groundwater reservoir as defined in OAR 690-512-0030(6) of the Petition Proposed Rules has experienced only minor

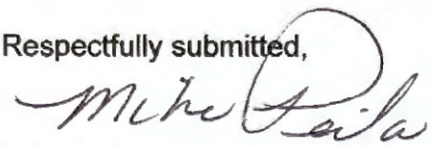
groundwater level declines that do not meet the criteria for designating a CGA as set forth in ORS 537.730(1). Given the relative groundwater stability in this area, voluntary agreements are the appropriate tool to ensure reasonably stable groundwater levels without unnecessary regulation.

The Petition Proposed Rules offer a clear, workable approach for voluntary agreements in the Silvies River groundwater reservoir administrative area, as set forth in OAR 690-512-0090(2) of the Petition Proposed Rules. This proposed language sets a clear target for a voluntary agreement among groundwater users (10% reduction in groundwater use) with a clear timeline (by 2040). OAR 690-512-0090(3) of the Petition Proposed Rules serves as a safeguard by allowing the Department to implement corrective control measures if the area reaches a decline trigger.

The language in OAR 690-512-0090(2) of the Petition Proposed Rule is a blueprint for a workable approach to voluntary agreements in the Silvies River groundwater reservoir administrative area. The approach captured in this section will allow groundwater users to work with each other, instead of in spite of each other, to reduce groundwater use. I urge the Department to foster cooperation by enabling groundwater users to develop collaborative agreements that will reduce groundwater use to a sustainable level and prevent costly, time consuming adversarial proceedings.

Please do not hesitate to reach out if you have any questions, and thank you for your consideration.

Respectfully submitted,



Mike Peila
Box 537
Hines, OR 97738
541-589-0207

MEINZ Kelly A * WRD

From: Mindy Sheley <mindysheley@gmail.com>
Sent: Monday, September 29, 2025 9:38 AM
To: WRD_DL_rule-coordinator; Mindy Sheley
Subject: Yes Vote for Harney Basin Water Petition

Some people who received this message don't often get email from mindysheley@gmail.com. Learn why this is important

I am adding my name as a "yes" vote to the Harney Basin Water Petition.

Any current water shortage that is being attributed to agriculture and/or ranching in the Harney Basin, is directly the fault of the State of Oregon! Why? Because the Oregon Department of Water Resources (for a fee) approved every permit for every well drilled in the Harney Basin. Since we purchased our farm in 2003, the State even used taxpayer dollars to drill wells on state land which is adjacent to our property and then leased this land out to alfalfa farmers. In addition, the ODWR (for a fee) compounded their mismanagement by instituting such practices as allowing farmers to transfer their water rights in the amount of "unirrigated pivot corner acerage" to other property. It appears that the State originally had zero concern for any negative impacts they were authorizing upon the ground water resources in the Harney Basin. It appears their only concern was for the amount of revenue they could collect.

Now this same Oregon Department of Water Resources is supposed to be the scientific authority on how to "fix the problem". First they recommended to the Harney Basin Resource Advisory Committee that, based on their collected data, the basin should be divided into 15 separate groundwater units. Then they reduced it to 7 units. Now they have reduced it to 1 unit. I'm sorry but one size does not fit all! The state is required by law to seek public input to the maximum extent possible on rulemaking, especially input from those likely to be affected by the rule. This petition recognizes that groundwater conditions are different in different parts of the basin and that groundwater will be more effectively managed as separate groundwater reservoirs rather than treating the whole basin as a single groundwater reservoir.

We have a USDA Agricultural Research Center located right here in Burns, Oregon. Why is the knowledge of these top researchers not being utilized? We have a Bureau of Land Management Office right here in Hines, Oregon. Why are they not providing a better understanding of the Malheur Forest's upland basin watershed which feeds the lower Harney Basin? In 1990, the Forest Service stopped managing the Malheur Forest. Since then, the forest has grown out of control and transpired massive amounts of water. From that point on, the lower Harney Basin has had less and less water in the ground. Last year, over 210,000 acres of these overgrown forests burned. It seems pretty obvious that less water used in the upper basin results in more water available in the lower basin. However, the state has refused to even consider any amount of water contributed from the Malheur Forest upland basin watershed as a part of the equation in the available ground water to the lower Harney Basin.

The state is also required by law to minimize economic impacts. This petition presents an alternative that minimizes economic impacts on small businesses and the community. This petition encourages programs that will fairly compensate groundwater rights holders who voluntarily cancel their groundwater rights or can no longer use their water rights due to regulation. This petition also provides a pathway through which a critical groundwater area designation could be lifted if groundwater is being sustainably managed.

We are asking the State of Oregon to work with us...not against us. If the ODWR is allowed to ramrod these water restrictions onto Harney Basin - in total violation of our legally established water right contracts - many farmers will not be able to produce enough crop to pay their bills and there will be bankruptcies. it will also make farm property unsellable. Who will want to buy a farm that they have little or no control over their water usage? Or is that the point? What a diabolical way for State environmentalists to take the ownership of water rights and farm land out of the hands of private ownership!

Mndy Sheley

MEINZ Kelly A * WRD

From: Neal Hadley <nealhadley@mulberryorchard.com>
Sent: Friday, October 3, 2025 4:54 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from nealhadley@mulberryorchard.com. Learn why this is important

I'm familiar with the Harney Basin and have friends living there. I've been to Steens and Alvord, Burns and up the Silvies.. Please accept the OWRD recommendations designating it a "critical groundwater area" with regulated pumping. Groundwater pumping for profits in the short-term, unregulated, will spread an onerous cost throughout the basin and long into the future. Pumping for livestock, household use, and gardening in this hardscrabble land is one thing. Large scale irrigation is a whole different level. We need good data to determine profitable sustainability. Some irrigators might be grandfathered but keeping a groundwater level residents can affordably access is imperative to the people around the basin, living and working to get by as best they can.
Thank you,
Neal Hadley
Mapleton, OR 97453

MEINZ Kelly A * WRD

From: Nellie Franklin <nellie.franklin18@gmail.com>
Sent: Tuesday, October 7, 2025 3:08 PM
To: WRD_DL_rule-coordinator
Subject: support for the petition on Harney Division 512 Rules

Some people who received this message don't often get email from nellie.franklin18@gmail.com. Learn why this is important

10/7/2025

To the Water Resource Dept.,
I'm writing in support of the petition on the Harney Division 512 Rules.
The current proposed 512 Rules would devastate Harney County. It would affect our already depressed economy, from the hay farmers, ranchers, schools and businesses. The petition supports our local farmers & ranchers that have been a steady economic source for our County. At one time our mill and lumber industry was a main economic source and the farmers & ranchers have always been here to support the businesses. If the water is shut off, we will literally be a ghost county & towns. I feel the local population knows what's best for Harney County.
The Water Resource Dept. has been at fault for continuing to let new wells be drilled and water transfers are still happening. Some of these transfers are legitimate, but others do not make sense to me as they are not even in the same aquifer.
Please, seriously consider this petition and don't let Harney County dry up & blow away.
Thank you for letting us comment.

Sincerely,

Ellen "Nellie" Franklin
Burns, OR

MEINZ Kelly A * WRD

From: Nick Schott <schottagair@gmail.com>
Sent: Wednesday, October 1, 2025 8:08 AM
To: WRD_DL_rule-coordinator
Subject: Harney Basin Groundwater

Some people who received this message don't often get email from schottagair@gmail.com. Learn why this is important

Water Resources Commissioners

725 Summer St NE Ste A

Salem, OR 97301

Dear Water Resources Commissioners,

As a business owner and resident in the Harney Basin, I feel it necessary to write this email in support of the Harney Basin Water Management Petition and the extensive efforts of all parties involved.

My family and I own and operate an aerial application business (Schott Ag Air, LLC) in Burns, Oregon. We started our business in 2012 after recognizing the unique opportunity to live and work in the Harney Basin and throughout Harney County. It is a vast area of land that provides numerous opportunities for producers to grow alfalfa, meadow grass hay, and various grain crops utilizing the use of groundwater irrigation. With that said, the groundwater conditions are different in different parts of the county, specifically the Harney Basin. The Harney Basin Water Management Petition recognizes that and makes efforts to manage separate groundwater reservoirs separately. I feel fortunate to have had a bird's eye view over the years of the diverse irrigation and growing conditions in this county. I feel very strongly that we are not utilizing one groundwater reservoir, rather numerous reservoirs scattered throughout an immense area.

Due to the numerous cow- calf operations in the region and export hay markets, the growing of local hay crops in the county is vital to the economic success of almost all residents. Our aerial application business is directly linked to the success of all producers throughout this entire county. We apply herbicide, insecticide, fungicide, and reseed pivots and irrigated crops from March-October, as well as, apply seed and herbicide to range ground from November- February. If guidelines included in the Harney Basin Water Management Petition are not practiced and/or utilized, the negative economic impact on our business and our community will be severe. If there are little to no irrigated crops in Harney County, there will be no need for an aerial application business which has thrived in the area for 13 years.

Thank you for taking the time to read this letter, as well as, take into consideration key elements present in the Harney Basin Water Management Petition. I feel it incorporates the needs of our local producers, businesses, and community, while stressing the importance of determining, stabilizing, and maintaining our local groundwater conditions.

Thank you,
Nick Schott

Schott Ag Air, LLC

MEINZ Kelly A * WRD

From: Nikki Morgan <nikkil2161@hotmail.com>
Sent: Monday, September 29, 2025 10:51 AM
To: WRD_DL_rule-coordinator
Subject: Harney Basin petition/Groundwater rule 512

Hello!

I'm writing in support of the Harney Basin community petition filed Sept. 12th, 2025. It is well written and shows the issues and the area itself has been well researched - they really paid attention. Kudos to those working on this petition for recognizing that each area in the Harney Basin is different and those differences need to be addressed separately! Addressing these differences allows for the separate areas to take care of their needs, to have a say in what is needed and follow through which, as we all know, inspires cooperation.

The current Governor has emphasized the need for housing; with the original proposal on the water restriction the cities would have a harder time establishing housing growth - some say why even try. Conservation has always been a better solution for the cities and certain areas in the Harney Basin. This petition allows for voluntary conservation to continue in those areas. People are willing to do that. It also enables growth to continue - there are housing developments currently in the works for both cities.

Harney County is a major producer for cattle/beef which requires feed for those cattle - hay, alfalfa, etc. You need water for the cattle and feed production. Following this petition will eliminate the need to import the cattle feed/hay from other areas. It should be known that a lot of the ranchers/farmers export their hay to areas where there is little to no production. Eliminating this would not only financially impact this area but impact those areas that need the hay imports.

Everyone in Harney Basin relies on groundwater for drinking water. This petition assures that there are adequate and safe supplies of groundwater for people and livestock. It also recognizes the need for ongoing financial and technical assistance for shallow domestic wells that may be impacted by declines. This petition also does a better job of protecting those legally granted groundwater rights and protecting the people who have followed the laws.

This petition is so well thought out, addressing the entire Harney Basin and its differences, that it would be totally idiotic not to just give it a try. If you haven't read it all the way through or you don't quite understand some parts, please ask someone - ask the committee. Asking questions to better understand is good - shows you actually care and are trying to do your best.

If you are unsure - just vote to give it a try. If something needs tweaked after awhile, it can be. (For all the naysayers, if it doesn't work, at the very least you could say I told you so.)

thank you,

Nikki Morgan
Mayor, Hines Oregon

MEINZ Kelly A * WRD

From: Normandy Helmer <nsh000@gmail.com>
Sent: Monday, October 6, 2025 9:29 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from nsh000@gmail.com. Learn why this is important

For the last ten years my husband and I have spent an average of a month every year living and working in Harney County. We have researched the history of local ranching and resource use, and interviewed long-time Harney County residents. We have actively engaged with local groups on land use policy, preservation of historical resources, and conservation of the high desert. We have friends there who are ranchers, who steward public lands, or run shops and provide local services. We feel we are part of the community of Harney County.

The Owens proposal is a self-serving alteration to the workable rules that have been established through a long, collective process. Owens will profit; many of his neighbors will go without essential water.

The Harney basin is in critical condition and needs to finally implement clear and significant controls to begin fixing the problem. Of course someone will complain, but we need to look at the big picture, at ALL the historic and current water usage, and set sustainable, functional rules. We need to rebuild the aquifers, support reasonable use over exploitation, and enforce allocations.

Please do not let one greedy legislator line his own pockets at his neighbors' expense. Water is more important than money.

Thank you

Normandy Helmer
nsh000@gmail.com

To: Kelly Meinz Division 512 Rules Coordinator

From: Oregon Ground Water Association

RE: Harney Basin community petition filed 9/12/25

Position: Support the petition

2755 Commercial St. SE
STE 101-333
Salem, OR 97302

10/1/25

The Oregon Groundwater Association would like to advocate for the Harney Basin community petition filed September 12, 2025. It is our assessment that the amendments in the petition to the proposed Division 512 rules provide a balanced approach in addressing the water level declines in the Harney Basin.

Looking at each reservoir and developing a plan for them independently versus one strategy for the entire basin will be targeted and effective. Modifications to the proposed rules are proportional for each reservoir, allowing a specific and intentional plan. Some of the reservoirs are in more dire condition than others, for example, Weaver Springs/Dog Mountain. In addition, the petition provides for adjustments along the way if necessary to improve results and will lean into data and science and be strategic in nature.

It is important for all stakeholders to choose the best path forward. Being good stewards of water management and using it responsibly without waste is key. Voluntary concessions by water users demonstrate resolve to partner in collaboration. This petition gives local input and strives to protect agriculture and economic activity. It also attempts to minimize conflicts and litigation around water rights use and contested cases. Focusing on the areas of greatest concern will make incremental progress towards a real solution.

Thank you for your consideration.

Kevin Gill

Government Affairs Co-Chair

Oregon Ground Water Association

August 13, 2025

Kelly Meinz -- Rulemaking Coordinator

Oregon Water Resources Department

725 Summer St. N. Suite A

Salem, OR 97301-1271

Subject: Comments on Proposed Division 512 Rules

Dear Mr. Meinz,

The Lower Blitzen-Voltage Subarea should not be designated as a critical groundwater area and the area wells should be regulated under existing law as should other subareas that are not overdrawn. Groundwater levels are reasonably stable and by the Department's own assessment Lower Blitzen-Voltage recharge, especially when including the Upper Blitzen recharge areas in the assessment there is actually a groundwater surplus.

No wells in the Lower Blitzen have large declines and in any one area if three have a five foot decline over ten years three adjacent wells might have stable levels while others are up some so a typical range throughout the area might be .3 ft per year plus or minus. OWRD should not use the static water level from the well driller well log in calculating static groundwater trend because the disturbance associated with drilling, adding soap and the methods by well drillers vary considerable and many water tables at the completion will be artificially a little high and a few will be a little low depending on how the driller worked and brought in the well.

When you look at the water level data without the well drillers initial water level the broad look accross the Lower Blitzen is even more stable. In addition, when one looks at all of the water table data with 21 years of drought dominating the system we irrigators feel pretty good about our sustainability if OWRD looks at our area as a distinct groundwater area separate from the rest of the Basin. Although we feel the Lower Blitzen is unique with different hydrology, soils and recharge zones other areas of the Basin are also distinct aquifers.

Sincerely,

Fred I. Otley, President Otley Bros., Inc.

40926 S Diamond Ln

Diamond, OR 97722

fredotley@hotmail.com

(541) 589-2143

MEINZ Kelly A * WRD

From: Patrick McCleery <patrickmccleery1@gmail.com>
Sent: Tuesday, October 7, 2025 3:10 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from patrickmccleery1@gmail.com. Learn why this is important

ORWD,

- I am commenting on both the "Petition for Rulemaking —Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. The petition will allow continued overpumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- I urge OWRD to first strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.
- I urge OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.

Sincerely,

Concerned Oregon resident Patrick McCleery

MEINZ Kelly A * WRD

From: Patty Dorroh <dorrohmp@gmail.com>
Sent: Tuesday, September 30, 2025 11:08 PM
To: WRD_DL_rule-coordinator
Subject: Dorroh support and public comment for Harney Basin community petition

Some people who received this message don't often get email from dorrohmp@gmail.com. Learn why this is important

September 30, 2025

Oregon Water Resource Commissioners;

I appreciate the opportunity to comment in strong support of the petitioned amendment to Oregon Administrative Rules Chapter 690, Division 512 regarding Harney Basin groundwater, filed September 12, 2025. Harney County has been my home for 23 years.

This is a crossroad juncture: either the State will impose blanket regulations and curtailment across the entire Harney Basin – even in areas where the groundwater is stable – or you may choose to work with the leaders and people of Harney County to address the over-appropriation of water rights in a way that makes sense and does not devastate Harney County's economy to an excessive degree while still achieving stable groundwater levels in a reasonable timeline.

The amended rules reflect something very important that is not captured in the proposed rules: local knowledge, input and buy-in. The people of Harney County want a voice – their voice - reflected in the decisions that will shape our future. The amended rules were developed collaboratively among the County, the cities, the Burns Paiute Tribe, business owners, irrigators and community members.

The petitioned amendment is thorough. All the important work, analysis and modeling that went into the proposed Division 512 rules all these months by OWRD staff are important contributions contributing to this amendment. The amendment, however, presents a satisfactory alternative that minimizes economic impacts on small businesses and the community. The need to meet this state requirement cannot be emphasized enough.

I urgently and humbly ask that you support the petitioned amendment to Oregon Administrative Rules Chapter 690, Division 512 regarding Harney Basin groundwater. With the assistance and teamwork of OWRD staff to fine tune any minor legal language matters that may exist, this can become the best outcome under challenging circumstances.

Thank you for reading and listening to our comments. Thank you for listening to the people.

Respectfully,

Patty Dorroh
70839 Crane Buchanan Road
Burns, OR 97720
541-589-1898

MEINZ Kelly A * WRD

From: Paty Jager <patyjag@gmail.com>
Sent: Thursday, October 2, 2025 9:06 AM
To: WRD_DL_rule-coordinator
Subject: Harney Division 512 Rule

Some people who received this message don't often get email from patyjag@gmail.com. Learn why this is important

Division 512 Rules Coordinator
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

RE: Reasons Against 512 Rule

This ruling will not only affect the people and economy of Harney County, but it will also cause financial ruin to the dairies that purchase their hay from this area.

This is a place where a lot of young families can get started farming and ranching. Taking away their livelihood in Harney County will cause banks and loan agencies to go under.

If the state stuck to the rules already in place and enforced them, water could be saved. There are many with wells who should not have been allowed to put them in, given the state's past rules, but the state went ahead and let them. There are pivots that were put in without going through proper channels and yet the state didn't cut them off when they "begged forgiveness." There are pivots where more acreage is being irrigated than they are certificated for; those should be penalized, not the people who are following the rules.

Over and over at the Water Resources meetings I've attended, when the state officials were asked, "Why haven't you followed the rules already set in place?" they would change the subject and not tell us why they have let this happen. Answers would be nice.

If you go with the state's demands, there will be 90% of Harney County who will be resistant and not conform.

If you work with the farmers and ranchers of Harney County and go with their proposal, you will have 90% of the people agree.

The resistance is because you haven't followed through on the rules set forth earlier, and why should anyone follow new rules? Especially ones that will devastate this farming and ranching community.

Sincerely,

Gerrit A. Jager & Patricia M. Jager
Princeton, OR

Writing into the Sunset,
Paty

Patyjager.net
Writing into the Sunset
Newsletter- Paty's Posse

MEINZ Kelly A * WRD

From: Paul Engelmeyer <pengelmeyer@peak.org>
Sent: Tuesday, October 7, 2025 2:38 PM
To: WRD_DL_rule-coordinator; Paul Engelmeyer
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from pengelmeyer@peak.org. Learn why this is important

TO: Kelly Meinz with OWRD.

Hello Kelly - I hope you consider my comments

- I am commenting on both the "Petition for Rulemaking —Division 512" as well as the "Agency Proposed Rules — Division 512."

- Water is one of the most precious resources we have in Oregon - we must do better at protecting both water quality and quantity. I can not support the Petition for Rule making filed by Representative Mark Owens. The petition will allow continued over-pumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.

- It makes sense to me to first strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.

- I urge OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.

- I have worked for over 2 decades attempting to improve water quality on the central coast of Oregon and understand statewide we have over 112K stream miles that are impaired and on the 303dlist. I urge you to secure funding to actually work on the TMDLs for the listed water bodies as a priority.

Paul Engelmeyer

MEINZ Kelly A * WRD

From: penelope kaczmarek <penkaczmarek@gmail.com>
Sent: Wednesday, October 1, 2025 10:24 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from penkaczmarek@gmail.com. Learn why this is important

To Whom it May Concern,

We write to comment on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512."

As areas throughout our state fight to hold onto enough water to support the needs of our businesses and all who depend on healthy water to thrive, and while we endeavor to (or at least talk about) more robustly decreasing the carelessness in guarding our water supplies that has historically characterized Oregon's water use, **we strongly oppose the Petition for Rulemaking as filed by Representative Owen's.** This proposal belies a very worrisome lack of fact as to what it will take to sufficiently protect groundwater supplies for use in areas such as the Harley Basin.

OWRD and the Commissions have for too long too dependably prioritized support for forward-thinking approaches to water management only in areas of denser population. For this favoritism they 'reward' *rural* areas with a default, laissez-faire bias to old fashioned, under-regulated, money-making operations. Prioritizing these above smart, compassionate and ethical care of Oregon's struggling land and water systems - in 2025 ***still*** permitting continued overuse when, by now, the scientific evidence is unequivocally clear it's wrong, and by now we should know better.
We urge OWRD and the Commission to please do what can be done to ensure the final rules do ***not*** include unfair 'rewards' to irrigators at the cost of desperately needed protections for groundwater.
We also urge you to please ***not*** adopt the proposed approach promoting voluntary agreements. When livelihoods are perceived as threatened it becomes easy for families/ business owners to think (and *volunteer*)more for themselves than for the greater good - and who can blame them?
In these circumstances voluntary 'agreements' leave far too much room for interpretation and loopholes likely to
p further undermine conscientious, skillful and enforceable water management.

Thank you for your work and for your attention.

Respectfully,

Penelope Kaczmarek
Jack Kaczmarek, MD
(541) 961-2417
penkaczmarek@gmail.com
I

MEINZ Kelly A * WRD

From: Peter Tronquet <pjtronquet@aol.com>
Sent: Wednesday, October 1, 2025 9:49 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

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

Stop over pumping of groundwater in the Harney Basin. I support the OWRD proposal and reject Rep. Owen's proposal to pump more groundwater, not less. Let the OWRD collaborative process work.

Peter Tronquet (recreationist in the Harney Basin for 40 years).
2958 Greenbrae Ct
Lake Oswego, OR 97034

Sent from my iPad

MEINZ Kelly A * WRD

From: Philip Klimbal <philip.klimbal@gmail.com>
Sent: Tuesday, September 23, 2025 11:26 AM
To: WRD_DL_rule-coordinator
Subject: Support for Harney Basin community petition filed September 12th

Philip Klimbal
Burns Oregon

I am writing to support the petition filed on September 12th to amend Division 512 Rules for Harney Basin groundwater.

The petition recognizes that groundwater conditions are different in different parts of the basin and that groundwater will be more effectively managed as separate groundwater reservoirs rather than treating the whole basin as one groundwater reservoir.

It adjusts the proposed boundaries to better reflect our understanding of groundwater conditions in the basin and does a better job of protecting groundwater rights that were legally granted and the people who have dutifully followed all of the state laws.

The petition protects public health, welfare, and safety, by preserving jobs, minimizing cuts to public services, protecting municipal water supplies, focusing regulation where domestic and stock wells have been most impacted, and allowing for an economic transition to absorb the impacts of cuts in groundwater use.

In the Harney Basin we have a track record of working together to solve problems collaboratively. The petition recognizes this history and invites the state to work with us.

Best,

Philip Klimbal
Pleased as Punch Farms

MEINZ Kelly A * WRD

From: Rep Owens <Rep.MarkOwens@oregonlegislature.gov>
Sent: Tuesday, October 7, 2025 2:51 PM
To: WRD_DL_rule-coordinator
Cc: MEINZ Kelly A * WRD
Subject: FW: [EXTERNAL] Questions on Harney Basin

Please enter this email thread into the comments for the Division 512 rulemaking and Petition.

Mark Owens
House District 60
Rep.MarkOwens@oregonlegislature.gov
503-986-1460
Frontier Oregon – The Best part of the State

From: Gingerich, Stephen B <sbginger@usgs.gov>
Sent: Monday, September 29, 2025 9:03 AM
To: Rep Owens <Rep.MarkOwens@oregonlegislature.gov>
Cc: Martin, Meredith R <mrmartin@usgs.gov>; Garcia, C. Amanda <cgarcia@usgs.gov>
Subject: Re: [EXTERNAL] Questions on Harney Basin

Hi Mark
You've got lots of good questions. I've spent some time putting together our answers and they are included here with your questions. Let me know what might be unclear. We have great uncertainty whether or not we will be in the office after Tuesday, so I might be tougher to reach until we return.

Steve

Can the groundwater study report and model prove that physical barriers are NOT present or is it just that no evidence of these barriers have been identified? The Department is saying "there are no known barriers to flow," which I understand to mean that there isn't any evidence of it. I think you already answered this, but I'm really trying to wrap my head around it.

Based on the best data available at this time, there are no known physical barriers within the Harney Basin that wholly impede groundwater movement or hydraulic interactions within the study area defined in our reports. None were recognized in the well cuttings described by drillers, none were recognized in the hydraulic responses among wells, and none were required in the model structure to represent the head and flux of groundwater in the system.

- If you say that the whole basin is hydraulically connected, but we know that some groundwater will never travel to other parts of the basin (for instance, water in Crane will never travel up to Riley and water in Burns will never travel up to Diamond), what does that term even really mean in a management context? I like what you said about providing a way to examine interconnectedness, but I'm still trying to understand this and explain it to others. We know that the different recharge areas all drain and discharge to similar areas, but they're also pretty distinct.

When we say areas are interconnected, we mean that hydrologic changes in one area could affect how groundwater moves in a different area. This does not necessarily mean that a drop of groundwater would flow from one area to another. Pumping in one area will change the pressure in that area and cause groundwater flow patterns to change in some way. The model allows us to see how far that impact may be felt depending on the conductivity and storage properties of the rocks, the amount and location of pumpage, the time involved, and the places of recharge and discharge throughout the system. Only a 3-D flow model of the system can properly integrate all of these factors and allow one to see the extent of the impacts spatially and through time. We may see that even though areas are interconnected, impacts from one area to another are minimal due to the intervening low-permeability rocks and sediments and the time frame we are interested in. As we demonstrated with our future scenario 1 (pg 84) of continual pumping, impacts continue through 2100 and in many places haven't stabilized. Fig 44 shows how water-level changes of 10 ft are felt 10 miles south of Voltage due to continued pumping north of Malheur Lake. Figs 45 and 46 show that water levels and streamflow are still declining in most places. One could argue that these impacts are not that big or that is too far in the future to consider, and impacts must be assessed as determined by the regulatory community.

The concept of "hydraulic connection" in groundwater is analogous to a city water system. A user at the end of the system will experience low water pressure at their tap if there is a main break elsewhere in the system. The water spilling from the broken main is not in their backyard but they nevertheless experience a drop in water pressure.

- What "management unit" makes sense for management purposes to effectively manage available groundwater supplies and groundwater level trends? What do you see in other places/states?

The USGS does not advocate or recommend any particular management solution. We can provide insight into the results of choosing a particular set of conditions (usually by using groundwater model) but we typically avoid looking into the economic, social, and political implications of management choices in order to maintain our unbiased position. If the hydrology were the only consideration, the most effective way of managing would be to have the ability to decide pumping rates and durations on a well-by-well basis to minimize the impacts of that pumping. But even then, someone would have to set the priorities of which impacts to consider and prioritize (such as water levels or spring discharge) and the timescale one is considering.

- What are some of the hydraulic barriers or divides in the basin? Do these exist?

Groundwater flow boundaries can be hydraulic such as at a groundwater divide (associated with topographic highs), and at recharge and discharge areas. The topography around the periphery of the basin creates one kind of divide where water flows from areas of high to low elevation. These can sometimes move if you change head conditions in the system, such as through pumping. An example of this in Harney basin is the migration of the groundwater discharge zone in Harney Lake northward toward Weaver Spring in response to pumping. Prior to substantial pumping in Weaver Spring, groundwater from the north, west, and south converged along a line running through the middle of Harney Lake; it now converges from all four cardinal directions on a point centered on the cone of depression in Weaver Spring.

Groundwater flow boundaries can also be physical such as some faults or very-low-permeability layers such volcanic dikes or thick clay layers. Unlike hydraulic groundwater flow boundaries, physical groundwater flow boundaries don't typically move when head conditions change. Physical groundwater flow boundaries often are spatially and temporally scale dependent, and also dependent on the question being asked. For example, under a certain set of pumping conditions a horizontal clay layer could effectively be a physical boundary to downward vertical flow but not affect horizontal flow at all. An increase in pumping at that well (or the addition of new wells in the vicinity) could allow the pressure effects of pumping to propagate beyond the extent of the clay layer and cause vertical flow from more permeable units above the clay layer.

- People in community are wondering out loud about the role of faults in groundwater flows. Did the study look very much at how faults might affect flow?

We thought long and hard about how faults might affect flow in the basin. Faults can act as barriers to flow when they juxtapose a low permeability unit next to a higher permeability unit. But they can also act as conduits to flow, allowing springs to emerge along zones of higher permeability. The only real evidence of fault-controlled flow was along the Warm Springs Valley (WSV) where the line of springs corresponds pretty well with a set of mapped faults along the southern edge. Even here the exact impact of the faults can be enigmatic: faulting along the southern margin of WSV could be impeding groundwater flow to the south, which forces it to the surface and(or) it could act as a conduit, penetrating deeper into the basin and providing a path for water to flow upward. No other examples of fault controlled-groundwater flow are evident anywhere in the basin, especially in the lowlands. In our analyses of the groundwater-level and pumping data available for the study, we did not see any indications that faults are causing anomalies in the flow system. One of the few anomalies is the Crane Hot Spring, in an area in which we have no deep geologic information to rely on. A fault here likely would be considered a conduit, allowing deep hot water to flow vertically up to the ground surface. We don't see a line of springs in the area though, just one, so its impact doesn't seem to be too widespread.

- People are talking about deep subsurface flows that maybe originate outside of the basin. In particular the source of groundwater for the Warm Springs valley. What is your level of confidence that all groundwater in the Harney Basin originates within the boundaries of the study area? Especially for really deep groundwater.

We have seen no evidence that water in the basin is originating from far outside the basin. Fundamental hydrologic principles can explain the topographically driven flow of groundwater from areas of high elevation to areas of low elevation, and we have no reason to invoke a more complicated explanation. Given the altitude of Harney Basin, there are elevation barriers to getting water from outside the basin into it. Land surface drops off in all directions external to the Harney Basin watershed boundary. I am not sure how to reconcile the idea that barriers to flow are being invoked in the hopes that pumping impacts are not propagating from area to adjacent area within the basin, contradicting the hope that groundwater is flowing unimpeded for hundreds of miles from distant sources to emerge at springs in the Warm Springs Valley.

- Did the study show that water from the Donner Und Blitzen area is getting as far north as Weaver Springs now? Did it show that water from the Voltage area is traveling north into the Crane area?

The groundwater model indicates that the heads in the Weaver Spring area are about 100 ft lower than heads near the mouth of the Donner Und Blitzen River and no groundwater divides are apparent between these areas. This means that groundwater flow potential is toward the Weaver Spring area. The model could be used to get a feel for how much this may be happening based on the permeability of the basin fill. The permeability between the two regions is low due to fine-grained lakebed sediments, and the flow between the regions likely is very small (see the answer to the next question about flow into the area). Likewise, the heads in the Crane area are as much as 30 ft lower than heads in the Voltage area so the flow potential is toward Crane. However, the distance between these two areas is further, the groundwater gradient is much flatter, and the geology of the Virginia Valley area (mainly highly permeable Voltage Basalt) makes flow between the two areas harder to pinpoint. Again, the model could be used to get some estimates of the flow through this area.

- Before Weaver Springs was pumped, is there a way to estimate the groundwater flow into that area from adjacent areas? Is it possible to estimate the recharge to Weaver Springs alone?

The groundwater model could be used to show the amount of flow into a certain area (such as the Weaver Spring area) at any time during the simulation of 1930-2018 conditions. Figure 42 of the modeling report is an example of doing this for the entire lowland area.

- *What amount of the drawdowns in areas adjacent to Weaver Springs are the result of the cone of depression in Weaver Springs versus pumping in adjacent areas? Is it possible to tease that apart?*

Again, the model could demonstrate this. You could run a simulation of your choice and look at simulated water levels across the basins and then turn off all wells outside of some designated area (such as the Weaver Spring area) and run the same simulation again. Then you would compare water levels at observation wells and spatially across the basin and see the difference between each scenario.

- *What would it take to have the USGS work with the community to run some scenarios? At this point our community would prefer to work with USGS, but I need to understand if that's something you can do or if we need to find some funding for that or maybe a bit of both.*

Our fundamental science practices guide the type of work and release of the results for any study we undertake. We have a pretty full workload right now and given the current uncertainty in USGS funding and staffing we may be unable to commit to any new work in the foreseeable future. To undertake the work, we would need to develop a proposal and budget, and work with a funding partner to fund the effort. We would need to develop a set of scenarios to run, implement the scenarios and produce results, have the results go through the standard USGS review process, and then release the results to all members of the public simultaneously in a report. This is not a nimble process, so it would likely take on about 12-18 months if we dropped everything else we are working on (including the Statewide Recharge Study) to pursue this. We would have to set up some further discussions to explore this option further.

From: Rep Owens <Rep.MarkOwens@oregonlegislature.gov>
Sent: Tuesday, September 16, 2025 14:53
To: Gingerich, Stephen B <sbginger@usgs.gov>
Cc: Martin, Meredith R <mrmartin@usgs.gov>; Garcia, C. Amanda <cgarcia@usgs.gov>
Subject: RE: [EXTERNAL] Questions on Harney Basin

Howdy Steve,

I do appreciate your time to answer my previous questions Still working through some thoughts in my head on the GW study and communicating with my community . Lots of questions from lots of community members and still struggling on how to answers some of the questions below.

- Can the groundwater study report and model prove that physical barriers are NOT present or is it just that no evidence of these barriers have been identified? The Department is saying "there are no known barriers to flow," which I understand to mean that there isn't any evidence of it. I think you already answered this, but I'm really trying to wrap my head around it.

- If you say that the whole basin is hydraulically connected, but we know that some groundwater will never travel to other parts of the basin (for instance, water in Crane will never travel up to Riley and water in Burns will never travel up to Diamond), what does that term even really mean in a management context? I like what you said about providing a way to examine interconnectedness, but I'm still trying to understand this and explain it to others. We know that the different recharge areas all drain and discharge to similar areas, but they're also pretty distinct.

- What "management unit" makes sense for management purposes to effectively manage available groundwater supplies and groundwater level trends? What do you see in other places/states?

- What are some of the hydraulic barriers or divides in the basin? Do these exist?

- People in community are wondering out loud about the role of faults in groundwater flows. Did the study look very much at how faults might affect flow?

- People are talking about deep subsurface flows that maybe originate outside of the basin. In particular the source of groundwater for the Warm Springs valley. What is your level of confidence that all groundwater in the Harney Basin originates within the boundaries of the study area? Especially for really deep groundwater.

- Did the study show that water from the Donner Und Blitzen area is getting as far north as Weaver Springs now? Did it show that water from the Voltage area is traveling north into the Crane area?

- Before Weaver Springs was pumped, is there a way to estimate the groundwater flow into that area from adjacent areas? Is it possible to estimate the recharge to Weaver Springs alone?

- What amount of the drawdowns in areas adjacent to Weaver Springs are the result of the cone of depression in Weaver Springs versus pumping in adjacent areas? Is it possible to tease that apart?

- What would it take to have the USGS work with the community to run some scenarios? At this point our community would prefer to work with USGS, but I need to understand if that's something you can do or if we need to find some funding for that or maybe a bit of both.

Thank you.

Mark Owens

House District 60

Rep.MarkOwens@oregonlegislature.gov

503-986-1460

Frontier Oregon – The Best part of the State

From: Rep Owens
Sent: Wednesday, August 6, 2025 1:32 PM
To: Gingerich, Stephen B <sbginger@usgs.gov>
Cc: Martin, Meredith R <mrmartin@usgs.gov>; Garcia, C. Amanda <cgarcia@usgs.gov>
Subject: RE: [EXTERNAL] Questions on Harney Basin

Thank you Steve.

Mark Owens

House District 60

Rep.MarkOwens@oregonlegislature.gov

503-986-1460

Frontier Oregon – The Best part of the State

From: Gingerich, Stephen B <sbginger@usgs.gov>
Sent: Tuesday, July 29, 2025 8:28 AM
To: Rep Owens <Rep.MarkOwens@oregonlegislature.gov>
Cc: Martin, Meredith R <mrmartin@usgs.gov>; Garcia, C. Amanda <cgarcia@usgs.gov>
Subject: Re: [EXTERNAL] Questions on Harney Basin

CAUTION: This email originated from outside the Legislature. Use caution clicking any links or attachments.

Hi Mark

I've finally caught up from my days out of the office. Here's my response to your list of questions. I'd be happy to discuss any of this further if you still need more clarification. I've copied Amanda who is heading our groundwater section now and our USGS Congressional Affairs Team with this response. Hank J. opted for an early retirement, but is still around to answer questions of groundwater age, etc. if any come up.

Steve

1. In general, we use "aquifer system" to describe the conditions in the Harney Basin, to encompass the variety of rock types throughout the basin in which groundwater occurs. We didn't find a discrete rock unit that everyone gets their water from, but a series of high and low permeability rocks in a complex 3D framework in which groundwater moves. We tried to limit the use of the word aquifer to a more generic sense when we were defining the concepts and physics of how groundwater moves but not referring to any specific rock layer in the basin. Aquifer system describes the larger interconnected collection of multiple water-bearing units and low-permeability layers that work together.

   Groundwater system and groundwater flow system mean the same thing. This term is broader than “aquifer” or “aquifer system” and includes the concepts of recharge and discharge areas, the amounts of recharge and discharge, the stratigraphic framework in which groundwater flows (the aquifer system), the impacts of pumping, the interconnectedness of different rock units, and even the speed and direction of groundwater flow. An 'aquifer system' generally just refers to the layers of rock or sediment in which groundwater moves.

2. Hydraulically connected means that groundwater can flow from one area to another based on things such as topography, geologic properties such as permeability and storage, and hydraulic head gradient (the difference in water pressure which includes both the natural gradient and gradients that have been induced by pumping). The degree of connectedness between two areas is

not a fixed metric or value. It depends on three factors: (1) distance between the areas, (2) the timeframe over which you are interested in assessing the degree of connection, and (3) the permeability of the groundwater system within and between the areas of interest. We didn't explicitly define this term or concept in the report, but I would say the entire sequence of reports produced by the study were needed to provide a basis for assessing the interconnectedness of the groundwater flow system, with the Gingerich and others 2022 report summarizing the various supporting documents into one report to conceptualize the movement of groundwater through the system. The groundwater-flow model could be used to quantify interconnectedness given certain specific questions. For example: “Will groundwater levels within 5 miles of Hines in the valley lowlands be affected by pumping at current rates in Sage Hen valley in the next 50 years?” The answer to that question might be different if the timeframe was 10 years or 200 years. The answer might also be quite different at 60 or 70 years, so it’s valuable to consider multiple time periods to avoid surprises down the road: a change of X in 50 years does not assure an incrementally similar change in 60 years. Groundwater flow systems are inherently non-linear in their temporal response to perturbations. The groundwater flow system (as previously defined) provides the framework to answer questions of interest to water users and managers.

3. This is one no one can really answer with the information currently available. That is why we refer to the entire rock package as an aquifer system. We can observe and trace certain packages of rock where they outcrop on the surface. Detailed geologic mapping (e.g. 1:24,000 maps from DOGAMI) cover a small fraction of the Harney basin. Our only view to the subsurface is through water wells reports by drillers, which are highly variable in detail and quality and cover only the portions of the basin where wells have been drilled. Detailed subsurface knowledge is available from the few wells (10-20) that have been drilled while a professional geologist describes the cuttings or collects cores. With these information constraints, the heterogeneous layers of rock making up the hydrostratigraphic framework cannot be mapped to a detailed degree anywhere. From the available information, however, we do see layers of varying lateral and vertical extent that have high permeability that are preferentially tapped for municipal and agricultural production and other layers that have low permeability that generally are avoided or used only for low-volume domestic or stock wells. And we see these areas come and go as you move around the lowlands.

   Areas of higher permeability often are colloquially referred to as aquifers, however we do not use the term because it lacks precision: the varying perceptions and conceptions the term conjures up often conflict with the strict statutory meaning. A similar issue with terminology arises with the terms “confining unit” and “semi-confining unit”, particularly the former where colloquial perceptions/conceptions often equate it to an absolute barrier to flow, whereas the hydraulic reality is considerably more nuanced requiring understanding of the changing composition, thickness, and lateral extent of their lower-permeability deposits. As with the interconnection question, it also requires a consideration of timescale: a silty clay deposit may have sufficiently low permeability to effectively be considered a confining unit on timescales of years, semi-confining at the scale of decades, and transmit both water and head signals on the scale of centuries. To properly map each unit, we would need the drill cuttings and/or geologic cores from all of the wells that have been drilled and use these to come up with some diagnostic tools to identify the exact rock units underlying the entire lowlands. We would use fossil evidence, rock chemistry, grain size, geophysical logging. water chemistry, etc. and then attempt to correlate each unit from well to well to create a detailed 3D model of the various layers. I can't begin to estimate the amount of money and time this would take especially since we would have to redrill all the locations to get the well cuttings to study. In our report, we refer to the Older basin fill and Younger basin fill Hydrostratigraphic Units (HUs). Each of these HUs are comprised of many layers that act as aquifers and confining units of an unknown (and unknowable with current data) number and extent. Even though we didn't have the existing data, nor time and money to define every single sediment and rock unit, we were

still able to replicate the water levels (both areally and through time) fairly accurately throughout the basin in our groundwater model by representing these HUs with spatially varying hydrologic properties. This tells us that we are able to replicate the overall groundwater flow system and develop a good understanding of how pumping has affected the system without having to know every nuance of the various layers making up the aquifer system in the basin.

4. Groundwater reservoir is the term used to describe the groundwater and the rock units that contain the groundwater. We didn't explicitly define this term in the report and didn't use it in the report. I believe the term might have a statutory definition but our study wasn't designed to define a specific legal extent or volume of water in it.

5. Groundwater flow boundaries can be hydraulic such as at a groundwater divide (associated with topographic highs), and at recharge and discharge areas. These can sometimes move if you change head conditions in the system, such as through pumping. An example of this in Harney basin is the northward migration of the groundwater discharge zone in Harney Lake northward toward Weaver Spring in response to pumping. Prior to substantial pumping in Weaver Spring, groundwater from the north, west, and south converged along a line running through the middle of Harney Lake; it now converges from all four cardinal directions on a point centered on the cone of depression in Weaver Spring.

Groundwater flow boundaries can also be physical such as *some* faults or very-low-permeability layers such as volcanic dikes or thick clay layers. Unlike hydraulic groundwater flow boundaries, physical groundwater flow boundaries don't typically move when head conditions change. Physical groundwater flow boundaries often are spatially and temporally scale dependent, and also dependent on the question being asked. For example, under a certain set of pumping conditions a horizontal clay layer could effectively be a physical boundary to downward vertical flow but not affect horizontal flow at all. An increase in pumping at that well (or the addition of new wells in the vicinity) could allow the pressure effects of pumping to propagate beyond the extent of the clay layer and cause vertical flow from more permeable units above the clay layer.

The best way to see the effects of a physical flow boundary is to look for abrupt changes in head on either side of the feature. Quite often, this is a small-scale local phenomenon, and ideally, you know the location of the barrier and you have water-level measurements on either side of the feature that show a smooth head gradient being disrupted by the flow-barrier feature. For example, our project in the Walla Walla Basin has many examples of large water-level changes in wells on opposite sides of mapped faults. And we have pumping near the faults causing head changes that help enhance the effect of the boundaries. Importantly, though, only some of the faults act as a local barrier. Among faults that seem to act as physical flow barriers, it is likely that they allow a small amount of groundwater flow across them…an amount that might be small on the scale of years but meaningful on the scale of centuries. In the Harney Basin, we have less detailed geologic and hydraulic mapping and a far less dense network of water level measurements, so we have much less data to work with to identify flow barriers at sub-regional scales. However, on the regional scale of the basin, we just don't see evidence of substantial barriers and associated abrupt lateral head differences. All the local water level differences we see are

likely attributable to wells pumping at different rates from different levels of the basin fill materials. The discontinuous distribution of high permeability rocks and the overall low permeability of the rest of the rocks are effectively controlling the spread of the effects of pumping across the basin. The comment on page 45 of the report about “the possible presence of flow boundaries” is primarily there to acknowledge the limitations of our knowledge of the fine-grained details at the flow system. As we’ve tried to emphasize from the early days, this study was not designed to answer site-specific questions but rather to provide a comprehensive system analysis, which is useful for framing questions at smaller scales and places hard limits on their operation – the results of smaller scale investigations must be consistent with what is now known about inputs, outputs, and general structure and functioning of the larger flow system.

From: Rep Owens <Rep.MarkOwens@oregonlegislature.gov>
Sent: Monday, July 14, 2025 10:26
To: Gingerich, Stephen B <sbginger@usgs.gov>
Subject: [EXTERNAL] Questions on Harney Basin

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hey Steve,

It's been awhile. Hope you are well. I've been spending some more time with the groundwater study report and have a few questions I'm hoping that you might help me with. We established through the study advisory committee that the Basin is one interconnected groundwater system through the advisory committee and I guess I'm trying to understand that better. Right now I'm stuck on this statement on page 16 of the 2022 report - "In the Harney Basin, groundwater occurs within a single groundwater system that includes various hydraulically connected areas of unconfined and confined layers distinguished by the hydraulic properties of the local hydrostratigraphy" - and also on page 65 of the report "Groundwater in the Harney Basin occurs within a single groundwater-flow system that includes several distinct yet hydraulically connected areas of interest distinguished by local hydrostratigraphy, location in the basin-wide groundwater flow system, and local rate and magnitude of recharge and discharge."

- The report describes both "aquifers" and "aquifer systems" - what is the difference between these? Similarly, what does "groundwater system" or "groundwater flow system" mean? Is that the same as an "aquifer system"?

- Can you describe what is meant by "hydraulically connected areas"? What does it mean for different areas to be hydraulically connected? Where is the best description of these connections in the report?

- How many "confined" "unconfined" and "semiconfined" aquifers are there in the basin and how do you tell them apart? Is there a place where all of these are described in detail? How is this different than a hydrostratigraphic unit? Or are those the same thing?

- Does the term "groundwater reservoir" have a scientific definition? I looked for it in your report but couldn't find it.

- On page 45 it talks about "flow boundaries". If there aren't any physical barriers to flow in the basin (like we talked about in the advisory committee), what is a flow boundary and how do you know one exists?

Thanks,

Mark

Mark Owens

House District 60

Rep.MarkOwens@oregonlegislature.gov

503-986-1460

Frontier Oregon – The Best part of the State

Input/Feedback from a Subset of the RAC*	Does the Petition Proposal address feedback?	Does the OWRD Proposal address feedback?
General - Groundwater levels are currently reasonably stable in Silver Creek, Silvies River, and Blitzen-Voltage areas.	**YES** - Distinguishes between conditions in each area and recognizes that groundwater levels in these areas are currently reasonably stable.	**NO** - Does not distinguish between area specific conditions and considerations and treats all areas as if they are in excessive decline.
General - The Harney Basin is NOT one groundwater reservoir.	**YES** - The Harney Basin is (at least) **five** groundwater reservoirs.	**NO** - The Harney Basin is **one** groundwater reservoir.
General - Additional feedback should be sought on area boundaries before finalizing them.	**YES** - There was additional conversation and consideration of area boundaries.	**NO** - There was not additional conversation or consideration of area boundaries.
CGWA - There should be different critical groundwater areas rather than one big critical area to allow for more area specific management.	**YES** - There are **five** critical groundwater areas.	**NO** - There is **one** critical groundwater area.
CGWA - Each area/reservoir should have to meet the threshold for designation of a critical groundwater area.	**YES** - Each groundwater reservoir has met different criteria for designation as a critical groundwater area and reflects that.	**NO** - Evidence from problem areas (Weaver Springs and Northeast Crane) used to designate the entire lowlands as one critical groundwater area.
CGWA - Not every area/reservoir has met the threshold for designation of a critical groundwater area (namely Silver, Silvies, Blitzen-Voltage).	**YES/NO** - An argument could be made that each area has met different criteria for a critical groundwater area designation. Many RAC members still do not agree to the designation, but are willing to accept it under certain conditions.[1]	**NO** - The entire Harney Basin lowlands are a critical groundwater area despite area specific conditions and considerations (some areas with minimal local concern and other areas with excessive declines and more significant concern).

[1] Some petitioners in the Silver Creek, Silvies, and Blitzen-Voltage areas do not agree with designation as a critical groundwater area, but are supporting the petition due to inclusion of a process and criteria for lifting the designation if reasonably stable conditions are maintained and the conditions warranting the designation are resolved.

Input/Feedback from a Subset of the RAC*	Does the Petition Proposal address feedback?	Does the OWRD Proposal address feedback?
CGWA – Not every part of the basin should be treated like Weaver Springs which requires urgent action because Weaver Springs is distinct.	**YES -** Each area/reservoir is designated on its own, has its own goal, and own set of regulatory and voluntary actions, including Weaver Springs.	**UNCLEAR -** Area specific criteria used to determine corrective control actions is unclear. OWRD repeatedly points to Weaver Springs as the justification for action across the entire basin.
CGWA - The rules should include a process and criteria for lifting a critical groundwater area designation.	**YES** - Includes a process and criteria for lifting a critical groundwater area designation.	**NO** - Does NOT include a process or criteria for lifting a critical groundwater area designation.
CGWA/VAs - Each area/reservoir should have its own goal based on area specific conditions and considerations.	**YES** - Each reservoir has its own goal based on area specific conditions and considerations based on a consistent framework for the whole basin.	**NO** - The entire basin is held to the same goal regardless of area specific conditions or considerations.
CGWA/VAs - Groundwater users from each area/reservoir should be involved in setting goals for that area/reservoir.	**YES/NO** – More groundwater users from each area were consulted in developing the petition, but more conversations area needed.	**YES/NO** - Each area generally only had one representative on the RAC, which is not sufficient.
CGWA/VAs - The goal of durable stability is too rigid and inconsistent with statewide policy.	**YES** - For areas with excessive declines, there will be a goal of dynamic equilibrium, to allow for natural fluctuations. For areas that are reasonably stable, there will be a goal to maintain reasonable stability.	**NO** - All areas will be required to achieve durable stability on the same timeline regardless of area specific conditions and considerations.
CGWA - Corrective controls should be tailored to the conditions and goals of each area/reservoir.	**YES** - Corrective controls are tailored according to area specific conditions or considerations.	**NO** - Same corrective controls for each area regardless of area specific conditions or considerations.
CGWA – New groundwater uses (anything coming online after a specific date) should not be allowed.	**YES -** Groundwater rights (including those developed under an extension) that did not have evidence of construction by December 31, 2024 would not receive water.	**YES** - Allocation would be limited to ground with evidence of water use from 2020-2024.

Input/Feedback from a Subset of the RAC*	Does the Petition Proposal address feedback?	Does the OWRD Proposal address feedback?
CGWA - Regulatory actions should be focused in areas where groundwater resources are clearly overdrawn and there is evidence of excessive declines.	**YES** - Regulatory actions proposed for Weaver Springs and Northeast Crane.	**NO** - Regulatory actions proposed for every area.
VAs - Voluntary reductions should be promoted and supported.	**YES** - Voluntary reductions promoted and supported in areas with reasonably stable groundwater levels.	**NO** - Focus on regulatory reductions for all areas. No mention of voluntary actions.
CGWA - PTW should not be set in areas where groundwater is not overdrawn/there is no evidence of excessive declines/groundwater is reasonably stable.	**YES** - PTW set for Weaver Springs and Northeast Crane. PTW will be set for other area if reasonably stable conditions are not met and decline triggers are tripped.	**NO** - PTW set for each area regardless of area specific conditions and considerations.
CGWA/VAs - Reductions should occur immediately in some areas (Weaver Springs) and be phased in in other areas.	**YES** - Regulatory reductions will occur immediately in Weaver Springs, regulatory reductions are phased in in Northeast Crane, voluntary reductions are provided a timeline for implementation.	**YES** - Regulatory reductions will occur immediately in Weaver Springs, regulatory reductions in other areas would be phased in over 24 years, with frontloading of reductions in all areas.
CGWA - Allocation of PTW should allow for maximum irrigable acres to remain viable.	**YES -** All groundwater rights would first be allocated 2.5 acre feet of water for acres irrigated from 2020-2024 and there would be a process for irrigators to signal non-use at the beginning of the season, allowing for use by a junior user.	**YES -** All groundwater rights would first be allocated 2.5 acre feet of water for acres irrigated from 2020-2024.
CGWA/VAs – The effectiveness of regulatory and voluntary actions should be assessed on their ability to slow the rate of decline.	**YES** - The rate of change will be assessed on an annual basis for each area/reservoir along with the estimated groundwater use to assess effectiveness.	**YES** - The adaptive management framework allows for adjustment of reductions to follow a modeled rate of change.

Input/Feedback from a Subset of the RAC*	Does the Petition Proposal address feedback?	Does the OWRD Proposal address feedback?
CGWA/VAs – The allowed magnitude/rate of decline should account for area specific conditions and considerations.	**YES -** Management for each area would consider current trends in each area and allow a reasonable amount/rate of decline based on those conditions.	**NO** - Each area would be required to achieve durable stability regardless of current trends.
CGWA - Implementation should be phased in, starting in the areas with the biggest problems.	**YES -** Contested cases can be phased in depending on priority of area.	**NO** - Each area would be on the same timeline.
VAs – The Commission and OWRD should be a partner in voluntary agreements.	**UNCLEAR -** The role of OWRD is not specified, but VAs are encouraged.	**UNCLEAR -** The role of OWRD is not specified.
Exemptions – Small users that are not significantly contributing to overdraw and that provide value to the basin should be exempted from regulation.	**YES** - Recreational uses and geothermal uses (e.g., Crystal Crane hot springs) exempted from regulation.	**NO** - No exemptions.
Exemptions - Tribal water rights should be exempted from regulations.	**YES** - Tribal water rights exempted from regulation.	**NO** - No exemptions.
Consultation - Cities should be consulted in decisions regarding municipal water use.	**YES** - Cities were involved and support the petition.	**NO** - Cities not involved.
Monitoring - All available groundwater level data should be used in assessing groundwater level trends (including permit condition measurements).	**YES** - All available groundwater level data would be used to assess groundwater level trends.	**UNCLEAR** - OWRD will determine “representative” data to use in analyses.
Monitoring - Groundwater users should be included in determine what are “representative” groundwater level measurements for different areas.	**YES** - There is a process by which groundwater users could assist in advising OWRD on what are representative groundwater level measurements for an area.	**NO** - OWRD alone will determine “representative” data to use in analyses.

Input/Feedback from a Subset of the RAC*	Does the Petition Proposal address feedback?	Does the OWRD Proposal address feedback?
SWMPA - If flowmeters are not functioning due to local conditions outside of the control of groundwater users there is a process to use other data/methods.	**YES -** A process to receive an exemption and report other data is included if a groundwater user cannot maintain a flowmeter for reasons outside of their control.	**NO –** Flowmeters must be maintained regardless of the ability to maintain flowmeters given local conditions/ circumstances outside of the control of groundwater users.
SWMPA - The requirement to install flowmeters should be phased in depending on the severity of issues in each area.	**YES/NO -** Water rights holders in area are required to have flowmeters installed on the same timeline, with the opportunity to adjust based on the Department's discretion.	**YES/NO -** Water rights holders in area are required to have flowmeters installed on the same timeline, with the opportunity to adjust based on the Department's discretion.
SWMPA - There is a clear commitment to assist groundwater users with the costs associated with installing measurement devices.	**NO** - Not mentioned.	**NO** - Not mentioned.
SWMPA - If data is collected we should make sure it is useful and used.	**YES -** OWRD will use all available data to produce an annual report of estimated groundwater use and groundwater level trends.	**NO** - Not mentioned.
SWMPA - All available data (water use data, satellite imagery, electricity records, etc) are used to track and improve water use estimates over time.	**YES -** OWRD will use all available data to produce an annual report of estimated groundwater use.	**NO** - Not mentioned.
Classification – There should be a pathway to allow for new uses of water through offset water (allow for new uses without increasing overall groundwater use).	**YES -** Pathway provided for issuance of limited licenses if offset water is provide.	**NO -** No pathway provided for new uses with offset water.
Classification – There should be a pathway for limited licenses through offset water.	**YES** - Pathway provided for issuance of limited licenses if offset water is provide.	**NO** - No pathway provided for limited licenses.

Input/Feedback from a Subset of the RAC*	Does the Petition Proposal address feedback?	Does the OWRD Proposal address feedback?
Transfers – Transfers should not have been allowed and should not be allowed between areas.	**YES -** Each groundwater reservoir will be a distinct source and transfers will not be allowed without consent to injury of all groundwater users.	**NO** - Not mentioned.
Other – There should be ongoing programs to track spring discharge, improve understanding of connection between groundwater pumpage and spring discharge, and remedy impacts to springs	**YES** - Encourages voluntary actions to understand and remedy impacts to springs.	**NO** - Not mentioned.
Other – There should be ongoing programs to track and mitigate impacts to shallow domestic and stockwater wells.	**YES** - Encourages actions to maintain and develop programs.	**NO** - No mention of maintaining or improving existing programs or developing new programs.
Other – There should be ongoing programs to promote voluntary cancellation of groundwater rights with compensation.	**YES** - Encourages actions to maintain and develop programs.	**NO** - No mention of maintaining or improving existing programs or developing new programs.
Other – Actions on federal lands have the ability to affect groundwater recharge and discharge and federal agencies should be consulted (e.g., juniper encroachment on USFS and BLM land, forest fires and forest management on USFS land).	**YES** - Encourages coordination with federal agencies.	**NO** - No mention of integration and coordination with federal agencies.
Other – The USGS groundwater model should be continuously used and updated to inform management.	**YES** - Efforts to update and use the model will be encouraged and supported.	**NO** - No mention of the model and its continued use.

Input/Feedback from a Subset of the RAC*	Does the Petition Proposal address feedback?	Does the OWRD Proposal address feedback?
Other – There should be a mutual commitment to implement the state recognized place-based integrated water resources plan.	**YES** - OWRD support for implementation of actions in thee place-based plan will be documented and communicated.	**NO** - No explicit mention.
Other – Groundwater users and OWRD need to consider the effect of well construction on groundwater quantity and quality.	**NO** - No explicit mention.	**NO** - No explicit mention.
Other – Implementation of decline conditions without consideration of priority subverts prior appropriation and should be considered in regulatory approach.	**YES** – Regulation by priority consistent with PTW would be prioritized.	**UNCLEAR** – Path forward for decline conditions is unclear, not mentioned in rules.
Other – The community has a desire for ongoing collaboration to support implementation of regulatory and voluntary actions.	**YES** - Encourages ongoing collaboration to support implementation.	**NO** - No explicit mention.
Other – The approach should limit the need for legal action and expenses from the state and groundwater users.	**YES** – Contested cases can be phased in and will limit the number of groundwater right holders included.	**NO** – Every groundwater right holder (670) will be included in the contested case process without phasing.

- This table includes input from a subset of the RAC. It does not represent a consensus view of the RAC and does attempt to the report the input from all RAC members.

October 7, 2025

Director Gall, Chair Smitherman and Commissioners,

We, the below signed RAC members of the Division 512 rulemaking process, offer these comments in support of the petition submitted on September 12, 2025. We believe the petition better reflects the comments, feedback, and requests that we repeatedly made from the beginning of the rulemaking process. There not a process by which the RAC could effectively deliberate amongst ourselves to arrive at cohesive advice or recommendation for the Department's consideration. Consequently, there is feedback from individual RAC members (in the form of verbal feedback during meetings and some limited written feedback between meetings), but there is not written advice from the RAC as a body. As RAC members we feel that we were put in a position to react on a very short timeline to the Department's stated positions and proposals. Oftentimes we were trying to make sense of very dense and long presentations and were not able to effectively engage due to the overwhelming amount of information. Between meetings the Department would make adjustments in ways, some significant and surprising, that at times did not seem to correspond with the feedback provided.

For the first seven meetings the Department indicated at the beginning of the meeting that their role was to foster collaboration and consensus building. It was reasonable for us to believe that we were engaging in a collaborative rulemaking process in which the RAC members would be seeking consensus. When we repeatedly expressed concern that the process was not feeling collaborative and the process for arriving at consensus was unclear, rather than providing clarification about how collaboration and consensus would occur, the Department switched approaches and indicated that they only intended to inform, involve, and consult, with the RAC.

From the beginning we openly expressed concern to the Department that they would not listen to us, consider our perspectives, or take our proposals seriously. Oftentimes we feel that silence was taken to mean consent. Some of us had to step away in the middle of the process due personal reasons, our inability to continue to make a significant time commitment, not understanding the relevance to ourselves and our work, a feeling of overwhelm and ineffectiveness because of the amount of information being shared, not knowing how best to contribute, not feeling that our contributions mattered, or to preserve our mental health and wellbeing. By the end of the process those of us who remained involved were tired, confused, and disenchanted. We still do not know how the Department arrived at its final rules as they do not reflect many of the concerns or suggestions we, as individuals, raised in the process.

We were eager to work with the Department on iterations of various modeled scenarios and felt that we were making progress exploring and comparing different scenarios together. The Department then unilaterally decided to optimize the model using internally determined parameters. These results were

presented to the RAC in January 2025. We were given a few weeks to provide feedback but many of us could not quite make sense of what the Department was optimizing for.

The near final scenario was presented in April 2025 along with draft rule language for the Critical Groundwater Area, which was proposing regulatory action for the whole basin. Prior to the April 2025 RAC meeting, which was the second to last meeting, many of us still had the expectation based on earlier RAC meetings that the Department would be pursuing regulatory action only in the Weaver Springs/Dog Mountain and Northeast Crane areas. Many of us were surprised that regulatory action was being proposed for the entire basin and we were surprised at the levels of regulation proposed for some areas. We were not able to make sense of how the Department arrived at the final proposal and why it was so different from earlier proposals.

Many of us represent different parts of the basin and when we came to the table we were very careful to make sure that the Department knew that we were speaking from the perspective of someone in our part of the basin but that we were not 1) a representative of the other users in our area and could not speak to their views, and 2) we were not speaking for the basin as a whole. It has taken time, but because of efforts around the public comment period and voluntary agreements we are now hearing from and engaging with others in the basin who are interested in the rules and have the potential to be affected by the rules. We are hearing significant concern from community members. The petition reflects not only what we communicated during the RAC meetings, but also much of what we are hearing from our neighbors.

We appreciate the time that Department staff, many of whom are new to the issues in the Harney Basin, took on the RAC process. It was lengthy and difficult at times. The stakes are too high for us to not continue to insist that our voices be heard in this process. We strongly believe that the petition more accurately reflects feedback given during the RAC process and presents a fair and reasonable approach, as you can see below.

We remain hopeful that the partnership we have forged with the Department will endure. We understand that there are problems caused by over-appropriation in our basin, we understand that some regulatory reductions are needed, we understand that we will benefit from voluntary reductions and other voluntary joint actions, and we are committed to long-term sustainable management of our precious groundwater resources for the benefit of current and future generations to maintain a balance of all beneficial uses.

Signed,

Andy Root
Rob Frank
Jay Nelson
Ken Bentz
Louie Molt
Rob Sharp
Steve Rickman
Angie Ketscher
Brandon McMullen
Jenifer Tayton
Kristen Shelman
Mark Owens
Roger Sheley
Tony Hackett
Barbara Howard
Fred Otley
John Short
Lorissa Singhose
Nick Schott
Steve Grasty
Travis Singhose

MEINZ Kelly A * WRD

From: rstoltze52@gmail.com
Sent: Tuesday, October 7, 2025 12:23 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

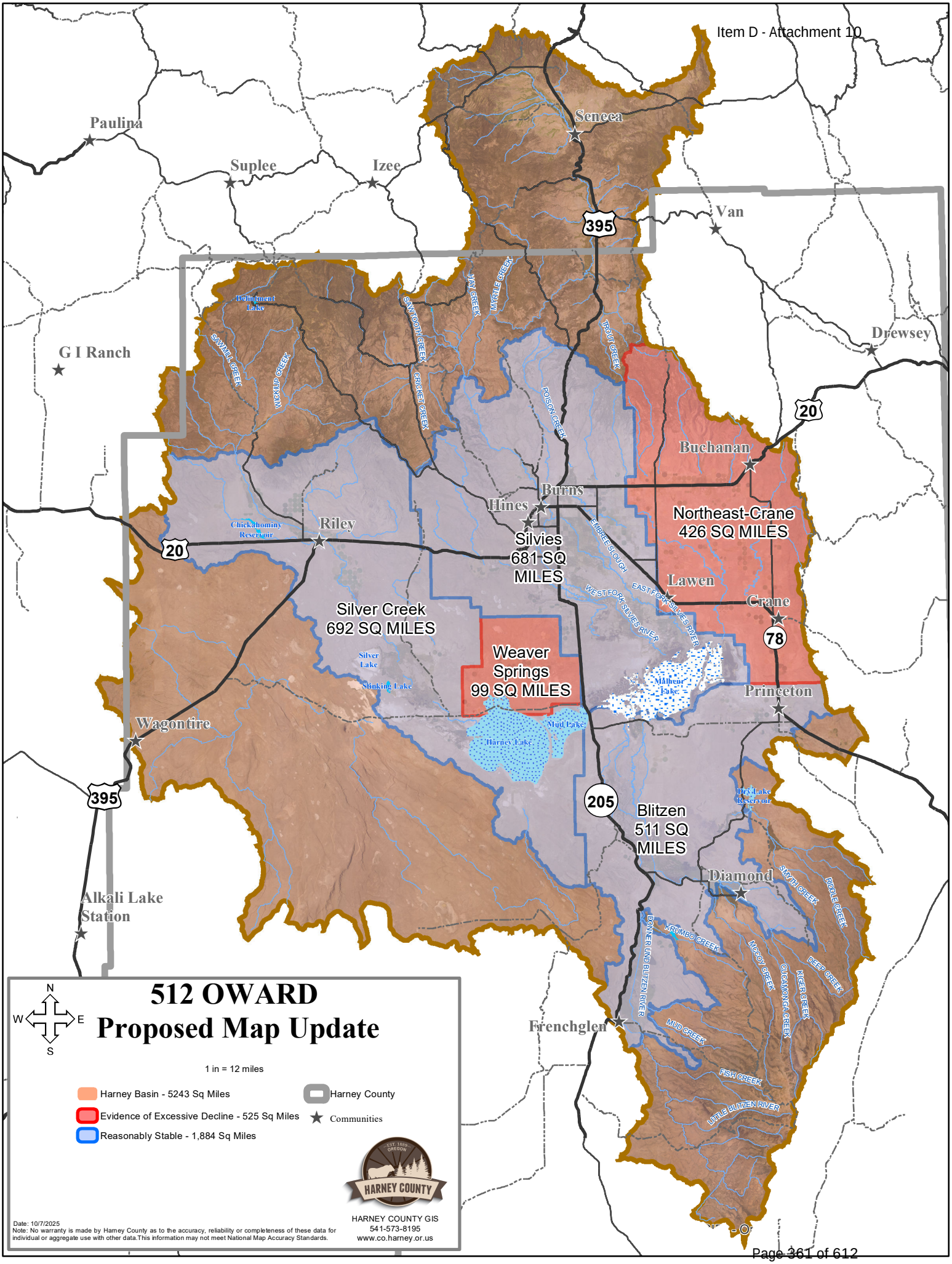
Some people who received this message don't often get email from rstoltze52@gmail.com. Learn why this is important

Attention Kelly Meinz with OWRD,

- As an outdoor enthusiast and supporter of science based resource management, I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules —Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. The petition will allow continued overpumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- I urge OWRD to first strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.
- I urge OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.

Thank you,
Richard Stoltze
14226 Whitewater Loop
La Pine, Oregon 97739

Email: Rstoltze52@gmail.com



512 OWARD
Proposed Map Update

N
W E
S

1 in = 12 miles

- Harney Basin - 5243 Sq Miles
- Harney County
- Evidence of Excessive Decline - 525 Sq Miles
- Communities
- Reasonably Stable - 1,884 Sq Miles

HARNEY COUNTY

HARNEY COUNTY GIS
541-573-8195
www.co.harney.or.us

Date: 10/7/2025
Note: No warranty is made by Harney County as to the accuracy, reliability or completeness of these data for individual or aggregate use with other data.This information may not meet National Map Accuracy Standards.

MEINZ Kelly A * WRD

From: Kelly.A.MEINZ@water.oregon.gov
Subject: RE: Thank you for today

On Fri, Oct 3, 2025 at 3:59 PM Rob Frank <rob.frank@harneycountyor.gov> wrote:

> Dear Commissioners,
>
> I want to extend a heartfelt thank you for taking the time to listen to the Harney County community about our cares and concerns about sustainable groundwater management in the Harney Basin today, and staying extra to hear all the registered comments was meaningful. I would like to take this opportunity to request that you ask the Department some questions that are important to consider regarding both the basin-specific and statewide policies. These are outlined below.
>
> It would be very meaningful to members of our community if you would acknowledge that groundwater users have been given a legal right to use water, most of them have been lawfully using that water in accordance with those rights, and that many of challenges we are now facing are a result of overallocation of the resource, not illegal or improper use. There is a lot of concern that farmers are being accused of doing something wrong or illegal, when that is not the case. These are hardworking individuals who want to do right by the water resources of the state and stand ready to partner with the Department and Commission to achieve sustainable groundwater management. It would also be very meaningful if you would talk about the appropriate role for regulatory action in groundwater management as it relates to other voluntary and collaborative actions given that the Department has been assuring the County and community that there would be a mix of regulatory and voluntary actions for our basin for nearly a decade.
>
> I noticed that the Department finalized their Division 10 groundwater study report after the September Commission meeting. In reviewing that document it does not appear that the Department took into consideration any comments from the Harney County Court or community. This is deeply concerning to me. I would also like to note that no formal presentations or formal consultation and coordination has occurred as is required by the Department's own rules and despite a written request from the County Court. This is one of many reasons the Harney County Court is supporting the petition as we have not been meaningfully included in decisions that will profoundly impact the future of the people we were elected to represent.
>
> As you know according to ORS 536.025 it is "the function of the Water Resources Commission to establish the policies for the operation of the Water Resources Department" and the Commission "may not delegate to the director the authority to adopt or amend a basin program." According to ORS 537.780 "the Commission may not adopt any rule restricting ground water use in an area unless the rule is based on substantial evidence in the record of the Water Resources Department to justify the imposition of restrictions." I encourage you to keep this in mind as you deliberate.
>
> These are some questions I would like for the Commission and Department to consider and be prepared to respond to publicly as they move forward with this process:

- Is it the proposed policy of the Water Resources Department that the Department alone can and should “ascertain or reasonably infer” the exterior boundaries of a groundwater reservoir without considering RAC feedback, public input, or input from affected local governments? List the criteria that the Department relies upon to make the determination that the Harney Basin is one groundwater reservoir and specify how that meets the statutory requirement in ORS 537.525 that the Department determine the “location, extent, capacity, quality and other characteristics of particular sources of ground water”?

- Is it the proposed policy of the Water Resources Department that so long as any criteria for a critical groundwater area are met in any portion of a groundwater reservoir that the entire groundwater reservoir should be subject to regulatory action, regardless of the size of the reservoir, the proximity to the problem area, or localized conditions?

- Is it the proposed policy of the Water Resources Department that a groundwater reservoir or portion of a groundwater reservoir that shows a median overall decline of around 3 feet with a median rate of decline of 0.3 feet per year as measured during a 20-year period of drought is NOT reasonably stable?

- Is it the proposed policy of the Water Resources Department that they have the direction and authority to curtail by regulation groundwater reservoirs or portions of a groundwater reservoir that are NOT over appropriated or overdrawn and do not have evidence of wells that have declined excessively or are excessively declining?

- Is it the proposed policy of the Water Resources Department that all groundwater reservoirs across the state need to reach durably stable conditions (0 ft/yr of decline) within 30 years regardless of current groundwater level trends? Do you propose to bring that forward as a statewide policy to the Commission or legislature for deliberation?

- Under what conditions will the Department and Commission have made a determination that its efforts to resolve or prevent impairments through voluntary joint action has been ineffective in a groundwater reservoir or portion thereof, thus requiring the police power of the state as stated in ORS 537.525? Who is responsible for identifying the impairments to be resolved through voluntary joint action and how will those be communicated to the groundwater users and public? Is it the position of the Department that it is the responsibility of the groundwater users to initiate voluntary joint action or is it the responsibility of the state?

If you stuck it out long enough to read my questions and concerns, I am appreciative. I would note, in closing, that I was bewildered by a night before agenda change to segregate public comment, relieved when Chair Smitherman announced a change in plans, and dismayed when the comment period moved right into a half hour of “water partner” commentary unfettered by the same time

constraints allowed the rest of public comment. It was the opposite of “equitable” to stack dissenting views right at the beginning, many of whom were not members of the RAC. My frustration stems not from their opposition to something I support, but rather the unilateral decision of which viewpoints deserve preference over others. As Commissioners, it is your agenda, your meeting. I thank you again for you time and attention to this matter.

Rob Frank

Harney County Commissioner

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MEINZ Kelly A * WRD

From: Rob Frank <rob.frank@harneycountyOR.gov>
Sent: Wednesday, October 1, 2025 3:45 PM
To: WRD_DL_rule-coordinator
Subject: public comments on the petition for rulemaking
Attachments: Scan Oct 1, 2025 at 3.04 PM.pdf

Below are Harney County's comments on the petition for amendment to the RAC 512 rules. I've included the text below, as well as attached the signed document. Thank you.
Rob Frank
Harney County Commissioner

Oregon Water Resource Commissioners;

The Harney County Court stands in support of the petitioned amendment to Oregon Administrative Rules Chapter 690, Division 512 regarding Harney Basin groundwater. The Petition, as well as Exhibit B - Harney Basin Water Policy and Management Background, is thorough and we hope that you will read them both in their entirety to better grasp the situation at hand.

In short, the amended rules are more reflective of local knowledge and input, and do not devastate the economy to such a degree as the proposed rules while still achieving stable groundwater levels in a reasonable timeline based on modeling. This community driven alternative meets the statutory requirements to protect this precious resource.

As the duly elected representative body for our county, we hope that you will not take lightly our recommendation to adopt the amendment as presented.

Respectfully submitted,
Harney County Court

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Oregon Water Resource Commissioners;

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As the duly elected representative body for our county, we hope that you will not take lightly our recommendation to adopt the amendment as presented.

Respectfully submitted,

Harney County Court

William Hart, Judge

Patty Dorroh, Commissioner

Rob Frank, Commissioner

MEINZ Kelly A * WRD

From: Rob Kuntz <longboards1@gmail.com>
Sent: Thursday, October 2, 2025 6:57 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from longboards1@gmail.com. Learn why this is important

Kelly Meinz
Oregon Water Resources Commission (OWRD)

Mr. Meinz,
The following remarks concern both the "Petition for Rulemaking — Division 512" and "Agency Proposed Rules — Division 512."

- I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission (OWRD) to deny Rep. Owens' petition.
- OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.
- I would like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.
- The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

Robert Kuntz
Sisters, OR 97759

Public Comment: Proposed Harney Basin Groundwater Plan

Submitted 8/13/25

Rob Sharp (rsharp80@icloud.com)

Subarea Boundaries:

My wells are located on the western boundary of the NE Crane subarea (T23S, 32E, Sec 3). The delineation of this boundary appears to be arbitrarily set based upon the presence of ground water irrigation on the western edge of the NE Crane subarea (arbitrary line to "group" our portion with the broader subarea). In reality, we should be included in the Silvies subarea as all of our surface runoff comes from drainages within the Silvies subarea (primarily Soldier Creek and Coffee Pot). The western boundary of NE Crane should end at South Harney and Rattlesnake Creek roads and not extend west beyond this.

Curtailments should be identified in this plan:

The department should conduct analysis and identify which water rights will be curtailed under the first phase of this plan. This data already exists. If specific rights can't be identified, the department should associate what priority dates will be curtailed first. This would allow irrigators to make hard business decision planning now and not wait until 2028.

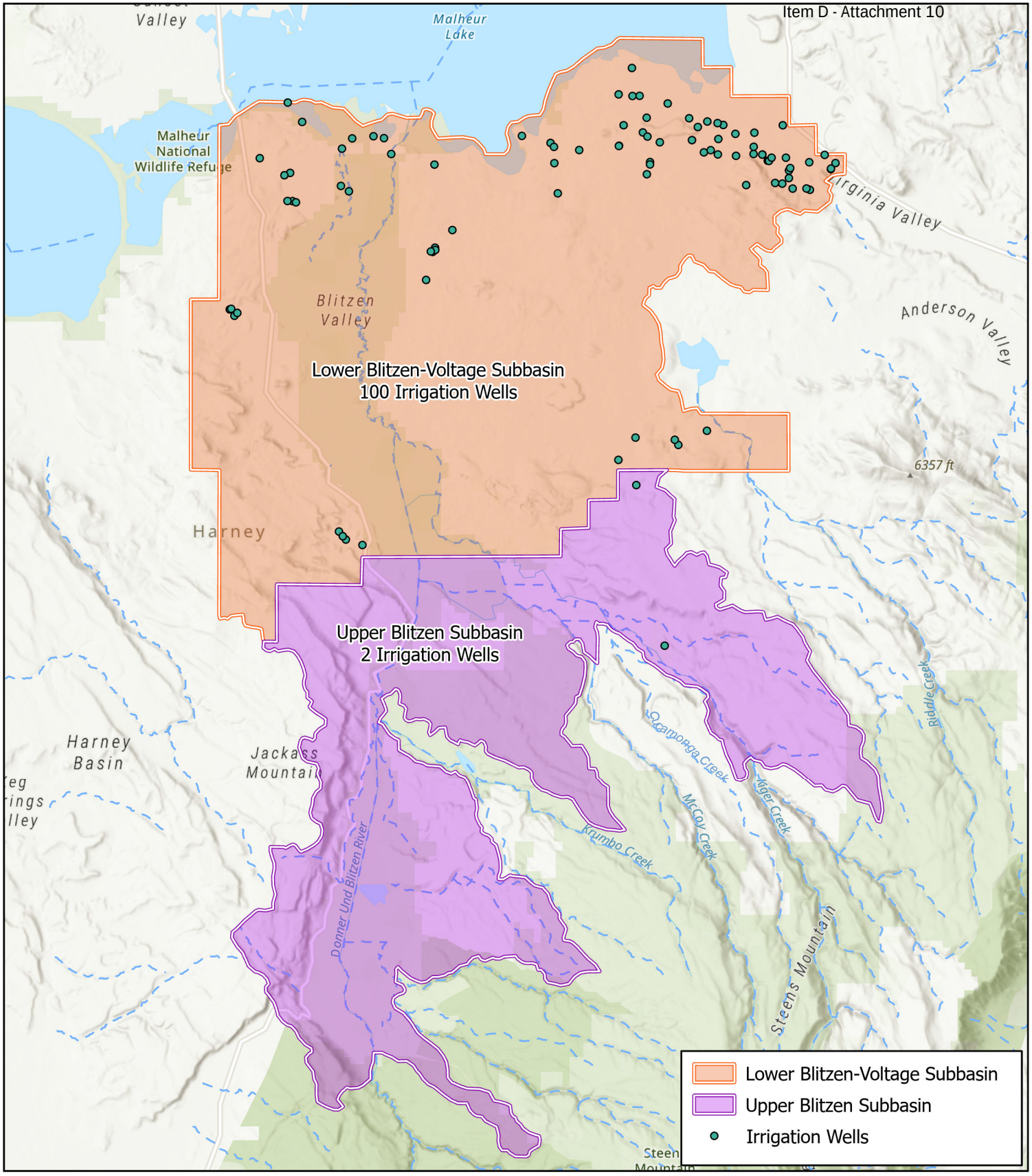
Ability for limited irrigation:

When curtailments end irrigation, the previously farmed acres will transition to noxious weeds and undesirable vegetation. Instead of complete shut-off of water, the department should identify limited periodic irrigation periods where operators could irrigate to establish or maintain beneficial vegetation. For example, if an operator was able to irrigate to establish a forage species such as crested wheat, these previously farmed acres could still be of value for livestock/wildlife grazing. I'm thinking like very brief 2-to-4-week periods in the springtime once every 3 or 4 years. Utilizing this very limited irrigation water, could have significant benefits compared to fallow ground. Additionally, maintaining desired vegetation would drastically reduce the wildfire threat that comes with mustard, cheatgrass, and tumble weeds.

Irrigation on Dept of State Lands:

Water rights should never have been allowed to be obtained on Oregon Dept of State lands. If curtailments are necessary, they should begin on rights located on state lands, regardless of priority dates. I can not comprehend the situation where the private

landowner across the fence is required to stop irrigation, when it continues on state owned parcels.



CwM-H2O
Complete Water Management

311 B Avenue, Suite P
Lake Oswego, Oregon 97034
(503) 954-1326

FIGURE 1
Irrigation Wells in the Upper and Lower Blitzen-Voltage Subareas

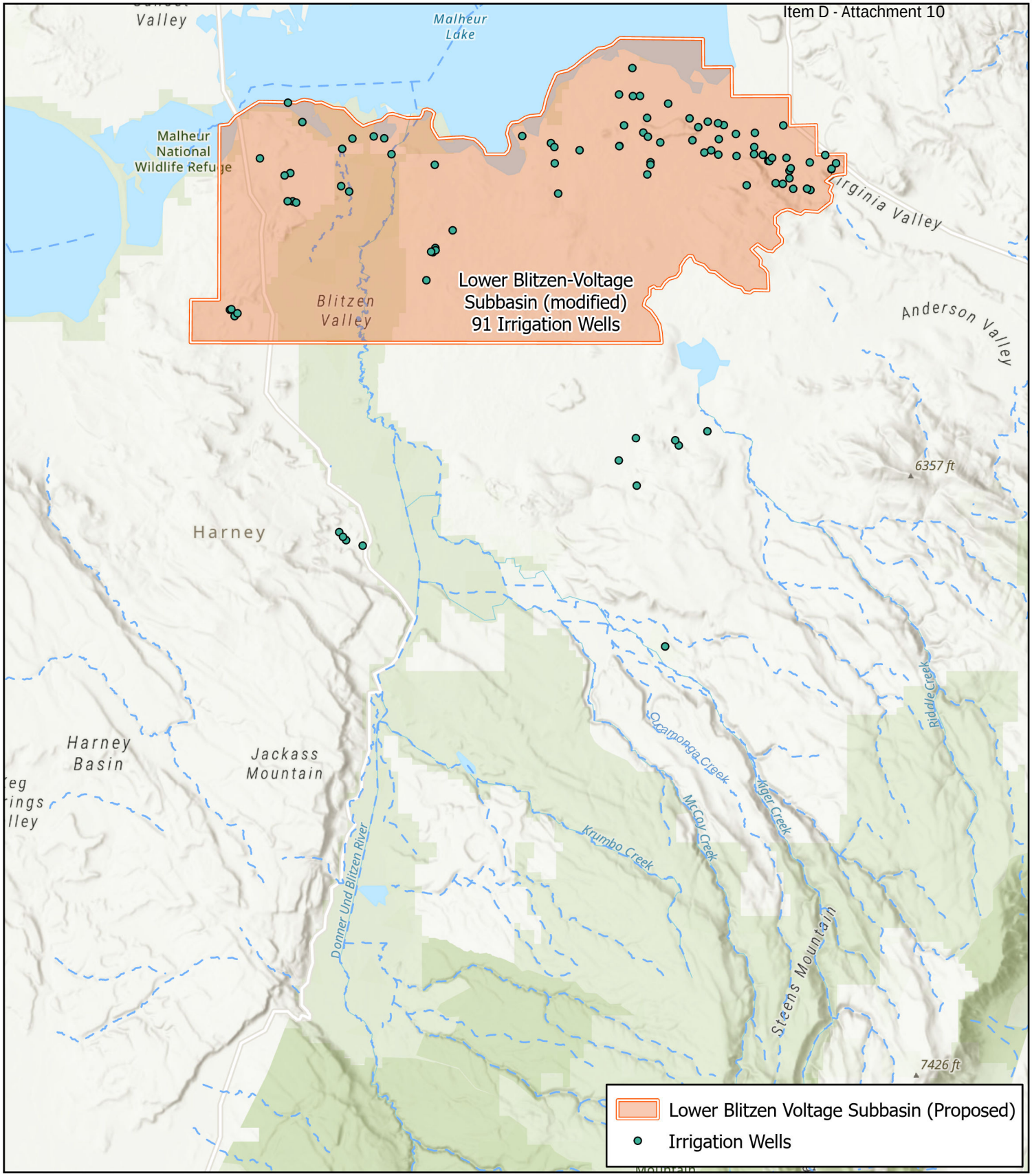
No.	Date	By	Revisions
1	DATE	AUTH	DRAFT

N

0 5 10 Mi

1:400,000

Proj#: 2526001
Roaring Springs Ranch



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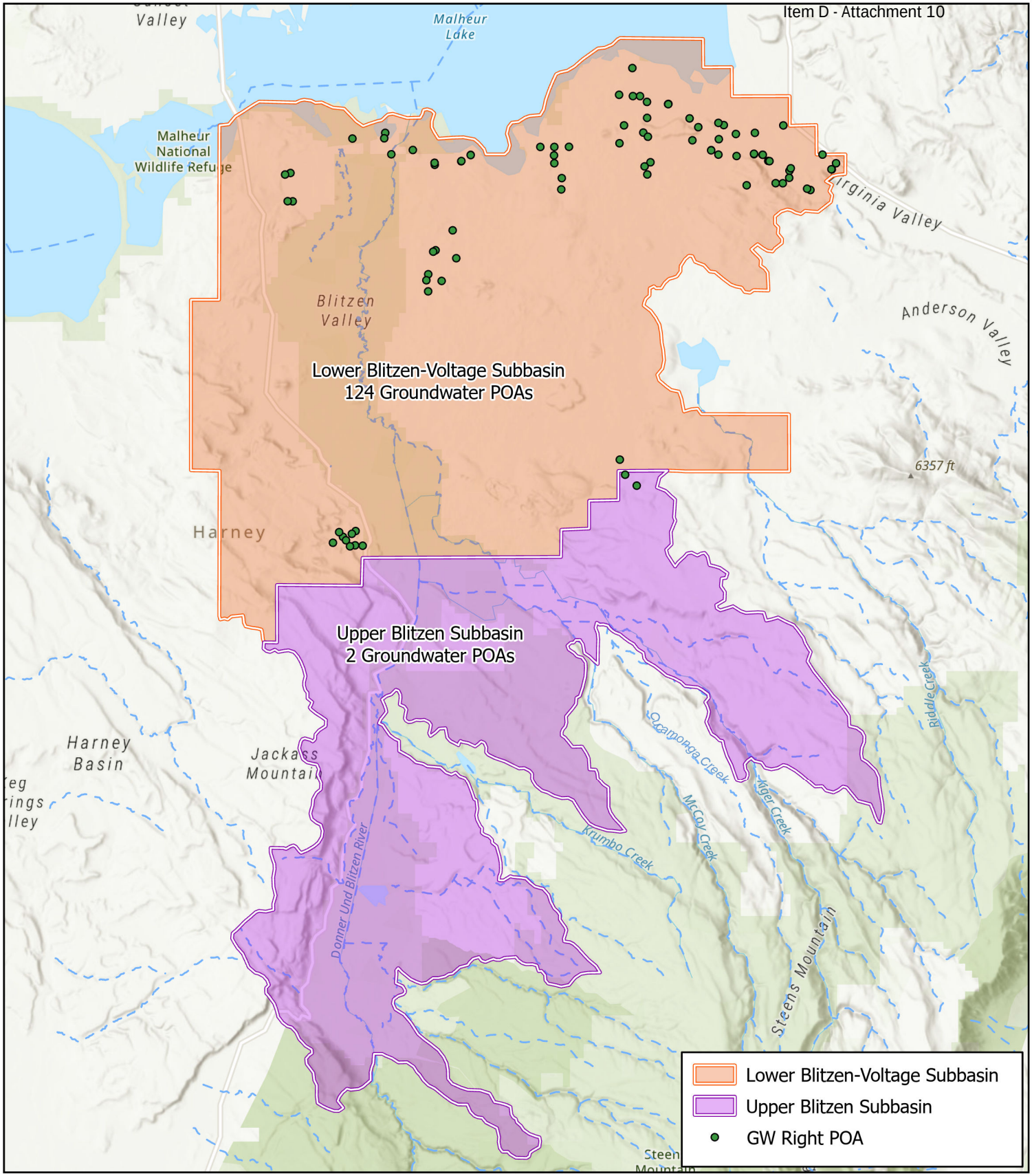
(503) 954-1326

FIGURE 2
Proposed Modification to the Lower Blitzen-Voltage Subarea Boundary

No.	Date	By	Revisions
1	DATE	AUTH	DRAFT

N
0 5 10 Mi
1:400,000

Proj#: 2526001
Roaring Springs Ranch



CwM-H2O
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(503) 954-1326

FIGURE 3
Groundwater Right POAs by OWRD Subarea

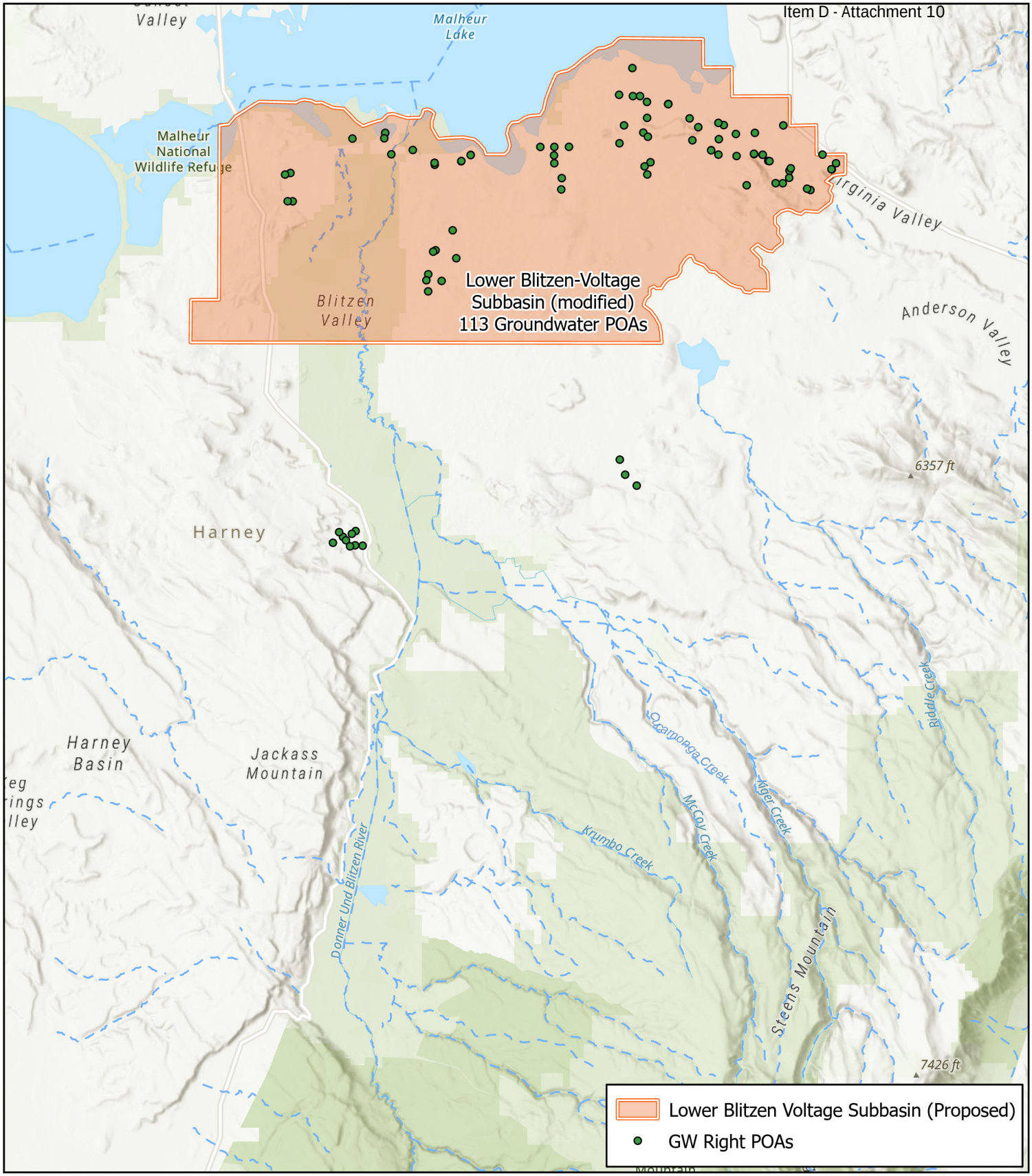
No.	Date	By	Revisions
1	DATE	AUTH	DRAFT

N

0 5 10 Mi

1:400,000

Proj#: 2526001
Roaring Springs Ranch



CwM-H2O
Complete Water Management

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Lake Oswego, Oregon 97034
(503) 954-1326

FIGURE 4
POAs in the Proposed Modified Lower Blitzen-Voltage Subarea

No.	Date	By	Revisions
1	DATE	AUTH	DRAFT

N

0 5 10 Mi

1:400,000

Proj#: 2526001
Roaring Springs Ranch

CwM-H2O
Complete Water Management

October 7, 2025

Oregon Water Resources Department
Attn: Kelly Meinz, *Rulemaking Coordinator*
725 Summer St. NE, Ste A
Salem, Oregon 97301

HARNEY BASIN DIVISION 512 RULESMAKING – UPPER AND LOWER BLITZEN-VOLTAGE SUBAREAS

Dear OWRD staff,

CwM-H2O, LLC (CwM) presents this letter in response to the Oregon Water Resource Department's (OWRD) proposed Division 512 Rules affecting water users in the Harney Basin, which would create a Critical Groundwater Area (CGA) within the Harney Basin aimed at addressing the ongoing groundwater declines observed over the last several decades. Specifically, CwM requests that the OWRD reconsider the technical basis for the delineation of the Blitzen-Voltage area of the proposed CGA and the inclusion of the Upper Blitzen watershed as part of the CGA. This letter is intended to supplement CwM's August 13, 2025 technical memo ("RE: Harney Basin Division 512 Rulemaking – Basin and Sub-basin Boundaries") discussing boundary delineations in the basin and its subareas, and reflects elements of the Petition to Amend Oregon Administrative Rules (Petition) coordinated and submitted by Representative Mark Owens on September 11, 2025. CwM's requests to OWRD include the following:

- Remove the Upper Blitzen subarea from the CGA boundary,
- Amend the southern boundary of the Lower Blitzen-Voltage subarea by moving it northward by approximately 10 miles.

The OWRD's proposed CGA is divided into seven sub-areas (subbasins). The September Petition seeks to reclassify these seven sub-areas into five groundwater reservoirs, each designated as its own CGA: Weaver Springs, Silver Creek, Silvies River, Northeast Crane, and Blitzen-Voltage. The Weaver Springs and Northeast Crane reservoirs would see the same reductions in water use as proposed by OWRD (54% and 30%, respectively) but on an accelerated implementation schedule. The remaining three reservoirs would implement 10% voluntary reductions by 2040, with a regulatory backstop in case of excessive declines. This proposed change stems from OWRD's modeling work which indicates that Silver Creek, Silvies River, and Blitzen-Voltage could see near-stable conditions within three decades without implementing mandatory reductions. CwM believes that the September Petition's approach will provide greater flexibility to OWRD in managing groundwater resources, with the resulting groundwater use reductions being more equitable and more effective in addressing declines. The sections that follow provide technical arguments for

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amending the delineation and inclusion of the Blitzen-Voltage reservoir to ensure reasonable and effective groundwater management in the Basin.

Technical Justification for Boundaries of Blitzen-Voltage Area

In addition to the proposed amendments outlined in the September Petition, CwM requests that the OWRD also reconsider the technical basis for their boundary delineation for the Blitzen-Voltage area, specifically that of the Upper Blitzen subbasin. There is no apparent correlation between the three main criteria listed by OWRD (Proposed Rules for Protecting Groundwater in the Harney Basin – Frequently Asked Questions, OWRD, 2025) for use in their basin delineation (i.e. the nature of subsurface materials, groundwater gradient, and groundwater level trends) and the southern, upland extent of the Upper Blitzen portion of the CGA (visible in Figure 1 – Irrigation Wells in the Upper and Lower Blitzen-Voltage Subareas).

The OWRD's Upper Blitzen subbasin includes portions of the Kiger Creek and Swamp Creek watersheds and areas in between the Krumbo and McCoy Creek channels within the wider Donner und Blitzen drainage, yet excludes the McCoy Creek, Cucamonga Creek, and Krumbo Creek drainages (which all flow into the Donner und Blitzen River above Kiger and Swamp Creek) from the subbasin. There is no explanation for these decisions to include some tributaries and exclude others. There is no clear correlation between the Upper Blitzen subbasin boundary here and mapped geology. The OWRD must provide technical justification for all boundary delineations, subbasins and the CGA as a whole, if they are to be enshrined in the Division 512 Rulemaking maps and used for implementation of groundwater use reductions.

Removal of the Upper Blitzen Subarea

The OWRD's proposed CGA includes the Upper Blitzen subarea, though it implements 0% reductions in groundwater use to manage groundwater. This is because groundwater use in the Upper Blitzen is minimal, groundwater declines are uniform and minor (less than 3 ft), and the OWRD's modeling efforts demonstrated that groundwater level stability could be achieved without implementing reductions (as stated in Scenario B presented by the OWRD at the Division 512 Rulemaking Advisory Committee on December 16, 2024). The Petition proposes 10% voluntary reductions in the Blitzen-Voltage area by 2040, which would meet the standard criteria for stabilizing groundwater levels.

The data shows that inclusion of the Upper Blitzen within or as a CGA is technically unnecessary. CwM reviewed the OWRD's well log database (downloaded on October 3, 2025) and identified just two wells described as "irrigation wells" located within the Upper Blitzen subarea (HARN-1932 and HARN-1941). In comparison, the Lower Blitzen-Voltage subarea (the other half of the overall Blitzen-Voltage reservoir proposed by the Petition) contains 100 wells listed as "irrigation wells" (see Figure 1). This uneven distribution of groundwater users is reflected in Exhibit 10 of the

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September Petition, which shows just five center pivots located within the Upper Blitzen, many of which are surface water fed.

Removal of the Upper Blitzen subarea would have de minimis impact on the efficacy of groundwater management or on the results of the CGA's efforts. The 10% voluntary reductions across the very few groundwater users in the Upper Blitzen, as proposed by the September Petition, would likely have no measurable effects for the groundwater resource. For simplification purposes alone, removal of the Upper Blitzen subarea from the CGA is an efficient Administrative action for OWRD and one that is technically defensible.

Modification of the Lower Blitzen-Voltage Subarea

The uneven distribution of groundwater users applies to the Lower Blitzen-Voltage subarea as well. Of the 100 irrigation wells in this subarea, only nine are located in the southern 50% of the subarea as delineated by OWRD (Figure 1). Several of these nine are located in the drainage for Barton Creek Reservoir. Barton Creek Reservoir is an endorheic lake located outside of the CGA boundaries, though OWRD has drawn the CGA boundaries to include portions of its watershed. All nine wells in the southern 50% of the subarea are located above the confluence of Kiger Creek with the Donner und Blitzen River, which is the most downstream major tributary of the Donner und Blitzen. For these reasons, CwM recommends shifting the southern boundary of the Lower Blitzen-Voltage subarea (or CGA as proposed by the Petition) northward to the middle of the Blitzen Valley (see Figure 2 – Proposed Modification to the Lower Blitzen-Voltage Subarea Boundary).

This boundary modification would have only minor impacts on the number of groundwater users included within the CGA (91 versus 102) and would reduce unfair impacts to dispersed groundwater users in the upper portions of this drainage. The 10% voluntary reductions proposed by the Petition would then be focused on the area with the highest well density, the area closest to Malheur Lake and the National Wildlife Refuge, and closest to the Northeast Crane subarea where severe declines have been observed.

The uneven distribution of groundwater use in the Donner und Blitzen River watershed is also demonstrated by the locations of water right points of appropriation (POAs), or designated sources for groundwater permits and certificates. There are only two POAs recorded within the Upper Blitzen subarea as drawn by OWRD (Figure 3 – Groundwater Right POAs by OWRD Subarea). In contrast, there are 124 POAs recorded in the Lower Blitzen-Voltage subarea (Figure 3). Removal of the Upper Blitzen from the CGA and shifting the southern boundary of the Lower Blitzen-Voltage subarea north (as shown in Figure 2) would retain 113 POAs within the critical groundwater area (Figure 4 – POAs in the Proposed Modified Lower Blitzen-Voltage Subarea).

It is important to note from the discussions above that there is not a one-to-one correlation between irrigation well logs and groundwater right POAs. This discrepancy highlights that not all

POAs listed on groundwater permits end up being developed as active wells, and not all irrigation well logs are active wells (some may be abandoned).

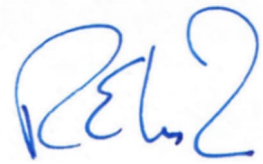
Conclusions

In conclusion, CwM is supportive of many of the proposed amendments in the September 2025 Petition by Representative Mark Owens. However, CwM believes that removal of the Upper Blitzen subarea from the CGA entirely and modification of the Lower Blitzen-Voltage subarea boundary will result in the following:

- Removal of an unnecessary regulatory area (Upper Blitzen) that has no proposed mandatory groundwater reductions and currently hosts very little groundwater use,
- Proposed movement of the southern boundary of the Lower Blitzen-Voltage subarea approximately 10 miles north will result in more reasonable and equitable implementation of groundwater reductions based on the current distribution and density of irrigation wells and uses,
- CGA boundaries that are based on current distribution of groundwater use and groundwater declines in the Lower Blitzen-Voltage subarea.

Sincerely,

CwM H2O, L.L.C.



Robert Long, CWRE

311 B Avenue, Suite P, Lake Oswego, Oregon 97034
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MEINZ Kelly A * WRD

From: rcargill71709@gmail.com
Sent: Tuesday, October 7, 2025 1:31 PM
To: WRD_DL_rule-coordinator
Subject: Division 512 Rules Coordinator

Some people who received this message don't often get email from rcargill71709@gmail.com. Learn why this is important

Division 512 Rules Coordinator:

I am hereby adding my voice to support the Harney Basin community petition, which was filed on September 12, 2025, and objects to the heavy-handed regulation for our community in regulating ground water usage. Specifically, this petition recognizes that groundwater conditions are different in different parts of the basin and that groundwater will be more effectively managed as separate groundwater reservoirs rather than treating the WHOLE basin as one groundwater reservoir. The petition focuses on regulation in the areas where there are CLEAR problems that meet the thresholds for regulatory action and encourages voluntary actions in parts of the basin where groundwater levels are reasonably stable and expected to remain stable. As the State of Oregon is required by law to minimize economic impacts, this petition presents an alternative that minimizes economic impacts on the small business and the community in whole.

Everyone in Harney Basin relies on groundwater for drinking water. The petition will assure that there are adequate and safe supplies of groundwater for people and livestock. The petition also recognizes the need for ongoing financial and technical assistance for shallow domestic wells that may be impacted by declines. The Harney Basin community cares about our ecosystem. The petition will continue to encourage the collection of information to target actions that restore or maintain the flow of springs in partnership with the Malheur National Wildlife Refuge.

The petition does a better job of protecting groundwater rights that were legally granted and the people who have dutifully followed all the state laws for generation and have a track record of working together to solve problems collaboratively. The petition recognizes this history and invites the state to work with us. The petition encourages programs that will fairly compensate groundwater rights holders who voluntarily cancel their groundwater rights or can no longer use their water right due to regulation.

Since agriculture is a large part of our community, the petition will minimize the likelihood of having to import hay from other places for Harney Basin ranches and will minimize the likelihood of having to increase electricity rates to homes across the basin. The petition also protects public health, welfare, and safety, by preserving jobs, minimizing cuts to public services, protecting municipal water supplies, focusing regulation where domestic and stock wells have been most impacted, and allowing for an economic transition to absorb the impacts of cuts in groundwater use.

Finally, the petition will reduce conflict and the costs associated with litigation and will allow our community and groundwater users to invest in water conservation instead. Since the state is required by Jaw to seek public input to the maximum extent possible on rulemaking, especially input from those likely to be affected by the rule. The petition incorporates public input from those who are likely to be affected by the rule.

With respect, please accept this as a sign of support for adding reason to this difficult issue.

Signed,

Robert N. and Sandra N. Cargill
71709 Turnout Rd.
Burns, OR 97720

MEINZ Kelly A * WRD

From: Roger Sheley <karmafarmer1@gmail.com>
Sent: Tuesday, September 30, 2025 9:40 AM
To: WRD_DL_rule-coordinator
Subject: Harney Basin community petition filed September 12

Some people who received this message don't often get email from karmafarmer1@gmail.com. Learn why this is important

I fully support the **Harney Basin community petition filed September 12. It is imperative that the community and the Federal land management agencies work together to manage the groundwater issues in Harney County. The current proposal puts the entire onus of the problem on ag irrigators. However, we know that land managers of the adjacent uplands must be included in any ecosystem wide solution to the Harney Basin water issue.**

Thank you,
Roger Sheley
71111 Ruhl Road
Burns, Oregon 97720
541.413.0450

The petition recognizes that groundwater conditions are different in different parts of the basin and that groundwater will be more effectively managed as separate groundwater reservoirs rather than treating the whole basin as one groundwater reservoir.

- *The petition focuses regulation in the areas where there are clear problems that meet the thresholds for regulatory action.*

- *The petition encourages voluntary actions in parts of the basin where groundwater levels are reasonably stable and expected to remain reasonably stable.*

- *The petition adjusts proposed boundaries to better reflect our understanding of groundwater conditions in the basin.*

- *The state is required by law to minimize economic impacts. The petition presents an alternative that minimizes economic impacts on small businesses and the community.*

• *Everyone in Harney Basin relies on groundwater for drinking water. The petition will assure that there are adequate and safe supplies of groundwater for people and livestock. The petition also recognizes the need for ongoing financial and technical assistance for shallow domestic wells that may be impacted by declines.*

• *The Harney Basin community cares about our ecosystem. The petition will continue to encourage the collection of information to target actions that restore or maintain the flow of springs important to the Malheur National Wildlife Refuge in partnership with the Refuge.*

• *The petition does a better job of protecting groundwater rights that were legally granted and the people who have dutifully followed all of the state laws.*

• *In the Harney Basin we have a track record of working together to solve problems collaboratively. The petition recognizes this history and invites the state to work with us.*

• *The petition encourages programs that will fairly compensate groundwater rights holders who voluntarily cancel their groundwater rights or can no longer use their water right due to regulation.*

• *The petition will minimize the likelihood of having to import hay from other places for Harney Basin ranches and will minimize the likelihood of having to increase electricity rates to homes across the basin.*

• *The petition protects public health, welfare, and safety, by preserving jobs, minimizing cuts to public services, protecting municipal water supplies, focusing regulation where domestic and stock wells have been most impacted, and allowing for an economic transition to absorb the impacts of cuts in groundwater use.*

• *The petition will reduce conflict and the costs associated with litigation and will allow our community and groundwater users to invest in water conservation instead.*

• *The state is required by law to seek public input to the maximum extent possible on rulemaking, especially input from those likely to be affected by the rule. The petition incorporates public input from those who are likely to be affected by the rule.*

• *The petition provides a pathway through which a critical groundwater area designation could be lifted if groundwater is being sustainably managed*.

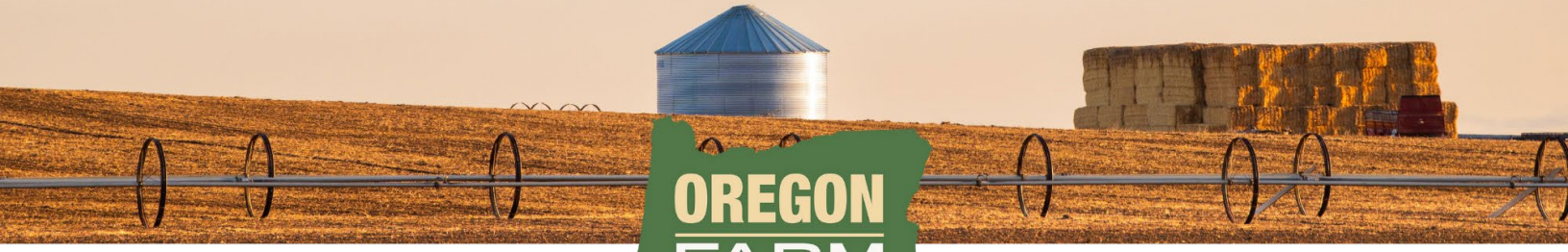
MEINZ Kelly A * WRD

From: Ron Garst <ronleegarst@gmail.com>
Sent: Tuesday, October 7, 2025 1:37 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from ronleegarst@gmail.com. Learn why this is important

- I am a retired fish and wildlife biologist who has worked in both Malheur and Harney counties and travel there frequently now as a retiree that enjoys the abundant natural resources of the area. I am familiar with the serious groundwater issues that the area is facing.
  I am commenting on both the "Petition for Rulemaking —Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. The petition will allow continued overpumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- I urge OWRD to first strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.
- I urge OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.

  Thank you for your attention to this important matter.



LOCALLY GROWN EST. OREGON FARM BUREAU 1932 GROWING STRONG

October 7, 2025

Mr. Ivan Gall, Director
Oregon Water Resources Department (OWRD)
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Submitted via email: WRD_DL_rule-coordinator@water.oregon.gov

RE: Support for Petition to Amend OAR Chapter 690, Division 512 – Harney Basin

Dear Director Gall:

Oregon Farm Bureau (OFB) is the state's most inclusive agriculture organization, proudly representing over 6,500 family farms and ranches that produce more than 220 agricultural commodities. From hops and hazelnuts to cattle, cranberries, and timber with operations spanning from just a few acres to thousands, our members utilize all farming methods including organic, conventional, regenerative, biotech, and even no-tech.

On behalf of our statewide membership, including those who operate within the Harney Basin, we write to express our strong support for the petition submitted on September 12, 2025 to amend the proposed Division 512 rules governing groundwater use in the Harney Basin. The proposed alternative reflects a more collaborative, balanced, and locally grounded framework that aligns with the values and operational needs of Oregon agriculture. These comments support the alternative approach encapsulated in the Harney Basin petition and supplement our prior comments of August 13 in response to OWRD's original Division 512 Rulemaking.

While we acknowledge the severity of groundwater challenges in the Harney Basin and appreciate the department's effort to address the issue, we are deeply concerned that the current proposed Division 512 rules impose uniform and inflexible mandates that do not reflect the hydrological diversity or economic realities of the region. By contrast, the petition advances a more adaptive and responsible approach that:

- Distinguishes between groundwater reservoirs based on sound science, recognizing that not all areas of the basin are experiencing the same levels of decline;
- Prioritizes voluntary, incentive-based conservation measures where conditions are stable, reserving regulatory interventions for areas with demonstrable need;
- Aligns with existing Oregon law requiring that agencies minimize economic harm, particularly to rural communities whose economies are dependent on groundwater-supported agriculture;
- Protects existing groundwater rights and provides for the legal, practical, and financial security of agricultural producers;
- Emphasizes local governance and accountability, inviting community stakeholders to play a leading role in crafting sustainable, place-based solutions.

Oregon agriculture has long supported conservation practices rooted in stewardship, and such practices must be viable for the communities who are tasked with implementing them. The petition's tailored, sub-basin approach represents a model of basin-specific water policy that both addresses long-term sustainability goals and respects the economic and property rights of those most impacted.

We urge OWRD and the Water Resources Commission to adopt the petition and engage with the Harney Basin community in a manner that strengthens trust, encourages innovation, and ensures that groundwater management policies are not only scientifically sound, but also socially and economically sustainable.

Thank you for the opportunity to comment.

Sincerely,

Ryan J. Krabill
Oregon Farm Bureau

October 1, 2025
Attn: Water Resources Commission
Oregon Water Resources Department
725 Summer St. N.E. Suite A
Salem, OR 97301-1271
WRD_DL_rule-coordinator@water.oregon.gov

Subject: Petition for Rulemaking

My name is Sabrina Maki, speaking to represent Rattlesnake Creek Land & Cattle. My family has lived in Harney County for five generations. I am a 2nd generation landowner and irrigator. Over the past two years, I've participated in many RAC meetings as a community member, and while I entered the process hopeful, the experience was deeply frustrating and emotionally taxing.

What was initially presented as a collaborative effort often felt one-sided. While we listened to the Department and tried to understand their reasoning, we were repeatedly met with condescension or disregard. We found ourselves on the defensive—scrambling to respond to proposals that would negatively impact our community, while our concerns and ideas received little genuine consideration. At times, it felt like many local voices were ignored in favor of well-funded outside interest groups. Even now, many locals' questions remain unanswered. It's still unclear how the modeling landed on the current proposed rules, and where the Oregon Water Resources Department's accountability lies in the face of its past over-allocation decisions. Yet, local stakeholders—like us—are being held responsible for those decisions with their proposal of unprecedented regulatory actions.

Because our voices were not adequately heard in the RAC process, we, as a community, took the steps of drafting the current petition. Our petition offers a balanced, community-driven approach to managing groundwater in the Harney Basin. It recognizes the distinct aquifer systems in the basin and only regulates areas where necessary. It encourages voluntary conservation in more stable areas. The petition does a better job of protecting groundwater rights that were legally granted. It also aims to minimize economic harm to small businesses, landowners, and residents, which is required by law.

The petition is rooted in public input while also meeting the state's policy goals for reasonably stable groundwater conditions. It offers a balanced, science-based solution to groundwater management and ensures the community's voice is heard in shaping our future. We are not asking to avoid regulation—we are asking for a fair and community-centered approach that truly listens to and respects those who live and work in the Basin. We urge the Commission to adopt a long-term solution that protects not only the groundwater, but also the future of Harney County and its people.

Thank you for your consideration.

Sincerely, Sabrina Maki

Sally & Joe Hendry
67690 Oil Well Rd.
Burns, OR 97720

PORTLAND OR RPDC 972
4 OCT 2025 PM 5 L

Division 512 Rules Coordinator
Oregon Water Resources Dept.
725 Summer St., NE, Su. A
Salem, OR 97301-1271

97301-126673

Received
OCT 06 2025
OWRD

9-30-25

Division 512 Rules Coordinator
Oregon Water Resources Dept.
725 Summer St., NE, Suite A
Salem, OR. 97301-1271

Gentlemen:

I live in rural Harney County with a fairly "shallow" well providing my water needs, and very well at that, in my 36 year residency here. However, I am only one of the many residents across the basin who have various uses and needs for water Therefore, I strongly oppose the State's proposed across the board blanket regulations and do support the proposed petition by Rep. Mark Owens which list, among others, voluntary actions where ground water levels are reasonably stable and which also minimize economic impacts.
Thank you for your consideration in this matter.
Sally Hendry
Rural Harney County

Sally Hendry

MEINZ Kelly A * WRD

From: Sandy Potter <sandypotter5127@gmail.com>
Sent: Tuesday, September 30, 2025 9:27 AM
To: WRD_DL_rule-coordinator
Subject: Harney Basin

Some people who received this message don't often get email from sandypotter5127@gmail.com. Learn why this is important

This is in regards to the underground water conditions in the Harney County Basin.

My name is Sandy Potter. My family took over this cattle and Hay Ranch in 1968 while I was in school. All of my 6 kids were raised here on this ranch and worked it while they were in school. It instilled a very good work ethic for all of them. My son took over the ranch in 2005. He has put his whole life into bettering not only his land, but helps his neighbors and community take care of this special County he have out here. He wants to be able to pass his ranch down to his son's so they can continue a 4 generation built on hard work, family and community. What is being proposed will take that very livelihood away from them which in turn will destroy this community.

I support the Harney Basin Community Petition filed Sept 12th. It matters to my family and our community.

MEINZ Kelly A * WRD

From: S Pritt <winds4sw@gmail.com>
Sent: Tuesday, October 7, 2025 3:47 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from winds4sw@gmail.com. Learn why this is important

Dear Kelley Meinz,

I am writing to comment on both the "Petition for Rulemaking —Division 512" and the "Agency Proposed Rules — Division 512."

I do not support the Petition for Rulemaking filed by Representative Mark Owens. The petition will allow continued overpumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.

I urge OWRD to **FIRST** strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.

Secondly, I implore OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.

Please stop Representative Owens' attempt to undermine the state's proposed rules.

Thank you for your consideration,

Sara Pritt

MEINZ Kelly A * WRD

From: scott.campbell@silviesvalleyranch.com
Sent: Thursday, September 25, 2025 9:56 AM
To: WRD_DL_rule-coordinator
Cc: Nicholas Green
Subject: Water petition filed September 12, 2025

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

Friends and co-voters: I am writing to support the initiative community petition filed September 12 with you by representative Owens. I have read the petition a couple times and agree with most of it. Certainly enough to vote for it.

This is a big topic and a whole bunch of little topics that really matter to me for lots of reasons – as it clearly does with most people in our community.

If the data shows that there are truly different reservoirs, they should be evaluated separately-not all together as one big reservoir. And if somebody did, what they believed to be legally proper and legal , they should not be punished.

Scott D. Campbell DVM
Ranch Office: 541-573-5150 x135
CVS Office: 503-762-1063
scott.campbell@silvies.us

PLEASE CONSIDER OUR ENVIRONMENT BEFORE PRINTING!

MEINZ Kelly A * WRD

From: Shani Hodge <shodge250@gmail.com>
Sent: Thursday, October 2, 2025 3:04 PM
To: WRD_DL_rule-coordinator
Subject: In Favor: Harney Basin Community Petition 9/12/25

Some people who received this message don't often get email from shodge250@gmail.com. Learn why this is important

Greetings,

I am writing in support of the Harney Basin Community Petition filed September 12. The Harney County community has proven time and again its ability to work together collaboratively in times of crisis and problem-solving. The people who live and work here are best equipped to tackle the water issues we face, and I look forward to the serious citizen-led efforts to do just that.

I appreciate your time and consideration.

Sincerely,
Shani Hodge
Owner/Operator, The Mill House | Hines, OR
705 Highway 20 S, Hines, OR 97738

October 1, 2025

Attn: Water Resources Commission

Oregon Water Resources Department
725 Summer St. N.E. Suite A
Salem, OR 97301-1271

RE: Public Comment in Support of the Harney Basin Groundwater Management Petition

As a local business owner in the Harney Basin, I am writing to express my strong support for the petition, which is proposing a more balanced approach to groundwater management in our region. The petition reflects a thoughtful and common sense response to the complex groundwater challenges we face—one that protects water resources while also safeguarding our local economy, jobs, and way of life. The petition recognizes that groundwater conditions vary across the basin and that the current proposed regulatory approach would be unnecessarily harmful to small businesses like mine.

Key Reasons I Support the Petition:

- **Targeted Regulation Based on Real Conditions:**
  The petition wisely focuses regulatory action in areas where there are clear, science-based thresholds for concern, while allowing for voluntary and cooperative actions in areas where groundwater is stable. This ensures that regulation is meaningful and not overly broad.
- **Minimizing Economic Impacts:**
  State law requires minimizing the economic impacts of regulation, and the petition does just that. It presents a path forward that avoids unnecessary harm to local businesses, avoids disruptions to local jobs, and maintains essential services.
- **Protection of Groundwater Rights:**
  The petition better protects legally established groundwater rights and respects those who have complied with state water law. It also encourages fair compensation for those who voluntarily give up rights, or are impacted by necessary regulations.
- **Support for Domestic and Stock Wells:**
  Recognizing that many families and ranches rely on shallow wells, the petition calls for continued financial and technical support to address the impacts of declining water levels—ensuring public health and safety remain a priority.
- **Encouraging Local Solutions, Public Input and Transparency:**
  Harney Basin has a strong history of collaborative problem-solving. This petition builds on that legacy, inviting the state to work with local stakeholders instead of imposing top-down solutions. It is rooted in public engagement and reflects the voices of those who will be most affected. It embodies the legal requirement to include affected stakeholders in water management decisions.

- **Path Toward Recovery:**
  Importantly, the petition outlines a clear pathway for lifting a critical groundwater area designation if groundwater is being sustainably managed—offering hope and a tangible goal for our community.

In summary, the petition offers a balanced and reasonable path forward—one that protects water, people, and our future. I urge the Water Resource Commission to support this petition.

Thank you for considering my comments.

Sincerely,

Sheryden Cary

7S RV & Mini Storage

MEINZ Kelly A * WRD

From: Stephanie Bowen <sbowen@hec.coop>
Sent: Wednesday, October 1, 2025 11:42 AM
To: WRD_DL_rule-coordinator
Cc: Fred Flippence; Justin and Stephanie Bowen
Subject: Harney Basin Community Petition Filed September 12

Some people who received this message don't often get email from sbowen@hec.coop. Learn why this is important

I support the Harney Basin community petition filed September 12 for many reasons. First, it includes a process and criteria for lifting a critical groundwater area designation which is not included in the OWRD Division 512 Rules. My family has a farm near Windy Point, and the petition encourages voluntary actions, and recognizes that groundwater conditions vary in different parts of the basin. These three elements are so important for our family farm. Being included in the NE Crane subarea gives us little hope to keep our junior water rights which are leveraged to help us pay our mortgage. The 35% reduction lowered to 30% does a better job of protecting groundwater rights that were legally granted and are being counted on for those of us who have dutifully followed all of the state laws. I would like to see the Petition Rules go one step further and include a Windy Point sub-basin conservation plan similar to Silver Creek, Silvies River, and Blitzen Voltage. This voluntary agreement is being assessed and developed and it is my hope that the Commission recognizes the value of communities coming together to solve this problem and gives us the ability to do so.

As part of my job at Harney Electric, I am in the trenches with the low-income folks struggling to pay their electric bills, and I cannot support the Division 512 Rules that place such a heavy burden on the most vulnerable of our population. The Harney County Basin has been facing increasingly serious economic challenges and increasing electric rates to homes across the basin is unconscionable for the state to impose as one example of the unreasonable economic devastation likely resulting from the proposed Div 512 rules. *The petition protects public health, welfare, and safety, by preserving jobs, minimizing cuts to public services, protecting municipal water supplies, focusing regulation where domestic and stock wells have been most impacted, and allowing for an economic transition to absorb the impacts of cuts in groundwater use*.

The state is required by law to minimize economic impacts. *The petition presents an alternative that minimizes economic impacts on small businesses and the community*. I grew up in an economically depressed agricultural community made up of haves and have-nots. The difference in Harney County is that we have a wide range of irrigators and small farms and ranches that make up a vibrant community where we can help support our low-income neighbors. What the Division 512 Rules will do is consolidate water rights to the wealthiest farmers and eliminate the farmers in the middle, which will result in two economic classes similar to where I grew up. The Division 512 Rules sacrifice a healthy, involved community for an unreasonable target groundwater level goal. The petition's groundwater level goals are more nuanced and align with standards and definitions already established.

I am not confident that the Department has been expressing our concerns and comments to the Commission in a manner that increases our chances of success going forward. *The petition will reduce conflict and the costs associated with litigation and will allow our community and groundwater users to invest in water conservation instead*. The community has been made assurances over many years, and those commitments have not come to fruition in these proposed rules. I wish I could understand why our widely recognized models of collaboration in Harney County cannot be counted on as a tool in this endeavor. *In the Harney Basin we have a track record of working together to solve problems collaboratively. The petition recognizes this history*

and invites the state to work with us. All the work that has been done between the Department and the community over the past few years is better captured in the petition than the Division 512 Rules.

Thank you for your time,

Stephanie Bowen
Office Manager
Harney Electric Cooperative, Inc.
PO Box 587 – 277 Lottery Lane
Hines, OR 97738

email: sbowen@hec.coop
phone: 541-573-2061
web: www.hec.coop

MEINZ Kelly A * WRD

From: Steve Parsons <sparsons@canby.com>
Sent: Wednesday, October 1, 2025 11:53 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from sparsons@canby.com. Learn why this is important

I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512

The last minute effort to circumvent proposed efforts to reduce the over allocation and pumping of groundwater in Oregon is not good for future generations of ranchers and farmers in Harney County. The move seems to be for short term gain, at the loss of water resources that would sustain ranchers and farmers in coming years.

I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.

The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

Stephen Parsons
Haines, Oregon

Sent from my iPad

MEINZ Kelly A * WRD

From: Susan Mates <smmates@gmail.com>
Sent: Thursday, October 2, 2025 9:51 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from smmates@gmail.com. Learn why this is important

To:
Oregon Water Resources Department (OWRD)
Attention: Kelly Meinz with OWRD

Re:
Harney Basin, critical groundwater area, for BOTH the "Petition for Rulemaking — Division 512" and "Agency Proposed Rules — Division 512."

I urge you to deny the Petition for Rulemaking filed by Representative Mark Owens. I am counting on you to do what you can to protect Harney Basin groundwater to the fullest extent possible. Rep. Owens' petition will not do that, and the OWRD's proposed rules already contain far too many concessions to irrigators.

Overpumping in this region has been rampant, especially given that we have been struggling with long-term severe or extreme drought. In September, the Los Angeles Times reported that scientists are finding, with the help of abundant satellite data, that overpumping of groundwater is one of the main contributors to the "mega-drying" of vast swaths of the Earth's surface. The OWRD's proposed rules are the result of years of work and negotiations with stakeholders. Don't undo this.

It seems to me that the proposed rules' schedule will favor irrigation in an unbalanced manner, as such a large amount of additional pumping will be allowed to occur so that groundwater levels are not stabilized for 30 more years. A balanced approach requires stabilization far sooner than that.

Furthermore, OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The petition instead promotes optional voluntary actions that would seem to create loopholes. And lack any required pumping reductions.

As a frequent visitor to this area, changes over the decades have been obvious, and the effects can't be ignored. I am hoping that the Commission will take a long view of what will be best for the land and find solutions that better protect groundwater-dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation—and the wildlife and communities that depend on them

Please strengthen any measures possible that will better protect groundwater.

Sincerely,
Susan Mates
Portland, OR

MEINZ Kelly A * WRD

From: Susan Otley <lsotley0924@gmail.com>
Sent: Tuesday, October 7, 2025 2:52 PM
To: WRD_DL_rule-coordinator
Subject: Support of Harney Basin Community Petition

Some people who received this message don't often get email from lsotley0924@gmail.com. Learn why this is important

I have lived in Harney County since I was twelve. My husband's family has been in Harney County for 138 years. Since we have five grandsons and three great grandchildren living in Harney County, we find Harney County's future a priority.

We grow some alfalfa to feed our livestock in the winter months south of Windy Point in the Princeton area. We support the Harney Basin Community Petition although for the last two years the static water level has risen in our wells. Under the OWRD 512 rules we would lose 2/3 of our irrigated acres. I then question why we are in a CGWA since our wells' are rising.

The petition does recognize groundwater conditions depending on the area location in the basin. It also takes into consideration that the USGS southern region or Lower Blitzen-Voltage subarea does not have draw down issues.

I feel the community has a much better understanding of the basin than outside very wealthy group[s with their own special interests.

The petition is a collaborative community effort to address problems and solutions.

Susan Otley

MEINZ Kelly A * WRD

From: Terry Keim <terrykeim@centurytel.net>
Sent: Tuesday, October 7, 2025 9:35 AM
To: WRD_DL_rule-coordinator
Subject: Division 512 Rules petition

[Some people who received this message don't often get email from terrykeim@centurytel.net. Learn why this is important at https://aka.ms/LearnAboutSenderIdentification]

Dear Commissioners,

Is the Mark Owens's sponsored petition designed to allow for a few businessmen to benefit financially in the short term, at a great cost to the many in the longterm? Can the commission reject it outright on the grounds the main sponsor actively participated in this process for 10 years?
I guess my question for the petitioners is why does it request to revert to "voluntary" compliance when that was tried, with the current disastrous results?
Does the Burns Paiute Tribe, as a sovereign nation of first peoples, have water rights to all this basin's ground water that supersedes the new rules, so their tribal land needs/concerns can be met via other mechanisms?
Thank you for your consideration,
Terry K.

MEINZ Kelly A * WRD

From: Theo Dreher <theo.dreher@gmail.com>
Sent: Tuesday, October 7, 2025 1:33 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from theo.dreher@gmail.com. Learn why this is important

Dear Kelly Meintz,

I am submitting comments on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512."

I know that OWRD has coordinated a thorough analysis of the ground water status in the Malheur basin, triggered by obvious shortfalls in wells that have increased over time. The study conducted there has taken considerable resources and been exceptionally thorough. It has resulted in recommendations for limiting groundwater use in order to conserve this resource. OWRD has studied groundwater resources across the state and likewise issued recommendations that are scientifically grounded and that aim to keep some level of the groundwater resource accessible. Given depletions, however, there is simply no other course forward than to sensibly limit the extraction rate.

In the Malheur and elsewhere these recommendations for extraction limitations have resulted in criticism from vested interests. We should strongly reject such criticisms that are based on short-term self-interest, and stick with recommendations that were arrived at through science and careful deliberation.

I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.

OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.

The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

Let's manage and preserve Oregon's water resources so that they last into the future and serve all the people of Oregon, not just a ew with loud voices.

Thank you for considering this input.

Theo Dreher

Professor Emeritus of Microbiology, Oregon State University
Past President, Oregon Lakes Association

-

MEINZ Kelly A * WRD

From: Thomas Berridge <twberridge@gmail.com>
Sent: Wednesday, October 1, 2025 10:15 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from twberridge@gmail.com. Learn why this is important

I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512."

I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.

OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.

I would like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.

The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

MEINZ Kelly A * WRD

From: Martin Thomson <martint7758@gmail.com>
Sent: Tuesday, October 7, 2025 9:13 AM
To: WRD_DL_rule-coordinator

Some people who received this message don't often get email from martint7758@gmail.com. Learn why this is important

Petition and new rules.

My name is Martin Thompson. I am sending this comment on behalf of Thompson Ranch Inc. We are a multi generation operation. I am the 4th generation and have kids and grandchildren that i hope will one day help take over the operation. My brothers and sisters are also equally involved with the ranch. They too have families.

We support the petition that has recently come before you. The language of the petition supports a more common sense approach to the Lower Blitzen and South Windy Point sub areas. That being said, the commission should send OWRD back to the drawing board to find a more common sense approach to administrate the rest of Harney Basin.

The proposed new rules put forth by OWRD are radically different from anything we have ever see. If the rules are adopted it will be devastating to this community. Certainly there must be some middle ground between what the department wants and what will not wreck dozens of families lives and investments. Hopefully you can rein in the department and find a solution that works.

Respectfully
Martin Thompson

MEINZ Kelly A * WRD

From: tim devine <goosedevine@yahoo.com>
Sent: Tuesday, October 7, 2025 12:14 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from goosedevine@yahoo.com. Learn why this is important

Groundwater needs to be monitored, regulated, and maintained at sustainable levels.
Thank you!

Sent from Yahoo Mail for iPhone

MEINZ Kelly A * WRD

From: Todd Sandell <troutsahoy@gmail.com>
Sent: Wednesday, October 1, 2025 10:00 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from troutsahoy@gmail.com. Learn why this is important

I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition. He should have recused himself from this matter as he is personally invested in the outcome.
T. Sandell

MEINZ Kelly A * WRD

From: Howard Ranch <tbhoward1974@gmail.com>
Sent: Monday, October 6, 2025 6:45 PM
To: WRD_DL_rule-coordinator
Subject: Response to Petition for Rulemaking to Amend Oregon Administrative Rules(OAR) Chapter 690, Division 512

Some people who received this message don't often get email from tbhoward1974@gmail.com. Learn why this is important

Director Ivan Gall

Water Resource Commissioners,

We are responding to the Petition for Rulemaking to Amend Oregon Administrative Rules, Chapter 690, Division 512.

We are in full support of this petition. It addresses all of our concerns on the proposals coming from the WRD staff at the RAC meetings. So many issues have been swept aside or totally ignored. The biggest issue being that WRD issued permits for too many years after they were informed there was a serious water problem.

First and foremost, this should be addressed before any reductions be implemented. We feel this would solve a lot of the issues at hand.
We thank you for your attentiveness to all of these problems.

Please help save our county and the landowners who contribute to the welfare of the county.

Sincerely,

Tom & Barbara Howard
Landowners in the Northeast-Crane Area

MEINZ Kelly A * WRD

From: Tom Cooney <cooneytg@centurylink.net>
Sent: Tuesday, October 7, 2025 3:45 PM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from cooneytg@centurylink.net. Learn why this is important

- I am commenting on both the "Petition for Rulemaking —Division 512" and the "Agency Proposed Rules — Division 512."

- I do not support the Petition for Rulemaking filed by Representative Mark Owens. The petition will allow continued overpumping of groundwater, will not stabilize groundwater levels, and will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.

- I urge OWRD to first strengthen the groundwater protections in OWRD's proposed rules to stabilize groundwater levels faster and better protect groundwater, and then adopt those rules.

- I urge OWRD to adopt rules that protect groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation from over-pumping of groundwater.

Sincerely,
Tom Cooney
1409 NE Siskiyou St
Portland 97212

MEINZ Kelly A * WRD

From: Tony Svejcar <tonysvejcar@gmail.com>
Sent: Sunday, October 5, 2025 2:20 PM
To: WRD_DL_rule-coordinator
Subject: Groundwater Rules in the Harney Basin

Some people who received this message don't often get email from tonysvejcar@gmail.com. Learn why this is important

To Whom It may Concern,

I am concerned about the way the rule-making process associated with Harney Basin groundwater appears to be proceeding. From what I can tell the rules will be applied with an ORWD top-down, one-size fits all approach. I participated in the early phases of the groundwater and surface water plans. In fact I wrote the white paper outlining the relationship between forest cover and streamflow several years ago and participated in the Vegetation Management subgroup. When I asked questions about how the information would be used it became clear that OWRD had not thought that question through and my sense was that you were going to ignore the community input. And it appears that is exactly what has happened. How do you as an agency justify the hours of time and money spent on the "community-based" water planning effort?

Anyone that knows about water modeling should understand that this effort is anything but clear cut. I suggested that the model receive peer-review -- which is standard for scientific efforts. There were some huge assumptions made on what I viewed as very limited data. But the modeling team clearly wanted to be done with the process and used the feeble excuse that the document was too big and nobody would want to review it. Yet now the community will have to live with the results.

The Harney Basin Community Petition would at least allow OWRD a chance to again receive community input. The reduction of groundwater use can be prioritized to areas with the most problems and other areas could be further evaluated. Many folks who bought land in areas with good water paid a premium for that land. The heavy-handed approach wili impact property values in all areas of the county.

Tony Svejcar Ph.D.

Former Research Leader, USDA-Agricultural Research Service, Burns, OR

MEINZ Kelly A * WRD

From: Trenton Potter <tp754489@gmail.com>
Sent: Tuesday, September 30, 2025 10:13 AM
To: WRD_DL_rule-coordinator

Some people who received this message don't often get email from tp754489@gmail.com. Learn why this is important

We, the undersigned, support the Harney Basin community petition filed on September 12 regarding the management of groundwater resources in the Harney Basin.

Groundwater conditions vary widely across the basin, and these differences must be recognized in order to ensure fair, effective, and sustainable water management. A “one-size-fits-all” approach will harm families, farms, ranches, businesses, and communities who depend on this essential resource.

We respectfully ask that the Oregon Water Resources Department adopt the following guiding principles, as reflected in the petition:

- **Recognition of Local Variability:** Groundwater is best managed as separate groundwater reservoirs, not as one single basin-wide reservoir. Regulation should focus on areas with clear, measurable problems that meet thresholds for regulatory action, not blanket restrictions applied without distinction.
- **Science-Based Boundaries:** Boundaries should be adjusted to reflect the best available science and local knowledge of groundwater conditions, ensuring that management decisions are based on accurate data rather than assumptions.
- **Encouragement of Voluntary Actions:** In areas where groundwater is stable and expected to remain so, voluntary actions should be encouraged rather than mandatory regulations. The Harney Basin community has a proven track record of cooperation, innovation, and shared stewardship, which should be supported and expanded.
- **Protection of Small Businesses and Families:** The petition minimizes economic impacts on small businesses, irrigators, and family ranching and farming operations, all of which form the backbone of our rural economy. Overly broad rules would jeopardize livelihoods and undermine the resilience of our communities.
- **Preservation of Public Health and Safety:** The petition safeguards domestic and stock wells, which are vital for drinking water, livestock care, and public health. Protecting these wells ensures security for households and animal agriculture alike.
- **Fairness and Respect for Legal Rights:** It protects water rights that were legally granted and exercised in good faith, avoiding unnecessary legal conflict and instead promoting cooperation and shared responsibility for long-term water management.
- **Collaborative Problem-Solving:** By prioritizing local involvement and solutions, the petition empowers those most directly affected by groundwater management decisions. The people of Harney Basin have long demonstrated the ability to solve problems together, and they should remain central to any future decisions.

Adopting the community petition will:

- Support sustainable groundwater use while allowing for economic stability.

- Avoid costly and divisive litigation by encouraging dialogue and collaboration.
- Provide a fair and balanced framework that accounts for unique conditions within the basin.
- Ensure reliable, safe, and sustainable groundwater supplies for future generations.

Everyone in the Harney Basin depends on groundwater for drinking water, livestock, crops, and community well-being. We believe this petition provides the best path forward to balance science, fairness, and sustainability.

I urge the Oregon Water Resources Department to adopt the Harney Basin community petition and reject blanket regulations that fail to reflect the realities of our basin. The future of our families, our economy, and our way of life depends on wise, locally informed water management.

Signed,
Trenton Potter

MEINZ Kelly A * WRD

From: vineto andre <vinetoandre@gmail.com>
Sent: Monday, October 6, 2025 7:53 AM
To: WRD_DL_rule-coordinator

Some people who received this message don't often get email from vinetoandre@gmail.com. Learn why this is important

I do not support the rules. I do support the petition. We are a family of 8 with 4 children. 100 percent of the hay we grow goes to feed our own cattle. These cattle support our family.

MEINZ Kelly A * WRD

From: Walter Petty <wpetty33@netscape.net>
Sent: Wednesday, October 1, 2025 10:14 AM
To: WRD_DL_rule-coordinator
Subject: 512 Petition and 512 Rulemaking Comments

Some people who received this message don't often get email from wpetty33@netscape.net. Learn why this is important

Kelly Meinz with OWRD

- I am commenting on both the "Petition for Rulemaking — Division 512" and the "Agency Proposed Rules — Division 512."
- I do not support the Petition for Rulemaking filed by Representative Mark Owens. It will not adequately protect groundwater in the Harney Basin. I urge the Oregon Water Resources Commission to deny Rep. Owens' petition.
- OWRD's proposed rules already contain extensive concessions to irrigators. I urge OWRD and the Commission to re-evaluate these many concessions to ensure the final rules do not include any unfair giveaways to irrigators that undercut needed protections for groundwater.
- I would like to see OWRD's proposed rules strengthened to better protect groundwater. I would like to see groundwater dependent ecosystems such as springs, wetlands, streams, lakes, and native vegetation better protected. I believe the proposed rules' schedule that allows such a large amount of additional pumping to occur that groundwater levels are not stabilized for 30 more years favors irrigation in an unbalanced manner. A balanced approach requires stabilization far sooner than 30 years.
- The Commission should reject the petition's promotion of optional voluntary actions that lack any required pumping reductions. OWRD's proposed rules accommodate alternative voluntary actions where those would meet requirements, and include an adaptive management program. The Commission should not adopt the petition's reckless approach to voluntary agreements, which would only create loopholes and jeopardize long term uses of this tool.

We must protect our groundwater before it is too late.

Thanks You,

Walter

Walter Petty
1979 Villard St
Eugene, OR 97403

WATER LEAGUE

Engaging the public in water stewardship.

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Cave Junction, OR
97523

chris@waterleague.org
(541) 415-8010

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In Memoriam
John L. Gardiner

October 6, 2025

Kelly Meinz, Water Policy Analyst
Jason Spriet, East Region Manager
Laura Hartt, Water Policy Analyst
Tim Seymour, Assistant Groundwater Section Manager

Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

WRD_DL_rule-coordinator@water.oregon.gov

Water League submits our comments on *The Petition to Amend Oregon Administrative Rules (OAR) Chapter 690, Division 512*. These comments are in addition to our oral and written testimony presented to the Water Resources Commission on Friday, October 3, 2025.

As always, we appreciate the opportunity to share our thoughts.

Thank you,

Christopher Hall
Executive Director

Water League Comments on The Petition to Amend Oregon Administrative Rules (OAR) Chapter 690, Division 512

By Christopher Hall, Water League – October 6, 2025

Abstract Summary

The *Petition to Amend Oregon Administrative Rules Chapter 690, Division 512* (Petition) is a political maneuver built upon deliberate misrepresentations of scientific and legal facts, intended to prioritize the short-term economic interests of a small cohort of irrigators and their co-dependents over the long-term, broader public interest in stabilizing the excessively declining groundwater levels of the Harney Basin.

As such, the Petition is an act of sophistry designed to obstruct the Oregon Water Resources Department's (OWRD) lawful rulemaking authority: rather than duly address the existing 2016 rules, the Petition Authors respond at length to the Department's proposed 2025 revisions.[1] The so-called Petition is little more than a late-filed public comment with suggested rule language rather than a valid petition for rulemaking; herein, all references to the Petition as a petition under ORS 183.390 are purported. The Petition relies on the egregious misrepresentation of the Harney Basin's single, hydraulically connected groundwater system into five fabricated groundwater reservoirs to advance its undue cause to justify continued over-pumping.

The Petition, having arisen from the Authors' discontent with the results of their longstanding obstructionism, is deficient because it permits excessively declining groundwater levels to resolve lower than OWRD's proposed rules. Flora, fauna, domestic homes, livestock wells, pasture lands, groundwater dependent ecosystems, springs, streams, and posterity are all put at increased risk and loss by the Authors' mutually exclusive desire to pump groundwater at the greatest politically expedient rate and duty possible in this basin gripped by the Tragedy of the Commons.[2]

[1] Mark Owens, Petition to Amend Oregon Administrative Rules Chapter 690, Division 512, September 11, 2025. [0] ("The Oregon Water Resources Department ("WRD" or "the Department") has proposed rules to address declining groundwater levels as well. This Petition is submitted as an alternative to the Department's proposed rulemaking…" See our brief introduction to section IV. Review of Petition Proposal to Amend the OAR 690-512 Rules on page 42 of our comments for further context.)

[2] We strongly support excluding groundwater rights held by federally recognized Indian tribes from any Corrective Control Orders. These rights are federally reserved, held in trust by the United States, and are therefore not subject to state curtailment or regulation. Under the *Winters* Doctrine and the Supremacy Clause, the federal government's jurisdiction over reserved tribal water rights preempts state authority.

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1. Introduction

The *Petition to Amend Oregon Administrative Rules (OAR) Chapter 690, Division 512* is a quintessential example of sophistry, the rhetorical art of subterfuge. In this case, the Petition's Authors establish a baseless foundation upon which they build layers of subsequent falsehoods to manufacture an untenable conclusion on behalf of their interests to maintain the status quo: over-pumping the groundwater reservoir of the Harney Basin to the greatest extent possible.

Across 17 section headings, the Authors misappropriate the numerous laws they cite in the same way they misappropriate the scientific research and data. They attempt to gain credibility for their unfounded assertions and conclusions by wearing the mantle of legitimacy that inheres in the laws and science. However, to put these credible authorities to the task of buttressing their contrived narrative, the Authors must misrepresent the intent of the policies and the findings, respectively.

We presume some signatories to the Petition may be unaware of or had no hand in fabricating the Petition's pretenses. Therefore, instead of referring to *Petitioners* through our comments, we strictly refer to the *Petition Authors* (Authors).

While we are surprised by the brazen mendacity running throughout the Petition, we acknowledge that this Petition is otherwise an expected development that irrigators and their aligned cohort have progressed toward since OWRD began the Division 512 rulemaking process. For decades, there has been a pattern of resentment towards the state government's preemptive authority to manage the large-scale water use draining the basin at the rate of 110,000 acre feet per year. The refusal to lawfully comply with the statutory *decline conditions* on water rights is just one example. The tension underlying compliance with the laws and rules governing water use management evinces the Tragedy of the Commons.

OWRD prescribed the 2023-2025 Division 512 rulemaking in the existing 2016 Division 512 rules. During the intervening years, OWRD, irrigators, and others shaped place-based planning

alongside this expectation. As the rulemaking first emerged and then coalesced in 2023, irrigators began to engage in obstructionism during Rules Advisory Committee (RAC) meetings, marked by: filibustering; misdirecting discussions through extensive bird walking, dragging red herrings across topics, constructing strawman arguments, and raising non sequiturs; deflecting both questions and answers by all means possible; feigning confusion in a coordinated and structured manner; denying peer-reviewed science without the professional qualifications to do so while proclaiming personal anecdotal experience is a fungible substitute; and on occasion, staging coordinated dissent tinged with ad hominem attacks against OWRD staff, and when that failed, political theatre contrived to manipulate state officials' emotions.

Compounding this obstructionism, RAC members requested a dozen extracurricular Discussion Groups, which we extensively critiqued in our comments on the Division 512 rules as a highly sophisticated countervailing force to the OWRD-run RAC meetings.[3]

During the 2025 legislative session, the leader of the supermajority of irrigator-aligned RAC members, Representative Mark Owens, an irrigator in Crane whose wells sit atop some of the basin's steepest cones of depression, pivoted to sponsoring legislation (HB 3800 and HB 3801) as a second countervailing force to supersede the rulemaking process as the RAC meetings were nearing their conclusion.

When that legislative override failed and the RAC process concluded, the Secretary of State hosted the public comment period. Then, one month after the close of the public comment period, Representative Mark Owens submitted the Petition on his official House District 60 letterhead, as a third countervailing force to OWRD's rulemaking process. While OAR 137-0070(2)(a) requires petitions to respond to existing rules, this Petition substantially reacts to OWRD's proposed rules while supplying a preferred rewrite of the rules. As such, the Petition is a rushed and poorly contrived political maneuver intended to obstruct the science-based policy goals for water management that OWRD has identified to be in the interests of Oregon's citizenry. This circumstance is yet another front in the entrenched struggle between individual interests and the greater public interest.

The Petition sacrifices objective truth and intellectual honesty in an attempt to prevail over the OWRD rulemaking process:

First, the Authors misappropriate the United States Geological Survey (USGS)/OWRD groundwater study referred to herein as "Gingerich, et al., 2022." In so doing, they deliberately misrepresent the findings of one groundwater system by falsely declaring that the Harney Basin comprises five groundwater reservoirs. This improper stratification is the pretext for

[3] Christopher Hall, "Comments on the Chapter 690 Division 512 Malheur Lake Basin Administrative Rules," Water League, August 12, 2025.

gerrymandering the Greater Harney Valley Groundwater Area of Concern (GHVGAC) into five Critical Groundwater Areas (CGWA) instead of one CGWA with multiple subareas, as OWRD has posited. By this fragmentation, the Authors then grade their five groundwater reservoirs on a curve and declare that most of the regions look *reasonably stable* compared to Weaver Springs and Crane. In doing so, they deny the scientific research, which concludes that the entire GHVGAC experiences the effects of excessively declining groundwater levels. By this denial, the Authors appeal to a much less rigorous standard that only requires the state to maintain reasonably stable groundwater levels, a condition OWRD contends the hydrologically-connected basin blew past many years ago. The Authors minimize these hydrologic facts to manufacture their conclusion: since the groundwater crisis is not much of a problem, as they see it, they can manage their own affairs alongside substantially fewer regulatory water use curtailments.

Second, the Authors frame their individual interest in maintaining the pumping status quo to the greatest extent possible as if their pumping was in the greater public interest. They carry out this rhetorical maneuver, in part, by highlighting the 51 (and growing) signatories, which purportedly demonstrates the interests of the public. ORS 183.390 does not prescribe petitions in the common sense of the word: only one person needs to file the Petition under ORS 183.390. While OAR 137-001-0070(1) says "The petition shall state the name and address of the petitioner and any other person known to the petitioner to be interested in the rule," the number of signatories is not a factor in the outcome of a petition to revise rules insofar as OWRD shall consider petitions on the six criteria in ORS 183.390(3)(a-f). Furthermore, since the signatories on a petition may share a similar interest in the topic as persons who file comments under ORS 183.390(2) in support of a petition to revise rules, it is by ORS 183.390(3)(b) that signatories may have any material relevance as OWRD considers the "nature of complaints/comments" as the law requires. Signatories only telegraph their support for a petition to amend rules in advance of the mandatory public comment period in which they and others may participate. The number of signatories to revise a petition to amend is not more important than an equivalent number of public comments under ORS 183.390(2). In a deficient petition to amend, the number of signatories should not sway OWRD's consideration of the Petition any more than unconvincing "complaints/ comments" under ORS 183.390(3)(b) would.

We acknowledge that politics plays a part in agency decisions related to petitions because ORS 183.390(3) does not limit what OWRD may consider beyond the six criteria; nor does the statute require OWRD to decline a petition even if the department considers the Petition to be deficient on one or more of the six criteria in ORS 183.390(3). That said, we do not believe the number of signatories on the Petition differs from the same number of comments that support the Petition under ORS 183.390(3)(b). To this point, we believe double-counting the same persons twice, when signatories invariably submit comments, is not justified.

We surmise that the Petition triggers a process similar to a petition for *certiorari* or a writ of *mandamus*. The Petition is not a collective petition like a ballot initiative that uses the collective weight of its signatories to compel action. ORS 183.390 is about the worthiness of the idea and how petitions and public comments shape the idea; whereas with collective petitions, brute force can sometimes advance the worst ideas, which is not what ORS 183.390 is about.

2. Petitions Under ORS 183.390: DOJ Guidance, Legal Authority, and Procedure

The 2008 *Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the Administrative Procedures Act* states that [**emphasis added**]:

> The APA is designed to protect individual interests and to promote governmental accountability by requiring agencies to **provide advance information to affected individuals and to the public**, while at the same time accommodating the competing public interest in timely governmental action.[4]

Protecting individual interests and promoting governmental accountability are limited in scope to procedural aspects, specifically, the provision to "advance information to affected individuals and to the public."

The protection and promotion do not include providing shelter from the proposed or existing content of the rules. Rather, the APA seeks to balance "the competing public interest in timely government action" (i.e., the content) with the need to "advance information to affected individuals and to the public" (i.e., noticing of the content).

The APA requires agencies to make individuals and the public reasonably aware of the content of proposed rules. This legal mandate functions in practice as a political courtesy, but it does not diminish the state's ultimate preemption authority. Because the state will have to limit activities by individuals and the public through the implementation of administrative rules, the procedures require equitable and due diligence to ensure that those whom the rules limit have had a sufficient and reasonable opportunity to state their claims and concerns in an open public forum for all to consider. The APA does not permit individuals or the public to obstruct the state's preemptive authority to govern, as some discontents improperly allege from time to time.

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[4] Oregon Department of Justice, *2008 Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the Administrative Procedures Act*, Salem, OR, Department of Justice, State of Oregon, 2008. [1-2] (The obvious need to work from the 2024 edition of the manual is well understood but is not available within the time frame needed to submit these comments. The precepts and guidelines we cite appear to be sufficiently general in nature to hold fast over time.)

Resenting statutes and administrative rules, because they limit harmful individual freedoms and liberties, is a common phenomenon. As we have stated recently:

> The public interest is neither the addition of all the special interests in a room nor a thematic reduction of them to a few generic concepts. Rather, the public interest is a wholly separate phenomenon, which is what the entire society needs in order to remain civilized. Not surprisingly, serving the greater public interest usually requires some degree of limiting individual special interests. Freud talked about frustrated individuals in his book, *Civilization and Its Discontents*; these were the folks who resented giving up some liberties to enable everyone to get along. Laws and regulations set limits on behavior for the greater good in both the present and the future. The public interest is what's an interest to society as a whole, which sometimes is going to be different from individual special interests.[5]

The state's rulemaking process to revise the Chapter 690 Division 512 rules is a theater of discontent individuals and other members of the public bristling at proposed rules; in this case, the designation of a Critical Groundwater Area (CGWA), the limits defined by Permissible Total Withdrawals (PTW) of water from seven subareas that comprise the CGWA, and the presumptive reductions in water use that would be required to implement the seven PTWs. However, these discontents, the absolute number of which form a small minority of the basin population, do not represent the broader number of county and statewide residents who are either unconcerned about the state's rulemaking process or support OWRD's efforts to manage water use in the Harney Basin.

We incorporate by reference Water League's "Comments on the Chapter 690 Division 512 Malheur Lake Basin Administrative Rules," which we submitted as public comment per the Notice of Proposed Rulemaking on August 12, 2025. In those comments, we note that:

> In more than a dozen RAC meetings, we have seen the disjunction between the users who argue that their water use is beneficial to them, while others have equally argued that the same water use harms the greater public and ecosystems.[6]

Water League's Division 512 comments discuss at length the tension and strife between those advocating for their individual interests and others advocating for the broader public interest. The revision of the Chapter 690, Division 512 rules has put the APA to the test insofar as the act

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[5] Christopher Hall, Water League "WaveMaker Report #6," KXCJ 105.7 FM, Valley News and Views, July 15, 2025. (Also cited in Water League's "Comments on the Chapter 690 Division 512 Malheur Lake Basin Administrative Rules," August 12, 2025. [7])

[6] Christopher Hall, "Comments on the Chapter 690 Division 512 Malheur Lake Basin Administrative Rules," Water League, August 12, 2025. [9]

attempts to inform the public in advance (indeed, engage the public extensively), while balancing the need for timely action to serve the long term greater public interest in stabilizing the excessively declining groundwater levels.

In our Division 512 comments, we expressly noted that the rulemaking process provides notice to affected parties (i.e., "advance information to affected individuals and to the public"), not executive or veto power over rulemaking:

> Recall that we began our Division 512 comments, noting how the process of drafting these future-oriented rules has asked the very parties responsible for the crisis to provide advice on how to stop their water mining. Their ensuing cognitive dissonance led to sustained resistance against proposed curtailment measures and a push to "water down" regulations that would otherwise protect future access to the very water they want to use for their income.
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> Oregon does not revise the Division 512 rules to serve industrial-scale water users today; if it did, then irrigators (who use 95% of all water in the Harney Basin each year) would be more amenable to the coming water use reductions. The state adopts rules for others' benefits but seeks advice from those to whom the rules will apply. Notably, there is a difference between seeking the advice of those whom the rules are likely to negatively impact and adopting rules that will benefit others who are forthcoming. Oregon's Division 512 rulemaking process is not a negotiation with current water users, but a legal and moral obligation to consider their input while ultimately making a decision that serves the broader and long-term public interest. The time has come to stop avoiding this elephant in the room and accept the unspoken truth that the Division 512 rules serve tomorrow's residents who have no voice but are deeply affected by the decisions made in the present.
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> The Division 512 rules are clearly a future-facing moral and legal intervention: a line drawn to say that the destructive practices of the present cannot continue unabated, especially when their costs are shifted forward in time onto those who had no part in the harm and cannot be present to advocate for themselves, even though we know for a fact that they will eventually be present.[7]

The APA seeks to be as equitable and diligent about involving the public as reasonably possible. ORS 183.333 *Policy statement; public involvement in development of policy and drafting of rules; advisory committees* states that [**emphasis added**]:

[7] Hall, "Comments on the Chapter 690," [16].

> …**whenever possible the public be involved in the development of public policy** by agencies and in the drafting of rules. The Legislative Assembly encourages agencies **to seek public input to the maximum extent possible** before giving notice of intent to adopt a rule. The agency may appoint an advisory committee or use any other means of obtaining public views that will assist the agency in drafting the rule. **The membership of an advisory committee appointed under this subsection must represent the interests of persons and communities likely to be affected by the rule**.

Division 512 rulemaking discontents have repeatedly misconstrued this statute to mean the public has the authority to collaborate on the process and they point to times when agencies have responded to public comments by adopting them as evidence of their claims. This category error is a common misunderstanding of state preemption authority. ORS 183.333 further explains that [**emphasis added**]:

> (3) If an agency appoints an advisory committee for consideration of a rule under subsection (1) of this section, **the agency shall seek the committee's recommendations** on whether the rule will have a fiscal impact, what the extent of that impact will be and whether the rule will have a significant adverse impact on small businesses. If the committee indicates that the rule will have a significant adverse impact on small businesses, **the agency shall seek the committee's recommendations** on compliance with ORS 183.540.
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> (4) **An agency shall consider an advisory committee's recommendations** provided under subsection (3) of this section in preparing the statement of fiscal impact required by ORS 183.335 (2)(b)(E).

The extensive noticing process in ORS 183.335 *Notice; content; public comment; temporary rule adoption, amendment or suspension; substantial compliance required* would be an empty gesture if all the state considered was alerting the public to agency rulemaking. The reason for the elaborate noticing process is to empower the public to attend meetings, learn about the proposed rulemaking, and provide input during the rulemaking process.

We detail these circumstances, the APA statutes, and the DOJ guidance on the APA to set the context for how to understand the Petition. Under ORS 183.390 *Petitions requesting adoption of rules*, the state generously permits any interested person to petition a state agency to add, change, or repeal rules. For petitions to amend or repeal, the agency must first invite public comment, and in all cases it must either deny the petition in writing or initiate rulemaking proceedings within 90 days. A petition is a procedural requirement to review a proposal and take action to accept or reject it, not a share in rulemaking power. A petition does not elevate the petitioner to an advisory role or alter the preemptive effect of the agency's authority. While ORS 183.333

ensures public involvement when an agency initiates rulemaking, ORS 183.390 goes a step further by allowing individuals to petition an agency with specific proposed language and supporting reasons for the rules they seek.

The Petition, as advanced by a local cohort of individual interests, is a direct challenge to how the state exercises its authority to manage water for the long term public interest because it does not respond to the existing 2016 Division 512 rules anywhere near to the extent that it is a direct reaction and in response to the state's effort to implement ORS 537.730 to 537.742, ORS 537.780, OAR 690-010, and to revise OAR 690-512. Notably, the Petition also comes after the lead petitioner's legislative strategy (HB 3800 merged with HB 3801) failed to supersede the Division 512 rulemaking. The failed legislation and the current Petition are of the same species: both attempt to control the state's administrative procedures to serve local special interests in the Harney Basin without reasonable and sufficient regard for the present and future public health, safety, and welfare, as well as the basin's geologic and ecological integrity.

During the past few years, irrigators and their aligned constituents attempted to block the state's authority to manage water use in the Harney Basin, as we describe in the introduction to these comments at the top of page three. Following those inadequate obstructions, the Authors filed the Petition under ORS 183.390 as a last attempt to wrest control over the public management of water use for their individual interests. (Refer to our critique of the Petition's *Exhibit B* for related information.)

We noted earlier that the APA does not transfer rulemaking authority to individual petitioners or the public, nor does it allow them to obstruct agency action beyond the procedures it provides. Nonetheless, the Petition is a tacit acknowledgement that the Authors' efforts to control OWRD's process have reached their limits after nearly three years of obstruction and resistance to the Division 512 rulemaking. The presumptive reliance on collecting signatures for a petition that must otherwise be considered on the six criteria under ORS 183.390(3)(a-f), makes the tacit political acknowledgement more explicit.

Despite this record, the Authors state that "Our goal is to arrive at the best policy for the Harney Basin, with consideration of statutes, rules, science, data and public input that will help us solve this complex issue."[8] This reason for the Petition centers around the Authors' concept of "best policy," which the Authors assert as if it were a universal idea. Water League has argued that:

> In more than two dozen recorded meetings (RAC and Discussion Groups), irrigators characterized the common good as a narrow form of their economic interests and effectively force-teamed the local economy into their plight.[9]

[8] Owens, Petition to Amend Oregon Administrative Rules. [Cover page]
[9] Hall, "Comments on the Chapter 690," [23].

This pattern follows a decades-old stratagem by irrigators in Oregon that exaggerates special interests as if they were the public interest. We incorporate by reference Water League's white paper, *No, We're Not There Yet: Modernizing the Conventional Wisdom*, and note our discussion on the topic here:

> Framing unwelcome special interests as if they were the public interest is a longstanding stratagem to mislead the public. Such lobbying is a form of posturing that feigns public interest. While not all individual interests harm the public good, leaders must no longer misconstrue harmful special interests as being in the public interest.[10]

The Authors seek to present a public consensus on their special interest concerns, the irony of which is centered on the core problem of a few irrigators using 96% of all groundwater, and by that use, causing excessive declines in groundwater that will not recover on human timescales below 100', and will severely harm Groundwater Dependent Ecosystems (GDE), domestic wells, and springs in the top 100' that have the potential to experience recharge.

The effort to emphasize special interests as the public interest by use of a petition is unjustified: under ORS 183.390, only one person must sign onto a petition for it to be valid. The purpose and force of such a petition is not legally bound to represent more than one person's perspective, though it may, and we believe that a state agency should not deny a petition solely on the basis that it only had one signature; nor should an agency prefer a competing deficient petition (if two were simultaneously submitted) solely because the deficient one had more signatories than the other. We note this point about signatories because the law almost certainly envisions petitions under ORS 183.390 to be forceful and meaningful related to the ideas promoted by the petitioner(s) and public comments.

OWRD reviews petitions under Section 3 of ORS 183.390 *Petitions requesting adoption of rules*, which lists the six criteria:

> (3) In reviewing a petition subject to subsection (2) of this section, the agency shall consider:
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> (a) The continued need for the rule;
> (b) The nature of complaints or comments received concerning the rule from the public;
> (c) The complexity of the rule;
> (d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;

[10] Christopher Hall, "No, We're Not There Yet: Modernizing the Conventional Wisdom," Water League, July 17, 2024. [9]

> (e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and
> (f) The statutory citation or legal basis for the rule.[11]

Whether one person or 50 people sign onto the petition, a state agency must consider the petition on the basis of paragraphs (a-f) in ORS 183.390(3), though it is not expressly limited from weighing other considerations. In the Administrative Procedures Act (APA), the term *petition* is a term of art. It's not about demonstrating popular will, but about ensuring procedural access, even for a lone individual with a good idea. The statute allows agencies to deny such petitions *with reasons* because it is *the rationale of the petition* that matters.

We note this circumstance because the Petition appears to marshal about 50 people and institutions, possibly to offset the weaknesses inherent in the Petition. Generally, any increase in the number of people articulating poorly wrought, incomplete, or harmful ideas that serve individual interests does not make those ideas better; rather, the increase amplifies the poorly wrought, incomplete, or harmful ideas, potentially worsening a conflict with the greater, long-term public interest in securing water sources in the present and for posterity.

The Platonic Ideal Form of "best policy" or some *a priori* notion of the same does not exist, precisely because special interests and the public may view any set of potential policies differently. The Authors attempt to disregard this inalienable fact of politics, hoping their preferred policies will prevail as if they were universal or universally regarded. For three years, OWRD has been patiently and diligently teasing out a very real, tangible, and material set of water use policies to manage the severe problems of excessively declining groundwater levels in the Harney Basin, the quintessential site of the Tragedy of the Commons, where irrigation accounts for 96% of all water use in the basin. To hear the irrigator-aligned Authors declare they are the fount of the "best policy," as evinced in their Petition, is an impossible irony given their conflict of interest to maintain the status quo that furthers the obstruction of finding a reasonable long-term solution to the decades-long impairment of the groundwater reservoir. The Authors' only recourse throughout the Petition is to resort to sophistry to mask this irony.

The present circumstance is notable for how the powerful irrigation industry, which has long enjoyed widespread influence over legislators and control over agency officials to affect its desired water management policies, now has to file a petition instead of relying on regulatory capture. In the past, regulatory capture may have been sufficient – look no further than the 32-year freeze on adopting the Division 10 rules that finally enable OWRD to designate the Harney Basin as a CGWA. We suspect the waning political influence of irrigators is the result of the harms associated with increasing water scarcity: as arm-twisting officials to approve subprime water rights over decades led to the over-appropriation of groundwater, the subsequent

[11] Or. Rev. Stat. § 183.390(3) (2025).

over-pumping of groundwater reservoirs has become a serious emergency in some basins where groundwater levels are now excessively declining. Regulatory capture under these circumstances has become increasingly untenable and unjustified.

The reason for the irrigators' struggle to capture the regulators in this particular instance is more complicated than just waning influence. The problem in the Harney Basin is also procedural. Although ORS 183.333 requires agencies to consider the fiscal effects on regulated parties, the inherent purpose of the Division 512 rules is to impose water use curtailments, which, by design, will result in negative financial impacts on those parties. The statutory requirements for fiscal analysis in ORS 183.540 *Reduction of economic impact on small business* are primarily intended to address the incidental costs of compliance (e.g., the cost of a new water meter, a permit fee, or new reporting requirements). ORS 183.540 is not designed to override the core purpose of a rule that is created to address a direct public harm; nor does it require the OWRD to find a way for irrigators to continue their harmful business activities at a lower cost. The core purpose of the Division 512 rules is to stop the unsustainable use of groundwater, the costs of which have been substantially externalized onto others in the past, the present, and now in the future. The effects result in desiccated Groundwater Dependent Ecosystems (which tourism and recreation depend upon), drained springs and streams, and dry domestic wells. The resulting financial impact on the irrigators is not an incidental cost but a consequence of the regulatory action itself.

As the DOJ Administrative Rule Manual notes, the APA balances the "competing public interest in timely governmental action" against the need for due process for affected individuals.[12] In a situation where a business's operations are a direct cause of a public harm (i.e., over-pumping a shared resource), the public interest in stopping that harm would likely outweigh the special interest in the business's need to make money that is contingent on externalizing harm. Curtailing the business is not a side effect; it is the remedy when that business causes harm. Governments in every state prevent certain business activities that cause unreasonable harm to the public health, safety, and welfare. That it is distasteful to irrigators and their co-dependent businesses must be seen in the greater context of the greater harm over-pumping causes to others, which is also quite distasteful.

As the DOJ Administrative Rule Manual notes, the requirement to "seek recommendations on mitigating the cost of compliance" does not mean an agency has to find a way to eliminate the business impact by changing the fundamental purpose of the rule.[13] The APA requires OWRD to consider whether the rule could be implemented in a less burdensome way while still achieving its primary goal. OWRD's proposed Division 512 rules are, by some accounts, overly considerate of the irrigation businesses; in fact, officials reduced the initial plans for water use reductions. Currently, OWRD only proposes 35% water use reductions across the basin,

[12] Oregon Department of Justice, *Administrative Law Manual*. [2]
[13] Oregon Department of Justice, *Administrative Law Manual*. [14]

scheduled on a 30-year glidepath through 2058, and optimized to target a groundwater level trend of zero decline in the most efficient manner.

3. Sequential Critique of the Petition Sections I – XVII

The following sections correspond to the same numbered sections in the Petition. The critique of the Petition could be many times longer than the Petition itself, so we have sought to limit repeating the same critiques in the interest of time, given the short public comment time period and reader fatigue. Nonetheless, we do restate a portion of the introduction below in our discussion of the first section titled "Overview of Proposed Rule Amendments" because this section is the foundation upon which a rich rhetorical edifice of falsehoods throughout the Petition is based.

I. Overview of Proposed Rule Amendments

The Authors begin weaving their sophistry in the Overview of Proposed Rule Amendments by taking a legitimate scientific document, the USGS/OWRD study referred to herein as "Gingerich, et al., 2022," and deliberately misrepresenting the one-groundwater system finding.[14] The Authors treat *areas of interest*, which are zones for study within the one-groundwater system, as if they were distinct, separate *groundwater reservoirs*.[15] This gerrymandering is the foundation of the Petition. Without this initial fabrication, the rest of the Authors' contrivance falls apart.

Without scientific justification, the Authors identify five distinct, unconnected groundwater reservoirs and choose to designate each as an independent CGWA. By this pretense, stratifying the single groundwater system facilitates carving out Weaver Springs and Crane from the three other so-called reservoirs that the Authors allege are not part of the one connected groundwater system. This claim sets up a specious assumption that the various regions within the basin do not impact each other. This conjecture advances their unfounded narrative to the next stage, whereby the Authors state that, while two regions do experience excessively declining groundwater levels, the other three regions are reasonably stable and can be managed as such.[16]

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[14] Gingerich, S.B., Johnson, H.M., Boschmann, D.E., Grondin, G.H., and Garcia, C.A., 2022, "Groundwater resources of the Harney Basin, southeastern Oregon: U.S. Geological Survey Scientific Investigations Report" 2021–5103, 118 p., https://doi.org/10.3133/sir20215103. [65] ("Groundwater in the Harney Basin occurs within a single groundwater-flow system that includes several distinct yet hydraulically connected areas of interest distinguished by local hydrostratigraphy, location in the basin-wide groundwater-flow system, and local rate and magnitude of recharge and discharge.")

[15] Owens, Petition to Amend Oregon Administrative Rules. [2]

[16] Owens, Petition to Amend Oregon Administrative Rules. [3] ("By contrast, those reservoirs that are reasonably stable will implement voluntary agreements to continue to maintain reasonably stable conditions and achieve the other substantive goals in policy.")

Contrary to this special interest misconstruction, OWRD contends that the entire Harney Basin experiences the effects of excessively declining groundwater levels basin-wide precisely because the endorheic basin is connected. Therefore, the degree of variation in decline rates across the basin in different areas does not waive the need to manage the entire basin as one system. Without regard for this fact, the Authors use Weaver Springs as the baseline for what is unstable to contrast that massive (cinder) cone of depression with other regions that, in comparison, look more stable.[17] To be clear, the Authors sacrifice Weaver Springs as a foil to the rest of the Harney Basin. Even the severely degraded cones of depression in Crane look less devastating by comparison, which sets up the third stage of the sophistry: claiming that the groundwater crisis in the Harney Basin isn't as critical as the OWRD and USGS have asserted. (Never once do the Authors establish their professional qualifications or credentials to countermand the USGS and OWRD.)

With the gerrymandered groundwater system, the assertion of managing "reasonably stable" groundwater levels, and a belief that the crisis in the Harney Basin isn't so critical, the Authors assert their conclusion: not only should Permissible Total Withdrawals (PTW) be more voluminous than OWRD permits in Weaver Springs and Crane, but that the irrigators can manage the groundwater use problem themselves in the other three proclaimed CGWAs without OWRD imposing regulatory Corrective Control Orders. The only way the Authors can assert their conclusion – that they are better situated to manage their own affairs than OWRD in these areas – is through the development of this elaborate stratagem. By means of the Petition, they hope to convince others as well. As such, the Petition is an elaborate attempt to frame the Authors' special interests as the greater public interest, which is the ultimate wrench they use to turn the screws on the OWRD.

Below, we discuss in greater detail the four core falsehoods related to the "I. Overview of Proposed Rule Amendments."

<u>Falsehood #1 – A fabricated stratification of the GHVGAC</u>

The petition claims the single groundwater system is instead multiple independent groundwater reservoirs. This category error, misrepresenting "hydraulically connected areas of interest distinguished by local hydrostratigraphy"[18] as distinct reservoirs, establishes the two false tiers: one portion that is declining excessively and the other that can be managed as reasonably stable.

The Petition states, citing Gingerich, et al., 2022:

[17] Owens, Petition to Amend Oregon Administrative Rules. [3]
[18] Gingerich, et al., "Groundwater resources of the Harney Basin." [65]

> The rule amendments proposed in this petition identify five groundwater reservoirs within the Harney Basin: Weaver Springs, Silver Creek, Silvies River, Northeast Crane, and Blitzen-Voltage. Each meets the definition of groundwater reservoir at ORS 537.515(6). In brief, these groundwater reservoirs are distinguished by local geology, location in the basin-wide groundwater-flow system, local rate and magnitude of recharge and discharge, hydraulic gradient, groundwater levels, groundwater quality, and groundwater chemistry. (Gingerich, et al., 2022)[19]

The Authors' assertion that their views align with Gingerich, et al., 2022 is a misrepresentation; as such, it exemplifies their invention of arbitrary alternative facts used to manufacture a narrative that ultimately contravenes OWRD's water management efforts on behalf of the greater public. The petitioner's claim of five separate groundwater reservoirs in the Harney Basin is baseless and directly contradicts the extensive research by the OWRD and the USGS (Gingerich, et al., 2022), which states that:

> In the Harney Basin, groundwater occurs within a single groundwater system that includes various hydraulically connected areas of unconfined and confined layers distinguished by the hydraulic properties of the local hydrostratigraphy.[20]

Gingerich, et al., 2022 continue, at length, explaining that [**emphasis added**]:

> **For the purposes of describing regional hydrogeology and for modeling and analyzing groundwater, stratigraphic units are typically grouped into a smaller number of hydrostratigraphic units, which are distinguished and characterized by common hydraulic properties and consist of one or more stratigraphic units that occupy a similar stratigraphic position.** The 19 stratigraphic units defined for the Harney Basin were grouped into 9 hydrostratigraphic units (HUs; figs. 8–9; table 1) based on similar ranges of transmissivity, spatial association, and physical properties (Grondin and others, 2021). As with the stratigraphic units, the transmissivity values associated with each HU came from wells where a HU occupies 90 percent or more of the open interval. **Characterizing the hydraulic properties of different stratigraphic and hydrostratigraphic units does not imply that groundwater in these units is not hydraulically connected to other units or to surface water.** These characterizations are important for describing the physics of groundwater flow and storage within each unit and between each unit.[21]

The Petition rebrands the scientific hydrostratigraphic units (used to classify and model groundwater) as "groundwater reservoirs," falsely asserting, "Each of these five groundwater

[19] Owens, Petition to Amend Oregon Administrative Rules. [2]
[20] Gingerich, et al., "Groundwater resources of the Harney Basin." [16]
[21] Gingerich. et al., "Groundwater resources of the Harney Basin." [20]

reservoirs is designated as a separate critical groundwater area in the proposed rule amendments."[22] The term "groundwater reservoir," however, is a distinct legal designation under ORS 537.515(6), meaning "a designated body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred."[23]

The definition says "designated body," not "designated bodies." Gingerich, et al., (2022) deliberately uses the term "single groundwater system" to reflect the reality that all parts of the basin are one connected system – a single water body. While the hydrostratigraphic units differ in permeability and show locally complex responses (affecting the rate, direction, and timing of pumping and recharge impacts), they do not constitute separate reservoirs or waterbodies as the Authors misconstrue.

Gingerich, et al., 2022, states that:

> Recharge to the Harney Basin lowlands is supplied from infiltrating surface water as streams and rivers flow out of the uplands onto the sediments forming the relatively flat lowlands and through groundwater inflow from the surrounding uplands.[24]

This type of hydrologic activity is only possible in a single connected groundwater system. To be clear, the Harney Basin is an endorheic closed basin. All the water that falls onto the basin permeates and remains in the basin until it evapotranspires. Furthermore, pumping at depth in the zones deeper than 100 feet mines the ancient groundwater storage and pulls on the shallower system in the top 100 feet across the basin as the pressure drop in the confining layers communicates throughout the connected system.

OWRD administratively defined the original 15 subareas within the GHVGAC under OAR 690-010-0130(3)(c) to implement corrective control provisions, which is the only action that the rule permits; they did not establish a scientific declaration of sealed-off reservoirs. Even when OWRD agreed to the vagaries of the RAC members' vacillations between five, six, or seven subareas, the facts were always clear: these are administratively mapped regions.[25] Similarly, USGS sorted the basin into three regions (Northern, Western, Southern) only for comparative analysis and water budgeting and modeling purposes, not to define discrete reservoirs.

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[22] Owens, Petition to Amend Oregon Administrative Rules. [2]
[23] Or. Rev. Stat. § 537.515(6) (2025).
[24] Gingerich, et al., "Groundwater resources of the Harney Basin." [103]
[25] Note that we critiqued the gerrymandering of OWRD's 15 subareas by RAC members in our "Comments Related to the Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir." In that critique we argued that OWRD should not have agreed to the RAC members' demands because they ran afoul of 690-010-0130(3)(c), which only provides for administratively defining subareas "*to implement corrective control provisions*," not to implement VAs or to socialize (spread out) the pain of water use reductions.

The Gingerich, et al., 2022 report provides no delineation of exterior boundaries or independent behavior of these areas. The Authors misappropriate the law by claiming that their proposed reservoirs "meet the definition of groundwater reservoir" under ORS 537.515(6), which is an unfounded assertion by fiat; it is not a conclusion drawn from the science. All evidence shows one hydraulically connected groundwater system with spatially variable, time-lagged responses, not five distinct reservoirs.

The Petition states [**emphasis added**]:

> Because each critical groundwater area is associated with a distinct reservoir, the proposed rule amendments provide maximum flexibility in managing the Harney Basin's groundwater resources **while minimizing impacts to groundwater users in areas experiencing less serious and**[*sic*] **declines.**[26]

This statement runs directly counter to OWRD's hydrologist report (Boschmann) from February 2024, which discusses the impacts that occur when reducing the number of subareas in the CGWA, creating larger geographical regions [**emphasis added**]:

> Grouping together both high priority subareas and lower priority subareas for the "sub-basin" approach and **distributing pumpage reductions across these larger areas will require significantly more pumpage reductions in the lower priority subareas to achieve stable groundwater levels in the high priority subareas**. The PTW for the entire "sub-basin" will be constrained by the pumpage reductions needed to achieve stable groundwater levels in those area[s] with the most significant declines.[27]

We again refer to our extensive critiques on the RAC members' insistence on gerrymandering OWRD's initial proposed 15 subareas in our "Comments Related to the Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir"[28] and our "Comments on the Chapter 690 Division 512 Malheur Lake Basin Administrative Rules."[29]

OWRD originally proposed establishing 15 subareas categorized into two types of administrative sectors to allow for implementation of corrective control provisions: high-priority subareas would have set stringent PTWs targeting water use curtailments, while the low-priority subareas would be set to 2018 pumpage levels and put on a watch schedule for future water use curtailments. RAC members, however, explicitly pressed hard for the reduction in the number of

[26] Owens, Petition to Amend Oregon Administrative Rules. [2]
[27] Darrick E. Boschmann, Response to RAC request: "sub-basin" PTW for the Harney Basin CGWA, 02/26/2024. [6]
[28] Christopher Hall, Comments Related to the Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir, Water League, February 13, 2025. [7-10].
[29] Hall, "Comments on the Chapter 690," [26-29].

subareas to five or six; eventually, the RAC landed on seven (now this Petition is back to five). While the number of subareas in that range has been demonstrably arbitrary, the effects of establishing fewer and larger subareas were to 1) spread the pain of water use curtailments among a larger set of irrigators than just targeting those in the high-priority 15 subarea plan as OWRD originally proposed,[30] and 2) create larger geographic areas that would serve Voluntary Agreements (VA)[31] since the smaller high-priority subareas in the 15 subarea proposal would comprise mostly of irrigators who would have their water use curtailed and would have little with which to negotiate.

The Authors are now smarting from their previous decision to press OWRD to accept maps with fewer, larger subareas, because now reality has sunk in that "spreading out the pain" among a wider array of irrigators to comply with the limits of the PTWs has become a rather unwelcome circumstance, perhaps, especially, among those irrigators who were not attending RAC meetings. To be clear, about two dozen irrigator-aligned RAC members made the decision to lobby for larger subareas in a basin that has 670 groundwater water rights. And now there is growing discontent among areas of the GHVGAC that were once designated by OWRD as "Low Priority Areas" in OWRD's original 15 subarea proposal, are now all "priority" areas. Numerous public comments to the Division 512 rules attest to this fact.

We are reminded of the Pottery Barn Rule: *you break it, you buy it*. In this instance, RAC members pushed for fewer administratively defined subareas so that those irrigators in RAC meetings could spread out the pain and construct VAs. But now, an increasing number of signatories to the petition want a partial reversal: not a return to the 15 subareas, but a return to apportioning the basin into a high and low priority dichotomy.

To address this very uncomfortable position, the Petition is now attempting to have it both ways, and it's getting signatures from all who want it both ways. But the only way to reconcile two mutually exclusive ideas (the OWRD Boschmann report findings and the desire to return back to the high-priority and low-priority regime) is to misrepresent the Groundwater Study (Gingerich, et al, 2022) in order to then refute the Boschmann OWRD Hydrologist report. Explaining why the Authors' attempt to refute Boschmann is a lost cause requires a closer look at the hydrologic connectivity within the administratively defined areas of the basin, and why they require increased water use curtailments than the Petition acknowledges:

As discussed above, OWRD originally proposed targeting only six out of 15 of its proposed Harney Basin subareas (the 60th percentile). Following the doctrine of prior appropriation, the department would have regulated off junior irrigators within those precisely defined high-priority zones until the scientifically-modeled PTWs were satisfied to reach a groundwater level trend of

[30] Boschmann, Response to RAC request. [7-8]
[31] Hall, Comments Related to the Proposed Guidance. [8-9].

zero decline. Due to the administrative precision of the many 15 subareas, and following the doctrine of prior appropriation, there was a close correlation between junior water rights and their proximity to cones of depression. The water rights causing the most hydrological damage were also more likely to be the ones curtailed, making curtailment hydrologically efficient.

But when certain irrigator-RAC members bristled at this specificity (which may have targeted some of their wells), they proposed administratively defining fewer, larger subareas. OWRD's Boschmann report,[32] which was requested by those bristling RAC members, explained how following the doctrine of prior appropriation in the fewer, larger subareas requires *socializing* (spreading out) the water use curtailments to satisfy the PTWs that now would apply to those larger areas. (Water League has suggested that socializing the water use curtailments simulates involuntary water right transfers.)

By following the doctrine of prior appropriation (seniority), OWRD must shut off juniors across the larger geographic areas until the PTW is met, even if those juniors were previously in lower-priority subareas and are far from cones of depression. Seniority creates an inefficient, basin-wide burden in larger geographic areas, as the cuts are based on the date of the water right rather than the proximal hydrological impact.

Hypothetically speaking, in the absence of seniority, OWRD's management of the larger areas would prioritize shutting down the specific wells causing the greatest rate and magnitude of groundwater level decline, resulting in stopping the declines at the steepest cones of depression. Because OWRD would be targeting wells based on hydrological necessity to achieve stable levels, this non-seniority approach within the gerrymandered larger sub-basins would functionally result in the same outcome as the original 15-subarea proposal: it would target the most hydraulically destructive wells, thereby nullifying the inefficient *socialization* of cuts that the RAC's proposal created when paired with prior appropriation.

The Harney Basin is a connected single groundwater system that can consist of administratively defined subareas, the sizes of which impact the extent of pumping required to satisfy PTWs in each, due to the inefficiencies of the doctrine of prior appropriation. The Authors' desire for two mutually exclusive circumstances – larger administrative areas that can still be sorted into high and low priority partitions requires denying the hydrologic connectivity within those administrative areas and among them. We reject this fantasy out of hand.

<u>Falsehood #2 – A denial that excessively declining groundwater levels impact the entire basin</u>

The Authors misrepresent the scientists' work to repurpose OWRD's sub-areas into five so-called reservoirs to fit their policy goals of managing a portion of the Harney Basin as if it

[32] Boschmann, Response to RAC request.

were reasonably stable, which is a much less stringent regulatory regime than managing groundwater that is excessively declining or about to be overdrawn.

The Petition "proposes rules that will implement Oregon's groundwater policy goal of achieving reasonably stable groundwater conditions in the Harney Basin…"[33] The Authors, who have been involved in OWRD's Division 512 RAC process during the past three years, have repeatedly rejected without scientific evidence OWRD's premise that managing for reasonably stable groundwater levels is no longer possible. To explain this disjunction, we incorporate by reference the entirety of our February 13, 2025, *Comments Related to the Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir* and note how:

> OWRD reported to the WRC on September 13, 2024:
>
> > For the Harney Basin, the Department is proposing to not define reasonably stable, as some areas of the basin are showing more than 50 feet of decline. Instead, the Department is framing the discussion about goals for future groundwater level trends in the Harney Basin as the target water-level trend. The Department's goal is to stabilize groundwater levels at a target water-level trend of zero decline for the entire designated CGWA.[34]
>
> The logic of "proposing to not define reasonably stable" is self-evident since the groundwater declines are already far beyond the lawful requirement of being reasonably stable as ORS 537.525(7) mandates. In many areas throughout the Harney Basin, there are no "reasonably stable groundwater levels."[35]

Water League rejects the attempt by the Authors to contravene OWRD staff hydrologists and their USGS peers. Both agencies have extensive research and data that substantiate the fact that the term *reasonably stable* is inapplicable in the Harney Basin based on extensive hydrogeologic research in Gingerich, et al. 2022.

As if to prove the anecdotal nature of their preferred outlook, the Authors state that [**emphasis added**]:

> Although this Petition provides a basis for designating critical groundwater areas within each reservoir within the Harney Basin, **some petitioners maintain that there is insufficient evidence to designate critical groundwater areas** for the Silver Creek,

[33] Owens, Petition to Amend Oregon Administrative Rules. [1]
[34] OWRD Memorandum to the WRC – Agenda item "D", September 13, 2024. [1]
[35] Christopher Hall, Comments Related to the Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir, Water League, February 13, 2025. [1-2]

> Silvies River, and Blitzen-Voltage groundwater reservoirs and that these areas are likely to maintain reasonably stable conditions without the necessity of regulatory reductions.[36]

This statement demonstrates the arbitrariness of the Authors' administrative CGWA designations to the extent that persons lacking the professional qualifications to opine on the designations openly debate whether or not they are justified. This rhymes closely with the arbitrariness of designating discrete groundwater reservoirs, which the Authors proclaimed in order to assign five separate CGWAs.

The Authors also state that [**emphasis added**]:

> **Although those Petitioners do not support a critical groundwater area designation in these areas**, they are signing on to this Petition because they support the basin-wide approach implemented in this proposal. **They sign on with the understanding that voluntary approaches will be utilized and a provision to lift critical groundwater area designations will be included** in the proposed rule amendments.[37]

We have to ask: What do some signatories know that others do not, and what do all the signatories know that the OWRD/USGS scientists do not? Three years of meetings clearly document that *they know what interests them*. To serve that interest, the signatories have signed onto the Authors' manufactured false conclusions about the hydrogeology of the Harney Basin without the professional qualifications to refute the peer-reviewed scientific research. Notably, the Authors' fabrications to designate multiple CGWAs are not agreed upon among the signatories. We have to wonder if there is an element of NIMBY-ism underlying the disagreement as opposed to peer-reviewed science.

The signatories' internal disagreement reveals the signatory cohort as a political coalition and the Petition as their negotiating tactic, instead of the Petition being a unified, scientifically grounded, administrative procedural request. To this point, the mollification of the signatories by promising VAs and CGWA repeal provisions looks more like manufactured consent than informed scientific disagreement on the merits of informed hydrology.

This politicking demonstrates the petition isn't driven by hydrology. The signatories, or even the Authors, can't agree among themselves which parts of the basin are CGWAs. The claim that "voluntary approaches will be utilized" and that designations can be "lifted" in the future reads like a political promise that no petitioner can actually guarantee. The Authors are effectively deal-making on policies that they cannot deliver upon, which suggests some level of leverage within their cohort. Only the OWRD and WRC have legal authority to approve VAs and

[36] Owens, Petition to Amend Oregon Administrative Rules. [2]
[37] Owens, Petition to Amend Oregon Administrative Rules. [2]

designate or lift CGWAs, unless, of course, the Authors are relying on their political influence and counting on other forms of regulatory capture to secure their claims. We note that if these proposed Petition rules are adopted under political pressure today, the Authors will be further emboldened in the future to relentlessly lobby the OWRD and WRC to enforce the new rules in a manner favorable to the Petition's political dealmaking noted above, essentially binding the OWRD and WRC to their political compromise.

As if all this weren't already enough to stop any disinterested party in their tracks from approving the Petition, the Authors say of their signatory cohort [**emphasis added**]:

> They also **agree** that the proposed corrective controls and voluntary measures in these areas will **enhance the likelihood** of maintaining reasonably stable groundwater levels **in perpetuity**.[38]

Just how do the signatories know this? Well, they don't. All they can do is agree in principle on a *collective hope* that "the proposed corrective controls and voluntary measures in these areas will enhance the likelihood of maintaining reasonably stable groundwater levels in perpetuity." But even this hope is incredible. The Authors use the conceit "enhance the likelihood" to characterize a highly variable phenomenon – groundwater hydrogeology – and then apply it to a preferred absolute result "in perpetuity." This conceit belies the genuineness of the Authors' politicking because it is a logical oxymoron: one cannot meaningfully speak of "increasing the likelihood" of perpetuity. Perpetuity is not a probability spectrum; it is binary. The Authors claim the Petition's signatories agree to an impossibility, but in no version of this universe can anyone incrementally increase the likelihood of something that must either be perpetual or come to an end.

We're reminded of the *Broken Windows Theory* of policing, where low-level violations are indicative of much larger consequential actions. The idea that the Authors can sell their scheme to the local community using such absurd paradoxes as "increasing the likelihood" of perpetuity is yet another suggestion that the entire Petition, one error after the other, lacks the credibility required to be taken seriously.

<u>Falsehood #3 – A false baseline for the groundwater crisis</u>

The Authors sacrifice Weaver Springs as a foil to make the rest of the basin look less critical by comparison. This rhetorical tactic of cherry-picking an outlier minimizes the scale and severity of the basin-wide crisis.

[38] Owens, Petition to Amend Oregon Administrative Rules. [2]

Using Weaver Springs as the baseline for excessively declining groundwater levels even makes the Crane location appear less ruinous despite the precipitous cones of depression cratering that underground region. The Authors use this juxtaposition to infer that other areas of the basin are reasonably stable or capable of being managed as such. This inference only holds when a close causal relationship exists between junior water status and excessive groundwater declines, a correlation the Authors refuse to acknowledge because they reject OWRD's granular 15 subarea approach. In so doing, the Authors overstate the health of three of their five so-called groundwater reservoirs. Anf by disconnecting them, they create the illusion that excessive declines in one area are isolated and cannot affect groundwater levels in others. The Petition establishes two *excessive decline colonies*, which the Authors claim can't infect the other three areas whose health they overstate.

The Authors state that [**emphasis added**]:

> …the proposed amendments require corrective controls to achieve dynamically stable conditions within a timeframe tailored to the unique conditions of each reservoir (i.e., for Weaver Springs, the timeframe is 100% of the required reductions by 2028 or upon completion of the contested case process). **By contrast, those reservoirs that are reasonably stable will implement voluntary agreements to continue to maintain reasonably stable conditions and achieve the other substantive goals in policy**.[39]

The OWRD and USGS scientists have gone to great lengths in meetings and reports to explain how the fully-contained endorheic Harney Basin is like a large tub filled with many different formations of rocks, and that the basin most recently filled up over the past 35,000 years as glaciers receded. They have also explained how all water in this fully-contained endorheic basin is connected, and that when irrigators (who account for 96% of all the groundwater diversions annually) over-pump the basin, groundwater levels decline in spatial and temporal ways related to the geology – the various rocks in the tub. Some areas of the basin are more permeable than others, and in some locations, cones of depression form quickly, and in others, more slowly. All pumping drains the groundwater reservoir and hydrologically impacts the entire basin over space and time.

Just because there is variation in the rock formations does not negate the fact that the Harney Basin is one large, contained tub of water. Furthermore, segmenting the basin by fiat does not negate the hydrologic facts that pumping has both short and long term effects across space. There is no question that if OWRD targeted the 60th percentile of wells causing the most excessive declines in groundwater across the endorheic basin, the holes would stop worsening and eventually fill up from the surrounding areas where groundwater is at higher elevations. Some areas, such as Weaver Springs, would fill up more quickly than others (e.g., Crane), but that does

[39] Owens, Petition to Amend Oregon Administrative Rules. [3]

not negate the fact that gravity will pull the water through the basin along both slight lateral slopes and steep vertical slopes.

The Authors deny this hydro-doctrinal logic by favorably comparing three of their five compartmentalized "reservoirs" to Weaver Springs and Crane. The comparison artifice skews the proportions of the problems in those other three areas to look better than they actually are and would be under the pretenses of the Petition. However, the hydrologic connectivity described in both the Gingerich, et al., 2022 and the Boschmann report shows how those other three areas have higher curtailment burdens than the Authors acknowledge. Grading the other three regions on a curve compared to Weaver Springs is not justified under any scientific circumstances; it's a false baseline strategy to disguise basin-wide declines to justify inadequate voluntary reductions. To bring those three other areas into conformance with OWRD's modeled PTWs, greater water use curtailment increases are required than the minimal voluntary reductions the Authors propose.

Falsehood #4 – A proclamation for self-governance in a region gripped by the Tragedy of the Commons

The Authors proclaim that they are better suited to manage the (minimized) groundwater crisis with voluntary measures than OWRD's regulatory oversight and that they know better how to regulate water use resulting in the Weaver Springs and Crane cones of depression. This is the conclusion that the Authors' entire rhetorical edifice was built to legitimize.

As we discussed above, the Authors insist on using the term *reasonably stable* to argue that the Harney Basin is better off hydrologically than OWRD and the USGS hold. By claiming that the basin is in better shape than it is, the Authors argue for increased PTWs and for the substitution of VAs over enforceable water use curtailments, thereby preserving current pumping to the greatest extent possible.[40]

Water League has extensively critiqued the potential for VAs to function as proponents have envisioned using them. We have submitted those comments (during the public comment period for their Division 512 rules), which detail how VAs risk creating unconstitutional privileges and immunities for a specific class of irrigators, function as a stall tactic to delay real curtailments, rely on gerrymandered subareas to externalize pumping reductions onto neighbors to minimize their total Voluntary Reductions, and seek to bypass established transfer laws and contested case protections in ways that ultimately undermine both equity and the state's preemptive authority.[41]

[40] Ben Scandella and Darrick Boschmann, Memorandum to Ivan Gall, Director, Oregon Water Resources Department, Technical Evaluation of Petition to Amend Division 512, September 30, 2025. (The report results demonstrated that even when managed by the Petition's rules, the connected nature of the basin led to excessive, basin-wide declines.)
[41] Hall, Comments Related to the Proposed Guidance.

But reliance on unproven VAs to replace prior appropriation is a nonstarter in the Harney Basin that is gripped by the Tragedy of the Commons and the longstanding intransigence underlying the resistance to the state's preemption authority by irrigators. In our separate comments, we explain that ORS 537.745 *Voluntary Agreements* are not a substitute for regulation; they work only with a strong CGWA backstop (corrective controls, contested case participation, enforceable milestones). We acknowledge that the Authors state:

> These voluntary measures will be backed by regulatory measures to ensure that the resource is protected long-term if voluntary measures do not maintain reasonably stable groundwater levels as anticipated.[42]

The Petition uses the term *regulatory backstop* to sell the merits of their VA proposals that would structure a 25-foot decline in groundwater levels before OWRD would be allowed to take over water use management of the three areas the Authors deem reasonably stable. Notably, the Authors structure their 25-foot decline on top of the declines that have been accumulating over the past 50+ years. We explain VA the proponents' vision, stating:

> The Voluntary Agreement statute under ORS 537.745 carves out a special place for irrigators to comply with the law freely, and in return for this concession, beneficiaries seek exclusive privileges and immunities that shield them from the law.[43]

When we wrote that summary, we did not ourselves envision that VA proponents would request privileges and immunities from the law to also structure 25-foot declines in groundwater levels that other regions of the basin would not also enjoy. Should the WRC approve such VAs, OWRD would have its hands tied until groundwater levels had plummeted past 25 feet. To say such a decline trigger would never happen deliberately obscures a critical point: unregulated pumping plummeting towards 25-foot declines causes negative impacts to other regions. Draining groundwater near headwaters pulls downward on surface waters to refill and "maintain" the groundwater levels, but then the surface water flows to the center of the basin decline unreasonably, harming GDEs, wells, and worsening groundwater declines there. We also note that OWRD is designating a CGWA in the Harney Basin as the result of substantial groundwater declines that have already occurred, and that 25 feet more is exceptionally audacious for its disregard for others who are not irrigators, and for the flora and fauna, and posterity.

The insufficient amount of voluntary water use reductions the Petition proposes is evidence of the weakness of the proposed regulatory backstops. These overly permissive factors are precisely why the state cannot allow the regulated interests to dictate the terms of their own regulation.

[42] Owens, Petition to Amend Oregon Administrative Rules. [3]
[43] Hall, Comments Related to the Proposed Guidance. [1]

Stalling and delay tactics are the stock-in-trade for proponents of VAs in California, and they will be the key function in Oregon.[44]

Water League has argued that VAs risk forming a two-tier system, where those fortunate enough to join a VA will enjoy "flexibility and carrots" that others left out cannot, raising Article I, §20 equal protection concerns. The specific privileges (e.g., open-ended "adaptive management" periods, exclusion from contested cases, and transfers of seniority, POAs, POUs, etc.) are either unlawful (conflicting with ORS 540.520 and 540.523) or delay groundwater stabilization by turning VAs into long 'learning while doing' experiments. We note that the Authors attempt to avoid this constitutional problem arising from unequal protection under the laws by permitting all irrigators in three of their five so-called distinct groundwater reservoirs to solely function by means of VAs, thus removing the problem of 'haves' and 'have-nots' in those geographic regions. We tip our hat to the persons who engineered that work around, except for the fact that such a scenario would still only work if the Authors' claim of five distinct groundwater reservoirs were true, which it is not.

Water League has challenged the notion of VAs on the premise that if they are such good ideas for a few privileged irrigators, then perhaps OWRD should equitably apply the premises of VAs to the entire connected basin. Notably, our sarcasm is inconceivable to the Petition Authors, who, to their credit, cannot imagine irrigators voluntarily stopping over-pumping in Weaver Springs and Crane, which we presume is why they agree to OWRD imposing Corrective Control Orders in those areas. We are, however, far more incredulous than the Authors, and firmly stand by our assertion that OWRD cannot hand over the other three-fifths of the Harney Basin to irrigators who are gripped by the Tragedy of the Commons to manage their own affairs.

II. Basis for Proposed Rules

For their Petition, the Authors selected proposal "B" from the five options OWRD surveyed during the RAC process, but that model, like all the others, presupposes a single hydrologic basin. OWRD also proposed "E" as an option that would not identify any administrative boundaries under OAR 690-0010-0130(3)(c), and would just reduce water use by curtailing juniors basin-wide. The Authors misappropriate OWRD's water management scenario "B" on the basis that the scenario is founded upon strong scientific research that unequivocally demonstrates that the Harney Basin is one single groundwater system. The Authors cannot appropriate the extensive computer modeling conducted by the USGS and OWRD scientists because that modeling uses the one groundwater system fact as its basis. Scenario "B" would look different under the Authors' false premise of five groundwater reservoirs.

[44] Felicia Marcus, Nell Green Nylen, Dave Owen, Michael Kiparsky, "Five Guiding Principles for Effective Voluntary Agreements: A Case Study on VAs for Water and Habitat in California's Bay-Delta Watershed," The Center for Law, Energy & the Environment, UC Berkeley Law, January 2024. [25]

For example, on September 30, 2025, OWRD released its findings on the hydrologic proposal in the Authors' Petition, which is titled "Technical Evaluation of Petition to Amend Division 512." In that report, staff hydrologists modeled the Authors' proposed water management proposals and compared them to full pumpage and to OWRD's proposed rules. Of course, OWRD cannot model the Authors' proposal under the blatant false premise of five distinct groundwater reservoirs because that would be unrealistic – literally. (We would not be surprised if the Authors cry foul that OWRD didn't model their proposal based on their unscientific contrivance.)

The Department's technical evaluation confirms that the Authors' proposal is hydrologically unsound and substantially inferior to OWRD's proposal. Under the Authors' proposal, basin-wide declines continue, groundwater levels under the Petition remain 2.9 to 25.1 feet lower than OWRD's by the end of the model period, more than 90% of wells are still declining after 2058, an additional 25 domestic wells go dry, and losses to springs, streams, and natural ET are all greater than OWRD's proposal. OWRD's proposed rules optimize reductions to achieve durable stability within 30 years, with higher water levels, fewer dry wells, and less ecological harm. The authors' proposal slows declines only marginally compared to the do-nothing scenario.

The Technical Evaluation of Petition to Amend Division 512 demonstrates that the Authors' "II. Basis for Proposed Rules" is unfounded because it misappropriates OWRD's Scenario "B" by alleging unrealistic pretenses.

III. Definitions and Standards

Discussed later in section 4: Review of Petition Proposal to Amend the OAR 690-512 Rules in Exhibit A, "690-512-0020 Definitions"

IV. Technical Basis for Designating Groundwater Reservoirs[*sic*] and Critical Groundwater Areas

We refer to our extensive critique in the preceding pages of these comments regarding the spurious declaration of five groundwater reservoirs and the designation of CGWAs.

On page 4, at the top of Section IV, after misappropriating the statement in Gingerich, et al., 2022, which declares the Harney Basin is a single groundwater system, the Petion Authors state with no attribution:

> The distinctions between these "areas of interest" are used to ascertain and reasonably infer exterior boundaries of groundwater reservoirs for management purposes.[45]

[45] Owens, Petition to Amend Oregon Administrative Rules. [4]

The strategic ambiguity about whether the Authors are commenting on the report or their own Petition is really all they have got when it comes to advancing their misrepresentation of the Gingerich, et al., 2022 report. The nature of ambiguity is that it can be "this and this," which is the Petition Authors conceit at hand; otherwise, the Authors would not have used the passive voice (renowned for creating ambiguity) and would have taken full responsibility by saying instead: "*We use the distinctions between these "areas of interest" to ascertain and reasonably infer exterior boundaries of groundwater reservoirs for management purposes.*" To be clear: there are countless examples throughout the Petition that grasp at all manner of grammatical and stylistic errors to obfuscate, misrepresent, misappropriate, omit, fabricate, dissemble, and prevaricate. The three-week comment period OWRD provided is insufficient to list them all. This slush pile of sophistry that comprises much of the Petition has its own side effect of accumulating petty falsehoods to such a degree that it overwhelms readers – a well-known legalese strategy.

For anyone questioning whether such ambiguity is overstated, we offer the Authors' unfounded presumption in the next paragraph [**emphasis added**]:

> **The USGS Groundwater Study indicates that the Weaver Springs/Dog Mountain area** (the Weaver Springs Groundwater Reservoir in the proposed rule amendments) **has characteristics that distinguish it from other areas in the Harney Basin, thereby supporting its identification as a separate reservoir** with boundaries that can be ascertained and reasonably inferred.

This claim is a blatant lie. The study does no such thing. At what point do the scientists have any legal recourse for such gross misrepresentations of their work? The Author's Petition cannot be defended as satire because they insist on their earnestness as the very political cover for such blatant falsehoods.

Returning to the first paragraph of section IV, the Authors say that [**emphasis added**]:

> **These distinctions are supported by best available science as well as local knowledge and expertise** and will support the development of appropriate, site-specific regulatory controls and voluntary agreements that reflect the self-organization of groundwater users based on different locations and characteristics of these groundwater reservoirs.

First, the Authors' distinctions are most demonstrably not supported by the best available science. Second, by pairing science with "local knowledge and expertise," the Authors suggest that peer-reviewed hydrology and the self-interest of irrigators whose pumping caused the very declines under review are fungible and equal. This very Petition is a primary example of

self-interested irrigators facing water use curtailments, producing a litany of falsehoods in a last-ditch attempt to supersede OWRD's well-researched, three-year public rulemaking process.

Each of the five subsections of Section IV describing the Authors' so-called groundwater reservoirs contains a similar paragraph that begins with: "Some of the characteristics that distinguish…" The Authors' indiscriminately copy/pasted from the Gingerich, et al., 2022 report features and facts that have no bearing on the scientists' own determination that the Harney Basin is one single groundwater system. This slush pile of text that comprises a large portion of section IV has zero credibility, other than the Authors' attempted use of it to obfuscate that the entire section has zero credibility.

V. Modeled Impacts of Proposed Rules

The Authors state:

> Available scientific information supports the understanding that the proposed rule amendments would maintain reasonably stable groundwater levels and ensure perpetual use of the groundwater resources in all five groundwater reservoirs.[46]

This statement is backed by fiat, not science. The September 30, 2025, "Technical Evaluation of Petition to Amend Division 512" conducted by OWRD hydrologists states that:

> …the Petition Proposal results in continued long-term groundwater level declines in most areas, lower overall groundwater levels, and greater impacts to domestic wells, springs and streams, and natural evapotranspiration.[47]

While groundwater level declines slow down under the Petition proposal, the levels fall between OWRD's proposal and the do-nothing full pumpage scenario, which means that the Authors structure substantial externalized costs and harms onto others to subsidize their over-pumping. The era of externalizing such costs must end for posterity's sake.

VI. Specific Strategies to Maintain Reasonably Stable Groundwater Levels

The Authors' premise this section on maintaining reasonably stable groundwater levels, which is a non-starter since the entire basin is one connected groundwater system, and pumping in the Authors' so-called reasonably stable areas negatively impacts other regions.

[46] Owens, Petition to Amend Oregon Administrative Rules. [8]
[47] Scandella and Boschmann, Technical Evaluation. [24]

For example, the Lower Blitzen area sits at the southern headwaters margin of the basin, and pumping in that area intercepts groundwater that would otherwise move downgradient to support springs, streams, wetlands, and groundwater recharge in the valley floor. So-called stable wells in Lower Blitzen mine the flow that would naturally discharge throughout the basin, which is precisely why the groundwater in that area would appear to be stable.

We refer to our comments on "XII. Consideration of Impacts to Streamflow and Lakes," where we go into greater detail about the fallacy of so-called reasonably stable groundwater levels that appear stable because surface water drains into them uncontrollably.

VII. Consideration of Economic Impacts

We reject this entire section out of hand since it cites the ECOnorthwest report, which is so riddled with distortions that it fails even the most basic standard of credibility. The report inflates alfalfa values by fixing prices at a cherry-picked five-year high rather than the thirty-year average, exaggerates revenues to $58 million when the USDA's gold-standard census shows only $36 million, and incorporates livestock losses on the false premise that cattle cannot obtain feed from outside Harney Basin. By focusing only on inflated present-day harms and ignoring the profound long-term benefits of stabilizing the groundwater levels in the basin, the report only considers the welfare of those who profit from water mining and externalize costs onto others. That OWRD allowed such a defective study into the record is a gross failure in its own right and will serve as an ongoing target for misfeasance until it is removed. We incorporate by reference our extensive critique on the ECOnorthwest report in our comments on the Division 512 rules.[48]

VIII. Consideration of Impacts to Water Rights

The Petition permits substantially more groundwater pumping than the OWRD Division 512 rules proposal. Therefore, the Petition causes greater impacts to surface water users, especially as the result of over-pumping the headwaters in the southern region, which recharge the lowlands. We refer to our comments in section XII. *Consideration of Impacts to Streamflow and Lakes*, to explain how over-pumping the headwaters drains springs and streams, interrupting the terranean and subterranean portions of the hydrologic cycle. The Petition's increased pumping exacerbates well-to-well interference and prejudices the functioning of wells and surface water in the future more than the OWRD Division 512 proposal.

IX. Consideration of Impacts to Public Welfare, Safety, and Health

The Authors selectively quote ORS 536.220(2)(a), stating:

[48] Hall, "Comments on the Chapter 690 Division 512 Malheur Lake Basin Administrative Rules." [16-23]

> The agency is tasked with the responsibility to "promote and secure the maximum beneficial use and control of such water resources " and to undertake actions to "best protect and promote the public welfare generally with an impartiality of interest."[49]

The Authors misappropriate the law the same way they do the science. This selective quote misrepresents the context, hence the legislative intent, of the ORS 536.220. Doing so fabricates an argument that the Petition works within the framework of the public welfare, safety, and health. Of foundational importance to the state's policy on water, however, is the first section – ORS 536.220(1) – which states [**emphasis added**]:

> (1) The Legislative Assembly recognizes and declares that:
> (a) The maintenance of the present level of the economic and general welfare of the people of this state and the future growth and development of this state for the increased economic and general welfare of the people thereof **are in large part dependent upon a proper utilization and control of the water resources of this state, and such use and control is therefore a matter of greatest concern and highest priority.**[50]

Leaving out section 1 while quoting two fragments of section 2 omits the most fundamental aspect of the law: the "proper utilization and control of the water resources" that are "a matter of greatest concern and highest priority." OWRD's general mandate as an agency is the use and control of the state's water resources. The Authors ignore this inconvenient fact because they resent OWRD's implementation of the legislative mandate by means of the Division 512 rules revision. The Authors cannot justify their Petition as a way to control water use to ensure the public welfare, safety, and health unless they narrow their focus down to irrigators and a small number of codependent businesses in the present.

We understand that quoting entire sections of the water code is unnecessary and awkward, but quoting the relevant portions to convey the legislative intent accurately is an imperative. In the next sentence, the Authors paraphrase ORS 537.525(2), saying:

> Under ORS 537.525 the Department is responsible for acknowledging and protecting rights to appropriate groundwater, except when, under certain conditions, the public welfare, safety and health require otherwise.[51]

The actual text of ORS 537.525(2) is [**emphasis added**]:

[49] Owens, Petition to Amend Oregon Administrative Rules. [11]
[50] Or. Rev. Stat. § 536.220(1) (2025).
[51] Owens, Petition to Amend Oregon Administrative Rules. [11]

> 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.[52]

The effect of misconstruing the law herein – leaving out "and priority thereof be acknowledged and protected" helps the authors promote their claims of self-governance through Voluntary Agreements that supersede the doctrine of prior appropriation. Leaving out this clause on priorities has the effect of calling attention to the misrepresentation of the law for political purposes more than if the Authors had just quoted the section properly. We see this omission as a tacit admission that the Authors fear their proposals to manage three-fifths of the Harney Basin by themselves through VAs may not conform with ORS 537.525(2), with which VAs under ORS 537.745 must comply. As such, the Authors' Petition is at a significant disadvantage to OWRD's proposal to revise the Division 512 rules, which does not alienate senior water right users, some of whom may have nothing to gain from negotiating their water use with junior water users.

Oregon's CGWA statutes, in coordination with ORS 537.780(2), sort out the use of groundwater in over-drawn and excessively declining basins by setting PTWs to prevent harm to the public health, safety, and welfare. Following that determination, OWRD applies the doctrine of prior appropriation to regulate off (curtail the water use of) junior water right holders to the extent required to satisfy those PTWs. The Authors want to manage their water use in three-fifths of the basin on their own through VAs, which, not only removes the simple sorting by seniority but facilitates the removal by means of only 10% reductions: if only a small fraction of water users must curtail, then priorities don't matter.[53] As we see it, the process is: 1) the Authors sacrifice the reasonable and beneficial use compact between them and the public (to whom all water in the state belongs) by minimizing water use reductions in the basin, 2) priorities don't matter when low levels of reductions are required, and 3) VAs theoretically succeed when no one really has to give much up; in fact, and with no irony, they can maintain the status quo voluntarily.

The rest of this section, like so much of the Petition, comprises numerous statements by fiat – they are unsubstantiated and unjustified.

[52] Or. Rev. Stat. § 537.525(2) (2025).
[53] *Phillips v. Gardner*, 2 Or. App. 423, 469 P.2d 42 (1970). ("Priorities are meaningful only in times of shortage," and if the Authors only acknowledge minimal shortages, then they can more easily ignore the doctrine of prior appropriation.)

X. Consideration of Impacts to Domestic Wells

The Authors state:

> Concerns regarding impacts to domestic wells have primarily been raised in and near areas experiencing declines or in areas with low permeability and low yield, namely the Weaver Springs and parts of the Northeast Crane areas.[54]

We are surprised by this statement, as it does not conform to the findings in Gingerich, et al., 2022, which characterizes the heap of cinders that is Weaver Springs as highly permeable with very high yields, and denotes the Crane area as having both relative permeability to the east, and lower permeability to the west.[55] The domestic wells are bottoming out because irrigators are pumping highly productive wells, which are draining the static water level out from underneath them. This error is another example of our earlier reference to the *Broken Windows Theory*; we wonder just how unconcerned the Authors are of details such as these, which are directly related to a lack of concern for domestic wells. When a document such as this Petition is filled with uncountable numbers of misrepresentations and unreadable obscurations, careless errors become subsumed by the momentum of such unmitigated mendacity.

We detect virtually no consideration for domestic wells, which aligns with the casual disregard for domestic wells writ large across the basin by the water users who are focused on still trying to access 96% of all the water annually as groundwater levels excessively decline.

XI. Consideration of Impacts to Springs

We refer to our critique in Section XII. *Consideration of Impacts to Streamflow and Lakes* about how groundwater pumping near headwaters is bottoming out surface water, which has the artificial effect of maintaining the appearance of reasonably stable groundwater levels, but also reduces flows to the lowlands near the center of the basin. The Authors equivocate on the death of Sod House Springs, as they do across all other dwindling and variable springs basin-wide. The comparisons to point-in-time measurements for such hydrologic systems that are known to be variable make the Authors' citations specious and untenable.

The Authors state that:

> The Malheur National Wildlife Refuge has worked to establish effective working relationships with neighboring landowners built on mutual respect and trust.[56]

[54] Owens, Petition to Amend Oregon Administrative Rules. [12]
[55] Gingerich, et al., "Groundwater resources of the Harney Basin." [76 and 93]
[56] Owens, Petition to Amend Oregon Administrative Rules. [13]

With Sod House Springs, a part of the Refuge that has 1923 surface water rights, having dried up in 2014, we wonder just what is really meant by "establish[ing] effective working relationships with neighboring landowners built on mutual respect and trust," given that those neighboring irrigators pumping groundwater using junior water rights are responsible for desiccating the senior priority springs. We also wonder if the junior 2018 Double O springs are part of that "trust" and whether there are off-the-books water management decisions being made locally that have excluded and preempted the authority of the state to oversee, rightfully, the circumstance. We argue for state authority to ensure transparency, to ensure there are no questions about what is transpiring.

The Authors' consideration for springs is lost in their equivocations. As with streams, lakes, native vegetation, and domestic wells, they acknowledge springs because they have to. Predictably, they minimize evidence that groundwater pumping has dried and is diminishing them, and they punt on the problem of inexorable desiccation, saying "variability" or "relationships" are confounding.

XII. Consideration of Impacts to Streamflow and Lakes

The Authors' statement about impacts to streamflow and lakes misrepresents the findings of Gingerich, et al., (2022) by ignoring the mechanism of stream depletion. The stability of the upland water table is not real because surface waters must be sacrificed to maintain the appearance.

As repeatedly explained during RAC meetings, groundwater pumping reverses the natural hydraulic gradient in the lowlands, causing streams and springs to switch from being historically gaining to now losing drainages. The drying streams are not evidence of no impact; rather, they are the very impact itself. Surface water is being pulled downward by gravity, which has the effect of equilibrating the decline of the reservoir.

The over-pumping has permanently shifted much of the lowland hydrology from net gaining to net losing. Therefore, not only is the surface water overdrawn, but the groundwater reservoir has also been overdrawn because it can no longer support the base flows required to maintain the stream.

The Authors' claim that stream degradation is "more likely" caused by historical riparian changes and drainage efforts is a bogus assertion, a deliberate attempt to dismiss the measurable impact of over-pumping. Their claim ignores the overwhelming scientific consensus that pumping creates stream depletion – the evidence that the groundwater deficit is being satisfied by the streams. With no evidence, the Authors blame historical stream alterations in an attempt to dismiss the most significant factor driving the need for regulation.

Their deflection continues with the selective use of data regarding Malheur Lake. By narrowly focusing on the negligible net inflow to the lake's surface area, the Authors attempt to minimize the greater hydrologic connection as insignificant. They ignore the fact, clearly documented in the Garcia and Gingerich reports, that Sod House and Double O springs are the source of the Malheur Lake Refuge's very existence. Protecting these springs and the GDEs they saturate is a direct responsibility of the OWRD Division 512 rules, which this Petition attempts to overrule.

XIII. Consideration of Impacts to Native Vegetation

The Authors state:

> For these reasons, the proposed rule amendments do not address the possibility of impacts to native vegetation.[57]

This final sentence of this section caps a litany of excuses why GDEs (native vegetation) can be ignored; as such, it exposes the Petition's disingenuous aims. The Authors correctly note that phreatophytes drive groundwater ET (although it is shallow groundwater less than 100' deep), and that such groundwater declines "would result in changes to groundwater dependent vegetation." This admission, however, undermines their subsequent argument: since the OWRD does not require separate groundwater rights for native vegetation, the Authors believe neither OWRD nor the Authors' rule proposal are required to protect GDEs. This bias comes from a decades long presumption that OWRD serves only certain clients, such as the large-scale industrial water right holders. But OWRD *manages* those water right holders as required to serve the greater public interest in the water that belongs to the public. OWRD has a legal mandate to manage groundwater and stop excessively declining groundwater levels for numerous reasons, one of which is the limiting the desiccation of GDEs because GDEs represent a critical component of the natural ecosystem the greater public values. OWRD and USGS models, particularly those distinguishing the shallow groundwater zone (the top 100'), predict the desiccation of this zone long before visible vegetation changes occur, which the Authors ignore.

The Author's conclusion, that the rules should not address impacts to native vegetation because the link is complex, is a cop-out. The rules must address these impacts by limiting pumping to stabilize the vulnerable shallow groundwater region upon which all native vegetation relies. The complexity of GDEs is not a defense against taking action; such a position is a hackneyed, if not clichéd, attempt to undermine the legitimate modeling that clearly shows the very simple fact that draining the groundwater below the root zones kills the plants.

[57] Owens, Petition to Amend Oregon Administrative Rules. [15]

XIV. Consideration of Impacts to the Water Resources Department

This section is a patronizing artifice designed to camouflage a legal threat as constructive criticism: OWRD must either accept the Authors' desired rule changes or face a protracted, expensive legal battle. This is the same type of threat Rep Owens made in his public comment to the WRC during Agenda Item D on September 13, 2024 [**emphasis added**]:

> Are these people in these areas going to litigate the department? Can we keep those 15 subarea approaches? No doubt. Are we going to get away from litigation at all through this process? No, we are not. **I said this before, the decisions that you guys make in adopting the rules that come forward: is a majority of the community going to support you, or is the majority of the community going to leave, going to litigate you? What it comes down to.**[58]

Threats to sue are commonplace, but what makes these threats different is that they have come long before any action was ever taken by the state to impose Corrective Control Orders. The Authors and others have threatened to sue while the state has been working with the public under the laws and rules of the APA for three years to resolve the severe groundwater crisis in the Harney Basin. The threats in this section constitute a preemptive abuse of the legal process to coerce the OWRD and WRC that otherwise have a legal mandate to serve the greater public interest and ensure due process. Contested case proceedings are a mechanism guaranteed by the APA to ensure due process for affected water right holders – it is a necessary legal protection. The Authors turn this due process protection on its head by characterizing it as the fault and result of the state, even though the state is following the law and fulfilling its procedural duties.

The Authors, who are the source of three years of sustained regulatory obstruction, feign concern for the OWRD's legal budget and case backlog. The Authors attempt to exert regulatory capture by threatening to exacerbate the OWRD's already constrained budget. If the Authors genuinely cared about the welfare of the OWRD, their action would be to withdraw the threat of litigation and support irrigators through the contested case process that ensures due process.

Furthermore, the final paragraph, which advocates for "partnership and voluntary joint action," ignores the context of the need for a credible CGWA designation. OWRD proposes to designate a CGWA precisely because decades of voluntary actions have failed to materialize. The brazen and abusive rejections by irrigators to comply with the decline conditions on their water rights clearly demonstrate the contempt for voluntary action, even though the law requires those water right holders to measure their wells and shut them off according to the conditions of their water rights.

[58] Representative Mark Owens, Irrigator from Crane, OR, public comment on agenda item "D" before the WRC on December 13, 2024.

XV. Consideration of Preference for Voluntary Joint Action and Opportunities for Voluntary Agreements

The Authors cite ORS 537.525, which favors "voluntary joint action" before the state uses its "police power" to impose corrective controls. However, this statutory preference for voluntary action exists for normal resource management, not for a decades-long resource crisis that warrants a CGWA designation. The need for the CGWA strongly suggests that the voluntary phase has long since passed. We refer to our earlier critique about how the Harney Basin blew past the possibility of managing for reasonably stable groundwater levels since the single groundwater reservoir, the GHVGAC, has been experiencing excessive declines for years.

And again, we incorporate by reference Water League's Comments Related to the Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir,[59] which establishes numerous critiques of how proponents envision VAs.

XVI. Consideration of Integrated and Coordinated Basin Plans and Programs

The Authors misappropriate ORS 536.220, ORS 536.310, and OAR 690-400 to misrepresent their intent. The statutes and rule clearly establish a statewide, preemptive water policy, directing the OWRD and WRC to regulate water use in the public interest of all Oregonians, present and future. Place-based planning is strictly advisory. It provides communities with an opportunity to gather data, build community, and suggest projects, but it does not override the OWRD and WRC rulemaking authority.

The Petition conflates these distinct roles, presenting the Harney Basin's locally developed place-based planning as if it carried equal legal weight with binding state regulation. This is no different than the Authors' earlier misappropriation of science, where hydrostratigraphic units were rebranded as "groundwater reservoirs." Here, the Authors misrepresent the statutory language on "integration" and "coordination" to suggest that local consensus should constrain state regulatory action.

Equally misleading is the refrain that OWRD has failed to "listen" to basin stakeholders, which is the underlying tone of this section. Three years of RAC meetings, Discussion Groups, public comment, and extensive outreach prove otherwise. What Authors mean is not that the state has failed to listen, but that the state has not agreed with their demands. Claiming that disagreement is exclusion is yet another specious assertion that portrays legitimate policy disagreements as *ad hominem* attacks.

[59] Hall, Comments Related to the Proposed Guidance.

XVII. Criteria for a Petition to Amend Rule

OAR 137-001-0070 requires a petitioner to comment on five criteria under subsection (2) paragraphs (a-e). Below, we address the Authors' responses to each of the five criteria:

(2)(a): The Authors' response to OAR 137-001-0070(2)(a) is deficient. (2)(a) requires the Authors to provide options for achieving the existing 2016 Division 512 rule's substantive goals (which are stabilizing groundwater, conducting a peer-reviewed groundwater study, and convening a RAC) and to explain how those options reduce the economic impact on businesses. But the petition mostly ignores the requirement in (2)(a), and instead, is a response to OWRD's current proposed Division 512 rules revision; it is not about responding to the current existing rules. Therefore, the Authors offer no alternatives to the existing Division 512 rules. Instead, they reframe the existing Division 512 goals by substituting the existing conservation mandate of OAR 690-512-0020(1) for the private interest of "ensuring continued availability of groundwater" for industry, which is the entire intent of the Petition. Incredibly, the Authors conflate conservation of the resource with conservation of irrigators' continued over-pumping of that resource.

The sudden filing of this petition 1) after the close of public comment on OWRD's three-year Division 512 Rulemaking process and before the potential WRC adoption of the rules, and 2) after nearly a decade of silence on the 2016 rules (during which everyone has had a constant opportunity to be heard), strongly suggests the Petition functions to obstruct and supersede OWRD's existing, three-year rulemaking process. This is why the Authors fail to respond to the requirement in (2)(a).

(2)(b): The Authors' response to the "continued need for the existing rule" is not just an acknowledgment of the continued groundwater declines the existing 2016 Division 512 rules address, but an attempt to retain "the maintenance of reasonably stable groundwater levels," which is a much weaker and insufficient standard than the current OWRD proposal, to which the Petition is responding.

The 2016 Division 512 rules established the "reasonably stable" groundwater level standard as an interim conservation tool, intended to prevent depletion until comprehensive science could guide stricter regulation (i.e., the peer-reviewed Gingerich, et al., 2022 study). The authors seize on this transitional "reasonably stable" language and misappropriate it as if it should be, in part, a long-term water management standard going forward.

The Authors then use the fact of ongoing declines, precisely the evidence proving that "reasonable stability" isn't working, to argue the rules should be "expanded" only to their

gerrymandered distinct groundwater reservoirs that they choose to designate as "excessively declining," despite lacking the professional qualifications to do so.

The Authors misappropriate the "reasonably stable" conservation mandate in the 2016 existing Division 512 rules to sustain the status quo of over-pumping across most of the single groundwater system. This ultimately weakens OWRD's basin-wide long-term water use management proposal, which is the Authors' sole intent.

(2)(c): The Authors opportunistically invoke the 2016 rules and apply 137-001-0070(2). As the existing Division 512 rules are concerned, they treat the "reasonably stable" standard as permanent in (2)(b) when it suits their interest to keep pumping across most of the basin, and temporary in (2)(c) when it provides a pretext for their Petition to pivot toward their own weak amendments in the face of OWRD's current rulemaking process. As the APA rules are concerned, the Authors respond to (2)(c), conceding that the existing 2016 Division 512 rules were "preliminary actions" and are now "insufficient," whereas in (2)(b), they propose to entrench the temporary, insufficient "reasonably stable" standard across much of the single groundwater system.

The combined effect of (2)(c) following (2)(b) carries this message: 1) the Authors admit the 2016 Division 512 rules were temporary except for the "reasonably stable" standard, which they wish to keep in place across much of the basin because they claim to know the science better than the USGS and OWRD scientists, and 2) they have nominally declared by fiat that the single groundwater basin is five distinct reservoirs, and that the existing rules work just fine over a large portion of it.

(2)(d): The Authors admit there is no overlap or conflict, so their answer to (2)(d) should stop there. The requirement in OAR 137-001-0070(2)(d) is narrow and technical: it asks petitioners to identify whether the existing 2016 Division 512 rules duplicate, conflict with, or overlap other state, federal, or local regulations.

The Authors concede that no such conflicts exist, but instead of stopping there, they pivot to unrelated political complaints. They argue that the rules "do not adequately implement Oregon's groundwater policy" because they have not "ceased groundwater declines" and because they fail to "incentivize voluntary efforts." The first claim repeats what they already admitted in (2)(b) and (2)(c). The second claim is a straw man: the 2016 rules were never designed to implement ORS 537.745 *Voluntary Agreements*, for which OWRD has never adopted rules. Criticizing Division 512 for not implementing a separate statute is not a conflict with state policy; however, suggesting that it is, manufactures a regulatory conflict where none exists. The Authors conclude that because the 2016 rules do not mention or incentivize VAs, they are somehow inadequate, which is a non sequitur: no one ever stopped the Authors from proposing VAs over the past

decade. The Authors misuse (2)(d) by turning a narrow technical question into 1) a criticism of the temporary rules that limit new allocations for not stopping groundwater declines and 2) a justification for advancing VAs in their Petition on the premise that the 2016 rules somehow prevented the Authors from proposing them.

(2)(e): The Authors' response to (2)(e) once again misuses the criterion. The 2016 Division 512 rules themselves required the groundwater study that produced the peer-reviewed Gingerich, et al., (2022) report, the most significant technical advancement in the basin's history. Far from proving the need for Authors' rule amendment, this study has given them substantial heartburn precisely because it confirmed that the Harney Basin is a single groundwater system in excessive decline, contradicting their attempt to carve the basin into multiple "reservoirs."

Their second claim, that groundwater declines since 2016 threaten multiple industries dependent on groundwater, misrepresents not only the fact that irrigation accounts for 96% of all annual diversions, but also turns the conservation goal of the existing 2016 Division 512 rules on its head. The existing rules sought to stabilize groundwater in service to the greater public interest, stating in section (3):

> ...the Department may not find that the proposed use will ensure the preservation of the public welfare, safety and health unless the use is classified, and unless water is available…[60]

The 2016 Division 512 rules did not solely protect ongoing water supplies for irrigators, even though one reason for restricting new groundwater allocations is to protect existing water rights. There are many other expressions of " the public welfare, safety and health," including domestic wells, GDEs, springs and streams, vast flocks of migratory birds, and all flora, fauna, and humans in future generations who rightfully should be able to enjoy the same water that those in the present do.

Finally, the Authors' invocation of "community engagement" grossly misrepresents the record. Harney County has already experienced a decade of place-based planning and a prominent Groundwater Study Advisory Committee by which to practice community engagement. These forums have been inclusive and extensive. Rather, what the Authors attempt to proclaim is that there are no administrative rules that degrade the state's preemptive authority over the local community, which is what they mean when they say the existing 2016 Division 512 rules "do not encourage an integrated, coordinated, adaptive approach to groundwater management." The Harney Basin is gripped by the Tragedy of the Commons, many years have passed with no attempt to voluntarily address the serious destruction of the groundwater reservoir, and when given the opportunity to comply with the law through their decline conditions on their water

[60] Or. Admin. R. 690-512-0010(3) (2016).

rights, irrigators have not only ignored their legal duties but have all but mutinied when OWRD had to step in and enforce the laws with which irrigators were supposed to have "voluntarily" complied.

4. Exhibit A: Review of Petition Proposal to Amend the OAR 690-512 Rules

The Authors state:

> These Proposed Division 512 Rules propose to amend the existing Chapter 690, Division 512 rules by deleting OAR 690-512-0010 and 690-512-0020 and adding the following new rules (OAR 690-512-0010 to OAR 690-512-00150).[61]

The Petition to Amend OAR 690, Division 512, is structurally deficient because it misapplies the Oregon APA process. The Authors create an untenable disconnect: the main body of the Petition primarily critiques OWRD's proposed 2025 rules, while the formal amendment text in Exhibit A attempts to revise the existing 2016 rules, which is its only legal recourse.

This fundamental split forces OWRD to respond to arguments based on two different legal frameworks, undermining the clarity required to fulfill its duty to consider the filing as a proper petition under ORS 183.390. Since OWRD is not required to engage in a separate, parallel rulemaking process based on a critique of its draft already proceeding through its own formal process, the Petition fails to meet the threshold of providing "facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule" as provided for in OAR 137-001-0070(1)(b). Consequently, this procedural flaw provides the legal basis for the agency to deny the Petition.

Given the manner in which the Authors drafted the "Petition," it is instead little more than a late-filed public comment rather than a valid petition for rulemaking, which is why OWRD had to reopen the formal public comment period on its currently proposed Division 512 Rulemaking process that had closed on August 13, 2025.

We reject the Authors' proposed amendments to the existing 2016 OAR 690-512 rules in their entirety because they are based on gross misrepresentations of the scientific studies and the laws they misappropriate. We do respond to them in part only because they have been presented to the public for comment, and responding to them is necessary to complete our critique of the Petition.

[61] Owens, Petition to Amend Oregon Administrative Rules. [Exhibit A - 2]

The disconnect described above, between the first section of the Petition and this second section, is evident by the circumstance that we support a few provisions the Authors propose below, while we stridently oppose the baseless claims made in the first section. Generally speaking, if we do not comment on a provision, we are unopposed to the provision. If we strongly support a provision, we will say so. Any agreement with a provision is severed from all other views we hold and does not signal agreement with any other provisions or overall claims made in the Petition.

690-512-0010 Classifications

The references to 690-512-0040 New Groundwater Appropriations are moot; see our comments on 690-512-0040 New Groundwater Appropriations below.

690-512-0020 Definitions

The definitions for (2) Decline Trigger and (3) Dynamically Stable Groundwater Levels relate to the unreasonable permissiveness of VAs and the misfeasance of allowing irrigators in a Tragedy of the Commons to manage their own affairs.

The definition for (5) Permissible Total Withdrawal adds the word “estimated” to create permissiveness in rule about what the PTW is, so that irrigators can justify over-pumping their wells in a cumulative fashion and cite the fact that *estimation* creates an undefined amount of variance over which OWRD cannot regulate.

The definition for (6) Reasonably Stable Groundwater Levels is unjustified in the Harney Basin because areas in the basin that are not declining as fast as others are: 1) part of the entire single groundwater reservoir and the current level of pumping in such areas has already been worsening declines in connected groundwater levels, and/ or 2) some areas near headwaters are artificially maintaining what appear to be reasonably stable groundwater levels because surface waters are draining/ bottoming out to the over-pumped groundwater reservoir; furthermore, the interference with surface water causes harms to other water users, GDEs, springs, lakes, streams, flora, fauna, recreation, and posterity. The condition that groundwater levels appear reasonably stable masks harm elsewhere in the Harney Basin; therefore, use of the term is specious.

690-512-0030 Administrative Boundaries

We reject this entire section on remapping the administrative boundaries of the Harney Basin because the Authors base those maps on a gross misrepresentation of the scientific findings in the groundwater study by Gingerich, et al., 2022. We refer to our extensive critique on this matter for details.

690-512-0040 New Groundwater Appropriations

This entire section is unjustified. The Harney Basin is excessively declining and/ or about to be overdrawn, variously, across the single connected groundwater reservoir, and no new uses at a time of water use curtailments should be approved.

This concept of permitting by limitations new water rights was a temporary placeholder in 2016 to manage the gross over-appropriation of water rights in the Harney Basin due to decades of immense and protracted political pressure by irrigators and their attorneys, lobbyists, and select politicians to force OWRD staff to approve subprime water right applications. Recently, as the Harney Basin has become one of the most damaged groundwater systems in the state, irrigators have sought political cover for their responsibility in the over-appropriation of the Harney Basin and have attempted to place all blame on OWRD. There can be no question that OWRD shares responsibility for its historical behavior to allow itself to submit to such regulatory capture; however, in recent years, that era of obsequiousness has been ending.

In the past, staff hydrologists would routinely determine that water was not available or record that they did not have sufficient data to determine if water was available for many, if not most, water right applications in the Harney Basin since the 1980s. Nevertheless, political pressure put on staff resulted in the approval of subprime water rights that should have been rejected. The only attempt to prevent harms resulting from approving subprime water right applications was to impose decline conditions on those water rights to hedge against the harms staff hydrologists predicted would occur from pumping groundwater at sites where they either knew water was not available or did not know if water was available.

On this matter, we note the irony emanating from the extraordinary obstructionism during the Division 512 rulemaking process, culminating in this petition, and now this Section 690-512-0040 New Groundwater Appropriations, which demonstrates the unceasing compulsion to pump groundwater even when harms have been well-documented. This section further defines the penumbra around the unfolding and expanding Tragedy of the Commons in the Harney Basin, which has gripped the region in an exceptional way.

690-512-0050 Programs Encouraging Voluntary Cancellation

The Authors state:

> Compensation will be prioritized for groundwater rights that have either the highest potential to substantially interfere with an earlier priority surface water right or to impact ecologically significant groundwater dependent ecosystems or both.[62]

We refer to our comments on the Authors' considerations in sections X, XI, XII, and XIII of their Petition as our comments relate to the impacts that over-pumping groundwater has on domestic wells, springs, streamflow and lakes, and native vegetation. We agree that the state should allocate funding to a voluntary "eminent domain-lite" account to partner with irrigators without regard to their priority to buy out water rights harming surface water users, domestic wells, and the GDEs referred to above. For perspective, the Conservation Reserve Enhancement Program (CREP) mandatory cancellation of water rights after 15 years also acts as a soft form of eminent domain, unlike traditional land conservation CREPs.

Such buyouts should proceed independently of OWRD's proposed Division 512 rules, as submitted in its Notice of Proposed Rulemaking on June 2, 2025. Together with junior priority-related water use curtailments imposed to conform with the PTW limits of each subarea, buyouts of harmful water uses may succeed in creating more favorable conditions for irrigators during the adaptive management review every six years, when OWRD reviews whether to maintain the curtailment calibration or correct course to stay on target for a groundwater level trend of zero decline by 2058.

For voluntary eminent domain-lite buyouts to be equitable to others and not devolve into privileged pay-off schemes, the state would have to prohibit any new water right applications in perpetuity in the single groundwater system that is the Harney Basin.

We think the resolution of potential equity concerns among irrigators about who gets curtailed by priority and who gets paid off, resides, in part, in the Authors' proposal to prioritize compensation for groundwater rights that have the potential to substantially interfere with an earlier priority surface water right and/ or impact ecologically significant groundwater dependent ecosystems because those water rights are the most harmful. Under ORS 537.780(2), the WRC may make a:

> (b) determination that a ground water use will impair, substantially interfere or unduly interfere with a surface water source [...] [if] the determination is based on substantial evidence

and by that determination,

[62] Owens, Petition to Amend Oregon Administrative Rules. [Exhibit A - 10]

> (a) adopt any rule restricting ground water use in an area […] based on substantial evidence in the record of the Water Resources Department to justify the imposition of restrictions.[63]

What were once perceived as beneficial uses of water are now harmful uses of water, which should be prioritized for curtailment, whether by following priority or under any proposed funding mechanism, CREP, eminent domain-lite, or otherwise. The concurrence of two or more processes for water use reductions should not violate equal protection principles because each serves a legitimate and complementary public purpose: one enforces existing law (juniors' pre-existing legal burden) while the other purchases permanent reductions that lessen future enforcement burdens. Juniors are not owed buyouts, and a lottery system might ease the sting associated with the perennial fact of limited state funding availability.

For comparison, we critique Voluntary Agreements under ORS 537.745 for giving away limited exclusive legal privileges under the guise of voluntary enrollments that contradict the principle that all users should be equally subject to water law when only a few may do so.

We surmise that the unequal distribution of money under CREP and similar buyout programs is constitutionally tolerated because it is a clear public benefit, minimizing the shut-off orders the state must impose. For example, the state would spend funds to acquire a public good, which could be defensible under the Rational Basis Test for equal protection because the state is prioritizing permanent resource recovery with limited funds. However, with VAs, the state gives away limited exclusive legal privileges (such as freedom from corrective control orders and water right transfer laws) that almost certainly undermine the public good for private gain, and thereby violate the principle that the law must be equally applied to all subjects, especially when their willingness to enroll to avoid law enforcement is a limited benefit.

690-512-0060 Harney Basin Critical Groundwater Areas

This section assumes that the Authors' arguments in favor of their Petition are founded, which makes this section unfounded. Given that the Petition rests on falsehoods we have extensively critiqued in our comments, this section, as a whole, has no merit. However, there are subsections worth commenting on apart from this general irrelevance, which we note below.

The Authors state in subsections (1) and (2) [**emphasis added**]:

> (1) Groundwater level trends shall be measured annually **using all available data** collected by and reported to the Department.

[63] Or. Rev. Stat. § 537.780(2) (2025).

> (2) By February 1 of each year, the Department shall produce an estimate of water used in the previous water year in each critical groundwater area **using all available data, including satellite imagery.**[64]

The reference to "all available data" is a loaded statement that has been repeatedly asserted over the past two years during the OWRD Division 512 RAC meetings by RAC members attempting to open the range of inputs to include messy, anecdotal, obsolete, and unscientific information to substitute for rigorous, firm, disciplined, and hard scientific data. Water League board member Gordon Lyford, CWRE, reviewed each of the 670 water rights in the Harney Basin and concluded that the information reported to the OWRD on wells and their associations to water rights is woefully unsubstantiated.[65] The Authors propose that the OWRD will be required to use the data "reported to the Department," which is unreasonable without clear controls for data collection articulated in rule. Notably, subsection 2 includes satellite imagery, which dilutes the one and only factual measurement of water use: metering at the wellhead. RAC members have tried to diffuse the precision and accuracy of water use measurement and reporting by various means, one of which is the use of satellite imagery to estimate water use instead of simply reading functioning meters.

The Authors state in subsection 7 [**emphasis added**]:

> The Department will actively **encourage and promote groundwater users to submit groundwater level measurements** and shall accept groundwater level measurements taken by authorized professionals using any process established and publicized by the Department.[66]

The very idea that OWRD would "encourage and promote" water measurement reporting is farcical – are they to beg when recalcitrant irrigators refuse? What is the nature of a Division of rules that regulates water use in a CGWA and hinges on accurate and precise reporting, but must rely on *tasking* the Department to actively encourage and promote groundwater users to submit groundwater level measurements?"

The Authors state in subsection (10):

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[64] Owens, Petition to Amend Oregon Administrative Rules. [Exhibit A - 11]
[65] Gordon Lyford, "Audit of Harney Basin OWRD Excel Spread Sheet of Well IDs," Water League, April 15, 2025. (OWRD's well identification data in the Harney Basin is incomplete, inconsistent, and in many cases erroneous, undermining the Department's ability to meet the "substantial evidence" standard of ORS 537.780(2) and jeopardizing the enforceability of curtailments or other CGWA management actions. And this is only referring to wells OWRD knows about (there are alleged to be many unlawful wells). OWRD rightfully intends to prohibit all misappropriations of water in the Harney Basin before curtailing lawfully conforming junior water rights. OWRD must ensure all wells have been positively identified as either conforming, non-conforming, or in a state of coming into conformance to meet this standard.)
[66] Owens, Petition to Amend Oregon Administrative Rules. [Exhibit A - 11]

> The Department shall not enforce decline conditions in any groundwater rights in the critical groundwater areas.[67]

We are becoming increasingly incredulous while critiquing this section of rules. We refer to our critique of 690-512-0040 *New Groundwater Appropriations* above, which explains why those decline conditions were included on water rights in the first place. That the Authors do not want to be held accountable for the decline conditions *that they accepted* when they acquired water rights is an extraordinary abrogation of responsibility. Irrigators have been blaming OWRD for allowing over-appropriation while simultaneously lobbying to eliminate the safeguards against the resulting harm they have knowingly caused, not just by their initial pressure on OWRD to approve subprime water rights, but to refuse to comply with the law.

Subsection 14 outlines how the five so-called groundwater reservoirs will each be designated a separate CGWA, of which three have been delineated as regulatory-free regions where only VAs will reign. Then, subsection 16 states:

> One or more groundwater users within a critical groundwater area can petition the Commission to remove the critical groundwater area designation for that area. Consistent with ORS 537.730, the Commission shall remove the designation where:
>
> (c) A voluntary agreement is in place within the groundwater reservoir.[68]

The interplay between subsections 14 and 16 is a bait and switch. Also, the public does not need permission under this rule to file a petition under ORS 183.390 with the WRC. The wording plays directly into our critique on pages 21-22 of our comments, where we critique the Authors' promises to the Petition signatories who did not agree with designating the areas where they irrigate as CGWAs but for the promises made by the Authors to unwind the CGWA designations and ensure them the freedom from regulatory action by also promising their areas would solely engage in VAs.

690-512-0070 Weaver Springs Critical Groundwater Area

The Authors are not professionally qualified nor politically justified to make determinations and set PTWs, dates for stability, and other related criteria. The presumption by the Authors that they can file such a petition, which usurps the authority of a state agency, including its scientists and policy-makers, is a procedural overreach that conflates self-interest with public authority. Misusing the citizen petition process to dictate scientific standards and management objectives

[67] Owens, Petition to Amend Oregon Administrative Rules. [Exhibit A - 12]
[68] Owens, Petition to Amend Oregon Administrative Rules. [Exhibit A - 13]

that properly belong to the state's experts and elected officials is not the legislative intent of ORS 183.390.

690-512-0080 Silver Creek Critical Groundwater Area

Left to their own devices in a Tragedy of Commons, the Authors predictably declare that they will achieve a 10% reduction in water use by 2040, and with that insufficient water use reduction, allow groundwater declines to continue until they reach 25 feet before OWRD is allowed to impose regulations. The Authors have done their math: they know how much money is in the ground based on rough calculations of the groundwater reservoir thickness, its transmissivity, and its storage coefficient, and they know that they can make a penny for every five to nine gallons they pump, and they are planning on getting all that water as if it were money in the bank. The authors seek to maximize their private gain while delaying the imposition of mandatory regulation until the damage is irreversible. This is the exact same ideology fossil fuel drillers hold: pump the well until it is dry; bank the cash, and move on.

Any so-called conservation efforts to reduce the rate and duty while maintaining the same tons of alfalfa per acre are engineered to extend the period of time – years – that pumping can continue before hitting the 25-foot decline trigger. There is no other calculus. To this point, the Authors state in subsection 2 [**emphasis added**]:

> (2) To maintain reasonably stable groundwater levels, the Department shall also:
>
> (c) Monitor and develop programs to restore and protect spring discharge fed by the Silver Creek Groundwater Reservoir up to customary quantities, including actions to track spring discharge over time and delineate the contributing sources and subsurface flow paths. **Customary quantities shall mean the rate or annual amount of water ordinarily available under the terms of existing water rights.**[69]

In plain English, the authors say that surface water shall have zero priority relative to all the water rights, foreclosing on the possibility of ODFW or DEQ from filing instream water right applications or there ever being any claim in favor of surface waters henceforth. The text about monitoring and restoring up to customary quantities and tracking discharge refers only to what's left after all irrigation water rights have been satisfied.

The Authors state in subsection 3:

[69] Owens, Petition to Amend Oregon Administrative Rules. [Exhibit A - 16]

> If the Silver Creek Critical Groundwater Area has reached the decline trigger, as that term is defined in OAR 690-512-0010(2), the following additional corrective controls described in ORS 537.735 will be implemented:
>
> (a) The Department shall set a permissible total withdrawal amount necessary to reach dynamically stable groundwater levels within a reasonable amount of time, not to exceed 30 years;[70]

We refer to our comments under the section titled *Falsehood #4 – A proclamation for self-governance in a region gripped by the Tragedy of the Commons* on pages 24-26. There, we discussed how the Authors obfuscate the harms resulting from ongoing, structured groundwater declines leading up to the 25-foot decline trigger by blithely suggesting neither they nor OWRD can or should regulate until groundwater has dropped by 25 feet. During such declines, hydraulically connected surface water bottoms out and drains into the earth, which is how domestic wells, lakes, springs, and streams dry up. Near headwaters, the Authors declare groundwater levels are reasonably stable, but they conveniently ignore (deny) how gravity pulls surface water downward and artificially props up those groundwater levels. Such impaired surface waters fail to course water to the lowlands near the center of the basin, preventing recharge to groundwater and access to surface water by humans, flora, and fauna.

Furthermore, we note that if the harms are not enough to quench the irrigators' thirst for water toward 25-foot declines, then there is also the 30-year glide path after that to stabilize groundwater levels, which will further structure declines such that all surface water GDEs will desiccate indefinitely. This is the endgame for the Authors' proposed rules.

690-512-0090 Silvies River Critical Groundwater Area

We refer to our comments on 690-512-0080 *Silver Creek Critical Groundwater Area*.

690-512-0100 Northeast Crane Critical Groundwater Area

The Authors are not professionally qualified nor politically justified to make determinations and set PTWs, dates for stability, and other related criteria. The presumption by the Authors that they can file such a petition, which usurps the authority of a state agency, including its scientists and policy-makers, is a procedural overreach that conflates self-interest with public authority. Misusing the citizen petition process to dictate scientific standards and management objectives that properly belong to the state's experts and elected officials is not the legislative intent of ORS 183.390.

[70] Owens, Petition to Amend Oregon Administrative Rules. [Exhibit A - 16]

690-512-0110 Blitzen-Voltage Critical Groundwater Area [note was 0010]

We refer to our comments on 690-512-0080 *Silver Creek Critical Groundwater Area*.

[Note the typo in the numbering in the Authors' Petition, which states "690-512-0010."]

690-512-0120 Domestic and Stockwater Wells and Uses

Were there a more articulate statement of the casual disregard the Authors have for domestic and stock water wells, we cannot find it.

690-512-0130 Adaptive Management and Co-Management

This rule, which ensconces place-based planning, exclaims that "The collaborative can advise on how to increase the effectiveness of groundwater management actions, but are advisory only and are not conferred any authority." But the rule leads in with a title and introductory language that mislead readers into believing that the public will have more control over water management than state preemption would ever allow.

690-512-0140 Serious Water Management Problem Area (SWMPA)

No comments.

690-512-0150 Rights of the Burns Paiute Tribe and Harney Basin Co-Stewardship

This rule section should have been submitted to OWRD during the Division 512 rulemaking process per the department's tribal engagement requirement under the laws of the United States, Burns Paiute Tribal Laws, and Oregon State Laws (i.e., OAR 690-0010). There is no reason that this section outlining the sovereignty of the Burns Paiute Tribe should have been withheld from inclusion in OWRD's Division 512 Notice of Proposed Rulemaking. Water League formally calls for the inclusion of this text in OWRD's proposed rules as written.

5. Exhibit B: Petition Authors' Revisionist History and Propaganda

The Authors focus their historical narrative in Exhibit B on OWRD regulatory failures. To a lesser extent, they refer to defective laws and rules, and *force majeure* resource constraints. Notably, the Authors omit their central role in the Harney Basin groundwater crisis, including the roles irrigators and their lobbyists, lawyers, and select politicians played in wrenching, ratcheting, and tightening their political influence screws on OWRD to approve subprime water

rights over the past four decades. The authors create a specious narrative where the groundwater crisis is mostly the result of poor government management at the mercy of insufficient laws, rather than aggressive regulatory capture.

In their biased historical narrative painting OWRD as the responsible party for over-appropriating groundwater in the Harney Basin, stopping only occasionally to cite the laws and rules that presumptively enabled staff mismanagement, the Authors cite WaterWatch's efforts to get ahead of the problem, saying [**emphasis added**]:

> In 2014 WaterWatch of Oregon (WaterWatch) filed protests to propose issuance of 5 groundwater irrigation permits in the Harney Basin because the groundwater reviews performed by OWRD indicated that water availability "cannot be determined" and data showed concerning groundwater level trends in nearby wells. This was following a "propose to deny" determinations made by the Department for portions of the basin in 2013 and 2014. **In their protest, WaterWatch asserted that the lack of affirmative findings that water is available, not over-appropriated, and available within the capacity of the resource means OWRD should not issue the permit.**[71]

The Authors' textual objective throughout Exhibit B is to bring credibility to their one-sided doctrine that '*OWRD is responsible for everything that goes wrong*' because that presumption is so preposterous. As noted, the Authors relieve some incredulity by blaming the laws and rules they allege have tied OWRD's hands, but that too is disingenuous because they have had such a heavy hand shaping the laws and rules that regulate them. Knowing that 'it takes two to tango,' the Authors deflect blame for their decades of pressuring the state to approve their subprime water rights by intermittently placing blame on the water code. What is so shocking is not that the Authors advance such ahistorical fiction, but the audacity required to presume its credibility in the presence of others who do not have a conflict of interest to drain groundwater until the Economic Pumping Level has been reached.[72]

The Authors cite a WaterWatch PowerPoint presentation, ironically titled, "Harney Basin Case Study: How the State Severely Over-appropriated Groundwater and Potential Tools and Challenges for Fixing it After the Fact." However, two prominent slides document the pressure by irrigators to contest an order related to limiting water use in a CGWA [**emphasis added**]:

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[71] Owens, Petition to Amend Oregon Administrative Rules. [Exhibit B - 9]

[72] Or. Admin. R. 690-008-0001(6) (2024), (Statutory Groundwater Terms – Definition and Policy Statements. *"Economic Pumping Level" means the level below land surface at which the per-acre cost of pumping equals 70 percent of the net increase in annual per-acre value derived by irrigating.*" In common parlance, this means that irrigators will not stop pumping until they reach the depth at which the cost of pumping groundwater for irrigation becomes prohibitively expensive compared to the increased crop value the irrigation unlocks. The inexorably declining groundwater trends in the Harney Basin demonstrate the inevitability of the Economic Pumping Level.)

> In 1986, OWRD designated Butter Creek, in the Umatilla Basin, as a Critical Groundwater Area, placing limits on groundwater pumping due to declining groundwater levels. **Order was challenged by a group of irrigators, asserting in part that ORS 537.525(8)* mandated groundwater declines so long as the use was profitable at that time.**
>
> *("Depletion of ground water supplies below economic levels . . . be prevented or controlled within practicable limits")[73]

We repeat "...a group of irrigators, asserting in part that ORS 537.525(8) mandated groundwater declines so long as the use was profitable at that time." This is the short-term, extractive mentality of miners who are unconcerned about the harms they externalize onto others so long as they benefit financially.

The next slide in the presentation notes how a court found the irrigators' challenge was wrong [**emphasis added**]:

> We agree with the director and the Court of Appeals that ORS 537.525(8) does not mandate depletion to the lowest water level from which irrigation water may be profitably pumped today. A fair reading of subsection (8) casts it as a restriction on, rather than a justification for, depletion of ground water. **The water-mining theory fails because it is inconsistent with the legislative act.** Doherty v. Oregon Water Resources Director, 308 Or. 543, 555, 783 P.2d 519 (1989) (en banc).[74]

This Water Watch PowerPoint provides no evidence that the state so much over-appropriated groundwater inasmuch as it refers to laws and a political culture that were permissive of over-appropriation, and to water miners determined to game the system. The political culture, far more than the laws, permitted baseless legal interpretations by irrigators in Butter Creek in 1986 until a court order stopped them in their tracks three years later in 1989. Then, 25 years later in 2014, WaterWatch filed protests in the Harney Basin, which further interrupted the political culture that led to over-appropriation.

Over the years, there has not been an effective parsing of the mechanics of groundwater over-appropriation. The lack of nuance, however, is the result of an ongoing secondary lobbying effort to hide the irrigators' culpability in forcing the over-appropriation of water sources over the past decades. The Authors' Exhibit B is "Exhibit A" in the obfuscation that has played out over decades. As such, the Authors misappropriate WaterWatch's PowerPoint presentation as they do science and the law.

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[73] Lisa Brown, "Harney Basin Case Study: How the State Severely Over-appropriated Groundwater and Potential Tools and Challenges for Fixing it After the Fact," (CLE paper, Oregon State Bar, June 27, 2018). [Slide 13]
[74] Brown, "Harney Basin Case Study." [Slide 14]

Deflecting accountability is as important a political act as is misrepresenting Gingerich, et al., 2022; both to prop up the Petition in a spurious manner. To avoid accountability for substantially participating in the creation of the hydrologic problems in the Harney Basin, the Authors focus on being part of the solution, which, given the woefully inadequate proposal to solve the groundwater crisis, is also not credible. Indeed, the Authors' goal has consistently been to minimize water use reductions by any and all means. Not only did they play a central role in over-appropriating the groundwater sources of the Harney Basin, but they also deny all accountability for their actions.

The Tragedy of the Commons is a systemic pathology that enervates a community and prevents those gripped by the pressure to pump water (as if they were pumping money) from holding sufficient regard for the consequent harms "so long as the use was profitable at that time." Society is replete with examples of individuals and groups perpetuating harmful behaviors that return gains in the short-term by externalizing those harms onto others and the future until the consequences of those harms ultimately force cessation of that behavior.

The refusal to accept accountability is a well-known defense mechanism. For example, when actions conflict with a particularly unrealistic self-image, individuals unconsciously mischaracterize the harms they participate in to relieve the cognitive dissonance rather than change behavior that, for some, is just too hard to stop. Admitting accountability would rupture the victimized identity that irrigators lay claim to by their casting OWRD as the antagonist in their narrative.

It is precisely the evidence of the harms that incentivize the production of public relations and propaganda that attempt to create a false or misleading narrative to provide political cover for accountability and responsibility for harms. Throughout Exhibit B, the Authors are *solution-washing*, a performative practice of offering self-serving solutions to evade accountability for creating excessive groundwater declines in the first place. Their efforts attempt, no less, to control the rulemaking outcome, thereby perpetuating the over-pumping.

6. Conclusion

The "Petition to Amend OAR Chapter 690, Division 512" is not a constructive policy alternative; it is the final, predictable act in a years-long campaign of obstructionism designed to subvert the OWRD's current rulemaking process. The WRC and OWRD should reject the Petition, not merely on several technical grounds, but to assert the state's preemptive authority to govern in the long-term public interest, which the Petition imperils.

The Petition's fundamental deficiency rests upon a brazen act of sophistry: the construction of a fraudulent argument based on their strategic misrepresentation of the Harney Basin's single, hydraulically connected groundwater system as five distinct and isolated groundwater reservoirs. This fabrication is the basis upon which the Authors' many subsequent falsehoods and incredulous conclusion – that they know better than OWRD how to manage the basin – rest. The state must protect the greater public, their interest in ecosystems and posterity, from this unstable set of rules that does not provide a durable, long term governing structure.

The Petition is not an attempt to collaborate or find "best policy," as the Authors claim, but an outright attempt to impose their longstanding capacity for regulatory capture by using the petition process under ORS 183.390 in hopes of leaning on OWRD to go beyond the six criteria for consideration in section ORS 183.390(3), ignore the multitude of deficiencies in the Petition, and order the incorporation of more lenient PTWs and other factors that preserve the destructive status quo. The consequences of this maneuver would result in increased risks and losses to flora, fauna, domestic wells, Groundwater Dependent Ecosystems, and, of course, to posterity – the future residents who have no voice in the present debate but will experience the harms of today's unsustainable water use in ways people in the present do not. "*...So long as the use was profitable at that time*," indeed.

The WRC and OWRD should reject the Petition and move forward with OWRD's proposed rules that already contain substantial concessions to the irrigator-RAC members.[75] Oregon officials are responsible for holding water in trust, thereby prioritizing the proper utilization and control of water sources and fulfilling their moral and legal obligation to protect the public health, safety, and welfare of all Oregonians, present and future.

[75] Bill Jaeger "Public comments on Agency Proposed Rules – Division 512," Public Comment submitted to the Oregon Water Resources Department on the Division 512 Rulemaking, October 2, 2025. [2] (Bill Jaeger, OSU professor, notes that: a. The OWRD rule proposal does not stabilize groundwater in the basin. Our analysis shows that stabilizing groundwater will require reducing irrigation pumping from 129,000 acre-feet/year to about 74,000 AF/year. The OWRD proposal reduces pumping to 89,000 AF/year, which is 20% higher than what would be necessary to achieve stability according to our analysis. b. The recent petition rule proposal introduces reductions in pumping by less than 22%, which is half the reduction needed to stabilize groundwater according to our analysis. The OWRD technical analysis of the petition rule proposal makes similar observations.)

WATER LEAGUE

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John L. Gardiner

February 13, 2025

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Water League resubmits our January 8, 2025, comments to the *Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir*. Our comments have been revised to include new information since OWRD extended the comment period from January 8 to February 5, 2025. We acknowledge that our resubmission is after the most recent requested date; however, there have been three deadlines, none of which are related to a formal comment period that legally requires a cutoff date. The information we present is for the benefit of the overall process. As always, we appreciate the opportunity to share our thoughts.

Thank you,

Christopher Hall
Executive Director

Comments related to the *Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir*

and

ORS 537.745 *Voluntary agreements among groundwater users from same reservoir*

By Christopher Hall, Water League

Summary

Herein, Water League comments on Voluntary Agreements (VAs) authorized by ORS 537.745. Our comments are organized into five sections and provide extensive contextual information related to our views on the *Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir*, which may form the basis for rulemaking.

1. Introduction
2. Concerns About How Voluntary Agreements Have Been Envisioned, Discussed, and Promoted
3. Privileges and Immunities Called "Flexibility" and "Carrots"
4. Review of the *Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir*
5. Conclusion

tl;dr – The Voluntary Agreement statute under ORS 537.745 carves out a special place for irrigators to comply with the law freely, and in return for this concession, beneficiaries seek exclusive privileges and immunities that shield them from the law.

Introduction

The Oregon Water Resources Commission (WRC), through its designation of powers to the Oregon Water Resources Department (OWRD), has concluded that its implementation of water laws in the normal course of business has been insufficient to prevent the impairment, if not destruction, of the water sources in the Harney Basin. The WRC has concluded that it is past time to take an extra measure permitted by law, which is to designate a Critical Groundwater Area (CGWA) to stop the harm resulting from over-pumping groundwater reservoirs. OWRD reported to the WRC on September 13, 2024:

> For the Harney Basin, the Department is proposing to not define reasonably stable, as some areas of the basin are showing more than 50 feet of decline. Instead, the Department is framing the discussion about goals for future groundwater level trends in the Harney Basin as the target water-level trend. The Department's goal is to stabilize groundwater levels at a target

> water-level trend of zero decline for the entire designated CGWA.[1]

The logic of "proposing to not define reasonably stable" is self-evident since the groundwater declines are already far beyond the lawful requirement of being reasonably stable as ORS 537.525(7) mandates. In many areas throughout the Harney Basin, there are no "reasonably stable groundwater levels."

The designation of a CGWA and the subsequent imposition of Corrective Control Orders to curtail water use require updates to OAR 690-512 *Malheur Lake Basin Program* and a Contested Case hearing. This process, referred to as *Division 512 rulemaking*, must comply with:

- ORS 537.730 to 537.742 *The CGWA Statutes* and 537.780 *Powers of Water Resources Commission; rules; limitations on authority*;
- OAR 690-010 *Appropriation and Use of Groundwater*;
- ORS 183 *Administrative Procedures Act* (APA).

The OWRD has convened a Rules Advisory Committee (RAC) to incorporate the views of the irrigators and others impacted by and concerned about over-pumping groundwater reservoirs. All meetings are open to the public. The full and final decision-making process that will result in revised rules is the responsibility of the WRC acting on the recommendations of OWRD staff. According to the APA, parties to the Contested Case may appeal the WRC order to the Oregon Court of Appeals.

The CGWA process is fraught with tension because water equates to money and irrigators use water for income.

At the December 13, 2024, WRC meeting, Mark Owens, who identified himself as a farmer and state representative of District 60, addressed the WRC during public comment following the staff presentation on the progress of the Division 512 rulemaking process. Rep. Owens is an irrigator in the Crane subarea of the Harney Basin, whose pivots and wells are located on top of some of the steepest cones of depression in the proposed CGWA. While not formally selected by irrigators in the region to be their leader on the RAC, he often fills the role of speaking for his constituents. Pointing to a CGWA map of the Harney Basin, Rep. Owens discussed OWRD draft proposals and stated in his public comment to the WRC [**emphasis added**]:

> Big red areas – [show] decline. Subareas in the 15 that the department recommends for curtailment – this area here, these two areas here. None of the rest does the department recommend curtailment in. The department recommended no curtailment in any of these areas [and] none of these areas.
>
> Are these people in these areas going to litigate the department? Can we keep those 15 subarea approaches? No doubt. Are we going to get away from litigation at all through this process? No, we are not. **I said this before, the decisions that you guys make in adopting the rules that come forward: is a majority of the community going to support you, or is the majority of the community going to leave, going to litigate you? What it comes down to.**[2]

The lawsuit threats appear unrelated to the Contested Case hearing before an Administrative Law Judge

[1] OWRD Memorandum to the WRC – Agenda item "D", September 13, 2024. [1]
[2] Representative Mark Owens, irrigator from Crane, OR, public comment on agenda item "D" before the WRC on December 13, 2024.

and to bringing the Contested Case before the Oregon Court of Appeals, as permitted in statute. Rep. Owens' suggests that irrigators are already planning to sue the OWRD and WRC far in advance of the completion of the rulemaking process and frames the WRC's forthcoming decisions as a binary choice: commissioners can either choose now to gain community support or face litigation later.

For decades the powerful irrigation lobby has pressured elected and appointed state officials, but rarely has any of the activity been documented because so much of it occurs out of public view. This paper highlights the small portion of the influence the public can see to provide insight on the prospective formation of Voluntary Agreements (VAs), which are the proposed alternative to state regulatory action that many irrigator RAC members prefer.

The OWRD selected the Harney Basin as the first CGWA designation in 35 years because the cones of depression resulting from over-pumping are precipitous. The excessively declining groundwater levels pose unreasonable risks to groundwater dependent ecosystems, to human water users in the basin, and most of all, to future humans, flora, and fauna who would be denied access to water by the unsustainable over-pumping that has been ongoing for over 30 years.[3] The political pressure that stalled revisions to the Division 10 rules for HB 2192 (1991) for three decades has now shifted to the Harney Basin Division 512 rulemaking process as officials revise the rules to stop further groundwater declines. Notably, OWRD staff manage water use under duress. The force motivating irrigators to mine every last bit of value from the groundwater reservoirs must be met with an equal force by government agencies to impose restrictions and curtailments to stop the tragic events from worsening or becoming irreversible (e.g., persistent excessive groundwater declines and subsidence, respectively).

To varying degrees, every irrigator in the Harney Basin is mining groundwater; as a result, the region is the quintessential example of *The Tragedy of the Commons*.[4] Oregon laws require that water be used for the highest economic purposes,[5] which has the unintended side-effect of incentivizing mining. Just like a gold miner working their claim, irrigators will mine water until it is gone or too expensive to extract. The Tragedy of the Commons results when people scramble to extract the value of the commons and are powerless to self-regulate. That individuals own the land where irrigation occurs is of no matter because private property ownership does not align with groundwater reservoir boundaries, which span far and wide across many artificially drawn property lines. Furthermore, the water is not

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[3] Jaeger, W. K., Antle, J., Gingerich, S. B., & Bigelow, D. (2024). Advancing sustainable groundwater management with a hydro‐economic system model: Investigations in the Harney Basin, Oregon. Water Resources Research, 60, e2023WR036972. https://doi.org/10.1029/2023WR036972 [4]. ("Prior to 1990, groundwater recharge was sufficient to maintain a net positive gain in groundwater storage despite the groundwater withdrawal.")

[4] Glennon, Robert. *Water Follies: Groundwater Pumping and the Fate of America's Fresh Waters*. Island Press, 2002. [209-224]. (Glennon makes some general comments about the Tragedy of the Commons and the problems of over-pumping groundwater – e.g., "The hidden tragedy and irremediable fact is that groundwater pumping that has already occurred will cause environmental damage in the future," but in his chapter discussing the Tragedy of the Commons, he repeats the facile claim that rational humans will protect their property because they own it. People will only protect their property to the extent they get value from it; whether they own it is secondary. Once they have extracted the value from anything (whether they have a usufructuary or possessory claim), that thing becomes waste, hence all the garbage people throw away in landfills and exhausted mining claims. Some value is more persistent than other forms of value, hence the difference between a single use item and a durable good. Given the timescales it took for groundwater to percolate (5,000 to 35,000 years) and the decades to generations required for recovery following regulatory action, groundwater use and the many wells in the Harney Basin resemble single use items. The tragedy is in burning through the public's groundwater reservoirs in the High Desert and thinking that land ownership and having vested water right certificates will somehow stop the mining through rational self-interest.)

[5] 536.310 *Purposes and policies to be considered in formulating state water resources program.* ("(2) It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the state as a whole.")

privately owned; it belongs to the public, 98.5% of which do not hold water rights. That a tiny minority would plunder the commons, by right of the state, is a serious affront to the constitutional order. The WRC and OWRD have sought to correct this problem by implementing the CGWA statutes.

Because the irrigators will not stop pumping until they reach the Economic Pumping Level,[6] the state must step in to impose regulations.[7] As distasteful as it sounds in a *free nation*, the state must stop the irrigators from harming groundwater reservoirs and others because the irrigators are powerless to stop the pumping themselves.[8] Oregon law requires irrigators holding certain water rights to measure the groundwater levels in their wells by March 1 of each year and to halt pumping from wells that show declines beyond a certain point. Irrigators have refused to stop pumping on their own accord as required by law (some even won't measure the groundwater levels), and when forced to do so by the state, they press officials to rescind those orders.[9]

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[6] Oregon Secretary of State, Administrative Rules, Chapter 690 Division 8 Statutory Groundwater Terms 690-008-0001(6) Definition and Policy Statements. (*"Economic Pumping Level" means the level below land surface at which the per-acre cost of pumping equals 70 percent of the net increase in annual per-acre value derived by irrigating.*" In common parlance, this means that irrigators will not stop pumping until they reach the depth at which the cost of pumping groundwater for irrigation becomes prohibitively expensive compared to the increased crop value the irrigation unlocks. The inexorably declining groundwater trends in the Harney Basin demonstrate the inevitability of the Economic Pumping Level.)

[7] OWRD, Groundwater Use and Regulation, Letter regulating off wells with decline conditions, December 30, 2024. (This recent letter (one of 17) demonstrates that, by law, the water user should have discontinued use of Wells 1-3 by 2017 and Well 4 by 2019, but they kept on pumping the wells beyond the point of the conditions set by their water right. Therefore, OWRD had to step in and issue a Final Order other than contested case to force the water user from over-pumping the groundwater reservoir. From the letter: "*The Oregon Water Resources Department (Department) conditioned the issuance of the above listed permits with decline conditions that assure groundwater use under the water rights is within the capacity of the available source and so is consistent with the protection of the public welfare, safety and health. The conditions require the holder to measure and report static water levels and to discontinue use of or reduce the rate or volume of withdrawal from wells, if annual water level measurements reveal water level declines at specific levels within specific time periods as identified in the right(s) … Rules of the Commission include OAR 690-250-0050(1) which authorizes the watermaster to take corrective action when water use is inconsistent with the terms of the water right and is therefore unlawful.*" The law requires irrigators to self-regulate as a condition of accepting water rights for which they applied. The failure to comply with the law is innate to the conflict of interest irrigators have when pumping water is pumping money. The business model simulates printing currency precisely because groundwater is a scarce commodity that irrigators mine.)

[8] OWRD, Community Meeting on Groundwater Level Permit Conditions in Burns, Harney County Community Center, February 10, 2025. (The meeting was in response to the need to comply with ORS 537.720 *Violation of terms of law or permit or certificate; action by Water Resources Commission*, which states that [**emphasis added**]: "*Whenever, after notice to* ***and opportunity to be heard by such holder****, the Water Resources Commission finds that the holder of any permit or certificate of registration issued under ORS 537.505 to 537.795 and 537.992 is willfully violating any provision of the permit or certificate of registration or any provision of ORS 537.505 to 537.795 and 537.992, the commission may cancel or suspend the permit or certificate of registration or impose conditions on the future use thereof to prevent such violation.*" Irrigators applied significant pressure and pushback against OWRD. During the February 10, 2025, community meeting to discuss the concerns publicly, an irrigator launched into a 25-minute criticism of the enforcement action, rudely mischaracterizing OWRD's intent and motives. The irrigator used invective (e.g., "*...chopping the head off of individuals cold turkey like you are,*" and "*You go chopping everybody up all at once like that and you, it's gonna devastate this town*") to blame OWRD for requiring compliance with the water right decline conditions, which are the sole legal responsibilities of the irrigators. The diatribe exemplifies the belligerent extent irrigators, caught in the grips of the Tragedy of the Commons, will go to resist voluntary efforts to self-regulate their water use, whether under ORS 537.745, or otherwise.)

[9] OWRD, Division 512 Rulemaking, Rules Advisory Committee meeting, January 22, 2025. [at 0:0:00 to 0:5:37] (Irrigator outrage at receiving the 17 "Final Order other than contested case" shut-off letters necessitated the unusual circumstance of OWRD holding a brief unrelated discussion before the RAC meeting commenced: East Region Manager, Jason Spriet, was directed to issue shut-off orders in December 2024, to 17 water right holders on wells that have exceeded their decline conditions. He explains that OWRD has received complaints from the water users who received the shutoff orders and that OWRD will reissue new orders countermanding the first set. The new orders will state that all impacted water users may continue pumping at least until 2026 when OWRD will attempt for a second time to issue shutoff orders. Given the number of wells and the varied times when those decline conditions were exceeded over the years, if the water right holders had shut off those wells, as required by law, then those voluntary shutoffs would have occurred in a phased time period as opposed to

Nevertheless, irrigators wish to be left alone and are pressing for alternative solutions to the enforcement of CGWA statutes by attempting to implement the VAs, which we consider infeasible as proposed.

The current struggle in RAC meetings between irrigators and OWRD staff has ebbed and flowed (at times the struggle has been discussed at WRC meetings).[10] Irrigators on the RAC escalate tensions because they fear regulatory restrictions on groundwater access more than the inevitable loss of groundwater due to over-pumping. (This fear drives the interest to form VAs.) Without the OWRD designation of a CGWA, irrigators would eventually extract as much value from the groundwater resources as possible because every gallon of water equals money.[11] There is no way irrigators can continue the status quo (over-pumping) and preserve their way of life because groundwater levels are unstable and irrigators are pumping themselves out of business. In this context, the only way VAs could conceivably work is if there is a bulwark of credible regulatory action.

There is a lot of cognitive dissonance and confusion because irrigators want the water sources to last forever since that water is the source of their income. To this extent, conservation through efficiencies in irrigation technology is more about extending the time left to irrigate than preserving water for non-irrigation uses (e.g., others).

Below, we discuss the serious problems associated with the VA statute and how irrigators have proposed using it to minimize the impacts on their water-pumping operations. Despite the flaws inherent in voluntary approaches to self-control, we believe there are solutions to the vexing problems currently preventing VAs from working. Officials must prevent unequal protection under the laws of the state; OWRD must write administrative rules to accompany the statute before the WRC approves VAs; and water right transfers under ORS 540.520 and 540.523 must accompany VAs.

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all at once as when the OWRD had to recently step in and enforce the law. The irrigators have known for many years that they should have already stopped pumping from those wells. Claiming to be caught by surprise by the December 2024 OWRD order to stop pumping their wells points to a tacit agreement between the OWRD and the irrigators to ignore the law. Lawmaker and Harney Basin irrigator, Representative Mark Owens, argued that OWRD exhibited "bad governance,"[at 0:4:50] by sending out the shutoff letters. We are incredulous at such an allegation and hold that it is not OWRD ordering compliance with the law that is wrong; rather, it is in all the years irrigators did not comply with the law that is wrong. That OWRD did not require compliance with the law until recently could be viewed as mismanagement. This interchange before the start of the RAC exemplifies 1) the futility of Voluntary Agreements as currently envisioned by irrigators in the Harney Basin and 2) a reasonable lack of confidence in OWRD's proposed oversight of VAs. We suggest the Oregon Department of Justice oversee compliance with VAs and enforce ORS 537.745 in coordination with OWRD.)

[10] We recommend reviewing the recordings of the Division 512 RAC meetings, with particular emphasis on the March 6, 2024 RAC. Also, the appeals and amends made to the WRC at the March 21, 2024, meeting here, here, and here highlight the ordeal.

[11] Christopher Hall, *No, We're Not There Yet: Modernizing the Conventional Wisdom*, Water League, July 17, 2024 [25]. (In 2020, alfalfa irrigators produced 4.6 tons/ acre * $205/ ton = $943/ acre-year. We use 2.5 acre-feet irrigation water use/ acre-year as our median irrigation requirement. 325,581 gal/ = 1 acre-foot. 813,953 total gallons of irrigation water used per acre. The value alfalfa unlocks = $0.00116, or roughly 1/9th of one cent per gallon. We understand the price will vary some, from one irrigator to the next; however, we hold that each irrigator could reasonably estimate the value of each gallon they pump yearly. See: Oregon's Agricultural Statistics and Directory. p.41.)

Concerns About How Voluntary Agreements Are Envisioned, Discussed, and Promoted

Oregon has increasingly acknowledged the tension between minority water users' interests to pump water for financial gain and the greater public interest in the long-term sustainable management of their water. Significant developments include 1) the creation of the water code in 1909 regulating surface water, 2) the expansion of that code to regulate groundwater in the arid region east of the Cascade Mountains in 1927, and 3) the application of that groundwater regime over the entire state in the 1955 Groundwater Act. In the 1955 Groundwater Act (HB 26),[12] legislators included ORS 537.745 *Voluntary Agreements* in an attempt to provide for a reasonable middle-ground between under-regulated water mining and the imposition of Corrective Control Orders that curtail water use under both ORS 537.742 *Contested case proceeding to limit use of ground water in critical groundwater area* and OAR 690-0010 *Appropriation and Use of Groundwater*.

ORS 537.745 states that a VA approved by the WRC "shall control in lieu of a formal order or rule of the commission under ORS 537.505 to 537.795 and 537.992." This provision permits VAs to function parallel to those statutes. But in doing so, ORS 537.745 creates two separate classes of water users: one that benefits from perks (e.g., "flexibility" and "carrots" discussed in section 3 below) that VAs might offer, and the other class that does not. This dual-class system may not be constitutional under Oregon's equal protection clause. Article 1, Section 20, states:

> Equality of privileges and immunities of citizens. No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.

ORS 537.745 states that VAs must be "consistent with the intent, purposes and requirements of" all groundwater-related sections of Chapter 537, in particular, with the CGWA statutes. This legal parity requirement creates a conundrum: the law does not permit VAs to depart from the statutes; yet somehow, VAs are supposed to be more desirable than regulatory action.

During the Div 512 RAC, irrigators have consistently pushed back against the designation of a CGWA. Their most recent push is to slow down the timeline and geographically spread out water use reductions so more irrigators who are not facing severe curtailments shoulder the burden of those who do face substantial reductions. The OWRD has acknowledged these dual time and space considerations on behalf of the RAC members. OWRD's staff report for the WRC meeting on September 13, 2024, states:

> The Department's goal for the Harney Basin is to stabilize groundwater level declines by achieving a target water-level trend of zero decline. This goal consists of three aspects: the target water-level trend, the spatial extent to meet that goal, and the timeline to achieve stabilized groundwater levels. [. . .] The flexibility the community has for achieving the target water-level trend is around defining the spatial extent of the goal and the timing to achieve stabilized groundwater levels.[13]

In response to this regulatory regime, and premised on minimizing economic losses to the irrigators, most RAC members are pressing both temporal and spatial initiatives. First, they seek a 30-year glide

[12] Oregon State Archives, HB 26 Engrossed, Section 31 [73].
[13] OWRD Memorandum to the WRC – Agenda item "D", September 13, 2024. [1-2]

path to phase in water use curtailments with a 60-year horizon to reach OWRD's target water-level trend of zero decline. Second, they have gerrymandered OWRD's map of the Greater Harney Valley Groundwater Area of Concern (GHVGAC) to encompass working wells into regions where the most stringent water use curtailments would occur to make VAs feasible.

First, we discuss the spatial layout:

Over several iterations, irrigators rearranged OWRD's proposal for 15 small subareas, which target water use curtailments over the most severe cones of depression, to eventually settle on a map with 6 large subareas, the result of which has two outcomes:

1) Irrigators who would not have experienced water use curtailments in the 15 subarea map will experience water use curtailments in a 6 subarea version.[14] In the spatial version with 15 smaller subareas, about one-third of the areas sit atop severe cones of depression; OWRD refers to these as the high-priority subareas. Most of those irrigators will experience water use curtailments. However, by grouping the 15 smaller subareas into 6 larger areas, all irrigators in each subarea must conform to pumpage restrictions necessary to stabilize the highest priority areas sitting atop the most severe cones of depression. Irrigators with more sustainable levels of water face stricter controls to support the areas within their enlarged subarea that are experiencing more severe water level declines. There is no better depiction of *misery loves company*.

Looking at this scenario through the lens of VAs: if the irrigators over the cones of depression can benefit from VAs to the effect that they keep pumping those cones deeper by moving around seniority and Places of Use (POU), then surrounding neighbors whose groundwater levels are not so severe will be forced to make up the difference to the extent they are hydraulically connected to those deep cones of depression. This will be considered unfair, especially by those left out of VAs.

We note that this hydrologic reality simulates a water right transfer: by lumping smaller subareas together to form larger ones, those subareas that were distinct in the OWRD 15 subarea version are now forced to give up water to their neighboring subareas that sit atop steep cones of depression in order for the larger lumped-together region to comply with Permissible Total Withdrawals (PTW) that enable achievement of OWRD's target water-level trend of zero decline in groundwater levels.

2) Irrigators in subareas with the most severe groundwater declines can only hope to enter VAs if the geographic region they are in is large enough to encompass irrigators with better prospects. For VAs to work, there has to be a broader field upon which to negotiate – literally, a bigger geographic area from which to draw all comers to the negotiating table. This is the primary factor in pressing for the larger 6 subarea proposal. Under the 15 subarea proposal, the irrigators responsible for the steepest cones of depression have no one to negotiate with but themselves, which is like trying to negotiate a financial deal with no funds. If, however, a 6 subarea geographic map shows that further-flung neighbors must give up water to these larger subareas to reach OWRD's target water-level trend of zero decline in groundwater levels, then all of a sudden, the worst off can force others to the negotiating table.

It is reasonable to conclude that the equity concerns noted above in #1 are a side-effect of irrigators in the worst subareas wanting to gerrymander large enough areas to form VAs. To be clear, the winners under this scenario are currently the folks who have the most to lose and have already lost much due to over-pumping the groundwater reservoirs: they wish to externalize their potential losses on their

[14] Darrick E. Boschmann, Response to RAC request: "sub-basin" PTW for the Harney Basin CGWA, 02/26/2024. [7-8]

neighbors to create large enough areas to form VAs that offer them benefits others may not enjoy.

There is no debate that OWRD's target water-level trend of zero decline in groundwater levels can be achieved under the 6 or 15 subarea model scenarios (the main factor is the timeline given to arrive at the target).[15] However, what is yet to be determined is who will give up how much water, which is a political decision based on the private sector deal-making around the VAs and the political pressure put on state officials.

To reiterate, the 6 and 15 subarea modeling outcomes are close in aggregate but the results in detail are disparate: some irrigators who would not have to experience water use curtailments under the 15 subarea scheme will see water use reductions under the 6 subarea plan. The purpose of the 6 subarea plan is to protect the irrigators with the worst prospects so they can hope to evade regulatory actions by shielding themselves in VAs. That such a scheme comes at the expense of other irrigators begs the question of whether it is constitutional.

OWRD explains in the conclusion to the "Summary of Model Results Presented at RAC 11":

> What size of subareas should be used to manage the basin? Considerations for this question include how subarea size affects the ability to form voluntary agreements and water right transfers and how important it is to strictly follow prior appropriation.[16]

When asked by this author, during a Harney Basin CGWA Discussion Group on October 7, 2024, why irrigator RAC members would prefer fewer subareas that are larger than the OWRD recommendation, two moderators and one RAC member offered their thoughts [**emphasis added**]:

> Bobby Cochran, moderator: "...the subareas can be defined both hydrologically and geomorphologically, **and also by management**.
>
> "...running the USGS model, that **we can play with different variables and inputs to just kind of see what that might mean for overall stabilization and groundwater management implication**.
>
> Harmony Burright, moderator: "...are we pursuing targeted reductions in these areas of decline to see changes in water levels more rapidly in those areas, **or, are we really trying to achieve a kind of a new equilibrium in a larger subarea**?"
>
> "...what are the main kind of recharge areas – how are each of these subareas primarily recharged...and...**how people associate themselves with those various recharge areas.**
>
> "...**looking at potential voluntary agreements, how are people likely to organize themselves around kind of a shared vision and outcomes for the subarea.**"
>
> Rep. Mark Owens, RAC member: "...when the department put out their 15 subareas, it looked like, **in our opinion, that some subareas might be being restricted too much, while some**

[15] OWRD, RAC 11, Optimization of Management Scenarios, November 13, 2024. [Slide #77] (On this slide, annotations accompanying the graph include: "Considering a larger percent of wells increases curtailment. Using more subareas can reduce overall curtailment." The difference in this one optimization run shows how close the 6 and 15 subarea schemes compare in aggregate.)
[16] OWRD, Summary of Model Results Presented at RAC 11, November 13, 2024. [16]

> **might not be being restricted**...and [we're] wondering if a 30% or 35% reduction in that whole area would reach stabilization faster or more uniformly than the 15 subarea approach...**maybe a more equal distribution of reduction could meet a goal.**"[17]

By promoting the opinion that some areas are being restricted too much while others are not restricted enough, the idea of a "more equal distribution of reduction," appears to support a shift of the burden from areas with steep cones of depression to areas with slower declines. (This ideology aligns with redistribution schemes typical of *Socialism*.)

This Discussion Group was held six weeks before OWRD released the model results on November 23, 2024, showing how similar the PTWs are for both the 15 subarea and 6 subarea maps, when the phase-in period and timeline to the target water-level trend of zero decline are controlled for. Therefore, the speculation that the 6 subarea approach would reduce groundwater levels faster has been resolved as a "no" and the only reason to further push for that scheme is to assist irrigators sitting atop severe cones of depression to externalize their losses onto their neighbors who are not so bad off.

A concise explanation for drawing larger subareas came from OWRD staff during the December 13, 2024, WRC meeting during agenda item "D" Harney Basin Groundwater Update, as articulated by Tim Seymour, staff hydrologist [**emphasis added**]:

> "And, with more subareas, there's potentially less flexibility for Voluntary Agreements, or, I guess you could say it a different way, **there's less potential participants in a voluntary agreement…for limiting the number of Voluntary Agreements to within a subarea.**"[18]

A constitutional crisis is likely to occur under the proposed regime required to make VAs functional for the most at-risk irrigators whose pumps are located on top of the most severe cones of depression. Putting ORS 537.735(1)(a) and OAR 690-010-0130(3) to work for a few irrigators by harming other irrigators is a *de facto* use of the law to benefit some at the expense of others. This is not a justified use of OAR 690-010-0130(3), which states [**emphasis added**]:

> For the purposes of ORS 537.735(1)(a) the exterior boundaries of a critical groundwater area may be reasonably inferred or ascertained:
>
> (a) According to the presence of physical natural boundaries, hydrological conditions, or recharge or discharge areas; or
>
> **(b) Administratively by defining an affected area that does not have boundaries defined by natural features.**
>
> (c) Additionally, to the extent that subareas wholly contained within the designated critical groundwater area must be defined to allow for implementation of corrective control provisions, these subarea boundaries will also be reasonably inferred or ascertained as in 690-010-0130 (3)(a) or (3)(b).

The rule permits defining subareas to implement *corrective control provisions*, which are regulatory actions, not for implementing *VAs under ORS 537.745*. **This distinction is important.** There is much

[17] Oregon Consensus, Harney Groundwater Discussion Group, October 7, 2024. [at 7:25 to 11:40]
[18] Tim Seymour, OWRD Hydrologist presentation to the WRC – Agenda item "D", December 13, 2024.

ado about gerrymandering the Harney Basin CGWA subarea maps to make VAs work because OWRD has been clear that the geographic limits of VAs will be contained within those subareas, however they are configured. ORS 537.745 only permits "voluntary agreements among groundwater users from the same groundwater reservoir;" therefore, the gerrymandering of the Harney Basin subareas is effectively reverse engineering the presence of groundwater reservoirs as a legal fiction under 0130(3)(b) and (c) rules. This machination is not how the CGWA statutes or rules "envision" water management of CGWAs, which are the most sensitive and at-risk hydrologic regions in the state. We are incredulous that irrigators pumping from the most severely impaired groundwater reservoirs would use 0130(3)(b) and (c) to aggrandize themselves by harming their neighbors they would administratively map-in.

The OWRD hydrologists explain that:

> Grouping together both high priority subareas and lower priority subareas for the "sub-basin" approach and distributing pumpage reductions across these larger areas will require significantly more pumpage reductions in the lower priority subareas to achieve stable groundwater levels in the high priority subareas. The PTW for the entire "sub-basin" will be constrained by the pumpage reductions needed to achieve stable groundwater levels in those area[s] with the most significant declines.[19]

To reiterate, the decision to select the 6 subarea map over the more targeted 15 subarea map would be a *de facto* regime of involuntary water right transfers. Choosing to curtail water in low-priority subareas that do not experience severe declines in groundwater levels as their neighbors in high-priority subareas experience, the WRC would be effectively transferring water from the more stable low-priority subareas to the less stable high-priority subareas. The material results would be akin to forced water right transfers from water right certificates held by irrigators in low-priority subareas to water right certificates held by irrigators in high-priority subareas. The impetus for the 6 subarea map is to serve proponents' formation of VAs and externalize their water use reductions onto others. That they would use OAR 690-010-0130(3)(b) and (c) to achieve their goals depicts a clear and unambiguous use of the law to grant a class of citizens privileges and immunities, which, upon the same terms, do not equally apply to all citizen irrigators.

Second, we discuss the temporal elements and OWRD's target water-level trend of zero decline:

OWRD has created several computer models (as previously noted) that show the results of immediate and phased-in multigenerational timelines with 30-year phase-ins and 60-year targets to reach water-level trends of zero decline. The timelines are so long, they compound upon and worsen the effects of the 30-year freeze following the passage of HB 2192 in 1991, which revised the CGWA statutes. That bill had near unanimous legislative support to streamline the CGWA under the Administrative Procedures Act (APA), with hopes of *eliminating the stalling tactics* inherent to the struggle between the powerful irrigation industry and state regulators managing the public water resource. When OWRD Director, Bill Young, and legislators passed HB 2192, the urgency was palpable. Had they known 30 years would pass before the necessary Division 10 administrative rules would be written in 2023, they'd likely have been outraged.[20]

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[19] Boschmann, Response to RAC request. [6]

[20] Bill Young, OWRD Director, Testimony Before the Joint Committee on Water Policy, *HB 2192: Critical Groundwater Areas*, January 29, 1991. [1-2] (The bill passed without opposition in the House and 26-2-2 in the Senate [12, 15]. The stalled 30-year period between 1992, when Division 10 rules should have been written, until 2022, when they began in earnest, has been officially declared "the result of a lack of staff." If the claim that staff were not available for 30 years was true, then the executive leadership decisions not to prioritize the administrative rulemaking for Division 10 rules reflects the

The model results show that the most important factor leading to stable groundwater levels is the time taken to implement water use curtailments and the volume of water curtailed. Since the spatial configuration to make larger subareas aids prospective parties to VAs, the most indispensable element to control *among all irrigator RAC members* is the time and volume of water use reductions. To this extent, VA proponents want parity with irrigators who do not enter VAs as a matter of equity. So, if some irrigators enter VAs before other irrigators finish their appeals court challenges to the contested case hearings, VA parties don't want to start water use reductions until all others do.

But proponents argue on behalf of VAs during RAC meetings by saying that they can begin slowing or stopping groundwater declines immediately. How does this eagerness square with their desire to work within the 30-year phase-in and 60-year horizon once regulatory orders kick in for other irrigators who slogged through appeals court challenges to push back against regulatory action? It doesn't; rather, it resembles the stall tactics used by proponents in California basins. For some perspective on this issue, we refer to the 2024 policy paper, *Five Guiding Principles for Effective Voluntary Agreements*, which addresses the problems associated with irrigators using VAs for the express purpose of stalling the effects of regulatory action:

> One of the oft-cited benefits of VAs is that they can achieve desired outcomes more quickly than regulatory requirements alone. However, the actual pace of VA development in the Bay-Delta watershed—where, as for many other watersheds, pace matters acutely—has not lived up to this promise. When ecosystems are buckling under severe hydrograph modification, climate change, and a barrage of other stressors, delays in establishing and implementing adequate flow requirements risk permanent ecosystem harm, including extinction. In effect, however well-intended, the protracted VA negotiations and related State Water Board processes have functioned as long-term waivers of the increased regulatory protections the Board and others have long agreed are necessary.[21]

The authors discuss at length how VAs function as diversions away from regulatory action. The extent of the subterfuge in California, as it relates to stalling action in the Bay-Delta watershed, is near universal. Notably, VA proponents wish to incorporate adaptive management processes that could require elaborate beta-testing scenarios, which are sequential and time-consuming. Indeed, prolonged measures of some adaptive management schemes could be labyrinthian.

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pressure over several administrations at OWRD following Bill Young, who had pressed hard for HB 2192. His immediate successor, Martha Pagel took no action over eight years. Notably, The Capital Press reported on the OWRD Director: "*Nicknamed the "water queen," Pagel was considered a highly capable administrator of the agency that she led from 1992 to 2000 and a ferocious advocate for irrigators as a private lawyer.*" Pagel was lauded as "*a skilled 'champion' for agricultural water users,*" and "*'She was on the side of the farmers, on the side of irrigators…'" according to state Sen. Betsy Johnson, D-Scappoose*." The article continues: "*In recent years, Pagel successfully argued for pending water rights applications to remain viable in Oregon's Harney Basin even as new drilling was otherwise being shut down by regulators, Howard said. She also helped fight off a proposal in the Legislature to require more extensive water measuring by irrigators by explaining why the timing was wrong for such a policy, Howard said.*" Paul Cleary, Pagel's immediate successor, did not take action, nor did Phil Ward, who was Executive Vice President of the Oregon Farm Bureau and Director of the ODA. OWRD Directors spun through the revolving door repeatedly, going from the industry they were to regulate to serving in those industries. Questions about why 30 years passed from 1992 to 2022 and no Division 10 rules were written to enable implementation of the CGWA statutes must acknowledge these political facts in order to understand the political pressure pushing back against forthcoming regulatory action under the Division 512 rulemaking process in the Harney Basin and the desire to seek shelter inside the Voluntary Agreements statute.

[21] Felicia Marcus, Nell Green Nylen, Dave Owen, Michael Kiparsky, *Five Guiding Principles for Effective Voluntary Agreements: A Case Study on VAs for Water and Habitat in California's Bay-Delta Watershed*, The Center for Law, Energy & the Environment, UC Berkeley Law, January 2024. [25]

Privileges and Immunities Called "Flexibility" and "Carrots"

The more a VA departs from the regulatory arm of the law, the more likely irrigators will enjoy and comply with the VA provisions. With this axiom in mind, and the contradictory requirement that VAs must be "consistent with the intent, purposes and requirements of" the groundwater sections of Chapter 537, we now review the terms *flexibility* and *carrots*. VA proponents and OWRD staff use these two terms to refer to the benefits and incentives, respectively, that VAs can offer irrigators.

The more benefits parties to VAs enjoy, which separate their experience from irrigators who are left out of VAs, the more unconstitutional the implementation of ORS 537.745 becomes. It is expressly the provision in ORS 537.745 that VAs must be "consistent with the intent, purposes and requirements of" the groundwater sections of Chapter 537 that both prevents the statute from running afoul of the equal protection clause in the Oregon Constitution and makes the proposed benefits of VAs difficult to comprehend within a legal framework.

Similar to California, Oregon incentivizes VAs through the threat of regulatory action.[22] This sentiment is the basis for all diplomacy. Agreements must be backed by the use of force, whether by the law, regulation, order, or legal precedent. Every VA is, by definition, an alternative to regulatory action to avoid, by degrees, the concrete implementation and enforcement of the law and administrative rules of the state. Ostensibly, every VA is an effort by those, whose actions would be regulated, to find an easier and softer way to mimic the effects of the law.

The authors of *Five Guiding Principles* state that:

> Public discourse often misleadingly describes a false choice between regulations or VAs. It is more accurate to say that, to enable VAs, there must be regulatory requirements that allow for the possibility of alternative implementation pathways.[23]

Such sentiment is welcome but must be tempered by fairness to the extent the means (e.g., "alternative implementation pathways") create a premiere class of citizen irrigators who reduce their water use not only because they have to as the regulated irrigators must, but because they also receive exclusive benefits that unfairly privilege them while leaving the regulated irrigators at a disadvantage, economic or otherwise.

Presumably, for VAs to work, the voluntary actions must parallel regulatory actions in effect; while the means may vary, the ends must be the same. There is a problem, however, when the means in fine grain detail are unfair among the population of a class, such as regulated irrigators not party to VAs. The aggregate outcomes achieved through a VA may equal the same outcomes achieved by irrigators exposed to regulatory action, but at what cost in terms of equity under the law? Are there benefits ("flexibilities" and "carrots") that some irrigators enjoy, which others cannot access because they are either excluded from VAs as if left out of cliques, or excluded for other reasons despite their wish to join?

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[22] Marcus et al., *Five Guiding Principles*. [28] (The authors note that "VAs cannot substitute for regulatory requirements. On the contrary, negotiation of successful, durable VAs depends directly on the existence of a strong regulatory foundation to drive agreement and assure implementation.")
[23] Marcus et al., *Five Guiding Principles*. [35]

VA proponents want the OWRD to allow "flexibility" that others cannot enjoy outside VAs, and to provide them with "carrots" that are sweet enough to incentivize the formation of VAs.[24] If all irrigators could enjoy the same benefits whether or not they were parties to VAs, then the justification for VAs would be moot. Therefore, the presence of VAs are *prima facie* evidence of a double standard or two-tier class system. The idea that any irrigator can form a VA or join one to enjoy the benefits is baseless; otherwise, the WRC would institute the "flexibilities" and "carrots" for all irrigators in the GHVGAC as a matter of policy.

On the matter of flexibility, there are three desires:

1) A desire for adaptive management, which in the case of excessively declining groundwater levels, generally means starting from a ramp-up in reduction of pumping, to annually checking results against the trajectory when the USGS/ OWRD modeling scenarios project reaching OWRD's target water-level trend of zero decline, and modifying pumping up or down as needed to stay on track. Factors related to pumping reductions include: 1) monitoring meters on wells and monitoring groundwater levels, 2) evaluating effectiveness, 3) adjusting the timeline for reaching the Total Voluntary Reductions (TVR), which requires both "reducing the Agreed Water Use Limit each year until the PTW or TVR is met,"[25] and 4) modifying the TVR as needed to target OWRD's goal of a water-level trend of zero decline.

   Without strict OWRD oversight and guardrails to confine adaptive management activities, these objectives could go from a straight-line trajectory intended to achieve the desired outcomes to a meandering journey. VA proponents desire control over adaptive management to the greatest extent possible to test various alternatives to simulate regulatory orders without experiencing the same level of pain as those directly exposed to such orders.

   There are two species of adaptive management: one is guided by administrative rules and OWRD staff; the other is guided by the terms of VA contracts. As of this writing, there is a debate as to which activities that comprise adaptive management go into which bucket: the OWRD rule bucket and the VA bucket.[26] While this is a legitimate exercise, it can become corrupted by inappropriately putting some activities into the wrong bucket. For OWRD, adaptive management will apply to all irrigators (whether or not they are in VAs) within a review of Corrective Control Orders every 3 years and a review of the CGWA designation every 10 years.

   With the proposal to phase in water use reductions over 30 years and a 60-year horizon for

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[24] Oregon Consensus and OWRD, Harney Groundwater: Voluntary Agreement SubGroup, October 1, 2024. (See the entire set of negotiations in this informal 2-hour discussion to set the standards for Voluntary Agreements. This meeting was publicly announced after it was held. The incentive to join a VA must be inherent to the benefits of acting voluntarily (whatever they are that do not create a constitutional crisis). Attempting to incentivize VAs in lieu of the threat of regulatory action is nonsensical, unless the state allows irrigators to turn the concept of "incentive" on its head, and concludes that submitting to the threats of lawsuits by irrigators who would draw out the regulatory process interminably is an incentive to approve VAs. In that case, the state has ceded power to the persons they would regulate, setting up an entirely higher level of preferential treatment (the "coercion carrot") for parties to VAs.)

[25] OWRD, *Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir*, October 25, 2024. [3]

[26] Oregon Consensus & The High Desert Partnership, Examples of Adaptive Management in Oregon and Beyond, December 12, 2024. [3] (This document is ostensibly an advisory draft; it appears, in part, to also be a countervailing force to the OWRD document "*Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir*.)

achieving the OWRD's target water-level trend of zero decline, in the hands of VAs, adaptive management could draw out compliance well into the 22nd century. The premise of adaptive management, related to VA "flexibility," is that reaching OWRD's target water-level trend of zero decline is highly complex and will require much "learning while doing" (a euphemism proponents embrace to replace the distasteful but more accurate term "trial and error").[27]

For irrigators not party to VAs, OWRD will simply regulate off juniors until PTWs result in a target water-level trend of zero decline, and then they'll probably hold that pattern indefinitely.

2) A desire to transfer the seniority of water right certificates from one Point of Appropriation (POA) to other junior POAs, and to move irrigation water from one Place of Use (POU) to other POUs – all within the geographic boundaries set by the terms and conditions of VAs within the same reservoir. ORS 537.745 can control in lieu of WRC orders related to the groundwater sections of Chapter 537, but not over the rest of the chapter or other chapters; therefore, ORS 540.520 and 540.523, which govern water use transfers, block the presumption by VA proponents that they can move their water right certificates around among various POAs and POUs under ORS 537.745.

   No one else in Oregon, including irrigators left out of VAs, can evade the water right transfer laws. The proposal for flexibility to avoid ORS 540.520 and 540.523 is factually and legally impossible. Arguments by VA proponents that water needs to be used on more productive soils is a widespread problem across eastern Oregon and is resolved through the water rights transfer process. The idea that irrigators who have caused some of the worst damage to groundwater reservoirs and soil salinization would be rewarded with not having to comply with the water right transfer laws would create widespread resentment across the state.

   The simple remedy is for every party to a VA to apply for water right transfers as needed. The idea of hot-swapping seniority, POAs, and POUs on very short time scales runs counter to the most essential principle that propelled the establishment of Oregon's water code in 1909 and the subsequent expansion of it by the 1955 Groundwater Act: taming the water use chaos through staid and controlled regulation to create more certainty and predictability, both spatially and temporally. An important consideration is that water right transfers shall not cause injury to others. The OWRD maintains security by conducting hydrologic studies that demonstrate over long periods of time, and at specific locations, proposed water uses will not harm others. Proponents' use of VAs to move around seniority, POAs, and POUs annually is anathema to the rule of law and order necessary to reasonably protect the present and future public health, safety, and welfare, and the groundwater dependent ecosystems. As such, the proposal is inconsistent with the CGWA principles, which we argue is the precise intent of VAs: to avoid the WRC's regulatory actions to the extent possible.

   In a CGWA, the logic of moving senior water diversions around to various POUs is not unlike trying to develop land around the rims of steep eroding canyons. If proponents of VAs define subareas of VAs under OAR 690-010-0130(3) to benefit some irrigators party to a VA, and it has the effect of harming others,[28] there is a high chance that any water right transfer in the geographic area of the VA will cause an injury. Moving water diversions among POAs and POUs without going through the water right transfer process compounds the potential for injury.

[27] Oregon Consensus, Examples of Adaptive Management. [1-2]
[28] Boschmann, Response to RAC request. [6-8]

The related concepts about comparing VAs to rotating ditch agreements and irrigation districts[29] are unjustified and therefore fail to work around the water right transfer statutes. VAs would comprise two or more water rights, each associated with POAs and appurtenant POUs; whereas, ditch rotation agreements usually distribute water to various landowners whose properties are overlaid by one POU associated with a water right certificate. The parts of a VA cannot become subsumed into or become a whole; legally, they must remain as parts distinguished by their distinct water rights and associated POAs and POUs. We acknowledge that OWRD proposes Total Voluntary Reductions (TVR) that represent the collective sum of water use conservation required by each VA, subtracted from the full duty of all the water rights that parties bring to VAs. However, this summation does not subsume the various parts into a whole, single water right. The analogy to a rotating ditch agreement erroneously conflates numerous discrete components with a VA that cannot legally merge those components.

Nor will ORS 540.150 *Rotation in water use; notice* suffice to move water around various POUs in conjunction with ORS 537.745. In circumstances where two or more water right certificates share use of the same water source, rotation agreements can provide an alternative to prior appropriation where one of the water right holders is senior, but nonetheless, they agree to share the water source with other junior water right holders.[30]

Ditch and other types of rotation agreements do not transfer seniority to different POAs or POUs, nor do they mix water from various sources for distribution to various POUs as VA proponents propose. Instead, rotation agreements manage timing and sharing of water within the constraints of existing rights. VA proponents misconstrue ditch and other types of rotation agreements, particularly regarding how water rights are geographically and legally bound.

In the case of rotating two or more water rights, ORS 540.150 is a voluntary version of ORS 537.742(2)(f), which is the regulatory action OWRD uses in CGWAs: "A provision requiring and specifying a system of rotation of use of groundwater in the critical area." Quite to the contrary, VA proponents envision mixing and matching various water rights and POAs to irrigate various unauthorized POUs. Additionally, some rights would be in use, some not, and some might attempt to pump their wells at rates higher than the water rights permit.[31]

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[29] Oregon Consensus, Voluntary Agreement SubGroup. (Discussions in this meeting, about how VAs are like rotating ditch agreements and irrigation districts, have the unintended effect of highlighting how VAs are not like rotating ditch agreements and irrigation districts.)

[30] United States, Brief on the Merits as Amicus Curiae in Support of Appellants Oregon Water Resources Department and Klamath Tribes, Case No. CA A167380, Oregon Court of Appeals, filed December 7, 2018, by Billy J. Williams, Kelly Zusman, Jeffrey Bossert Clark, and Eric Grant. [28-29] (The US Attorneys' argument about why the Hyde Agreement is not a rotation agreement under ORS 540.150 is elegant and concise. Citing two sources: "*In a rotation agreement, different water users, each of whom draws their supply from the same source, agree to 'take a turn at using the full quantity of water available in the source to irrigate his or her lands*,' … '*Under rotation one user may take all the available water, regardless of senior priorities for a limited period of time, and the next user may do the same.' Oregon law confirms the obvious proposition that a rotation agreement is an agreement to "rotate" the use of water … Even under the Hydes' erroneous interpretation of the Hyde Agreement, the parties did not agree to each take a turn using their full shares of the river's water. Instead, the Hydes argue that the parties agreed to split the water of the Upper Williamson River between the Hydes' appropriative use and the Tribes' non-consumptive, in-stream water rights in the Klamath Marsh. But that is not "rotation" because the parties are not taking turns or "rotating" their use of the water.*"

[31] Representative Mark Owens, Draft Voluntary Agreement Guidance Document, email to OWRD, August 6, 2024. [3] (See admission that irrigators have been exceeding the rate limits set by their water rights and how they want to keep doing so under the pretense that pairing ORS 537.735(3)(d) with ORS 537.745 allows them to exceed water right rates despite the fact that VAs must be "consistent with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992.")

As for irrigation districts, they hold water rights on behalf of their members, who put water authorized by those water rights to beneficial use. Irrigation districts hold a set number of water rights associated with specific PODs, POAs, and POUs, and any movement of these real assets requires a water right transfer for which only the water right holder can apply.[32] VAs cannot operate as irrigation districts unless the irrigators who would be parties to VAs set up an irrigation district. Even then, the law prohibits moving around seniority, POAs, and POUs within an irrigation district without a water right transfer.

3) A desire for a flexible contract that can increase or decrease the number of parties to a VA, change the geographic boundaries of the VA, move the goalposts for compliance with VA provisions under the pretense of adaptive management, and change other terms of the VA in a ministerial way without having to go back before the WRC and seek approval for the revised contract. As Chad Karges noted during the Harney Basin VA Subgroup Meeting, they would like: "Resolution at the lowest level possible," and Rep. Mark Owens suggested, tongue-in-cheek: "Complete discretion by the groundwater users."[33]

On the matter of "carrots," there are:

1) A desire to receive a waiver on the Contested Case process, which would protect parties to VAs from being legally held to the same standards as irrigators who are left out of VAs. Contested Case proceedings are long and drawn out; they are quasi-judicial hearings that fulfill the constitutional requirement of due diligence when enacting water use curtailments on a water right. They include evidence, discovery, witness statements, and a legal process that concludes in a ruling by an Administrative Law Judge (ALJ). Then the WRC reviews the ALJ ruling and issues an order. Following the orders, which could include substantial reductions in pumping along the doctrine of prior appropriation, there could be cases brought before the Oregon Court of Appeals. That appeals process could take two to five years. If VA parties were exempt from the Contested Case process, they could not be regulated off in the event their VA fails or parties leave the VA. The WRC would have to start up a new Contested Case every time a VA fails or a party resigns from a VA. Given the rigmarole of the legal process, untold years could pass while a VA stalls through "adaptive management," fails to substantially comply with its obligations, and the WRC orders the termination of the VA before parties undergo a Corrective Control Order curtailing their water use similar to their neighbors who never entered VAs.

   Any VAs approved by the WRC should require all VA parties participate in a Contested Case hearing under ORS 537.742 and ORS 183 to ensure regulatory action buttresses substantial compliance with all VA provisions. The "learning while doing" (trial and error) activities under the pretense of adaptive management should have strict timeline limits set forth from the outset to ensure that the effects promised by the VAs will strictly align with the effects of regulatory actions imposed upon irrigators who are not parties to VAs. If parties to VAs are to be believed – that they will meet the same standards as the statutes to ensure the effects of their actions track with the effects of regulatory action – then they should have nothing to fear by being parties to the forthcoming Contested Cases. To the point: there could be irrigators who go through the Contested Case hearings as parties and then later on join a VA.

[32] *Fort Vannoy Irrigation v. Water Resources Comm.*, Sup. Ct. of Ore., filed July 10, 2008. (This case settles the question of who controls water rights and water use in irrigation districts, and discusses the roles and responsibilities of the water right users and water right holders, particularly with regard to water right transfers.)
[33] Oregon Consensus, Voluntary Agreement SubGroup. [at 2:04:50]

2) A desire to operate relatively risk-free means, in part, avoiding groundwater statutes in Chapter 537 that irrigators would otherwise have to comply with. ORS 537.745 states that VAs "shall control in lieu of a formal order or rule of the commission." A very liberal misconstruction of that clause could attempt to protect VA parties from other groundwater sections of Chapter 537 under the pretense that the VA has primacy. The extent of the misconstruction would be the degree to which it departs from the other requirement that VAs are "consistent with the intent, purposes and requirements of" the groundwater sections of Chapter 537. The law cannot equally apply to all irrigators if a portion of it applies only to one class and has the effect of reducing business risk on their behalf.

   Irrigators have also expressed a desire to be free from several types of risk associated with more rigid regulatory frameworks that others left out of VAs could be exposed to. For example, VA proponents are concerned about the potential for future regulatory changes that could impose stricter water use limitations in their subareas and they want their VAs to shield them from adaptive management by the state. VA proponents also want to be shielded from lawsuits by disgruntled neighbors who are left out of VAs and believe they have been harmed by the irrigators who are party to VAs. They also want to avoid the risk of being locked into annual/ seasonal water use limits that would have been set by the WRC as the annual Agreed Water Use Limit that increases until it equals the Total Voluntary Reduction (TVR). And proponents of VAs want to be shielded from lawsuits by those who have standing related to domestic well failures and harm to groundwater dependent ecosystems. It appears that VA proponents want the WRC to grant them fiefdoms.

3) A desire to be bought out by the state on the pretense that the state is responsible for the over-pumping because the agency staff over-appropriated the Harney Basin by permitting too many groundwater right applications. This desire, which came up during the Harney Groundwater Voluntary Agreement SubGroup,[34] is unrelated to VAs and is common to all irrigators who 1) fear having their junior water rights on productive wells being regulated off in the CGWA, or 2) want recompense for their water rights associated with non-productive wells that aren't capable of generating income. One of the attorneys, Dominic Carollo, raised the "carrot" of buying back defunct water rights during the discussion on VAs because he is skeptical that VAs are feasible and that the only viable alternative is paying irrigators to cancel or pause their water rights.

   Advocating for buyback proposals (e.g., eminent domain lite) is unrelated to VAs, but we refer to the proposals because they were raised during VA discussions.

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[34] Oregon Consensus, Voluntary Agreement SubGroup. [at 1:59:14 to 2:01:37] (The claim that Oregon is responsible for over-appropriating the Harney Basin and is therefore legally responsible for the welfare of the groundwater right certificates it issued is spurious because of extraordinary and prolonged political pressure by the irrigation lobby and their patrons who forced through water right applications that never should have been permitted. (See Emily Cureton Cook, "Race to the Bottom: How Big Business Took Over Oregon's First Protected Aquifer," OPB, March 16, 2022. This three-part series reports on the political and private sector negligence that has led to the impairment of the public's groundwater sources.) Far from the OWRD acting as if it were a socialist state government agency running the irrigation industry as a public sector concern, OWRD staff were under intense pressure for decades to approve water right applications when there was not sufficient water available or the water availability was unknown. We reference the tenure of Maragret Pagel, Phil Ward, and other state officials cum lobbyists/ lawyers who passed through the revolving door between the public and private sectors as examples of the culture that led to over-pumping the water sources that belong to the public. Notably, Representative Owens has managed to straddle the revolving door and work in the public and private sector simultaneously to benefit his and his constituents' interests, the awkwardness of which is constantly apparent.)

Review of the Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir

Generally speaking, OWRD's *Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir*, which we review and comment on below, is a good starting point for rulemaking related to ORS 537.745.[35] We also incorporate the entire set of comments in this paper as information to consider when contemplating rulemaking for ORS 537.745.

Notwithstanding our serious concerns about the statutory construction and the interpretations of ORS 537.745, including the ways proponents of VAs have envisioned applying the statute, we provide the following comments on OWRD's *Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir*.

We strongly agree with and support the *Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir* as a rough draft for writing administrative rules for ORS 537.745. ***Any sections of that document we are silent on means that we have no questions or comments and support the draft language.***

Our comments follow the title of each topic in the OWRD document:

Background:

We refer to our critique herein – of ORS 537.745 and the numerous proposals articulated by proponents of VAs – as the scope of information the WRC and OWRD should consider as background when contemplating the approval, management, and termination of VAs.

General Applicability:

ORS 537.745 explicitly states that VAs must be "consistent with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992, and in particular ORS 537.525, 537.730 to 537.740 and 537.780…" These statutes are the groundwater sections of Chapter 537. However, OWRD has interpreted the consistency to be with the Groundwater Act of 1955, the provisions of which were articulated in HB 26 in 1955. Since then, there have been many amendments to the groundwater section of Chapter 537, and we recommend reframing the General Applicability to ensure ongoing consistency with the evolving statutory framework governing groundwater within Chapter 537.

We also suggest acknowledging that VAs must be consistent with the entire water code, including all chapters from 536 to 558, and that ORS 537.745 cannot conflict with other statutes and the Oregon Constitution, as would some of the proposed provisions of VAs.

Authority

The WRC can delegate its authority to issue an order terminating VAs, as acknowledged at the end of the *Proposed Guidance* document; however, no mention of such authority is stated in this section.

While we strongly believe the WRC should hold informational hearings on VA approvals and termination orders, and make the first generation of approvals and any termination orders, we

[35] OWRD, *Proposed Guidance for Voluntary Agreements*.

acknowledge the authority of the OWRD staff to process such acts on behalf of the WRC.

The politics, liabilities, and gravity of approving VAs for the first time – under an elusive and troubled statute that has never been implemented since 1955 – requires the WRC leadership. We also recognize that administrative rules must be written to accompany ORS 537.745, which will involve the WRC to an extent that will enable the commission to be competent in actual business approving and terminating VAs.

Groundwater Users:

Under the Minimum Participation Level, the requirement is that a VA must account for at least 30% of the PTW of the subarea the VA is located in. But what happens if irrigators drop out and the VA lacks a minimum participation level? Is there a grace period for the remaining irrigators to seek new members before the OWRD finds the VA is not in substantial compliance with the WRC approval? Is there a subarea census that can be updated annually that contains the information that is required under the heading "Reporting and Monitoring" and reasonable projections be made about the "bench depth" that all VAs have regarding the potential to lose and gain new parties? OWRD could estimate the viability of VAs and the length of any grace period by understanding the scope of potential irrigators capable of joining VAs when VAs fall below the Minimum Participation Level.

The Agreed Water Use Limit should be referred to in the second paragraph of the Minimum Participation Level to clear up the ambiguity about what is "subject to the agreement;" otherwise, state what is meant by that conditional statement.

Groundwater Rights:

The statement referring to "valid water rights that can prove beneficial use within 5 years prior to the time the agreement is approved" needs to address the ways irrigators will prove use that is evidentiary based. Perhaps this could include metering where available, OpenET imagery, sworn statements of fact under the threat of perjury, and photographic and video evidence.

All unauthorized and non-conforming wells drilled without start cards and/ or lacking well log numbers, and all wells used in violation of the terms of a water right must be prohibited from participating in VAs and be subject to well abandonment unless OWRD receives water right transfer applications within 60 days of discovery by OWRD or disclosure by the irrigator. Well abandonment should begin after 60 days in the event of no action to remedy the unlawful appropriation.

That unauthorized water uses could be overlooked in a CGWA would be an extraordinary breach of the public trust, undermining the integrity of Oregon's water laws and the equitable distribution of this critical resource. Such permissiveness would erode confidence in the state's ability to manage water resources sustainably and equitably. The admission of the scope of the problem requires immediate remediation regardless of whether unauthorized or non-compliant wells are associated with VAs.[36]

[36] Oregon Consensus, Voluntary Agreement SubGroup. [at 0:43:32 to 0:45:53] (OWRD staff hydrologist, Tim Seymour, reading from a document compiled by Harney Basin VA group: "We anticipate that there will be a number of wells that are not specifically in their authorized locations, and we need a process to allow water users to fix this without penalty and without delays." Representative Mark Owens, irrigator from Crane also noted: "So you're going to see you're going to see a fair subset of wells that may or may not be in a specific location, maybe not authorized under permit…I mean, a lot of it's gone on for the last multiple decades. Well goes dry, a well goes out. You get a well driller, maybe the welder didn't do a start card. He drills a well close to the same location...We start pumping from it. I don't think, honestly, the farmers

The next statement that "The maximum volume of water available to the parties within a voluntary agreement is the sum of the total duty allocated to all valid rights participating in the agreement" should continue with "notwithstanding the limits imposed by the subarea PTW and/ or the VA TVR."

Groundwater Reservoir:

This section states that:

> An approved agreement must define the groundwater reservoir, or portion thereof, the agreement is intended to cover. For a designated CGWA, the groundwater reservoir may be defined as the entire CGWA, one or more subareas within the CGWA, or a portion thereof.

Given the extraordinary work by the OWRD and USGS to study and map the GHVGAC (and to paraphrase ORS 537.665), the WRC, 'by its own motion, has already identified and defined the location, extent, depth, and other characteristics of the groundwater reservoir' and 15 subareas that are hydrologically distinct.

But the gerrymandered 6 subarea map made up by irrigators with an interest in increasing the geographic areas to facilitate VAs are not groundwater reservoir boundaries; rather, they are administrative boundaries established under OAR 690-010-0130(3)(b) and (c). Because the irrigators drew up the 6 subarea map for their private contractual purposes, there is no set of groundwater reservoirs yet defined they can use for VAs. To be clear, the CGWA map lines are not the lines of groundwater reservoirs, though they could be if the WRC made a final determination of the boundaries and depth of the GHVGAC groundwater reservoir(s). Any proper map suitable for VAs may need to coordinate with ORS 537.665 if VAs are to withstand critiques about whether parties to VAs are indeed from the same groundwater reservoir. Such tensions could flare up between juniors in VAs adjacent to seniors not in VAs. Knowing that the WRC formally stood behind the data regarding hydraulic connections through a *Final Determination* under ORS 537.665(3) would streamline the resolution of these concerns.

While the entire GHVGAC is hydraulically connected by degrees, OWRD designates some areas as high-priority and others as low-priority because there are distinct hydrogeologic units that demonstrate unique features, including the propensity for some to be easily overdrawn much more than others. For this reason, we acknowledge the need for VAs to be sufficiently proximate so that they pump "each other's water" in a seasonal/ annual timescale (the groundwater flows along a hydraulic gradient among VA parties within the length of a season). If VA parties were spread out beyond the one-year reach of the groundwater flows, then the logic of how *a TVR is to a VA as a water use curtailment is to a single irrigator* falls apart. The logic of a VA is that all the irrigators sort out how they will collaborate on reducing annual groundwater pumping to reach the TVR, and somehow that is attractive enough for them to form a VA that does not run afoul of state laws and the state constitution.

The purpose of proximity is to ensure that irrigators are horsetrading water (under ORS 540.520/ .523) of the same relative level of *scarcity* because CGWA statutes (that the VAs must be consistent with) seek to establish a target water-level trend of zero decline, and that is not possible if irrigators were to cap and trade water credits from relatively distant, distinct, or compartmentalized groundwater reservoirs. We acknowledge that the entire GHVGAC could be regulated as one hydrologic unit as

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understand to what extent that that might be scrutinized, to what extent it might show up.")

shown in the "Model E scenario,"[37] but that requires a 59% reduction across the board and any proposed VA would have to consist of at least 30% of all irrigators in the GHVGAC, which is inconceivable.

This section also states: "(1) An approved agreement must be accompanied by a map depicting all places of use and points of appropriation for the water rights included in the agreement." We take this moment to concur with OWRD that no version of state-run water use management could allow unauthorized or non-conforming large-scale wells to be associated with water rights in a CGWA region that is under immense stress resulting from excessively declining groundwater levels and the scrutiny of hydrologists, political pressure, rulemaking, and the public eye. While the OWRD may have overlooked the misappropriation of water in the past as described in the Oregon Consensus Voluntary Agreement SubGroup discussion, the tolerance for such lax oversight is over. The POAs must be lawfully associated with the water right certificates and POUs must be preexisting locations defined and authorized by non-canceled water right certificates used at least once in the prior 5 years dated to the submission of the VA to the WRC for approval. (Incidentally, we support extending the period of permissible non-use to 15 years.)

Groundwater Use:

This section states that: "If a voluntary agreement is within a critical groundwater area or subarea where a permissible total withdrawal has been set by rule, the Department must use the PTW as the primary criterion for evaluation when considering whether to approve the voluntary agreement." This may be fine to determine whether the VA meets the Minimum Participation Level; otherwise, there should be an acknowledgment to the effect "...except where the department has set a TVR."

This section states: "Target for Voluntary Reduction" or "TVR" means the total amount of groundwater that the Department determines should be withdrawn from an area on an annual basis." The phrase "from an area" is ambiguous and should say "from within the geographic boundaries of a voluntary agreement approved by the WRC under ORS 535.745."

The concept of a TVR should be elaborated on to remove any question about what it is and how it works: the TVR is the total (collective?) amount of water irrigators party to a VA must not pump in order to comply with the PTW of any given CGWA or subarea therein.

In the case the WRC was to consider approval of a VA before a PTW or TVR has been set, then all WRC approvals of VAs must have a contingency clause that requires all VAs approved before the OWRD sets PTWs to immediately conform to the limits of PTWs once they are set.

Under the section on Agreed Water Use Limit is this statement: "The schedule for water use reductions must be specified in the voluntary agreement and should demonstrate a commitment to achieving stable water levels within a reasonable timeframe." This is weak language – "should demonstrate a commitment to achieving..." This allows irrigators party to a VA the flexibility to not conform to TVRs that must comply with PTWs; meanwhile, all the irrigators left out of VAs are forced to comply with state Corrective Control Orders and do not experience the so-called "flexibility" parties to VAs enjoy. This double standard is inequitable, where in one section of chapter 537, some irrigators can enjoy flexibility (ORS 537.745), and in others, they cannot (ORS 537.742).

[37] OWRD, Summary of Model Results Presented at RAC 11, November 13, 2024. (See the entire document for how "Model Scenario E" functions.)

The section on Rate and Duty states: "Notwithstanding this provision, the Director may determine, pursuant to ORS 537.735(3)(d), that a higher rate would result in more efficient water use." ORS 537.735(3)(d) states:

> Any 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.

Despite the broad scope of this paragraph, we question whether ORS 537.735(3)(d) can authorize water use rates beyond the terms of certificated water rights, especially considering the limits on water right transfers not to expand the rate. OWRD believes it is theoretically possible.[38] Rate limits are longstanding controls to protect the water resources of the state; to relax them in areas where substantial harm looms resulting from excessively declining groundwater levels is not only an unjustified privilege and immunity from the law, but a profound inconsistency with CGWA principles reining in harmful water uses.

This statement for increasing the rate on a water right comes from a request emailed by Representative Mark Owens, wherein he states:

> Many of the water rights in the Div 512 rulemaking area fall below the rate required to irrigate crops in the Harney Basin. Limiting all water use to 1/80th cfs (may not exceed the rate and duty of "any water right") will be highly detrimental to water right holders and voluntary agreement participants. If individuals are part of a voluntary agreement, it does not make sense that they would generally be subject to WRD regulation based on water right calls. ORS 537.735(3)(d) can apply whether there is a senior water right call, or not. The flexibility in rate is critical to formulate voluntary agreements that are reducing water withdrawals so as to achieve a stable groundwater level within an acceptable timeframe and at an acceptable level, while making economic sense to the participants and signatories to the agreement.[39]

We understand from this statement that 1) irrigators are currently using water at rates higher than their water right certificates authorize; 2) that irrigators have not been sufficiently regulated by OWRD on

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[38] OWRD, Response to email from Mark Owens to Kelly Meinz (August 6, 2024) regarding OWRD's Draft Voluntary Agreement Guidance Document, September 27, 2024. [6]

[39] Representative Mark Owens, Draft Voluntary Agreement Guidance Document, August 6, 2024. [3] (This email is a response to a July 8, 2024, meeting that was withheld from public view so VA proponents could work among themselves to settle the prospective guidelines for how VAs would function to their specifications. These guidelines will likely be the basis for administrative rules, and to that extent, they were at the time, a form of private rulemaking that is now open to the public. Rep. Owens began his email stating: "*We would kindly ask that WRD refrain from disseminating the draft proposed guidance to the RAC in its current form, pending further discussion with the small work group that met on July 8, 2024, and pending revisions reflecting further discussions and input. As explained in more detail below, there are a number of areas where we think further work is likely needed to find alignment and agreement on an approach to voluntary agreements in the area of the Div 512 rules/Harney Basin.*" We view this request for privacy as an example of how business as usual has worked in the past decades whereby the largest water users call the shots and influence statutes, administrative rules, guidelines, and the day-to-day management of the public's water resources. Such policymaking has had the effect of privileging special interests who have a usufructuary right to the water that belongs to the public over others, and in this case, not just over the greater public interest, but more specifically over those who may be left out of VAs. We include this detail to show in fine grain resolution the mechanics by which special interests (VA proponents) seek to influence laws to privilege themselves above and/ or immunize themselves from the public interest, which may hold different views. We also recognize that not all the VA proponents' ideas necessarily conflict with the public interest; some are worthy and ought to be considered.)

this matter; and 3) since parties to VAs will necessarily come under the close management of OWRD, parties to VAs request a pass on the enforcement of the law that requires water right holders to comply within the rate limits of their water right certificates. This is what VA proponents mean when they request flexibility: they want ORS 537.745 to extend privileges and immunities others cannot access. Given, however, that the Harney Basin is suffering from excessively declining groundwater levels, the fact that OWRD has not and would not enforce the rates on water right certificates is extraordinary. With the imposition of a CGWA impending, there is reason to believe OWRD will require all irrigators to stop misappropriating water by exceeding the authorized rates of their water right certificates. That VA proponents would anticipate this enforcement and seek "flexibility" on the matter demonstrates yet another example of how those left out of VAs will not enjoy the same perks, including perks that are unlawful, such as exceeding rate limits set by water right certificates.

The section on Rate and Duty states: "'Overuse' means use above the volume or rate of the approved voluntary agreement." The section should state: "'Overuse' means use above the collective duty or rate of the approved voluntary agreement, or the use above the duty or rate of any one water right."

There is also this statement: "Overuse is a basis for a finding that the parties are not substantially complying with the agreement." We suggest that OWRD clearly define the term "substantial compliance" in rule as it relates to compliance with VAs. While the term is generally understood in a regulatory context, VAs must be held to a percentage, such as 95% of the Agreed Water Use Limit, TVR, and PTW. Otherwise, there will be endless stalling over what is meant by substantial compliance by lawsuits that have already been threatened.

The statement "At no time will under use result in an increase to the agreed water use limit," should include a direct statement that "no parties to VAs may carryover under use from a previous year to any year thereafter."

Duration:

The statement "The agreement will include the period of time over which groundwater use will be reduced" should replace the word "over" with "during."

Regarding the duration of water use, OWRD could track the annual water use for a VA on a graph that shows the actual duty of water used on the Y-axis and each year on the X-axis, with the Y-axis ranging from zero to the maximum duty the TVR permits, and the X-axis ranging from the year the WRC approves the VA to the year when OWRD has set compliance with the target water-level trend of zero decline. This simple graphing would enable OWRD to reasonably project whether VAs are on a timeline to reach their targets and will give OWRD and VA parties sufficient notice of whether course correction is required to stay on target. The OWRD should project (plot) the graph in advance as to what the trajectory would look like so that it can compare every year just how close VAs are "Substantially Complying" with their TVRs. The USGS/ OWRD modeling software would set the end point where the TVR rate results in OWRD's target water-level trend of zero decline.

Under section (1) of Duration, the statement "...voluntary water use reductions to match the PTW should be implemented within a reasonable timeframe" must be consistent with what is expected of irrigators who are not party to VAs and are subject to regulatory action. Otherwise, preferring or privileging water users because they entered VAs creates a double standard, two-tier class system under the law. This double standard is the quintessential definition of unequal protection under the laws. Whatever time frame OWRD imposes upon irrigators not party to VAs (in any given CGWA or

subarea) must be the same time frame imposed upon parties to VAs, or vice-versa.

Section (2) of Duration states: "If a voluntary agreement is within a critical groundwater area or subarea where a target for voluntary reduction has been set, voluntary water use reductions to match the TVR should be implemented within a reasonable timeframe." The term "reasonable timeframe" is a poor and ambiguous euphemism for "Substantial Compliance," which should be used and the graph mentioned above should replace the ambiguity. Also, the statement is awkward and redundant.

Section (3) states: "If a voluntary agreement is within an area or subarea the Department has set a target for voluntary reduction, the period of time for voluntary reduction to match the TVR cannot exceed the duration of the agreement." The statement should be: "If a voluntary agreement is within an area or subarea the Department has set a target for voluntary reduction, the period of time for *the Agreed Water Use Limit* to match the TVR cannot exceed the duration of the agreement."

Reporting and Monitoring:

Under the Annual Statement of Use, section (1) "a map depicting lands subject to irrigation" should show the precise POUs surveyed by a CWRE. A CWRE could initially map out all the existing POUs and grid the map for easy modifications in the future, where each grid square is one square acre.

Section (3) requires: "contact information, including telephone and email address, for owners of every well to be pumped during the irrigation season." This section should also require the same for owners of the POUs to be wetted by irrigation use; they may not be using their wells but they may be contributing their lands. (We take this opportunity to reiterate that all VAs must incorporate water right transfers under ORS 540.520 and 540.523.)

Under Monitoring, Section (2) states: "...that Department staff may, with reasonable notice, enter the property of a party for the purposes of water level measurement, collecting flow meter readings, and ensuring that the flow meters are properly functioning." We suggest that ascertaining the location of irrigation use on POUs and the duty of water on POUs not to exceed the certificated CFS/ AF is also a reason to enter the property.

Section (3) states: "...the watermaster must visit each participating landowner's property to verify wells authorized for use under the voluntary agreement and the existence and functioning of totalizing flow meters." We suggest detailing what the term *verify* means by adding "to verify that wells authorized for use under the VA have well logs, are associated with start cards, and are authorized for use by water right permits or non-canceled water right certificates."

Agreement Modification Prior to Commission Approval:

No additional comments at this time – refer to the entirety of this paper for details related to the approval of VAs.

Agreement Amendment After Commission Approval:

(Note: we reiterate that there must be strict limitations to the "flexibilities" and "carrots" that parties to VAs enjoy that privilege or grant immunity to them over irrigators unable or uninvited to join VAs. Proponents have been vocal about wanting near free rein to act as if VAs were sovereign entities. Their ambition is directly proportional to their resistance to the Division 512 rulemaking effort leading to a

CGWA designation and regulatory action to curtail water use. We suggest the WRC be present and active in the VA approval process and that OWRD manage VAs carefully because VAs are statutory instruments with their legitimacy and fairness dependent on equitable access and administration.)

The statement: “The Commission also may delegate this authority to the Department” is acknowledged. However, while OWRD can manage ministerial amendments to VAs, the WRC should oversee more substantial amendments, especially when attempting to implement ORS 537.745 for the first time since 1955. What are the minor amendments that can be managed ministerially, and what are those that should go before the WRC for approval?

We suggest that the following amendments must go before the WRC and should not be processed by OWRD staff in a ministerial fashion:

1) Changes in parties to the VA, both incoming and outgoing;
2) Changes in POAs and POUs (which will require coordination with ORS 540.520/ .523);
3) Water Right Transfers into or outside of the VA geographic boundaries (intra-VA Water Right Transfers between VA parties can be an OWRD ministerial action);
4) Changes in the Agreed Water Use Limit and the TVR;
5) Changes in the timeline to reach the TVR or water volumes that relate to phasing in or out of water use reductions and the timeline to reach the zero rate of decline in groundwater levels;
6) Any changes in adaptive management that could cause injury or harm to domestic wells, groundwater dependent ecosystems, and other irrigators subject to regulation in the Harney Basin CGWA.

OWRD staff will be put under immense pressure by parties to VAs to process changes ministerially, and we believe the WRC must oversee all the amendment types listed above to prevent the abuse on behalf of the public interest. Pressure on OWRD staff by those they regulate must come to an end, especially when such pressure goes unseen out of the public eye.

Under Additional Parties, two statements need to be better understood:

> (1) A prospective party must notify the Department and the existing parties to the agreement of their intent to join the agreement by December 31 prior to the year in which they wish to join.
>
> (3) All existing parties to the agreement and the Commission (or Department if authority has been delegated) must consent to the addition of any new party.

Who decides who is in VAs and who is left out of VAs? What if three irrigators get together and want to form a VA and a fourth wants to join – can the three irrigators refuse to admit the fourth? And can they gang up on each other and sue each other and push each other out? How is the formation of VAs (who is privileged to enter, who is left out, and the criteria for being selected or rejected) to be determined? Since VAs are instruments of the law, which is a specific legal framework that has been envisioned by proponents to grant parties to VAs certain privileges (“flexibilities” and “carrots”), the decision about who gets to benefit and who does not quickly reaches a constitutional question of fairness and equal application and protection of the law to all.

Given that VA proponents seek significant advantages, how VAs derive their authority to form, change membership, and dissolve raises legal and ethical questions regarding equality and fairness. We wonder if VAs are like public or mutual benefit corporations or political subdivisions of the state that require

bylaws or charters, and trustees. Would parties to VAs be the trustees of the VAs?

We believe that if the opportunity to participate in a VA, in any given CGWA or subarea, is not equally available to all eligible water users without prejudice, or if the criteria for participation are not transparently applied, VA governance (or the lack thereof) could potentially lead to claims of discriminatory practices. These are significant factors to consider regarding the statutory construction of ORS 537.745 and proposed administrative rules. We also wonder if and who can challenge the membership of VAs – who has standing to challenge the vagaries of membership.

Under Party Termination, will the WRC and OWRD be held liable for how VAs manage terminations and resignations of its members since the WRC and OWRD approved the VAs? We believe the process of membership management must be very carefully considered since VAs are an instrument of the law that has been envisioned to dole out privileges and immunities only some can enjoy.

The statement "Any party terminating their involvement in the agreement will become subject to any existing groundwater control measures pertaining to the geographic location of their water right" underscores the seriousness of terminations and disgruntled resignations from VAs because the consequences are the loss of privileges and exposure to the cold hard hand of the regulatory state. Who will take responsibility for those kicked out of the Garden of Eden?

We also note that all parties to VAs will have to also be parties to Contested Case hearings from the start if they are to be subjected to the regulatory actions of the state after removal from VAs.

Two side notes: 1) any prospective VA parties who went through a Contested Case hearing but do not wish to go through appeals court challenges to implement their VAs, will be casting doubt on the legitimacy of the complaints other irrigators have who wish to proceed with their appeals court challenges; and 2) the discrepancy between the experience irrigators have in their VAs and irrigators subject to regulatory action will come into stark relief on the basis that VA parties may not wish to go through the appeals court challenges, demonstrating the extent to which the VA class of irrigators enjoys benefits under the law that regulated irrigators do not.

The section titled Water Right Transactions is a poor euphemism for Water Right Transfers under ORS 540.520 and 540.523, and is unjustified. The following language from this paragraph is unambiguously the language of water right transfers:

> …if any water right subject to the agreement is modified by a water right transaction in a way that changes the amount of water available to the agreement or changes the places of use subject to the agreement. Such transactions include, but are not limited to, changes to the place of use, changes to the points of appropriation, or splitting of a right.

We are incredulous at the term "water right subject to the agreement" because the legal term is water right subject to transfer. ORS 537.745 has no authority over statutes other than ORS 537.505 to 537.795 and 537.992. While VAs must be "consistent with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992," there is no law that says VAs may run afoul of all the other laws of the state of Oregon, including other chapters in the water code. Our position here aligns with our repeated statements that ORS 537.745 does not permit the WRC to approve VAs that run afoul of the Oregon Constitution. All VAs must apply for water right transfers.

Agreement Approval:

See our earlier comments on the WRC delegation of its authority to the OWRD.

Agreement Termination:

Section (b) states: "Changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary to the intent, purposes and requirements of the Ground Water Act of 1955." The Ground Water Act of 1955 has been amended many times over 70 years, so it may be best to say the "Water Code" to encapsulate all the laws of the state that pertain to water governance and management regardless of the time period. If VAs were a detriment to the public health, safety, and welfare for any reason, they could be terminated for breaching any law, including the Oregon Constitution.

There may also be a reason for the WRC to terminate a VA if the parties are suing each other in tort actions that are prolonged and are not resolved in a timely manner. The governance of VAs must be held at a high level in the way public and mutual benefit corporations function with bylaws and trustees to ensure that VAs, instruments of the law authorized by ORS 537.745, are maintained in an orderly, lawful, and constitutional fashion. Administrative rules for ORS 537.745 must include how VA governance shall function.

Conclusion

Privatizing public sector duties has been fraught with many failures over the past 70 years because some public sector activities are not well-suited to the private sector. VAs are an attempt to privatize the regulatory functions of the state, and we believe such privatization will unreasonably perpetuate the harms resulting from over-pumping the groundwater reservoirs. The VAs under ORS 537.745 are not feasible as proposed because they conflict with the water right transfer statutes and create a constitutional crisis resulting from numerous factors related to privileges and immunities. The VA's most effective result may be stalling water use reductions while the WRC imposes water use curtailments on other irrigators. Such an effect runs counter to the legislative intent of HB 2192, which sought to remove stalling tactics by affected water users and their lobbyists by bringing the CGWA statutes in line with the Administrative Procedures Act (APA).

The OWRD must manage the water in the basin (every basin) to ensure that we do not return to the *Wild West*. It's problematic enough that too many of Oregon's water use policies still contain vestiges of the dysfunctional past, not for the private sector to potentially game the public sector and worsen those effects in the 21st century.

If there are any credible scenarios, at a minimum:

- VAs must be state-enforced binding legal contracts so all parties have shared expectations and legal responsibilities to each other and the state.
- The WRC must impose strict penalties for breaking the contracts or stalling their provisions, which would parallel VA parties suing each other for breach of contract (tort).
- Access to VAs would have to be open to all irrigators in the Harney Basin (no one could be denied entry), and protections would have to be in place to ensure those who experience regulatory action do so because they believe they are as well off as if they were to join VAs.

- VAs can never be used as schemes to avoid unequivocal and timely compliance with OWRD's target water-level trend of zero decline, which is already 30 years past due.

VA proponents will argue that VAs are inherently fair because they are voluntary; because participation is not compulsory, any resulting disparities in access or benefits do not raise concerns of fairness or constitutional rights. That argument is facile because it leaves out important details related to privileges and immunities in both the formation of VAs and the disparity of experiences and outcomes VA parties seek.

If the benefits of VAs were genuinely equitable and universally beneficial, there is a compelling reason for the WRC to extend these benefits across the board, rather than restrict them to self-selected groups. If, however, doing so stalled or preempted the goal of stabilizing groundwater levels in the CGWA, then it follows that extending the perks of VAs is an exclusive benefit only a few can enjoy. The idea that the Harney Basin hydrology might only be able to tolerate a certain limited amount of VAs would demonstrate that there necessarily must be an excluded class of irrigator citizens if VAs were ever implemented. Perhaps this is one reason why ORS 537.745 has never been implemented since legislators passed the law as part of the 1955 Groundwater Act.

We also note that conflating the voluntary nature of the agreements with freedom, which is both the public relations message and the main benefit VA proponents seek (e.g., freedom from the imposition of Corrective Control Orders, freedom to hot-swap water sources and locations, freedom to exceed the rates of water rights, etc.), has the effect of misrepresenting the potentially egregious negative impacts. We sense the inadvertent and inescapable possibility that proponents cannot avoid voluntary-washing their ambitions to obscure how the envisioned privileges and immunities may benefit them at the expense of others: "It's voluntary; what's not to like?"

We explained how gerrymandering the CGWA subareas only serves proponents of VAs; worse, the process forces irrigators in low-priority areas to give up their water to irrigators in high-priority areas, which when reverse-engineered by OAR 690-010-0130(3)(b) and (c), simulates a state-mandated water right transfer that redefines the term *water right subject to transfer* in ways no one could have ever envisioned.

Voluntary Agreements under ORS 537.745 incentivize lawful behavior by offering exclusive benefits to participants, effectively rewarding them for voluntarily complying with laws that are intended to apply equally to all. This arrangement contradicts the principle of equal application of the law, creating a privileged class that operates under different rules.

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August 12, 2025

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Water League submits our comments on the Chapter 690 Division 512 Notice of Proposed Rulemaking Amending and adopting Division 512 rules concerning groundwater management in the Malheur Lake administrative basin. These comments are in addition to our oral testimony presented on Tuesday, August 5, 2025.

As always, we appreciate the opportunity to share our thoughts.

Thank you,

Christopher Hall
Executive Director

Comments on the Chapter 690 Division 512 Malheur Lake Basin Administrative Rules

By Christopher Hall, Water League – August 12, 2025

Abstract summary:

The Oregon Water Resources Department's Chapter 690 Division 512 rules mark a long overdue shift in groundwater management, outlining how officials shall discharge their fiduciary duty to protect groundwater for present and future generations and ecosystems. The rules align with Oregon's constitutional and statutory obligations to manage water in the public trust.

In the Harney Basin, unsustainable over-pumping depletes deep ancient groundwater reserves that are not being renewed at human timescales, and it harms shallow recharge zones where domestic wells, springs, and groundwater-dependent ecosystems are located. Unsustainable over-pumping threatens both the public health, safety, and welfare, and flora and fauna in the present and future. The habitability for all creatures declines as over-pumping evaporates water away from the Harney Basin.

The Division 512 rules propose a 35% reduction in water use over 30 years to curb groundwater mining. In so doing, the state recognizes that continued over-extraction is contrary to the public interest. By designating the Harney Basin as a Critical Groundwater Area (CGWA), these rules establish a legal framework for equitable and sustainable groundwater management by balancing intergenerational equity and ecological integrity with short-term extractive interests.

Note:

Water League assiduously avoids recommending to OWRD hydrologists how to run their models, conduct their studies and research, and determine solutions to complex scientific and engineering problems related to resolving the problem of excessively declining groundwater levels. Throughout the Division 512 Rules Advisory Committee (RAC) meeting process, some RAC members and members of the public stated that they did not understand much of the complex details presented, while others questioned the merits of the hydrologic research and proposed alternatives to complex hydrological methodologies without the professional qualifications necessary to do so. The incomprehension and skepticism resulted in tripling the number of RAC

meetings, adding more than a year to the process,[1] and prompting a dozen informal Discussion Groups run by Oregon Consensus and the High Desert Partnership. These accommodations were made to explain the scientific research, groundwater models, and complexities of the Division 512 rulemaking policies so that RAC members and the public could "provide input/advice and help [the] Department consider various perspectives."[2] Water League contends that there is a difference between possessing a sufficient understanding of the material to participate in the rulemaking process and possessing the expertise to (re)direct hydrologists in the execution of their professional duties.

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"*If the WRD is not given clear authority to stop issuing permits in these cases, not many years from now there will no doubt be many people who will have made large investments in water resource development and come to rely on water that with increasing frequency very well may not be available.* ***This will most likely bring on tremendous conflicts involving environmentalists on the one hand, junior appropriators on the other, and the WPRB caught in the middle.*** *It would serve the interests of all to prevent these conflicts from intensifying*."[3]

[1] Oregon Water Resources Department, Rules Advisory Committee Meeting, Division 512 Rulemaking: Ground Water Regulation for the Malheur Lake Administrative Basin, (PowerPoint presentation, August 29, 2023). [9-10]
[2] Oregon Water Resources Department, "Division 512 RAC Presentation," August 29, 2023. [8]
[3] Bret William Stafford, "The Problems and Issues of Implementing Oregon's Minimum Stream Flow Program" (Master's Thesis, Oregon State University, 1977). [22, **emphasis added**.] (Bret William Stafford's 1977 master's thesis explores instream and out-of-stream values, tensions, and proposed solutions that were debated a decade before the 1987 instream water rights statutes. Brett was the son of the great poet, William Stafford. He explains: "The WRD consists of the Water Policy Review Board (WPRB), the Water Resources Director, and the staff and assistants working under the Water Resources Director." [5])

I. Introduction:

The Oregon Water Resources Department is wrapping up the first phase of a fraught yet high-functioning rulemaking process that will have lasted approximately three years by the time it is complete.

The process has been fraught because the state is attempting to manage the *Tragedy of the Commons*[4] destruction of water sources, which in its own right is very difficult. But, OWRD has followed state law, which requires that: "The membership of an advisory committee appointed under this subsection must represent the interests of persons and communities likely to be affected by the rule."[5] This requirement has made the Rules Advisory Committee (RAC) meetings even more challenging to conduct because a supermajority irrigator-aligned cohort formed a bulwark against the proposed rules that would restrict groundwater pumping, even though such rules are necessary to prevent irreversible groundwater depletion to protect the broader public interest.

The rulemaking process has also been high-functioning because at every turn, OWRD staff practiced patience, active listening, and considerate responsiveness in meetings. They held many more meetings than planned and allowed meetings to focus on sticking points; they attended a dozen independent "Discussion Groups," some of which were day-long activities; they prepared extensive documentation to convey many complex ideas and proposals, and paired them with extensive discussions to ensure no RAC member or member of the public was left behind; and staff provided constant and thorough notice of meetings, produced comprehensive agendas and slide decks to run meetings in logical and sequential formats, provided meeting summaries and video recordings for review at any time, and were responsive to post-meeting follow-up emails and discussions related to questions, comments, and concerns.

In response to HB 3800 in 2025, which sought to enact a law superseding the Division 512 Rulemaking process and was sponsored by Representative Mark Owens (a RAC member and irrigator from Crane whose wells sit atop some of the steepest cones of depression in the Harney Basin), Water League wrote to OWRD staff on March 27, 2025:

> The 184-page slide deck presentation for the April 2 DIV 512 RAC is an extraordinary accomplishment by OWRD that demonstrates your meticulous work to address all aspects of the CGWA process, from hydrology, modeling, economics, input from the community and broader public, responsiveness to that input, and painstaking clarity in developing and

[4] Garrett Hardin, "The Tragedy of the Commons," *Science* 162, no. 3859 (December 13, 1968): 1243–48, https://doi.org/10.1126/science.162.3859.1243.

[5] ORS 183.333 *Policy statement; public involvement in development of policy and drafting of rules; advisory committees*. (1).

> explaining rules language to ensure informed and constructive feedback. Along with diligence and patience to get this process right over two years by finding the best broad-based alternatives to the status quo, OWRD has hedged against picking winners and losers or letting that process devolve into such inequity.[6]

Water League uploaded that 184-page slide deck presentation as a report to the HB 3800 testimony tab[7] to show the extent to which OWRD staff have conducted due diligence in the Division 512 rulemaking process despite extraordinary resistance to the rulemaking process.

We begin our comments on the proposed Division 512 rules with this duality (fraught yet high-functioning) because a central fault line exists between the public interest in stopping the harm to the state's water sources and the minority special interests who are mining the groundwater in the Harney Basin. The tension built along this fault line has sustained conflict throughout the rulemaking process. Notably, this conflict has driven the process closer to a resolution that incorporates the public interest. The past consensus that water use was the sole purview of the water user, and that OWRD must service such "clients" to enable them in their unsustainable endeavors, has finally begun to recede. The conventional water management paradigm has been evolving for a number of years towards greater consideration of the long-term public interest as irrigators' longstanding demands of OWRD to permit subprime water right applications led to widespread over-appropriation and subsequent over-pumping.

II. Public Sentiment and the Greater Public Interest

Many people have an interest in the well-being of the public's water sources, whether they live in any particular basin today, lived there in the past, or may live there in the future; whether they visit the region, have friends and family that have ties to the region, or care about the water sources for ecological, spiritual, ancestral, social, cultural, and economic interests during the present and long-term future. We contend that people who have not been born yet hold the same interests, and our actions today should not foreclose upon their forthcoming rights to enjoy the same.[8]

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[6] Note: The April 2, 2025, RAC #14 meeting was postponed to April 16 to account for the flooding in Burns.

[7] Oregon Water Resources Department, "Groundwater Regulation for the Malheur Lake Administrative Basin Rules Advisory Committee" RAC #14 slide deck, April 2, 2025. (Submitted as testimony for HB 3800 to the Oregon Legislative Information System by Water League. Ultimately, the bill died, sequestered in the House Committee on Rules, where it was being reengineered.)

[8] Clark Wolf, "Contemporary Property Rights, Lockean Provisos, and the Interests of Future Generations," *Ethics* 105 (July 1995): 791–818. (We distinguish, as Clark Wolf does, between the public of the future having an interest in the usufructuary right to water sources and the present public's limited entitlement to use those sources without destroying or degrading them. While current users may have access to the fruits of water resources, they do not have a moral or legal claim to compromise the underlying substance of those resources in ways that foreclose access for future persons. The interests of future generations, though not presently assertable in conventional legal forums, nonetheless impose

We note, however, that the Notice of Proposed Rulemaking (similar to the dozen-plus RAC meetings) frames regulatory actions with a dour tone. The language is devoid of optimism, reflecting the gravity of the situation from a solely present-day outlook. This bias contrasts sharply with how the same actions might be viewed from a future perspective. Those living in a future when water sources have been stabilized would likely be delighted, seeing these rules not as a cause for harm, but as a forward-thinking decision that prevented the collapse of the basin's resources and ensured water availability for generations to come. Water League calls for a more equitable reckoning of the public sentiment. Water Users in the present improperly act as if they have seniority over the future, resulting in the present regulating off the future's access to water.

Water use and water quality are broadly held concerns by the public across and through all basins. While only some lands belong to the public, ORS 537.110 *Public ownership of waters* declares that "All water within the state from all sources of water supply belongs to the public." No one person can own the water because it belongs to everyone.

In 2023, The New York Times conducted an expansive study of groundwater declines across the entire U.S., titled "America Is Using Up Its Groundwater Like There's No Tomorrow."[9] Notably, the readership of the NYT is national. The article contains almost 1,800 comments, which is much more than the average headline article. We regard the public sentiment as a legitimate statement of the greater public interest in groundwater.

We read most of the comments and had Chat GPT review the entire set to find themes. Based on these two types of review, the overall sentiment of the NYT commenters was concern about the unsustainable trajectory of groundwater use and a sense that political will and public awareness are lacking. Many believe the depletion of aquifers is an immediate crisis resulting from anthropogenic activity overwhelming ecological limits. They are frustrated by short-term outcomes driving political and economic decisions and call for better planning, regulation, and stewardship. The prevailing mood is one of realism bordering on alarm. These public concerns are not without justification: recent findings show that groundwater depletion is the dominant driver of global freshwater loss, affecting the majority of the world's population and in many cases representing an irreversible decline on human timescales.[10]

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real obligations on today's society not to exhaust or pollute water sources that must remain intact for the future's equal and undiminished enjoyment.)

[9] Mina Rojanasakul, Christopher Flavelle, Blacki Migliozzi, and Eli Murray, "America Is Using Up Its Groundwater Like There's No Tomorrow," *New York Times*, August 28, 2023.

[10] Hrishikesh A. Chandanpurkar, James S. Famiglietti, Kaushik Gopalan, David N. Wiese, Yoshihide Wada, Kaoru Kakinuma, John T. Reager, and Fan Zhang, "Unprecedented Continental Drying, Shrinking Freshwater Availability, and Increasing Land Contributions to Sea Level Rise," *Science Advances* 11, no. 30 (July 25, 2025): eadx0298, https://doi.org/10.1126/sciadv.adx0298. [10] ("The authors surmise: "In many places where groundwater is being depleted, it will not be replenished on human timescales. The disappearance of groundwater from the world's aquifers (13, 14, 20, 26, 27, 50) is a critical, emerging threat to humanity and presents cascading risks that are rarely

The comments revealed three main themes: concern for water sources, ecosystems, and communities; frustration over continued depletion; and disillusionment that officials' insufficient response will fix the problem. Commenters overwhelmingly viewed groundwater depletion as a preventable crisis driven by corporate greed, political cowardice, and consumer denial. Many expressed anxiety and a sense of powerlessness, feeling that large-scale water use is beyond their control. There was also anger directed at industrial agriculture and bottled water companies that profit from water extraction while local communities face scarcity. There was broad consensus that water should be treated as a public trust, not private property.

Commenters are especially critical of state and federal inaction, and cite a lack of leadership, transparency, and unwillingness to confront powerful water use interests. Commenters believe climate change, population growth, and wasteful lifestyles (e.g., lawns, golf courses, and meat consumption) are accelerating the groundwater crisis.

While a few propose hopeful solutions like recharge basins, conservation, or regenerative agriculture, the prevailing mood is that we are running out of time to find solutions. Among many comments is a sense of urgency and powerlessness in the face of long-standing mismanagement. The tone veers from resignation to moral outrage, with many fearing that only collapse will finally provoke action. (Notably, the Harney Basin had to drain uncontrollably for 35 years before state officials could muster the fortitude to take action, which still faces significant political headwinds.) The overall sentiment feels burdened by a reckoning with ecological limits and skepticism that our current political and economic systems are capable of meaningful change. This feels similar to the despair many feel about how the climate change crisis will not be resolved favorably. Water League, however, agrees that while climate change may be out of our reach, officials can always reduce the over-pumping of groundwater reservoirs.

To hold water in trust, the WRC and state officials must consider the greater public interest as a distinct factor unto itself that embodies the sentiment discussed above. In a recent radio segment, we discussed how:

> The public interest is neither the addition of all the special interests in a room nor a thematic reduction of them to a few generic concepts. Rather, the public interest is a wholly separate phenomenon, which is what the entire society needs in order to remain civilized. Not surprisingly, serving the greater public interest usually requires some degree of limiting individual special interests. Freud talked about frustrated individuals in his book, *Civilization and Its Discontents*; these were the folks who resented giving up some liberties

incorporated in environmental policy, management, and governance. It is an intergenerational resource that is being poorly managed, if managed at all (20, 26, 50), by recent generations, at tremendous and exceptionally undervalued cost to future generations. Protecting the world's groundwater supply is paramount in a warming world and on continents that we now know are drying.")

> to enable everyone to get along. Laws and regulations set limits on behavior for the greater good in both the present and the future. The public interest is what's an interest to society as a whole, which sometimes is going to be different from individual special interests.[11]

III. Review of the Existing Division 512 Rules adopted in 2016

We comment below on select provisions of the existing Division 512 rules adopted in 2016 to set the context for our comments on the proposed new Division 512 rules in 2025.

The existing 2016 rules are a temporary placeholder, anticipating the current Div 512 rules that are to impose a CGWA. The existing 690-512-0020 *Groundwater use in the Greater Harney Valley Groundwater Area of Concern* rule states:

> (12) Within 1 year after the Groundwater Study discussed in subsection 11 has been published by the Department, the Department will convene a Rules Advisory Committee to explore whether there is a need for updates or changes to these rules.

Overdraft problems in the Harney Basin needed immediate cursory restrictions on new water rights in 2016 to bide time for the current 2023-2025 rulemaking process to proceed. The 2016 rule, 690-512-0020, also states:

> (1) The Greater Harney Valley Groundwater Area of Concern (GHVGAC) is established to ensure that groundwater in the GHVGAC is appropriated within the capacity of the resource and that new appropriations of groundwater assure the maintenance of reasonably stable groundwater levels and prevent depletion of the groundwater resource.

We acknowledge that the temporary 2016 Div 512 rules sought to limit new water use allocations in anticipation of imposing water use curtailments shortly thereafter, but the language fails to acknowledge the circumstance that OWRD and water right holders had already over-appropriated the Harney Basin beginning around 1990. Ensuring "that groundwater in the GHVGAC is appropriated within the capacity of the resource" in 2016 was moot, and should have been state policy 30 years earlier. But the sense of urgency is palpable: for over a decade, there have been numerous studies and models by OWRD and the USGS,[12] two Div 512 Rulemaking processes in 2015-2016 and 2023-2025, the Harney Basin Place-Based Planning and the Groundwater Study Advisory Committee (SAC), and many other related meetings and discussion groups, including regular updates before the WRC. Numerous studies since the mid-20th century have noted the

[11] Christopher Hall, Water League "WaveMaker Report #6," KXCJ 105.7 FM, Valley News and Views, July 15, 2025.
[12] For just one example: Gingerich, S.B., Johnson, H.M., Boschmann, D.E., Grondin, G.H., and Garcia, C.A., 2022, "Groundwater resources of the Harney Basin, southeastern Oregon: U.S. Geological Survey Scientific Investigations Report" 2021–5103, 118 p., https://doi.org/10.3133/sir20215103.

potential for industrial-scale water users to over-draft groundwater in the West, in eastern Oregon, and the Harney Basin.

We also note a key aspect of that diligence related to water use management in the existing 2016 rules, 690-512-0020, which state [**emphasis added**]:

> (3) In processing applications to appropriate and use groundwater within the GHVGAC, the Department **may not find that the proposed use will ensure the preservation of the public welfare, safety and health unless** the use is classified, and unless water is available for the proposed new use as described in subsections (4), (5), (6), and (7) of this section.

This rule inheres the self-evident fact that the "public welfare, safety, and health" are fundamental constituents of the public interest, as there can be no credible assertion that these elements are not, individually or collectively, essential to the public interest. If OWRD encounters a proposal for water use that is not classified or that would pump from a location where water is not available, such a proposed water use could not possibly constitute a public benefit; at the very least, it could not be allowed to impair the public welfare, safety, and health. Prohibited water uses referred to in Section (3) above could not possibly be a beneficial use of water because the state "may not find that the proposed use will ensure the preservation of the public welfare, safety and health."

IV. Ensuring Beneficial Use by Limiting Harm

The 2025 proposed Division 512 rules strike the content from the existing 690-512-0020 section and add several new sections with clear statements that outline precisely how OWRD will curtail 35% of all irrigation water use to protect the public health, safety, and welfare. There is no clearer statement about what constitutes a non-beneficial use of water than restricting uses that conflict with the public's interest in their water.

The profound imposition of water use curtailments in the proposed 2025 Division 512 rules greatly increases protection of water sources to the extent Permissible Total Withdrawals (PTW) are far more consequential than conditioning new water right allocations on certain criteria, such as classification and water availability. The addition of withdrawal limits in the proposed Division 512 rules indicates a greater consideration of the public health, safety, and welfare over the 2016 policy that merely conditions new water use allocations.

In Oregon, reasonable use is implied in beneficial use; whereas, for comparison, in California water law, reasonable use and beneficial use track together as independent terms. OAR 690-0300-0010 states:

> (5) "Beneficial Use" means the reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state.

For 150 years, Oregon's beneficial use of water doctrine has been frequently misconstrued to apply only to the water user, even though many statutes acknowledge that all water uses impact the public generally. The intent to designate a CGWA by the proposed Division 512 rules acknowledges that some water use irrigating alfalfa is beneficial to both the users and the public (or at least does not harm the public's health, safety, and welfare), but that 35% of the water use irrigating alfalfa is not beneficial to the public, even if it remains beneficial to the users who would stridently resent the imposition of Corrective Control Orders curtailing their water use. In more than a dozen RAC meetings, we have seen the disjunction between the users who argue that their water use is beneficial to them, while others have equally argued that the same water use harms the greater public and ecosystems. Clearly, the state agrees that at least 35% of the existing irrigation water use in the Harney Basin is harmful because it intends to implement and enforce the CGWA statutes, ORS 537.730 to 537.742, ORS 537.780, the rules in OAR 690-010, and the proposed rules in OAR 690-512.

Recent statutes acknowledge how some water use is not sufficiently beneficial to the greater public and cannot be allowed to continue, despite how the water users feel otherwise. For example, HB 4061 in 2022 prohibited the distribution of municipal use water to sites where unlicensed cannabis plants are present because the public made it clear to officials that such deliveries harmed the public health, safety, and welfare. Due to the income generated, the unlawful cannabis growers, the bulk water truckers, and the municipalities all thought the municipal water use was beneficial to them. But the greater public felt otherwise, and HB 4061 came down in support of the greater public.

SB 326 in 2023 prohibited the use of any water from any source to be used in any way on a site where unlicensed cannabis plants are present. While the unlicensed cannabis plant growers believe their water use is a benefit to them for income purposes, the general public holds a different view: water use related to unlicensed cannabis grows harms them and the ecosystems upon which they rely. Therefore, the state concluded that irrigating unlicensed cannabis plants is not a beneficial use of water. We incorporate by reference *Cannabis Industry Impacts to the Environmental Health of the Illinois River Basin and Community Well-Being*,[13] which describes in detail the disjunction between the water users' interests and those of the general public. SB 326 prohibits all such water use, including water use authorized by water right permits and certificates, because irrigating unlicensed cannabis is not "reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state."

[13] Hall, Christopher. 2022. Cannabis Industry Impacts to the Environmental Health of the Illinois River Basin and Community Well-Being. Illinois Valley Soil & Water Conservation District, Oregon.

We offer a more rosy example of how laws comply with the beneficial use of water doctrine: for 70 years, Oregon *unreasonably* prohibited the public from using their exempt use domestic wells on their 1/2 acre gardens when those water users would have sold their produce at their local farmers' markets. Given the state's allowance of water uses for commercial and industrial activities at a rate of 5,000 GPD from these same wells (a double standard), coupled with the community value of local food production, Oregon rightly ended the 70-year prohibition by enacting HB 3372 in 2025. Irrigating a 1/2 acre garden from an exempt use domestic well is indeed a beneficial use of water that promotes the public health, safety, and welfare because it is a "reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state."

A plant does not have to be heavily regulated by the OLCC to pose a threat to the public health, safety, and welfare insofar as its irrigation is concerned. Numerous factors may account for why water use harm related to a plant occurs besides the state's controlled substance regulations. Those factors include, but are not limited to: aridification, excessively declining groundwater levels, subsidence, impaired water quality, dewatered perennial streams and springs, negative impacts resulting from climate change, prolonged drought, the misappropriation of water, ecosystem impairments, violations of the Environmental Species Act, and the use of water in the commission of a crime.

To address these harms and ensure water use truly serves the "best interests of the people of the state," Oregon law establishes rigorous standards. For example, consider Section 2 of ORS 537.780, which places a burden of proof on the Water Resource Commission (WRC) when commissioners seek to impose groundwater restrictions or make determinations about groundwater-surface water interactions.[14] Since substantial evidence shows in the Harney Basin that groundwater levels are excessively declining and that groundwater reservoirs below 100 feet are not replenishing on *meaningful human timescales*, this data serves as the justification for water use restrictions. The purpose of these restrictions is to prevent the impairment, if not destruction, of public and ecological resources for present and future generations. Yardstick measurements are not the end purpose (*telos*); rather, they are the evidence of manifest harm to the public health, safety, and welfare. The Division 512 designation of a CGWA is data-driven and directly related to the negative impacts on the ecosystems and the public in the present and future.[15] The substantial

[14] Or. Rev. Stat. § 537.780(2) (2025), which states, "Notwithstanding any provision of subsection (1)... the commission may not: (a) Adopt any rule restricting ground water use in an area unless the rule is based on substantial evidence... to justify the imposition of restrictions. (b) Make any determination that a ground water use will impair, substantially interfere or unduly interfere with a surface water source unless the determination is based on substantial evidence."

[15] Gordon Lyford, "Audit of Harney Basin OWRD Excel Spread Sheet of Well IDs," Water League, April 15, 2025. (OWRD's well identification data in the Harney Basin is incomplete, inconsistent, and in many cases erroneous, undermining the Department's ability to meet the "substantial evidence" standard of ORS 537.780(2) and jeopardizing the enforceability of curtailments or other CGWA management actions. OWRD rightfully intends to prohibit all misappropriations of water in the Harney Basin before curtailing lawfully conforming junior water rights. OWRD

evidence required by ORS 537.780(2) delineates the very harm taking place throughout the Tragedy of the Commons.

The statutory requirement for substantial evidence means the WRC cannot arbitrarily restrict groundwater use or make unfounded determinations. Commissioners must have demonstrable, fact-based justifications for their assessments and actions. When the OWRD presents substantial evidence of excessively declining groundwater levels, overdrawn groundwater reservoirs, failing domestic wells, dried-up springs, desiccated Groundwater Dependent Ecosystems (GDE) and pasturelands, or unrecoverable Ancient Water, that evidence is, by its very nature, a direct articulation of the harm to the public health, safety, and welfare and to the ecosystems upon which all life depends.

The existence of such an evidentiary standard in ORS 537.780(2) indicates a legislative intent that water management decisions must be grounded in compelling reasons that go beyond those articulated by special interests. Since water use has broader impacts than just those enjoyed by the water user, WRC determinations and restrictions are directly related to the greater public good. Requiring substantial evidence for determinations and restrictions means that the reasons for WRC actions *are the rationale* that connects directly to public interest concerns. Through the evidentiary standard in ORS 537.780(2), the WRC resolves the disjunction between the benefits that water users enjoy and the harms their water uses cause to the public health, safety, and welfare. The evidence of these harms becomes the basis for determining that such a use is no longer a beneficial use of water that is a "reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state."

The very act of the state needing to determine substantial evidence to justify restrictions on existing water uses demonstrates an inherent acknowledgment that some previously permitted or existing uses, over time or under changing conditions, have lost their status as beneficial. This circumstance cannot come as a surprise to anyone. The state cannot say that the water use it intends to restrict is still a beneficial use of water. Why? Because the water use is no longer "consistent with... the best interests of the people of the state."

By demanding substantial evidence, ORS 537.780(2) ensures that when the WRC approves a water use or allows one to continue, it is necessarily beneficial in a way that aligns with a contemporary understanding of the public's current and future interests in their health, safety, welfare, and in ecological sustainability. The substantial evidence standard finding measurable harms serves as a powerful foil to beneficial use by allowing the state to demonstrate where water use ceases to be beneficial and becomes detrimental.

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must ensure all wells have been positively identified as either conforming, non-conforming, or in a state of coming into conformance to meet this standard.)

ORS 537.780(2) provides the factual basis and legal justification to impose water use limitations. By presenting such evidence, the state can concretely measure and determine the opposite of beneficial use, which is the harmful uses we discussed in our paper, *Water Use Harms: The Unintended Consequences of Beneficial Use*, which we incorporate by reference here.[16]

V. The Greater Harney Valley Groundwater Area of Concern

In the Greater Harney Valley Groundwater Area of Concern (GHVGAC), the harms driving the state's designation of a CGWA and subsequent Corrective Control Orders include: excessively declining groundwater levels, subsidence, impaired water quality, misappropriation of water, domestic well failures, desiccation of GDEs and pasturelands, and the dewatering of springs, lakes, and drainages.

Regarding the impairment of water sources: in a sweeping scientific investigative report, the USGS calls Harney Basin groundwater "Ancient Water" that glaciers deposited 30,000 to 5,000 years ago.[17] In a fact sheet used to summarize that report, the authors state their three *Important Study Findings*, one of which is "Most groundwater pumped from lowland wells is ancient and not being replenished at meaningful human timescales."[18] Their discussion of the harm related to over-pumping groundwater states that [**emphasis added**]:

> **Geochemical evidence indicates that modern recharge generally circulates to a depth no greater than 100 feet below the floodplains of major rivers and streams in the lowlands.** Away from the major river and stream corridors, pre-modern water commonly is found at the water table. **Recharge to groundwater and recovery of groundwater levels in the most heavily pumped areas in the Harney Basin lowlands are restricted by the limited spatial extent and depth of modern recharge in the Harney Basin lowlands** and the relatively fine-grained deposits underlying most of the lowland areas.[19]

The USGS and OWRD scientists explain that recovery of a large portion of the groundwater pumped from the Harney Basin cannot be recovered within human time scales. To be clear, most irrigation wells in the Harney Basin that are deeper than 100 feet are drawing from ancient,

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[16] Christopher Hall and Gordon Lyford, Water Use Harms: The Unintended Consequences of Beneficial Use, Water League, September 27, 2024.

[17]Gingerich et al., Full Study, 2022. [48] (Based on the multi-tracer evidence, much of the deep groundwater in the uplands and most of the groundwater in the Harney Basin lowlands was recharged in the late Pleistocene to mid-Holocene (about 30,000–5,000 yrs ago) when climatic conditions in the northern Great Basin were cooler and wetter than today.")

[18] Gingerich, S.B., Garcia, C.A., and Johnson, H.M., 2022, Groundwater resources of the Harney Basin, Southeastern Oregon (ver. 1.1, June 2025): U.S. Geological Survey Fact Sheet 2022–3052, 6 p. [1]

[19] Gingerich et al., Full Study, 2022. [1]

effectively non-renewable groundwater.[20] For this obvious reason, it appears that OWRD has not generally sought recovery of groundwater levels; instead, the department has focused on a *Target Groundwater Level Trend* of zero decline. For groundwater reservoirs deeper than 100 feet, excessively declining groundwater levels are on a one-way elevator going down, with no hope for going back up anytime soon.

Water League has a few questions that are directly related to the long-term public interest, insofar as the beneficial use of water is concerned:

- Can OWRD incorporate two distinct outcomes in the rules: one for unconfined aquifers where the water-table level is the key indicator of recovery, and another for confined aquifers where the piezometric level (or potentiometric surface), as identified in the USGS and OWRD study, is the relevant measurement?
- At what point in the groundwater reservoir elevation will the state choose to stop the harm from worsening, both at the shallow <100-foot level and the regions deeper than 100 feet?
- If the loss in groundwater below the 100-foot level since 1980 is a permanent loss, then has the state agreed to discount the loss as "water under the bridge," as apparent in the proposed rule, 690-512-0080(2)?

Since the state has declared that water equals money,[21] water mining is the *de facto* business of irrigators who gross one penny for every five to nine gallons of water used to irrigate alfalfa.[22] Water mining directly causes the enormous deficit in the Harney Basin water budget, alternately referred to as the diminishing groundwater bank account. A key factor leading to the designation of a CGWA in the Harney Basin is the persistent and substantial imbalance between annual groundwater recharge and discharge. The Harney Basin is being overdrawn by approximately 110,000 acre-feet per year, which is equivalent to the annual municipal water use of Portland.

Much of the deficit results from discharging reservoirs below 100 feet that were last charged during the late Pleistocene glacial period and will take an unknown number of generations to recharge. Most recharge in the basin percolates to depths of less than 100 feet. These shallow zones support springs and GDEs, and are tapped by relatively shallow wells. These ecosystems

[20] Gingerich et al., Full Study, 2022. [62]

[21] ORS 536.310 *Purposes and policies to be considered in formulating state water resources program*. "(2) It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the state as a whole."

[22] In 2020, Oregon alfalfa irrigators produced on average 4.6 tons/ acre * $205/ ton = $943/ acre-year. 2.5 acre-feet irrigation water use/ acre-year is a reasonable median irrigation requirement, which equals 813,953 total gallons of irrigation water used per acre. The value alfalfa unlocks = $0.00116, or roughly 1/9th of one cent per gallon. If, however, we use the claims made in the ECOnorthwest study (discussed later): Harney Basin alfalfa irrigators produced on average 5.5 tons/ acre * $273/ ton = $1,501/ acre-year, which means this value alfalfa unlocks = $0.00184, or roughly 1/5th of one cent per gallon. Water League argues in the section of these comments titled "Fiscal Impacts and Economics" that this higher figure is not credible.

have been stressed for at least 30 years, and an increasing number of domestic wells must be deepened (a remedy not afforded to the ecosystem).

Geochemical and isotopic evidence indicates that these deeper aquifers do not receive meaningful modern recharge under current climatic conditions. The USGS/ OWRD report explains a common phenomenon:

> The vertical distribution of groundwater ages observed in this region is similar to that observed in the Silvies River/Poison Creek floodplain–namely, a thin layer of predominantly modern groundwater resting atop a large body of predominantly pre-modern groundwater.[23]

The takeaway is that recharge and discharge in the thin, shallow geologic layer is dynamic and aridifying. As well pumps drain the upper 100-foot layer, shallow domestic wells, GDEs, and springs dry out. Meanwhile, in the underworld, below the 100-foot layer, groundwater recharge does not meaningfully occur at human timescales.

These facts point clearly to severe harm to the public health, safety, and welfare of the present and future, and to the ecosystems upon which all flora, fauna, and humans rely. Destruction of Oregon's water sources must be prohibited. We do not see how such destruction is not a legal injustice perpetrated on others, particularly those in the future who are the quintessential silent majority.[24]

Referring to groundwater pumping, the USGS states that "the extraction of this resource for economic gain constitutes ground-water mining in the truest sense of the term."[25] In his law review article, "Ground Water Mining Law and Policy," J. David Aiken explains that "Ground water mining or depletion occurs when withdrawals from an aquifer, a ground water formation, exceed net recharge."[26] And to round out the concept is Harold E. Thomas' USGS circular from 1955, which states: "Ground water mining, the progressive depletion of storage in a ground-water

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[23] Gingerich et al., Full Study, 2022. [90]
[24] Wolf, "Contemporary Property Rights." [810-818] (Rather than granting absolute dominion over resources, usufructuary rights impose duties of care, restraint, and preservation, especially when dealing with finite or slowly renewing natural systems. Oregon does not allow possessory ownership of water. Those with a usufructuary water right to use the public's water, and the very public themselves have a responsibility across time to ensconce long-term sustainability and accountability into law. Elected and appointed officials must provide leadership holding water in trust to ensure the sanctity of water for posterity.)
[25] Devin L. Galloway, David R. Jones, and Scott E. Ingebritsen, eds., *Land Subsidence in the United States*, U.S. Geological Survey Circular 1182 (Reston, VA: U.S. Geological Survey, 1999), https://doi.org/10.3133/cir1182.
[26] Aiken, J. David, "Ground Water Mining Law and Policy" (1982). Faculty Publications: Agricultural. [4] Economics. 32.https://digitalcommons.unl.edu/ageconfacpub/32 [505] (Aiken continues on page 512: "If water levels decline annually as well as seasonally, however, ground water mining is occurring.")

reservoir." [27] Oregon's Economic Pumping Level[28] describes how pumping continues until it's no longer financially viable for irrigators, based on the cost versus crop value. Short of regulatory action, the ongoing decline of groundwater in the Harney Basin highlights that this economic threshold is unavoidable.

To date, the most effective remedy is the 1955 CGWA statutes that the state adopted, knowing back then that excessive declines in groundwater levels were a critical public health and environmental issue. As trustees of the water that belongs to the public, OWRD staff and the WRC have always had a fiduciary duty to ensure the Harney Basin groundwater bank account would not be overdrawn. Because they did not discharge their fiduciary duties sufficiently in the past (due to unjustified powerful political and economic reasons), today they are faced with the job of curtailing water use to protect the future, both in the short and long terms.

We ask a question conspicuously absent from the Division 512 Rulemaking process: for whom are these CGWA rules written? Are they written for people in the past who have since died? Are they written to benefit people in the present, or are they written for those in the future, who would like water in the coming generations?

Left to the inexorable facts of the Tragedy of the Commons, irrigation over-pumping would foreclose future access to water. The Division 512 rules are not designed to benefit those currently draining the resource (they are already over-benefitted), but to prevent irreversible harm and preserve the public trust resource (for those who are under-benefitted). We again refer to Clark Wolf's seminal paper on this topic:

> Our duty not to damage or destroy resources is not based on the property rights of future persons, only on the general prohibition against causing harm. We may stipulate, however, another sense of the term 'usufruct' on which it refers to a limited property claim that affords the claimant the right to use and to consume the fruits of property but no right to damage or destroy its substance. . . While there is no one else whose claims supersede those of current owners, such owners simply do not possess any valid claim to degrade, consume, or destroy resources in which future persons have an important stake.[29]

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[27] H. E. Thomas, *Water Rights in Areas of Ground-Water Mining*, U.S. Geological Survey Circular 347 (Washington, D.C.: U.S. Geological Survey, 1955). [1] (Thomas continues on page 9, stating: "The water in areas of ground-water mining, however, may have great storage volume but negligible replenishment, and thus may not qualify as a renewable resource.")

[28] Or. Admin. R. 690-008-0001(6) (2024), Oregon Secretary of State, Administrative Rules, Chapter 690, Division 8, "Statutory Groundwater Terms." ("Economic Pumping Level" means the level below land surface at which the per-acre cost of pumping equals 70 percent of the net increase in annual per-acre value derived by irrigating.")

[29] Wolf, "Contemporary Property Rights." [811-812] (Clark concludes his assessment, stating: "If current claims on resources constitute usufructuary rights rather than more robust rights of full-blown ownership, then these rights will not be violated by legislative restrictions that prohibit destruction or degradation of privately owned resources needed by future persons.")

Recall that we began our Division 512 comments, noting how the process of drafting these future-oriented rules has asked the very parties responsible for the crisis to provide advice on how to stop their water mining. Their ensuing cognitive dissonance led to sustained resistance against proposed curtailment measures and a push to "water down" regulations that would otherwise protect future access to the very water they want to use for their income.

Oregon does not revise the Division 512 rules to serve industrial-scale water users today; if it did, then irrigators (who use 95% of all water in the Harney Basin each year) would be more amenable to the coming water use reductions. The state adopts rules for others' benefits but seeks advice from those to whom the rules will apply. Notably, there is a difference between seeking the advice of those whom the rules are likely to negatively impact and adopting rules that will benefit others who are forthcoming. Oregon's Division 512 rulemaking process is not a negotiation with current water users, but a legal and moral obligation to consider their input while ultimately making a decision that serves the broader and long-term public interest. The time has come to stop avoiding this elephant in the room and accept the unspoken truth that the Division 512 rules serve tomorrow's residents who have no voice but are deeply affected by the decisions made in the present.

The Division 512 rules are clearly a future-facing moral and legal intervention: a line drawn to say that the destructive practices of the present cannot continue unabated, especially when their costs are shifted forward in time onto those who had no part in the harm and cannot be present to advocate for themselves, even though we know for a fact that they will eventually be present.

VI. Fiscal and Economic Impacts

To properly evaluate the fiscal and economic impacts of the proposed rules, it is necessary to consider not only the present-day costs but also the long-term benefits for future generations. We highlighted this perspective in our public comment at the Division 512 RAC on October 2, 2024, when we articulated what a Harney Basin economic study should consider: [**emphasis added**]:

> As a term, *fiscal impact* relates to both current conditions and future conditions. If pumping is not sufficiently curtailed in the short-term, then the long-term fiscal impact is harmed. Fiscal impact research by an economist has to consider the future public interest.
>
> An important question of the day is: "Over what timeline should OWRD achieve the goal of Zero Rate of Decline?" What would folks alive in 2100 say?
>
> Saying that OWRD's position of "No Rate of Decline" reduces irrigated acreage too much is a *present-day perspective* that impacts the future *of those here today*; however, no rate of decline helps the long-term needs of others who are not here today. There's an important

> difference to acknowledge between protecting the future of those who live today, and protecting the future of those who will live when we are all gone by the end of the century.
>
> Allowing further declines protects the short-term future of those here today in the present. Stabilizing water levels by curtailments and no rate of decline protects the long-term future for others who are not here today. By degrees, pumping will slow and stop one way or the other: either through curtailments today, or later, when the groundwater reservoirs go below the economic pumping level.
>
> **The current hydrologic and fiscal impact debate is not just among those here today; it's really between those here today, and the silent majority in the future whose voices we cannot hear. Currently, the present moment has seniority over the future, and the magnanimous choice is to cede some of that power**.[30]

This brings us to our next topic, which is a review of the ECOnorthwest report OWRD commissioned upon the request of RAC members and the public (including Water League) to evaluate the economic impacts of reducing groundwater use in the Harney Basin.[31] Our assessment is that the commissioned economic report is severely impaired.

First, the report primarily displayed economic harms to those in the present, despite the fact that the future of the region would benefit economically from water use reductions. Second, RAC members successfully lobbied to insert the cattle herding industry into the economic loss calculations to worsen the outlook, which OWRD sought to rectify by requesting a "Sensitivity Analysis" on pages 16-17 of the ECOnorthwest report. The Division 512 rulemaking process was marked by a dour focus on negative impacts to the present. There was no upbeat discussion or acknowledgement of positive long-term outcomes for the basin's public health, safety, welfare, and ecosystem. Indeed, the premise stating that "The goal of the rules is to make sure that groundwater levels are sustainable for the future"[32] served as the basis for the entire report that explains why the rules would harm the present economy.

The ECOnorthwest report's assumptions, which we critique here with significant additions from our previous comments submitted to OWRD on May 16, 2025, include:

1) The ECOnorthwest report assumes that Alfalfa crop prices were $273 per ton, based on a five-year average from 2019 to 2023.[33] This price is substantially higher than the historical average and cannot be relied upon for the future. The study should have taken a 30-year average price if it

[30] Oregon Water Resources Department, "Division 512 RAC Meeting 10 - October 2, 2024" YouTube video, posted October 7, 2024.
[31] Nathanial Trull and Mark Buckley, *The Economic Impacts of Groundwater Management in Harney County, Oregon* (Portland, OR: ECOnorthwest, 2025).
[32] Trull and Buckley, *Economic Impacts of Groundwater Management*. [4]
[33] Trull and Buckley, *Economic Impacts of Groundwater Management*. [10]

intends to project out 30 years into the future. Taking a 5-year snapshot distorts reality: the price of alfalfa was $224, averaged over the past 30 years, when adjusted for inflation. The ECOnorthwest price fixes an 18% overstatement in value that unreasonably inflates the claims of harm done to the irrigation industry and regional community.

2) The ECOnorthwest report assumes $58 million of total annual revenue is generated by alfalfa production. Not only is this dollar value unsubstantiated in the ECOnorthwest report in its "Exhibit 1. Crop and Livestock Production," on page 8, it does not pencil out based on its $273/ per ton average (do the math in the table). Furthermore, the $58 million number is 50% larger than the $36 million ($39 adjusted for inflation in 2024) that the USDA NASS Census reports.[34] There is little debate that the USDA NASS Census is the gold standard for such information. It's notable that ECOnorthwest chose to use the USDA NASS Census to account for the total Market Value of the livestock industry and for the past five-year average for alfalfa prices, but chose not to use it for the total Market Value of alfalfa. ECOnorthwest's reported value of the alfalfa is improbably high, and it is not clear where the figure came from.

For a point of reference, the Harney Basin alfalfa assessments in the 2023 *Business Case for Investing in Water in Oregon*, itself a study on how to frame values, claims that the Economic Output for "All other crop farming (primarily hay and forage)" is $49 million.[35] It is unclear, however, just how comparable the terms "Economic Output" in the Business Case and the "total annual revenue is generated by alfalfa" in the ECOnorthwest table are, or how both relate to the USDA NASS Census "total Market Value."

The ECOnorthwest report cites OWRD's most recent and accurate number of irrigated acres as only 48,003.[36] But the Business Case states that:

> Assuming all 108,760 acres of irrigated cropland are dependent on groundwater withdrawals, the estimated gross revenue from lands irrigated with groundwater is approximately $59.4M, and the estimated net cash farm income on these lands is $14.5M (Aspect Consulting 2021).[37]

These various numbers from both reports elevate *discrepancy* to an art form: just how can half the number of irrigated acres in the ECOnorthwest report equate to the Business Case's values of

[34] 2022 Census of Agriculture, U.S. Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), Table 2. Market Value of Agricultural Products Sold Including Food Marketing Practices and Value-Added Products: 2022 and 2017, [249] (See page 249 for "Other Crops & Hay" and for "Cattle & Calves." Total sales in Harney County in 2022 were $99,336,000, which is 1.8% of the total agricultural output of $97,527,000.)
[35] Pilz, D., Kruse S., Raucher R., Clements J., Gardner T., Odefey J., Madsen T., Purkey A., Sheridan C., McCoy A., Ehrens A., The Business Case for Investing in Water in Oregon. AMP Insights. (June 2023). [161] (Note that all so-called "hay and forage" in the Harney Basin is alfalfa.)
[36] Trull and Buckley, *Economic Impacts of Groundwater Management*. [8]
[37] Pilz et al., "The Business Case for Investing in Water in Oregon." [163]

either the $49 million in Economic Output for "All other crop farming (primarily hay and forage)," or the $59.4 million, which, quoted above, is "the estimated gross revenue from lands irrigated with groundwater is approximately?"

Not to belabor the point, but the ECOnorthwest claims an average yield of 5.5 tons/acre at $273/ ton, which equals $1,501/ per acre; whereas, the Business Case footnote #28 on page 163 states that:

> …gross revenues from irrigated cropland were calculated by multiplying the 108,760 irrigated acres times $474.24 per acre in average commodity sales as reported in the Appendix A in the 2021 Aspect Consulting report…[38]

The Business Case, which also cites ECOnorthwest *in a previous study*, speculates on fallowing between 37,000 and 53,000 acres in the Harney Basin, which is incomprehensible in the present ECOnorthwest study conducted for OWRD's Division 512 rulemaking process (their calculations only fallow 16,000 acres). We cite these discrepancies because they raise significant questions about the consistency, transparency, and accuracy of the data used to inform water management decisions related to the economic impact of water use reductions. OWRD relies on both the ECOnorthwest study and the Business Case in the Notice of Proposed Rulemaking it filed with the Oregon Secretary of State.

3) The ECOnorthwest report declares that [**emphasis added**]:

> Alfalfa/hay is an important input to livestock production and preliminary analyses revealed that groundwater reductions had approximately a 1:1 relationship with reductions in alfalfa/hay production (e.g., a 10% reduction in groundwater use would result in a 10% reduction in hay production). **This 1:1 relationship is thus passed through to the livestock production value.**[39]

We are incredulous that the 1:1 water-to-alfalfa ratio would arbitrarily be carried over to rationalize the same ratio between alfalfa production and cattle production. There is no logical basis for this assumption because the ECOnorthwest report assumes that only 20% of the alfalfa purchased stays in the basin,[40] which, if accurate, would show that pegging livestock industry losses to reductions

[38] Pilz et al., "The Business Case for Investing in Water in Oregon." [163]
[39] Trull and Buckley, *Economic Impacts of Groundwater Management*. [7]
[40] Trull and Buckley, *Economic Impacts of Groundwater Management*. [8] (The authors' anecdotal interviews of farmers about how much alfalfa remained local ranged widely. They state: "According to local farmer interviews, between 5 and 35 percent of on-farm alfalfa production goes to the livestock operation. This analysis uses an average value of 20 percent that goes to livestock production and reduces the revenue from alfalfa production by that amount to account for the alfalfa that does not go to market." We note that *The Business Case* by Pilz, et. al., claims 17%, which raises questions of why ECOnorthwest didn't trust that study and just cite it, which says on page 160: "Even then, local use accounts for a relatively small percentage of total supply generated within the County (17%), leaving a significant amount for export to other counties, states, and countries.")

in alfalfa production in a 1:1 ratio is incomprehensible. If ECOnorthwest knows that there is more than enough alfalfa after curtailment to stay in the basin for local use, then what effect does the baseless ratio serve but to improperly inflate the economic impacts of water reductions to serve a predetermined conclusion? This is not only a rhetorical question; we would like a credible answer as to why this flawed calculation was not completely removed from the final draft of the report.

The ECOnorthwest report inserted $65M total annual revenue generated by the livestock industry as an additional basis from which economic losses were calculated above the alfalfa industry valuation. OWRD rightfully states:

> In response to comments regarding the relationship between reduced alfalfa sales and reduced livestock sales, ECOnorthwest ran a sensitivity analysis holding the livestock production constant over the 30 years.[41]

Below, we argue for entirely disregarding ECOnorthwest's use of the livestock industry, beyond just adding another scenario where it is excluded:

Since the sales of alfalfa are commodity-priced across the West, and if it *were true* that the average price per ton in Harney County is $273, then it is all but certain that livestock operations would already be importing cheaper, similar quality forage from other markets, notwithstanding the marginal increase due to trucking. An average price of $273 per ton is not competitive.

The sale of alfalfa is intrastate, interstate, and international because it is a commodity (see numbers in the weekly Capital Press). The fact that 80% of the Harney Basin alfalfa is exported out of the basin demonstrates the ubiquity of shipping alfalfa. Livestock operations all over the West buy their alfalfa from many locations. Furthermore, as is well established, cattle graze the vast lands they roam, and they are not solely dependent on alfalfa (if all cattle ate was alfalfa, they'd die from bloat in short order). Aside from grazing, cattle also feed on smaller amounts of baled meadow grass. These facts further undermine ECOnorthwest's decision to peg presumptive livestock industry losses to reductions in alfalfa production in a 1:1 ratio.

Local livestock operations often buy lower-quality alfalfa; the amount of reduction in alfalfa production resulting from water use curtailments in that particular crop segment will be a small portion of that lower-quality product as the water use curtailments phase in over 30 years. The water use curtailments do not all target one quality of alfalfa, which ranges from utility to supreme quality. There will still be an oversupply of Harney Basin alfalfa to buy locally, of various qualities. Nonetheless, the fact of 80% exports out of the basin necessarily demonstrates that alfalfa is exported and imported across Oregon and neighboring states, and that livestock

[41] Oregon Water Resources Department, "Notice of Proposed Rulemaking, Chapter 690, Division 512," May 27, 2025, Oregon Secretary of State, Archives Division. [23]

operations in the Harney Basin can import whichever quality of alfalfa they need that is on the market in the very same way all others do who buy alfalfa on the commodity-priced region-wide market.

Regarding the Sensitivity Analysis in the ECOnorthwest report, which reluctantly pulls out livestock herding from the report, OWRD states:

> These results suggest that assuming livestock production does not depend on the availability of local alfalfa will cut the rulemaking's estimated economic impacts by at least half. These results do not account for the cost of securing alternative alfalfa supplies, which may be available but at higher cost to the consumer.[42]

We reject this statement being relegated to the back of the report, long after the front of the report boldly declares that presumptive livestock industry losses will suffer reductions similar to alfalfa production in a 1:1 ratio. The purpose of the ECOnorthwest report should have accurately demonstrated the impact of the Permissible Total Withdrawals (PTW) on the Harney County economy for better and worse in the future and present. The report's conclusions may have resulted in the irrigator-aligned supermajority cohort increasing pressure on OWRD to allow increases in PTWs to offset the alleged economic losses. This economic report is unreliable and could mislead state officials and the public in the next couple of years, not just by falsely influencing pushback on PTWs in the short term and resistance to stabilizing groundwater at shallower levels, but also in how contested case hearings are resolved. Researching and calculating the various numbers, dollars, and percentages with accuracy matters because they shape perceptions, administrative rules, and Contested Case hearings. We expect there will be a lot of scrutiny of the methodology of this report, or it will be summarily ignored.

On the matter of job losses: if we were to accept the Sensitivity Analysis numbers that exclude the livestock industry, then Harney County would absorb the losses of 160 jobs over 30 years (which would impact about 64 jobs in the first six years, since the OWRD plans to frontload 40% water use reductions in the first six years).

We strongly support economic development in the basin that could come in other forms, as often is the case when industries and technology evolve. The possibility of industrial evolution and economic development brings us to declare our strong support for the testimony on behalf of the City of Burns' staff at the Division 512 Public Hearing, Seneca, on June 26, 2025.[43] The amount of water the city uses is a tiny fraction of all the water irrigation uses (irrigation uses 95% of all water in the Harney Basin). There is no justification for punishing the small rural cities for the substantial over-appropriation of groundwater by OWRD for irrigation use and the subsequent over-pumping

[42] OWRD, "Notice of Proposed Rulemaking." [24]
[43] Oregon Water Resources Department, "Division 512 Public Hearing, Seneca – June 26, 2025," YouTube video, posted June 27, 2025.

by irrigation water users. Cities in the high desert must have adequate access to groundwater, and their relatively infinitesimal volume of use must not get caught up in the serious problems they did not and could not have ever caused.

We hold that penalizing Burns and Hines is an equity issue that must be rectified. Claims of a double-standard – that allowing cities to continue unabated while curtailing irrigation water use is unfair – are spurious and unfounded because the cities did not cause or contribute to the over-pumping, and they use less than 1/19th of annual water diversions in the Harney Basin. The idea of a city suffering in the high desert because an irrigator wants to keep exporting animal forage crops is an anathema to any principled system of resource allocation and good governance. We are appalled at the immorality of the false equivalence that cities bear any comparable blame for aquifer decline.

Numerous statutes strongly suggest that Oregon should place the health, safety, and welfare of desert communities above the export of commercial forage crops. Claiming the obverse – that continued irrigation of alfalfa is necessary to support local communities – is a cynical justification and affront to reason: *over-pumping groundwater for forage crops led to the crisis in the first place*. To suggest that the same practice is essential to the community's welfare is a tortured inversion of the very rationale to designate a CGWA and impose Corrective Control Orders on irrigators. No amount of exported alfalfa can compensate for a community's basic (e.g., Maslow) needs for water.

As Nick Green testified on behalf of the City of Burns' staff, Harney County can increase economic development by siting data centers along Highway 20, where a massive fiber optic cable runs. Claims that data centers use a lot of water are baseless when set in the context of irrigating alfalfa: a medium to large data center uses one million gallons/day, which equals about 1,100 acre feet of water annually, and is about 12% less water than the duty required to irrigate 500 acres of alfalfa at 2.5 acre feet per acre during the irrigation season. For comparison, OWRD proposes water use curtailments on 16,000 acres, which would equal 32 medium to large data centers.

Water League strongly supports water right transfers from one or more remaining irrigation operations to industrial uses to offset economic impacts from water use curtailments and even increase economic development in Harney County. Medium to large data centers employ between 25 and 50 personnel, which is considerably more employment than a 500-acre pivot-irrigated alfalfa operation that uses the same amount of water. Along with solar, wind, and electrical transmission systems, there are reasons to believe that the economic impacts from water use reductions in Harney County can be offset during the 30-year phase-in through 2058 and beyond.

Oregon is not designating a CGWA and planning to reduce water use to make a bad situation worse, as the supermajority irrigator-aligned cohort has insinuated. Every gallon left in the

groundwater reservoirs will secure the public health, safety, and welfare for generations and prevent the ongoing desiccation of the ecosystem. Nonetheless, in more than two dozen recorded meetings (RAC and Discussion Groups), irrigators characterized the common good as a narrow form of their economic interests and effectively *force-teamed* the local economy into their plight. We hold a much more positive view of the potential for the Division 512 rulemaking process to benefit the local community in the long run because people can and will thrive by creating new economic development opportunities over the 30-year phase-in period of irrigation water use reductions. The non-irrigating local community can reasonably be expected to grow and benefit from water use curtailments on irrigation operations.

VII. Discussion Groups

OWRD announced that Oregon Consensus, with support from the High Desert Partnership (HDP), would facilitate "Discussion Groups" to run parallel to the Division 512 RAC meetings.[44] These sessions were presented as informal opportunities for RAC members and the public to explore details, work through issues, and ask questions outside the formal RAC framework. In practice, however, the Discussion Groups often functioned as a countervailing force to the RAC process. By removing OWRD staff from their presiding role and relegating them to that of observers and consultants, these sessions periodically shifted the power center-of-gravity in the rulemaking process to the supermajority irrigator-aligned cohort and their moderators.

The structure of the Discussion Groups, particularly the moderators' effort to maintain a "consensus-like" environment, naturally favored the majority interests present, most notably the supermajority irrigator-aligned cohort of RAC members (Cohort). The moderators always sought to hear from all participants; however, their attempts to accommodate the broadest sector of participants effectively amplified this dominant bloc, creating a mechanism for irrigators to consolidate their positions outside the formal RAC process. Instead of confronting opposition in RAC meetings, irrigators were able to use these sessions as a safe venue to form consensus around preserving their status quo and to coordinate strategies that would influence RAC agendas.

Midway through the dozen Discussion Groups, a RAC member joked, prompting laughter precisely because the joke contained an awkward truism related to in-group and out-group dynamics:

> **John Short:** John Short, water right guy and RAC member. And I don't think Harmony let people know that she did used to work for Water Resources...

[44] OWRD and Oregon Consensus, Discussion Group Charge, Harney Groundwater RAC, 8/9/2024. [3] ("The discussion groups will have staff support from High Desert Partnership to assist with organizing discussion group logistics; and bringing information into the discussion on the options and considerations offered by the discussion groups, RAC, and/or OWRD.")

Harmony Burright: Ah, yes, I...
John Short: Came over to the... [Laughter]
Participant #1: To the dark side...
John Short: The good side. [Laughter]
Participant #2: I don't know why she didn't say that. [Laughter]
Participant #3: We should give her an opportunity.
Harmony Burright: I can provide more context for my professional background and credentials if you so desire. [Laughter]
Kristen Shelman: Geez, John, can give us your opinion of the department again...[Laughter]
Bobby Cochran: Let's not go down that route...
Harmony Burright: For the record, I am very proud of my time with the department.
Bobby Cochran: Alright...[45]

The unspoken, yet persistent, circumstance is that the Cohort in the Discussion Groups opposes the efforts by OWRD and non-aligned others. When an unidentified person in the room, playfully refers to the supermajority irrigator-aligned cohort of RAC members as "The Dark Side," they use a humorous label that aligns with a common, though generally unstated, perception. John Short's immediate correction, "The Good Side," is also a playful affirmation that the Cohort and their interests represent the morally right position. It's clear among those laughing that the underlying truth the joke points to is a sensitive, yet widely held, perspective among the Cohort. The exchange, far from being just a joke, served as a rhetorical tool to reinforce the shared in-group identity and collective opposition to the OWRD, using humor to safely express a serious divide. By solidifying this internal cohesion, the Cohort could more effectively present a united and unwavering front in the Discussion Groups, which we argue served as a mechanism to coalesce the countervailing force.

A complete study on the concept of neutrality and bias among the Discussion Group moderators throughout more than a dozen Discussion Group meetings, hundreds of emails, documents, and conversations is beyond the scope of this Division 512 set of comments. Furthermore, the efforts by the Discussion Group moderators to uphold the appearance of neutrality, a sight to behold in real-time, require extensive research after the fact. We highlight this structural problem inherent in the Discussion Groups because we believe the moderators were under the same pressure that OWRD staff were under, as the department sought to resolve the Tragedy of the Commons. However, a key difference was the moderators' attempt to appease the Cohort in the Discussion Groups, a strategy that ultimately eroded their neutrality. Had the moderators truly maintained a critical distance (in theatre, directors are scolded for becoming friends with the actors), we surmise

[45] Bobby Cochran and Harmony Burright, moderators, "Harney Groundwater Discussion Group, Oct 28 2024," Zoom recording, Portland State University. [at 0:8:50] (Note: This transcript has been corrected from the original.)

that the Discussion Groups would have been much less accommodating affairs and would have appeared more like the disciplined RAC meetings.

The friendly atmosphere naturally led to shaping Cohort-preferred advisory decisions during Discussion Groups that were carried back into the advisory RAC meetings,[46] effectively making the Discussion Groups *de facto* RACs. The constant presence of the supermajority Cohort and the consensus-like environment in Discussion Groups ensured that the bulk of the information served the Cohort in RACs. This is a classic example of how using consensus to solve a longstanding problem born from consensus (here, a *Tragedy of the Commons*) serves to deepen the problem. The informal consensus-based influence was so strong that it unreasonably impacted the formal RAC process, leading to a blurring of roles between what a person could do in an informal Discussion Group and a formal RAC meeting.

This conflation may have undermined the intent of the Administrative Procedures Act (ORS 183) and its implementing rules (OAR 137). OWRD tried to keep a lid on the problem by periodically sending emailed public notices that explained how [**emphasis added**]:

> The discussion groups are an informal opportunity, designed to provide access to information and incorporate the collective wisdom of the RAC and the public into the RAC's role in developing an approach to groundwater management in the Harney Basin.
>
> **The groups do not make decisions.** Each discussion the group hosts is guided by the current topics being worked on by the RAC. For any topic, Oregon Consensus may ask a discussion group to:
> - Discuss particular questions posed by the RAC and/or OWRD;
> - Offer additional options and considerations for a particular topic and/or
> - Keep a record of the discussion to help inform RAC feedback to OWRD.[47]

In practice, and despite repeated notices from OWRD, the effort to constrain Discussion Groups to their limited mandate was nearly impossible in the consensus-catering, Cohort-enabling atmosphere: just how could the moderators maintain order when conviviality "*had*" to be maintained? One memorable attempt came during the final Discussion Group on April 28, 2025, when a moderator had to start the meeting with a reminder [**emphasis added**]:

> Welcome to the Harney Groundwater Rule **Decision…or Discussion Group**.

[46] Oregon Water Resources Department, "Division 512 Rulemaking: Groundwater Regulation for the Malheur Lake Administrative Basin," (PowerPoint slide presentation, Rules Advisory Committee Meeting, May 30, 2024), slide 19. (RACs are advisory; OWRD has the responsibility to draft rules as they see fit; WRC has the duty to decide upon the manner of adoption or to not adopt. In the context of the Discussion Groups, the supermajority irrigator-aligned cohort of RAC members wanted to control the entire gamut.)
[47] Oregon Water Resources Department, "Meeting Notice: Division 512 Discussion Group," GovDelivery Bulletin, April 24, 2025.

> I'm Bobby with Oregon Consensus, and it's been a little while since we came together, but just as a quick reminder as we get going: the role of the discussion groups is really around brainstorming ideas, kind of an advisory role of the Rules Advisory Committee is to give advice to the Water Resources Department. For us here, it's just to kind of develop more of that shared understanding that if there is advice, kind of going back to the department, we could do that.[48]

A Freudian slip is usually nothing much to consider. But here, the cognitive dissonance about the "Decision…or Discussion Groups" arose because the moderator held both realities in mind simultaneously: too often, the Discussion Groups had been *de facto* Decision Groups,[49] and the legal problem needed to be addressed. We appreciate this attempt in the final meeting to keep the Discussion Groups in their lane. Even without the slip, reiterating the guideline highlighted the ongoing problem. But the reminder was insufficient: further along in the meeting, the moderator noted that:

> …we had a lot of comments that probably were more RAC-like than discussion group-like. So I'm wondering if we even do want to meet on Monday. It seems like folks have their heads wrapped around the key issues in the rule…[50]

Instead of maintaining order, which would have required a modicum of sternness, the suggestion was to just cancel the next meeting. Through more than a dozen of these Discussion Groups, some of which were day-long events with breakout groups, the supermajority irrigator-aligned cohort of RAC members secured disproportionate influence, controlled narratives, redrew hydrologic subarea maps to favor prospective Voluntary Agreements, and prescribed content for official RAC agendas. This belated, yet noble attempt by a moderator to bring order to the Discussion Group on April 28, 2025, was the perfect example of the adage "too little, too late," considering the less direct reminders that had occurred throughout the eight-month process. Given the proclivity by moderators to ingratiate themselves with the Cohort to gain their trust, coupled with using consensus methodology to incorporate all points of view, the Cohort's intransigence made it nearly impossible for moderators to keep the Discussion Groups from becoming Decision Groups.

Perhaps the most egregious act making advisory decisions in the Discussion Groups was how the Cohort gerrymandered OWRD's 15 subareas that staff delineated hydrologically to select high and

[48] Bobby Cochran and Harmony Burright, moderators, "Harney Groundwater Discussion Group, April 28, 2025," Zoom recording, Portland State University. [at 0:0:05]
[49] We acknowledge the use of the word *decision* needs clarifying: there are *advisory decisions* individual RAC members make during RAC meetings as are there the same among the supermajority irrigator-aligned cohort of RAC members. There are also advisory decisions made by the same persons and members of the public during the extra-curricular Discussion Groups, which make those groups appear to be RAC meetings. Notably, these advisory decisions are not to be confused with the legal authority the WRC has in deciding whether and how to adopt rules. Throughout these comments, unless explicitly stated, Water League never intends to refer to the term *decision* as it relates to the duty held by the WRC.
[50] Harney Groundwater Discussion Group, April 28, 2025. [at 1:16:58]

low priority areas for the imposition of Corrective Control Orders. The GHVGAC initially comprised 15 subareas that were hydrologically distinct enough to be identified, even though groundwater reservoirs in the GHVGAC are hydraulically connected to varying degrees. RAC members, in Discussion Groups, made several proposals that reduced the number to five or six, the effect of which increased the sizes of the subareas. RAC members eventually settled on seven subareas.

RAC members present in the Discussion Groups sought this change for two reasons: 1) they wanted to merge the high-priority subareas with low-priority subareas to spread the pain of water use curtailments into larger subareas (subprime water rights would likely taint these larger subareas, reminiscent of Collateralized Debt Obligations),[51] and 2) high-priority subareas have few irrigators within their area with whom to negotiate a Voluntary Agreement and need to incorporate others from low-priority subareas who are not likely to be regulated off.[52]

We incorporate by reference here our extensive comments on ORS 537.745 *Voluntary Agreements* that we submitted to OWRD when the department sought input on the topic.[53] In our comments, we discuss at length the supermajority cohort's two rationales for gerrymandering OWRD's initial subarea proposal layout. While the internecine conflict among irrigators in the first rationale will likely resolve in the Contested Case hearings,[54] we wondered if:

> A constitutional crisis is likely to occur under the proposed regime required to make VAs functional for the most at-risk irrigators whose pumps are located on top of the most severe cones of depression. Putting ORS 537.735(1)(a) and OAR 690-010-0130(3) to work for a few irrigators by harming other irrigators is a *de facto* use of the law to benefit some at the expense of others.[55]

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[51] Darrick E. Boschmann, Response to RAC request: "sub-basin" PTW for the Harney Basin CGWA, 02/26/2024. [6-8]
[52] Christopher Hall, Comments related to the Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir, Water League, February 13, 2025. [7-9] (High-priority subareas in OWRD's initial 15 subarea proposal have little to negotiate with if they are all likely to be regulated off.)
[53] Hall, *Comments related to Voluntary Agreements*.
[54] Oregon Water Resources Department, "Division 512 Public Hearing, Diamond – June 24, 2025," YouTube video, posted June 25, 2025. (Dan Otley from Riddle Ranch comments in reference to the reformation of the subareas: "I think the OWRD needs to explain the scientific rationale for this approach," which we believe is only what is permissible under OAR 690-010-0130(3). While not himself opposed to gerrymandering subareas for Voluntary Agreements, Mr. Otley goes on to state that: "OWRD previously explained at RAC meetings that subareas are intended to group wells together that behave similarly. My wells do not behave similarly to the wells in the Northeast Crane subarea, namely, they do not have the same shortages and drawdown issues as the wells in most of the Crane subarea. My wells and my neighbors' wells are more similar to the wells in the Lower Blitzen and Voltage area. Importantly, my wells and my neighbors' wells are also physically separated from the Northeast Crane subarea by Windy Point, which I showed on the map."
[55] Hall, *Comments related to Voluntary Agreements*. [9]

The second rationale for gerrymandering larger subareas is linked to misusing OAR 690-010-0130(3) to define subareas within the greater CGWA for reasons other than the "implementation of corrective control provisions." That rule states [**emphasis added**]:

> For the purposes of ORS 537.735(1)(a) the exterior boundaries of a critical groundwater area may be reasonably inferred or ascertained:
>
> (a) According to the presence of physical natural boundaries, hydrological conditions, or recharge or discharge areas; or
>
> (b) Administratively by defining an affected area that does not have boundaries defined by natural features.
>
> (c) Additionally, **to the extent that subareas wholly contained within the designated critical groundwater area must be defined to allow for implementation of corrective control provisions, these subarea boundaries will also be reasonably inferred or ascertained as in 690-010-0130 (3)(a) or (3)(b)**.[56]

In our comments on Voluntary agreements, we argued that:

> The rule permits defining subareas to implement corrective control provisions, which are regulatory actions, not for implementing VAs under ORS 537.745. This distinction is important. There is much ado about gerrymandering the Harney Basin CGWA subarea maps to make VAs work because OWRD has been clear that the geographic limits of VAs will be contained within those subareas, however they are configured. ORS 537.745 only permits "voluntary agreements among groundwater users from the same groundwater reservoir;" therefore, the gerrymandering of the Harney Basin subareas is effectively reverse engineering the presence of groundwater reservoirs as a legal fiction under 0130(3)(b) and (c) rules. This machination is not how the CGWA statutes or rules "envision" water management of CGWAs, which are the most sensitive and at-risk hydrologic regions in the state. We are incredulous that irrigators pumping from the most severely impaired groundwater reservoirs would use 0130(3)(b) and (c) to aggrandize themselves by harming their neighbors[, whom] they would administratively map-in.[57]

Recall, these advisory decisions to rearrange subareas occurred in the *extra-curricular* Discussion Groups. While there is much to note about the impropriety of the advisory decisions' content, which we discussed above, our concern is that these advisory decisions occurred in what we believe were quasi-RAC meetings where OWRD was stripped of authority. OWRD's acceptance

[56] Or. Admin. R. 690-010-0130(3) (2025).
[57] Hall, *Comments related to Voluntary Agreements*. [9-10]

(reluctant or otherwise) of the advisory decisions made in the Discussion Groups could undermine the Division 512 rulemaking process under ORS 183.400 *Judicial determination of validity of rule*, which states:

> (3)Judicial review of a rule shall be limited to an examination of:
> (c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking procedures.
>
> (4)The court shall declare the rule invalid only if it finds that the rule:
> (a)Violates constitutional provisions;
> (b)Exceeds the statutory authority of the agency; or
> (c)Was adopted without compliance with applicable rulemaking procedures.

We believe the rulemaking process could become subject to ORS 183.400(4)(c). More specifically, as related to the internecine conflict about who's in or out of which gerrymandered subarea (and, later on, who's in or out of which Voluntary Agreement), there might be an equal protection clause concern that ORS 183.400(4)(a) addresses. When some RAC members guided OWRD's decisions to benefit their own operations, while many others were left out of the discussion-decision making process, there could be an effect not unlike a forced (involuntary) water right transfer, whereby an irrigator in a low-priority subarea (as defined by OWRD in its initial proposal for 15 discrete subareas) all of a sudden has to experience water use curtailments to offset being lumped in with a high-priority subarea that some RAC members merged during the Discussion Groups. We refer back to Mr. Otley's comments from June 24, 2025,[58] above as one example, and the memo by Darrick E. Boschmann, "Response to RAC request: 'sub-basin' PTW for the Harney Basin CGWA." We believe a tiny minority of Harney Basin irrigators may have used their position on the RAC and in the Discussion Groups to benefit themselves and possibly disadvantaged some who were not part of the RAC or rulemaking process.

In addition to subarea mapping to serve Voluntary Agreements, Discussion Groups also used the premise of informal discussions to guide and manage other topics on the RAC meeting agendas, which included proposing model scenarios and adaptive management. Advisory decisions on those topics from the friendly Discussion Groups were also carried into the more contentious RAC meetings. To be clear, the Cohort periodically used the Discussion Group venue not so much to gather information but to fortify their positions in preparation for the RAC meetings, effectively caucusing to game out their preferred positions and alternatives.

Discussion Group moderators also provided an entirely different service to all-comers: they promoted one-on-one support services outside of both the Discussion Groups and RAC meetings, offering to help RAC members and members of the public to complete surveys and submit

[58] Oregon Water Resources Department, "Public Hearing, Diamond."

comments to OWRD related to the Division 512 rulemaking process when the RAC meetings were still being convened. Because these interactions occurred off the formal public record, neither OWRD nor the public can assess the independence, consistency, or influence of the feedback generated. Water League differs from those who critiqued offline public comment submissions on the grounds that they couldn't keep abreast of comments sent by email, even though every submission is subject to public records laws. Rather, Water League critiques the possibility of moderators coaching comments, inadvertently or otherwise, and enriching them with strategic insight or points of view under the pretenses of neutrality carried over from the promises of Discussion Group principles.

While we do not question individuals' rights to free speech or assembly, the possibility of moderators coaching commenters is a line in the sand few can be sure about having been crossed. What is the difference between answering a survey and submitting comments by oneself, and having a paid Discussion Group tutor assist in those activities?

The moderator, Harmony Burright, advertised free services (underwritten by a contract with the High Desert Partnership (HDP)) in the last Discussion Group meeting on April 28, 2025, saying:

> I'm just making sure you all know that, you know this is, this is really an important window for you to provide comments to the department, and if you want help, I, you know, I've talked to several people, they're like, “I don't really know how to comment.” If you want to talk with me through it, and I'll write things down for you, and I've done this for a couple people, and then I send you what you said, kind of organized in these areas. And then you can determine if you want to send it to the department. I'm happy to do that. So please reach out, and we'd just love to help make sure that you have the ability to comment as you wish during this time.[59]

Either neutrality or blatant advocacy is perfectly acceptable; however, either posing as the other is not. What is the effect of offline assistance by “The Good Side” moderator who sought to express a neutral posture? The optics of such assistance matter in the context of rulemaking. The moderator’s contract with HDP and the emphasis on *neutral* support create an appearance of impartiality. Yet, the offer to help participants draft polished, structured comments could, at scale, produce a larger, more coherent body of local opposition than might otherwise arise organically. The concern is not the legality of this help, but whether neutrality is being used as a protective veneer for selective advocacy.

We acknowledge the widespread practice of organizations sponsoring community engagement related to all kinds of government actions, including legislation, rulemaking, and agency management. Indeed, *Calls to Action* by organizations are a ubiquitous form of electronic

[59] Harney Groundwater Discussion Group, 4-28-2025. [at 1:25:22]

"Election/ Advocacy Litter." Generic public comment form letters people can sign onto are ubiquitous. Water League supports engaging the public in water stewardship; indeed, that is our mission. However, we wish to highlight an important distinction: the line between impartial public assistance (as HDP advertises) and strategic advocacy becomes blurred when an individual who previously facilitated the official Discussion Group process, as described, now offers direct, unrecorded aid in documenting public comments.

The same comment writing services have now been offered by the moderator retained by the HDP to assist the public with submitting their public comments during the formal Secretary of State Notice of Proposed Rulemaking period. The first of eight consecutive emails (from June 11 to August 12, 2025) advertising the comment-writing assistance services stated:

> You are receiving this message because you have expressed interest in groundwater policies being considered for the Harney Basin. These policies are very likely to have a transformative impact on on[*sic*] Harney County through significant regulatory reductions of groundwater use.[60]

Despite promises "...to provide this service to ***anyone*** with an interest in groundwater management in Harney Basin regardless of their background/interest/desired outcome"[61] [***emphasis in original***], we do not see a durable pathway to neutrality as advertised. How meaningful is neutrality if the majority of likely participants are constituents of a monolithic bloc that adheres to the uniform principle of rejecting the designation of a CGWA and subsequent water use curtailments? Does calling the assistance available to "anyone" amount to a distinction without a meaningful difference in neutrality? Water League stands by our assessment that the Discussion Groups functioned as a countervailing force to the RAC process. The moderator's offer of personal writing assistance could reasonably be perceived as an extension of that leverage, and is a matter deserving of further inquiry only because of the appearance of neutrality claimed.

VIII. Comments on the Notice of Proposed Rulemaking Criteria

1) The Notice of Proposed Rulemaking (NoPR) states on page 9:

> Finally, reduced spring and streamflow will also decrease the availability of water and vegetation for domestic livestock grazing in the basin. Reductions in springs and stream flows will substantially impact water-dependent ecosystems and human populations that rely on these systems for recreational use and livestock grazing.

[60] Harmony Burright, Email Message to BCC, Wednesday, June 11, 2025 at 11:25 AM.
[61] Burright Email, June 11, 2025.

We wonder about how the EcoNorthwest report could have ever justified incorporating the $65 million value of livestock production as part of the economic losses resulting from the water use curtailments affecting irrigated alfalfa if the irrigators' over-pumping of groundwater reservoirs is desiccating pastureland? Wouldn't water use curtailments benefit herders seeking to pasture their livestock? Why was the possibility of such a benefit never raised in the ECOnorthwest report?

This issue is also confirmed on NoPR page 19, which also states: "Finally, reduced spring and streamflow will also decrease the availability of water and vegetation for domestic livestock grazing in the basin."

2) The NoPR states on page 11:

> By minimizing groundwater development in the upland areas of the Basin, the new rules will preserve recharge into the Basin's lowlands, where severe groundwater level declines are occurring.

Please explain the extent to which this recharge concern relates to the shallow layer less than 100 feet deep, where most recharge reaches, and the extent to which the deeper layers below 100 feet do not experience recharge. We previously cited "Groundwater resources of the Harney Basin, southeastern Oregon" in these comments that discuss this topic. We believe that distinguishing between the layer that experiences recharge from the deeper layer that does not get recharged within human timescales is necessary for water management purposes.

3) The NoPR states on page 11:

> On April 7, 2025, the Director sent a follow up letter to the Burns Paiute Tribe, offering dates and times that might be convenient for the Tribal Council.

We believe the Director could prioritize their schedule, clearing it as needed, to meet with the Burns Paiute Tribe. Since the tribe reached out to OWRD, it is the department's responsibility to ensure a timely meeting. We ask rhetorically: how many non-tribal lobbyists were on the calendar during those eight months?

4) The NoPR has typos on pages 19, 20-21, and 28:

The total costs associated with the remediation of domestic wells appear to have incorrect figures on pages 19, 20-21, and 28. Please check the math.

5) The NoPR states on page 20 says:

> [T]he Department set a goal of groundwater level stability rather than full water resource recovery. If recovery were the goal, the estimated economic impacts would be much higher because recovery would require regulating more groundwater users to return groundwater conditions to historic levels.

The claim that if OWRD sets recovery of groundwater levels as the goal, "economic impacts would be much higher," appears short-sighted because the obvious fact is that future water users would see increased economic vitality and security (we refer back to our comments on the fiscal and economic impacts and the public sentiment).

On another topic, please explain if the presumptive "recovery" refers to only the shallow layer less than 100 feet deep. According to the *Groundwater resources of the Harney Basin, southeastern Oregon*, recovery is not possible in human time scales for groundwater reservoirs below 100 feet deep, which is where the vast majority of irrigation use wells are located. We question the claim that OWRD has ever had the option of choosing "recovery" for the majority of irrigation wells, and that recovery is only possible within the most shallow groundwater region. Did this perceived concession – that OWRD "forwent recovery" – function as a palliative to discontented irrigators? We would like to know just how a policy of groundwater recovery for all the wells pumping water from below 100 feet could be possible. Would the policy simply be shutting off those deep wells and waiting for multiple generations for recovery?

6) The NoPR states on page 21 says [**emphasis added**]:

> **As the springs, streams, and Malheur Lake** ecosystem services within the Harney Basin depend heavily on groundwater, **the proposed rules expect** to stabilize groundwater levels at a new level after 30 years. Groundwater declines will continue through the 30-year implementation; however, stabilizing the groundwater levels after 30 years may help stabilize baseflow needed to sustain springs and streams, thereby mitigating some of the potential long-term impacts to the ecosystem and the services it provides.

The first sentence conflates the positive welfare of GDEs, springs, and the lake with the 30-year period during which groundwater levels decline before they are stabilized. This sentence, beginning with "As the springs, streams, and Malheur Lake," and the paragraph that concludes with "thereby mitigating some of the potential long-term impacts to the ecosystem and the services it provides," attempts to frame a period of sanctioned environmental degradation as a beneficial, long-term mitigation strategy, which is misleading. We know from the data that the rules will permit substantial ongoing harm to the various ecosystem elements, and that the final resting place of the groundwater levels will deprive the ecosystem of access to water.

7) Page 21 of the NoPR states:

> ECOnorthwest's key modeling assumptions are as follows:
>
> If a supplemental water right is not irrigated, the primary water right is not irrigated.

First, we did not find such an assumption in the ECOnorthwest report. Second, we think the logic of the statement is confusing. Shouldn't the statement read: "If the supplemental right is curtailed due to junior priority status, the model assumes the whole irrigated use stops because the primary right was not being used in the first place?" OWRD has a responsibility to be clearer.

8) Pages 21 to 24 of the NoPR discuss the ECOnorthwest report – see Section VI of these comments.

9) Page 26 of the NoPR states:

> Given the fluctuation in funding levels of the WARRF funds and the high demand across the state, the estimated 98 domestic wells that will go dry under the proposed rules may not have access to these funds when a well goes dry.

By projecting the number of domestic wells that will go dry and proposing to pay for the remediation of as many of those wells as possible, the state is agreeing to the continued excessive declines in groundwater levels and *subsidizing these declines* by paying for deepening domestic wells.

We understand the state's 30-year goal is to stabilize groundwater levels at lower levels than they were at in 2018 (or for that matter, 1980); however, the state ought to be more forthcoming that it supports the knowing harm and destruction of domestic wells (and, by extension, GDEs and springs that money can't buy the same way it can pay for deepening wells). Aligning with irrigators' interests to mine water for 30 more years until 2058 is an extraordinary policy decision.

Where else in the state is such a tiny population afforded such immense political power to knowingly plan the impairment of domestic wells within an expansive interstate free-market where alfalfa is priced as a commodity and readily accessible, otherwise? The state of Oregon should not subsidize alfalfa production when the cost is the long-term destruction of the state's groundwater sources; it's just not worth it. Water League supports perpetual eminent domain condemnations of water rights with basin-wide total withdrawals not to exceed 1990 volumes.

10) Page 26 NoPR states [**emphasis added**]:

> CGWA - LOCAL GOVERNMENT: Harney County assesses land value to collect property taxes. A loss of irrigated land is expected to reduce collected property tax revenue. The County uses three different land class values to assess property taxes. Land Class 2 is fully irrigated, Land Class 3 is land with some irrigation, and Land Class 5 is land without irrigation. For comparison, **Land Class 2 generates $1,185 per acre in property tax revenue, while Land Class 5 generates $93 per acre.**

This appears to be a misstatement or typo. The text states that "Land Class 2 generates $1,185 per acre in property tax revenue," which is implausible because one acre of irrigated alfalfa generates an average gross agricultural income equal to or less than that. That figure represents the average Specially Assessed Value (SAV) per acre for fully irrigated land (Land Class 2) in Harney County, not the tax revenue generated. Property taxes are calculated by applying the county's mill rate, which we believe is $11.84 per $1,000 of assessed value, to the SAV. Using that rate, $1,185 in SAV would generate approximately $14.03 in annual property tax per acre, not $1,185. The current phrasing in the document conflates assessed value with tax revenue and must be corrected.

This typo misrepresents the expected losses to the Harney County coffers and exaggerates the potential losses resulting from water use curtailment. This typo, coupled with the gross misrepresentations of losses in the EcoNorthwest report, combine to seriously mislead the public in their efforts to understand the Division 512 rulemaking process and their ability to respond competently to this rulemaking process in their comments.

11) On page 27, the NoPR states:

> This change is estimated to decrease tax revenue $146K.These reductions equate to a decrease of $55,000 in the general fund, $24,000 for hospitals, and $66,000 for local schools. In fiscal year 2024-25, the property tax revenue for Harney County was $11M, a reduction of $146,000, is an estimated 1.3 percent decrease in annual property tax revenue collections.

This reduction hardly impacts the county government and is within the range of many other normal impacts on county funds. Notably, EcoNorthwest could not justify land value tax losses related to the much larger livestock industry, because the livestock industry will not see any contractions. This fact further undermines the improper inclusion of the $65M livestock industry into the EcoNorthwest report, which overstates the economic impacts of water use curtailments. The report's assumptions are flawed because the livestock industry can easily buy alfalfa on the free market or from the 80% of alfalfa irrigated in the Harney Basin that exceeds local demand.

12) On page 28, the NoPR states:

> According to the Harney Electric Cooperative once the reductions in 2028 occur, power costs will increase by 18% with similar increases at each six-year adaptive management checkpoint. Consequently, rate payers may see higher electric bills.

OWRD plans to phase in water use curtailments over 30 years, so not all the electricity that would be shut off due to water use reductions will happen all at once. The Harney Electric Cooperative will see a reduction in consumer demand proportionate to the phasing-in of water use curtailments. What percent of a cut will the electrical use be in 2028 and in each of the six-year adaptive management scenarios? Did anyone consider the fact that there could be other economic drivers over the next 30 years, such as a Burns data center or a Crane solar farm?

13) On page 29, the NoPR states:

> The Department's existing water use reporting system does not allow for timely comparison to ancillary data to validate reported numbers, nor can the system easily identify whether the reported use is allowed within the limits of the water right or a combination of water rights associated with each well. Improvements to connect three existing databases, the Water User Reporting System (WURS), Water Rights Information System (WRIS), and the Groundwater Information System (GWIS), will allow the Department to monitor water use at all wells and for each water right. New resources are needed to implement these improvements. In lieu of improvements, minimal quality control will be done to reported data.

Funding the connection of the three databases must be a priority by 2028. Oregon has sufficient resources to make this database integration happen; only political will is lacking to overcome those who oppose the process. Similar statements are made about funding to implement and enforce water use measurement and reporting, which also must be prioritized.

14) On page 31, the NoPR states:

> A water right holder does not need to participate in the contested case, but should the holder choose to do so, he or she is likely to incur significant legal fees to participate.

Large numbers of water right holders may enter into joint representation agreements and pool their funds into a single law firm to represent them. While each water right is unique and will be adjudicated as such, the potential for an economy of scale in both representation of many water rights and the costs associated with each vested holder is not only possible but desirable. We strongly suggest that state officials provide informational services that incentivise water right holders to enter into joint representation agreements to pool their funds.

IX. Comments on the Proposed Draft Rules for OAR 690-512

690-512-0010 Definitions

Consider adding a new definition:

> (6.5) “Regulated Off” and “Reduce” mean limiting the use of groundwater pursuant to ORS 537.742.

We recommend adding these definitions, “Regulated Off” and “Reduce,” to ensure there is no question about the legal terminology related to limiting water use and the intent of these rules.

Throughout these proposed rules, there are several euphemisms for the legal phrase “limiting the use of groundwater” in ORS 537.742, which include “Regulated Off” in 690-512-0110 Serious Water Management Problem Area (SWMPA), and the root verb “to reduce” in several sections, such as: “water use reductions,” “schedule for reductions in groundwater use,” “water will be scheduled to be reduced,” “the schedule for reductions,” “regulatory reductions scheduled,” and “scheduled quantity of reduction.”

We suggest that if OWRD perceives a difference between the terms “Regulated Off” and “Reduction/ Reduced,” that these rules clarify that difference. For example, does “Regulated Off” mean shut off completely, whereas “Reduced” means only partially? How does the term "Regulated Off” differ regarding surface water, which is the most common use of the term? Do Watermasters who reduce surface water use still call it being “Regulated Off” even if some water is still allowed to flow for any given water right?

690-512-0041 Harney Basin Critical Groundwater Area

> (6) The Harney Basin Critical Groundwater area defined in OAR 690-512-0020(7) shall be divided into seven subareas for the purpose of management as shown in Exhibit 6.

Must be more specific -- replace “the purpose of management” with “implementation of corrective control provisions.” 690-010-0130 *Additional Requirements for Critical Ground Water Area Rulemaking Process* (3) states [**emphasis added**]:

> (c) Additionally, to the extent that sub-areas wholly contained within the designated critical groundwater area must be defined **to allow for implementation of corrective control provisions**, these sub-area boundaries will also be reasonably inferred or ascertained as in 690-010-0130 (3)(a) or (3)(b).

There are no other legal actions other than implementing corrective control provisions for which OWRD/ WRC can define subareas within a CGWA. Using the general term “management” opens up the possibility of misunderstanding 690-010-0130(3)(c) to include management of Voluntary Agreements or placating politically powerful irrigators who seek to minimize pumping reductions they personally experience by gerrymandering subareas to spread the pain of regulatory actions curtailing water use, as we have discussed in these comments.

690-512-0050 Permissible Total Withdrawal for Each Subarea Within the Harney Basin Critical Groundwater Area

> (3) The permissible total withdrawal for the Northeast-Crane subarea shall be 35,000 acre-feet per year.

On the matter of how the Groundwater Level Magnitude Trajectory in Crane went from a starting date of 2018 for measurement, showing -17 foot declines in groundwater levels at the April 16 RAC #14,[62] to a starting date ten years later in 2028 for measurement showing -5 feet in the NoPR Groundwater Level Change Envelope graphs,[63] see the Crane Groundwater Level Magnitude Trajectory graph on page 3 of the Evaluation of RAC Alternate PTWs Memo 20250530.pdf, which also uses the 2018 starting date.[64] On page 1 of that memo, the alternate increase in the percent of water use reduction in Crane goes from 34% to 45%, an increase of 6 Kaf/yr in water use curtailments. Along these lines, the graph on page 3 shows an apparent commensurate increase in elevation of the final groundwater level to be near -5 feet below zero, and *that zero* is the 2018 year basis point. But the NoPR, which uses a 2028 start date, still keeps the Crane PTW at 35 Kaf/yr, similar to the April 16 RAC #14 presentation.

Is OWRD using the graph from the RAC Alternate PTWs Memo for the Crane Groundwater Change Envelope in the NoPR, while keeping the PTW at 35 Kaf/yr as shown in the RAC #14? Please explain what is going on here. The public should not have to sort out these numbers, especially when it appears the baselines for dates are shifting by ten years, the effect of which masks the severity of the groundwater level declines. Indeed, the RAC #14 graphs included a dashed line showing the declines since 1980, which tells the story of excessive declines in groundwater levels. We think the public should not be prevented from seeing the accumulated groundwater declines since 1980 in the NoPR. The omission has the effect of obscuring the extent of the tragedy in the Tragedy of the Commons. Minimizing the extent of the harm accommodates the backlash by special interests against the Division 512 rulemaking process to designate a

[62] Oregon Water Resources Department, "Groundwater Regulation for the Malheur Lake Administrative Basin Rules Advisory Committee" RAC #14 slide deck, April 16, 2025. [97]
[63] OWRD, "Notice of Proposed Rulemaking." [59]
[64] Ben Scandella, OWRD, Evaluation of Division 512 RAC Alternate PTW Scenario, May 30, 2025. [3]

CGWA. How is such a decision not interpreted as a political act, given how easy it is to show the 1980 dotted line?

690-512-0060 Determination of Initial Allotment for All Groundwater Rights

> (1) To establish a schedule for reductions in groundwater use, the Department will determine an initial allotment for each groundwater right within the critical groundwater area which will be implemented through an order after completion of the contested case process as required in OAR 690-010. The initial allotment shall not exceed the total rate or duty authorized on the water right.

Irrigators may seek to expand the rate authorized by their water rights by claiming that they have always exceeded their rates in the past, which is an admission of guilt.[65] A rate increase must not be allowed in a region suffering from some of the worst groundwater over-pumping in the state. Pumping beyond the rate authorized by water rights is a misappropriation of water.

690-512-0070 Scheduling Water Use Reductions to Meet the Permissible Total Withdrawal

> (7) If enforcement of corrective control orders reducing use does not occur as scheduled in 2028, then at such time as enforcement occurs, all reductions scheduled under OAR 690-512-0070(1)(a) and (b), including any adjustments that should have occurred at the adaptive management checkpoints defined in OAR 690-512-0080, will be included in the enforcement.

Typo -- the reference should be OAR 690-512-0070(1) and (2).

Also, this rule is the minimum standard by which OWRD should prevent stalling the imposition of Corrective Control Orders by presumptive attempts to drag out the Contested Case Process and likely Appeals Court Challenges.

690-512-0080 Adaptive Management of the Harney Basin Critical Groundwater Area

> (2) For each subarea, if the contested case process is complete and corrective control orders reducing use can be implemented in 2028, the Department will:
>
> (c) If the median annual high groundwater level in 2027 is found to be greater than or equal to than the median annual high groundwater level measured in 2022 and the groundwater

[65] Representative Mark Owens, Draft Voluntary Agreement Guidance Document, email to OWRD, August 6, 2024. [3] (See admission that irrigators have been exceeding the rate limits set by their water rights and how they want to keep doing so.)

level decline rate calculated for 2022 through 2027 is found to be zero or above, then the regulatory reductions scheduled for 2028 will be reduced to zero.

The proposed language in OAR 690-521-0080(2) is both morally and hydrologically indefensible because it effectively discounts the significance of 30+ years of documented aquifer decline between 1990 and 2022, the very depletion that necessitated the CGWA designation in the first place. By tying corrective action in 2028 to a narrow five-year window from 2022 to 2027, the rule disregards the sustained overdraft that has caused irreversible ecological harm, economic instability, and intergenerational injustice. The rule also narrows the frame of reference and serves to minimize the appearance of harm dating back to 1990 by obscuring the historical accountability that the state has to hold water in trust for the public.

This proposed rule is the same species of politics that moves the Groundwater Level Change Envelope graphs ten years ahead from 2018 to 2028 and deletes the dashed line showing on the RAC #14 Magnitude Trajectory graphs where the 1980 groundwater levels were. The prevailing conventional wisdom, much of which we scorn, suggests that the past 45 years of decline are a *sunk cost* that is now politically expedient to ignore. Removing the weight of the ecological destruction, much of which will not recover in human time scales, from the current policy debate is negligent and is no way to hold water in trust. Holding water in trust requires adhering to a fiduciary duty to protect the resource for both present and future generations. Disregarding past harm and the lessons it provides is a failure to uphold that duty because it normalizes the continued degradation of a public resource and suggests a lack of political will to uphold a principled fiduciary duty into the future. We suspect the ease with which the state proposed a 30-year phase-in to stabilize a groundwater level trend of zero decline comes from this same political calculus.

Hydrologically, such a short five-year comparison period preceding 2028, when curtailments are set to begin, is insufficient to show the long-term groundwater decline trends. The state sends the message that decades of damage do not count *unless they are made worse*. This undermines both the public trust responsibility and the precautionary principle embedded in Oregon water law. The inclusion of this ‘no worse than 2022’ clause codifies a permissive stance toward unsustainable use, improperly continuing the trend of favoring influential water users in the present at the expense of future generations, ecosystems, and the communities already suffering from dried wells and lost springs. To be clear, this trend, a function of the conventional wisdom, is the driving force behind the excessively declining groundwater level trends. 690-512-0080(2) is not adaptive management; rather, it’s a policy that disregards the past 45+ years of damage. OWRD and the WRC must honor all who have been harmed and will be harmed by the past 45 years of neglect by imposing water use curtailments in 2028, *come politics or high water*.

We also acknowledge that the likelihood of 2027 groundwater levels improving over 2022 is essentially zero, which suggests that 690-512-0080(2) is a political concession, crafted to create the illusion of flexibility. Perhaps it is a counterpoint to 690-512-0070. In this case, it's political theater. Codifying a symbolic off-ramp based on a knowingly unrealistic outcome serves no legitimate regulatory function. No rule should be based on the need to choreograph a narrative of restraint when decades of damage are already enough reason to take regulatory action; furthermore, should Voluntary Agreements ever coalesce into a reasonable alternative to regulatory action, which we doubt possible, this leniency will enable stalling across the board because Voluntary Agreements only work when there is a credible regulatory backstop.[66]

690-512-0080(7)

> (b) The target water level trend has not been achieved and all scheduled **reduction** have been implemented, the Department will initiate a rulemaking process to adjust the permissible total withdrawal as needed to achieve the target water level trend; or

Typo – the word should be pluralized to "reductions."

690-512-0080(7)

> (c) The target water level trend has been achieved and all scheduled reductions have not been implemented, the Department will initiate a rulemaking process to adjust the permissible total withdrawal to match the implemented reductions.

What if the previous 6-year period was abnormally wet and it had an outlier effect that permitted irrigators to rely upon rain a bit more than normal, which resulted in less groundwater pumping, and then in, the decades following 2058, there is another 20-year megadrought that incentivizes irrigators to pump as much groundwater as possible?

The OWRD should not adjust the PTWs to remove the remaining headroom in the PTWs if the groundwater level trend of zero decline has been met in 2058; rather, the OWRD should extend the adaptive management decision from 2052 beyond 2058 and hold that level of pumping steady if implementing the full PTW is ever required.

690-512-0110 Serious Water Management Problem Area (SWMPA)

> (2) By no later than March 1, 2028, each groundwater right holder, well owner, or well operator shall properly install and thereafter properly maintain a totalizing flow meter on

[66] Felicia Marcus, Nell Green Nylen, Dave Owen, Michael Kiparsky, "Five Guiding Principles for Effective Voluntary Agreements: A Case Study on VAs for Water and Habitat in California's Bay-Delta Watershed," The Center for Law, Energy & the Environment, UC Berkeley Law, January 2024.

> each well listed as a point of appropriation on a valid groundwater right within the Harney SWMPA boundary as defined in OAR 690-512-0020(3). The Department may extend the deadline as needed. If the deadline is extended, the Department will notify each groundwater right holder, well owner, or well operator at least 60 days before March 1, 2028. Groundwater wells that are regulated off and disconnected from all water use infrastructure do not require a totalizing flow meter to be installed unless or until use is permitted to resume.

There should be no need to plan for the failure to implement the SWMPA rules before the March 1, 2028, deadline for compliance.

Resistance from the supermajority irrigator-aligned cohort of RAC members during RAC meetings on water use measurement and reporting was an ongoing theme since the SWMPA regulations were initially discussed. There never was a credible justification for a mass extension of the deadline other than irrigators worried that OWRD wouldn't have the ability to manage the incoming data, which is not their concern.

We support offering one-time extensions for up to six months to individual irrigators to account for the possibility of supply chain disruptions or plumbing installations getting backed up. Applications for extensions should include evidence of having made timely arrangements for a meter that is on back order and/or for an installation with a plumber with a reservation date.

Following the adoption of the rules in December 2025, there are 27 months for irrigators to purchase and install meters, which is a reasonable amount of time to comply with the SWMPA rules, which do not need to be brought before a contested case process for implementation. We suggest that timely means nine months before March 1, 2028, for both the purchase of a meter and related materials, and the reservation of a plumber and related contractors. That leaves an 18-month cushion of time to plan the installation by the deadline.

X. Conclusion:

The Oregon Water Resources Department's Division 512 rules represent a paradigm shift from managing water for extractive interests toward stewarding water as a public trust resource for present and future generations. This rulemaking process acknowledges that current water users have excessively drained the Harney Basin's groundwater reserves, and they won't stop short of enforced regulatory action.

The politics overwhelming these rules have stifled optimism and imposed a regime of defeatism. The nihilistic, fatalistic narrative perpetuated throughout the Division 512 process is harmful to

those who stand to benefit from meaningful groundwater protections. This defeatist stratagem, employed by the supermajority irrigator-aligned cohort of RAC members, represents an unreasonable attempt to seize narrative control and shift blame for over-pumping consequences onto the very regulatory process designed to remedy the harm.

We incorporate by reference our July 17, 2024, letter to officials titled "No, We're Not There Yet: Modernizing the Conventional Wisdom."[67] Holding water in trust requires unwavering fiduciary duty to protect resources for both present and future generations.

The Critical Groundwater Area designation provides a service to all of Oregon by highlighting that in an era of over-appropriated water sources, 21st-century water management must prioritize the greater public interest over short-term extractive benefits. Only through such a reorientation can Oregon prevent mining its precious water resources and preserve them for generations yet to come.

While Water League prefers a more robust outcome, we support the designation of a Critical Groundwater Area and acknowledge OWRD's implementation proposal. These rules mark a necessary and overdue departure from a century of groundwater mismanagement. Though opposition from entrenched water users has sought to delay, if not derail, this process, the WRC and OWRD have a fiduciary duty to uphold the public trust, safeguard future generations, and restore hydrologic balance to the basin.

[67] Christopher Hall, "No, We're Not There Yet: Modernizing the Conventional Wisdom," Water League, July 17, 2024.

WATER LEAGUE

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In Memoriam
John L. Gardiner

October 1, 2025

To: Water Resources Commission
Julie Smitherman, Vice-Chair
Commissioners Kathy Kihara, Jan Lee, Joe Moll, Janet Neuman, and Woody Wolfe

CC: OWRD Staff
Kelly Meinz, Water Policy Analyst
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Mindy Lane, Executive Support to the Deputies
Cassidy Fredlund, Executive Support Specialist

Oregon Water Resources Department
725 Summer St. NE, Suite A
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Dear Vice-Chair Smitherman and Commissioners,

Water League submits our comments on *The Petition to Amend Oregon Administrative Rules (OAR) Chapter 690, Division 512* to the Water Resources Commission in advance of the October 3, 2025 meeting for your consideration.

As always, we appreciate the opportunity to share our thoughts.

Thank you,

Christopher Hall
Executive Director

Comments on The Petition to Amend Oregon Administrative Rules (OAR)
Chapter 690, Division 512

By Christopher Hall, Water League – October 1, 2025

The Petition to Amend Oregon Administrative Rules (OAR) Chapter 690, Division 512 (the "Petition") is the quintessential example of sophistry, the rhetorical art of subterfuge. In this case, the Petition's Authors establish a baseless foundation upon which they build layers of subsequent falsehoods to manufacture an untenable conclusion on behalf of their interests to maintain the status quo: over-pumping the groundwater reservoirs of the Harney Basin to the greatest extent possible.

Across 27 section headings, the Authors misappropriate the numerous laws they cite in the same way they misappropriate the scientific research and data. They attempt to gain credibility for their unfounded assertions and conclusions by wearing the mantle of legitimacy that inheres in the laws and science. However, to put these credible authorities to the task of buttressing their contrived narrative, the Authors must misconstrue and misrepresent the intent of the policies and the findings, respectively.

We presume some signatories to the Petition may be unaware of or had no hand in fabricating the Petition's pretenses. Therefore, instead of referring to *petitioners* through our comments, we strictly refer to the *Petition Authors* (Authors).

While we are surprised by the brazen mendacity running throughout the Petition, we acknowledge that this Petition is otherwise an expected development that irrigators and their aligned cohort have progressed toward since OWRD began the Division 512 rulemaking process. For decades, there has been a pattern of resentment towards the state government's preemptive authority to manage the large-scale water use draining the basin at the rate of 110,000 acre feet per year. The refusal to lawfully comply with the statutory *decline conditions* on water rights is just one example; the presence of the Tragedy of the Commons evinces the tension underlying compliance with the laws and rules governing water use management.

OWRD prescribed the 2023-2025 Division 512 rulemaking in the existing 2016 Division 512 rules. During the intervening years, OWRD, irrigators, and others shaped place-based planning alongside this expectation. As the rulemaking first emerged and then coalesced in 2023, irrigators began to engage in obstructionism during Rules Advisory Committee (RAC) meetings, marked by: filibustering; misdirecting discussions through extensive bird walking, dragging red herrings across topics, constructing strawman arguments, and raising non sequiturs; deflecting both questions and answers by all means possible; feigning confusion in a coordinated and structured manner; denying peer-reviewed science without the professional qualifications to do so while proclaiming personal anecdotal experience is a fungible substitute; and on occasion, staging coordinated dissent tinged with ad hominem attacks against OWRD staff, and when that failed, political theatre contrived to manipulate state officials' emotions.

Compounding this obstructionism, RAC members requested a dozen extracurricular Discussion Groups, which we extensively critiqued in our comments on the Division 512 rules as a highly sophisticated countervailing force to the OWRD-run RAC meetings.

During the 2025 legislative session, the leader of the supermajority of irrigator-aligned RAC members, Representative Mark Owens, an irrigator in Crane whose wells sit atop some of the basin's steepest cones of depression, pivoted to sponsoring legislation (HB 3800 and HB 3801) as a second countervailing force to supersede the rulemaking process as the RAC meetings were nearing their conclusion.

When that legislative override failed and the RAC process concluded, the Secretary of State hosted the public comment period. Representative Mark Owens then submitted the Petition on his official House District 60 letterhead, as a third countervailing force to OWRD's rulemaking process. While OAR 137-0070(2)(a) requires petitions to respond to existing rules, this Petition substantially reacts to OWRD's proposed rules. As such, the Petition is a rushed and poorly contrived political maneuver intended to obstruct the science-based policy goals for water management that OWRD has identified to be in the interests of Oregon's citizenry. This circumstance is yet another front in the entrenched struggle between individual interests and the greater public interest.

The Petition sacrifices intellectual honesty and objective truth in an attempt to prevail over the OWRD rulemaking process:

First, the Authors misappropriate the USGS/OWRD groundwater study referred to herein as "Gingerich et.al., 2022." In so doing, they deliberately misrepresent the findings of one groundwater system by falsely declaring that the Harney Basin comprises five groundwater reservoirs. This improper stratification is the pretext for gerrymandering the Greater Harney Valley Groundwater Area of Concern (GHVGAC) into five Critical Groundwater Areas (CGWA) instead of one CGWA with multiple subareas, as OWRD has posited. By this fragmentation, the Authors then grade their five groundwater reservoirs on a curve and declare that most of the regions look *reasonably stable* compared to Weaver Springs and Crane. In doing so, they deny the scientific research, which concludes that the entire GHVGAC experiences the effects of excessively declining groundwater levels. By this denial, the Authors appeal to a much less rigorous standard that only requires the state to maintain reasonably stable groundwater levels, a condition OWRD contends the hydrologically-connected basin blew past many years ago. The Authors minimize these hydrologic facts to manufacture their conclusion: since the groundwater crisis is not much of a problem, as they see it, they can manage their own affairs alongside substantially fewer water use curtailments.

Second, the Authors frame their individual interest in maintaining the pumping status quo to the greatest extent possible as if their pumping was in the greater public interest. They carry out this rhetorical maneuver, in part, by highlighting the 51 (and growing) signatories, which purportedly demonstrates the interests of the public. But ORS 183.390 does not prescribe petitions in the common sense of the word: only one person needs to file the Petition under ORS 183.390. While OAR 137-001-0070(1) says "The petition shall state the name and address of the petitioner and any other person known to the petitioner to be interested in the rule," the number of signatories is not a factor in the outcome of a petition insofar as OWRD shall consider petitions on the six criteria in ORS 183.390(3)(a-f). However, the signatories on a petition may share a similar interest in the topic as persons who file comments under ORS 183.390(2) in support of a petition. Thereby, OWRD shall consider the "nature of complaints/comments" criterion in ORS 183.390(3)(b). Therefore, we hold that the number of signatories is not more important than an equivalent number of public comments under ORS 183.390(2); and in a deficient petition, the number of signatories should not sway OWRD's consideration of the Petition any more than unconvincing "complaints/ comments" under ORS

183.390(3)(b) would.

We acknowledge that politics plays a part in agency decisions related to petitions because ORS 183.390(3) does not limit what OWRD may consider beyond the six criteria; nor does the statute require OWRD to decline a petition even if the department considers the Petition to be deficient on one or more of the six criteria in 183.390(3). That said, we do not believe the number of signatories should materially differ from the same number of comments that support the Petition under ORS 183.390(3)(b). To this point, we believe double-counting the same persons twice, when signatories invariably submit comments, is not justified.

We surmise that the Petition triggers a process similar to a petition for *certiorari* or for a writ of *mandamus*. The Petition is not a collective petition like a ballot initiative that uses the collective weight of its signatories to compel action. ORS 183.390 is about the worthiness of the idea and how petitions and public comments shape the idea; whereas with collective petitions, brute force can sometimes advance the worst ideas, which is not what ORS 183.390 is about.

Water League Public Comment on Agenda Item G – Voluntary Agreements – WRC September 12, 2025

By Christopher Hall

Vice-Chair Smitherman and Commissioners, thank you for this opportunity to provide comments on the proposed guidance on Voluntary Agreements. I'm Christopher Hall with Water League.

I've submitted detailed written comments; here, I'll just focus my oral remarks on one point: While Voluntary Agreements under ORS 537.745 ought to be explored for implementation, they cannot be used to re-arrange seniority, points of appropriation, or places of use. Those are water-right transfers and they must proceed under ORS 540.520 and 540.523.

ORS 537.745 Voluntary Agreements may "control in lieu of" a commission order within the groundwater sections of Chapter 537, but it does not control other sections of 537 or other chapters of the water code. VA proponents' idea of "flexibility" to move certificates among POAs and POUs without transfer approval is legally untenable. Even a 2025 bill draft (HB 3801) explicitly contemplated changing the law to let VAs bypass 540.520/.523, which acknowledges this point: the state would need a new statute to do this.

Oregon's water right transfer laws exist to prevent injury to others and to maintain spatial and temporal water use predictability. Hot-swapping seniority, POAs, and POUs on short time scales, outside the transfer process, recreates the very chaos our 1909 Water Code and the 1955 Groundwater Act were designed to tame. In basins with excessive groundwater declines, ad-hoc movement of appropriations compounds injury risk to neighboring water users. If VA participants want to move water, they should file an application for a water right transfer like everyone else.

VAs are not like rotating ditch agreements, Rotations in water Use, nor are they irrigation districts.

- **VAs are not like rotating ditch agreement**, which is a timing-and-sharing arrangement that usually distributes water from a single water right to one POU among landowners using the

same source.

However, VAs envision bundling two or more separate water rights, each with its own distinct POA and appurtenant POU – they cannot be made into one water right. The TVR only accounts for the sum of the conserved duty; it is not a merger of legally distinct water rights.

- **VAs are not like *Rotation in water Use* under ORS 540.150**, which is about timing among distinct water right users of the same source. That statute does not move seniority among distinct water rights, nor mix and match POAs, or POUs – it does not mix multiple sources across various POUs as VA proponents envision. Rather, Rotations in Water Use permit distinct water right holders to share the same water source while their water rights maintain a strict connection between their respective POAs and POUs.

- **VAs are not like irrigation districts.** Districts hold the rights; members put water to use under those rights. Moving PODs/POAs/POUs inside a district still requires transfers under most circumstances, and only the right holder can apply, not the user (Fort Vannoy). VAs are not districts, and they cannot assume a district's authorities.

There is a reason why VAs have never been implemented since 1955: Voluntary Agreements only work when they're sweetened with special *carrots* and *flexibilities*, which is a great irony. This irony shows that the desired benefits aren't inherent to VAs but are added privileges. If those incentives are sound policy, then OWRD should write them into the rules for all irrigators rather than have the WRC reserve them for VA participants only. Because VAs are private, membership-controlled arrangements the Commission may recognize "in lieu of" certain actions, VA parties choose who's in or out, so they can function as exclusive clubs that would financially benefit members while nonparticipants face the full weight of regulation and suffer potentially greater financial losses. In a hydraulically-connected hydrologic system, every special benefit to any "in-group" likely imposes a corresponding burden on those excluded; otherwise, the interest in VAs wouldn't materialize.

Thank you.

WaterWatch of Oregon
Protecting Natural Flows In Oregon Rivers

October 7, 2025

Oregon Water Resources Department and Oregon Water Resources Commission
Sent via email to: WRD_DL_rule-coordinator@water.oregon.gov

RE: WaterWatch comments on both the Petition for Rulemaking – Division 512 and the Agency Proposed Rules – Division 512

Dear Rules Coordinator and Water Resources Commission:

Thank you for the opportunity to comment on the Petition for Rulemaking – Division 512 (Petition) and to provide further public comment on the Agency Proposed Rules – Division 512 (Agency Proposed Rules). These comments supplement WaterWatch's previously submitted written comments of August 13th and October 1st and oral comments of October 3rd.

Comments

1. **Overview of key statutory provisions**

Under Oregon law "[a]ll water within the state from all sources of water supply belongs to the public." ORS 537.110. The 1955 Groundwater Act (ORS 537.505 *et seq.*) sets forth several provisions to ensure that groundwater is allocated and managed in a manner that "insure[s] the preservation of the public welfare, safety and health." ORS 537.525.

All Harney Basin groundwater rights, with the exception of a small handful of pre-1955 rights, were issued under the 1955 Groundwater Act and thus were applied for, and accepted, with full notice of the Act's Critical Ground Water Area provisions and the public welfare, safety and health standards.

The Oregon Water Resources Department (OWRD or the Department) and the Oregon Water Resources Commission (Commission) have the duty to manage groundwater in accordance with statute and to recognize that the water belongs to the public at large, not to the irrigators who secured usufructuary rights to use the public's water in accordance with their water right conditions and the Oregon Water Code.

2. **The Petition was not discussed in the Harney Place Based Planning process, has not been endorsed by the Place Based Planning group, and is not part of that plan.**

We are concerned that certain public comments at the 10-3 Commission meeting could have left the incorrect impression that the Petition was a product of Harney Place Based Planning process (also called Community Based Water Planning). This is not true. The Petition was not discussed

in this process is not part of the Harney Placed Based Plan, which recently gained state recognition at the 9-12 Commission meeting. As an active member of the Place Based Planning/Community Based Water Planning group for nearly a decade, I think it is critical that OWRD and the Commission not be left with any false impression that the Petition was connected to this group. Any such suggestion to the contrary undermines the integrity and trust in not only that plan, but the program more broadly.

3. **The Petition will not stabilize groundwater levels, will increase harm to groundwater dependent ecosystems and domestic wells, and falls far short of meeting requirements**

The Department's recently issued memorandum with the subject Technical Evaluation of Petition to Amend Division 512 (Memo) confirms that, when compared to the Agency Proposed Rules, the Petition would result in lower groundwater levels; fail to stabilize groundwater levels resulting in chronic groundwater declines; dry up significantly more domestic wells; and create more harm to groundwater dependent ecosystems and native vegetation.

We very much appreciate the Department's work on the Memo. However, we believe it was incorrect to model the Petition Proposal as though in Silver Creek, Silvies River and Blitzen-Voltage sub-areas, "10% voluntary reductions from 2017/2018 mean pumping are *required* by 2040." (Memo at 2 (emphasis added)). We do not read the Petition to require *any pumping reductions* in those sub-areas, but rather only to require the Department to "promote and support" voluntary agreements. (*See* citations in #4 below). Accordingly, we think that for these three sub-areas, the Memo's "Full Pumpage" scenario more accurately portrays the petition (though it may understate pumping impacts because it does not account for any new wells coming on-line), while the Memo's Petition Proposal assumes pumpage as though irrigators in all three sub-areas form and implement Voluntary Agreements that actually result in 10% pumpage reductions by 2040.

In sum, the Memo confirms that even with pumping reductions that exceed the requirements of the Petition, it provides considerably less protections for groundwater than the Proposed Rules, and the "Full Pumpage" scenario appears to best demonstrate the effects that the Petition would have the Silver Creek, Silvies and Blitzen-Voltage sub-areas.

4. **Voluntary Agreements**

For all but two sub-areas, the Petition proposes to replace required pumping reductions with language requiring the Oregon Water Resources Department (Department or OWRD) to "[p]romote and support a voluntary agreement among groundwater users." (*See* Petition, *Petition Proposed* OAR 690-512-0080(2)(a); -0090(2)(a); and -0010(2)(a) (*sic*), Ex. A at 16, 18, 22 (Adobe p. 52, 54, 58) for Silver Creek, Silvies River and Blitzen-Voltage sub-areas respectively). However, we do not see any language in the petition's proposed rules that require any irrigators to actually form voluntary agreements or to voluntary reduce any groundwater use through such agreements. Voluntary agreements are, by statute, agreements formed among groundwater users that can be approved by the Commission if meeting certain standards. ORS 537.745. While the petition requires the Department to "promote and support" voluntary agreements, this does not

equate to irrigators actually forming any voluntary agreements, or accomplishing any level of curtailment result from any such agreements.

Further, we do not support inclusion of language requiring OWRD to "promote and support" voluntary agreements because it is vague and unclear and would likely lead to conflict in the future. Given that voluntary agreements are agreements among groundwater users (ORS 537.745), it is unclear why the irrigators feel that the Department needs to "promote" these or what that would entail.

In reality, the Petition would allow for continued full pumping, and even increased pumping as any un- or partially developed permits are further developed,[1] in Silver Creek, Silvies River and Blitzen-Voltage sub-areas until groundwater levels drop 25 feet and OWRD undertakes an additional process to establish a permissible total withdrawal. (*Petition Proposed* OAR 690-512-0080(3); -0090(3); and -0010(3) (*sic*)).

The absence of any voluntary agreement to date for reducing groundwater pumping in the Harney Basin, despite groundwater declines being a known issue for almost two decades (Petition, Ex. B at 1 (Adobe p. 77)), demonstrates that in the absence of a regulatory requirement, irrigators are not forming these voluntary agreements. There is no reason to expect a different result under the Petition.

Importantly, the Agency Proposed Rules already fully accommodate voluntary agreements, should any irrigators choose to use that tool. Under the Proposed Rules, irrigators can utilize voluntary agreements to come up with and implement alternative methods for meeting pumping reductions, rather than simply curtailing by priority date, providing that those agreements meet the requirements of ORS 537.745. The Agency Proposed Rules also contain an Adaptive Management program, which the petition deletes, under which curtailment would be reduced if groundwater levels trends are better than projected. This program would further accommodate voluntary agreements by cutting back on curtailment if irrigators' voluntary reductions stabilized groundwater faster than the Department projects.

In sum, the Petition's reference to voluntary agreements for three sub-areas, while failing to provide any required cutbacks on pumping or regulatory backstop, will fail to protect groundwater and is unlikely to succeed. The Agency Proposed Rules contain a much more robust opportunity to employ voluntary agreements in ways that can set the basin on a more sustainable path.

5. Petitioners' complaints about process are misleading and unfounded.

Petitioners' complaints about process are as perplexing as they are deeply frustrating to those of us who have participated in this very long and in-depth process in good faith, and with a

[1] The exclusion from the permissible total withdrawal of wells where construction was not initiated by December 31, 2024 would presumably not apply unless and until a permissible total withdrawal was set (which does not occur under the Petition's proposed rules until a 25' decline has occurred) and not during any voluntary action period. (*Petition Proposed* OAR 690-512-0080(1)(a); -0090(1)(a); and -0010(1)(a) (*sic*)).

considerable investment of time and resources.[2] We urge OWRD and the Commission to not be distracted by this false narrative and to focus on ensuring that the science and law are followed. We provide our perspective on the process below.

a) The special October 3rd Water Resources Commission meeting

Petitioners were granted extraordinary process and access to the Commission to argue for their Petition, yet, even within that venue complained that it was not adequate.

Petitioners were granted a special Commission meeting to argue for their Petition. They were provided a pre-scheduled 40 minutes (which went a bit over) to have a panel speak and give a Power Point presentation to the Commission and then were provided another 20 minutes to interact with the Commission and make additional argument, for a total of an hour. This was special treatment that is not normal practice.[3] Following a community member, The Nature Conservancy, WaterWatch, Water League, Environmental Defense Fund, and Ms. O'Conner then each spoke for three to five minutes each. This was unbalanced and inadequate, especially because several of the petitioners then got a second bite at the apple and were allowed to provide public comment in addition to their hour long presentation and discussion time. This cut into the time of those not on the panel to provide their views to the Commission. Clearly an hour long presentation and discussion cannot be addressed in a few three to five minute slots, meaning the Commission did not get balanced information about the Petition.

Despite the favorable set up for the petitioners at the October 3rd special Commission meeting, the same petitioners, ignoring the fact that they had just spoken to the Commission for an hour, then complained during their additional comment time during public comment that the conservation groups (which petitioners referred to as "special interests") actually "went first." We provide this recap because it illustrates the disconnect between petitioners' narrative on process and the reality of OWRD's approach. It reflects a lack of awareness on the part of petitioners as to the great lengths that have been made by the agency, often at the expense of other voices, to provide special treatment to local irrigators and their allies that has permeated this process.

b) The RAC process

The RAC met for 78 hours, with 30.5 hours of additional Discussion Groups. OWRD, and the outside facilitators, ran a thorough process, where in-depth information was distributed and discussed, everybody could be heard, and OWRD made many changes based on RAC discussion. A review of the RAC Roster shows that it included 29 community members, one consultant residing outside the basin with irrigation clients in the basin, and two conservation group staff residing outside the basin. (See RAC Roster on the OWRD 512 rulemaking page).

[2] Use of the term "petitioners" is not meant to imply all petitioners.
[3] For example, for the recent rulemaking petition regarding the stock water exemption, filed by WaterWatch and numerous other groups, there was no opportunity to provide public comment to the Commission. *See* Water Resource Commission Agenda for December 15, 2020, showing an asterisk prohibiting public comment as follows: "* A. Request for Decision on Petition for Rule Amendment or Rulemaking." Agenda available here: https://apps.wrd.state.or.us/apps/misc/wrd_notice_view/Default.aspx?notice_id=22 (visited October 6, 2025).

Complaints by the County Court (County Commission) are hard to square with the process. A County Court member, first Kristen Shelman and then Rob Frank, was present and active throughout the RAC process. Further the County Court essentially picked the majority of the RAC, because the County Court was granted the unusual authority of jointly, with OWRD, selecting the members of the "local Groundwater Study Advisory Committee," all of whom, also by rule, were then invited to participate on the RAC. *Current* OAR 690-512-0020(11)-(12).

While people can certainly have different views on whether they accept the USGS groundwater study or the like, the narrative that the process was not exhaustive or responsive enough does not hold water. 108.5 hours is a lot of process and a quick review of the materials available on OWRD's Harney (Division 512) Rulemaking webpage[4] clearly demonstrates the depth and breadth of information that was shared and discussed.

Some complaints by RAC members appear to be that the process was inadequate because OWRD did not put what they wanted in the rules and there was no consensus statement from the RAC. This misunderstands the role of a RAC. The agency has a duty to propose and adopt rules that meet statutory requirements; it has no duty to put what every RAC member wants into the rules, which would have been impossible here due to the different interests of RAC members.

If anything, for those of us not advocating for more irrigation pumping, the process felt plagued by what were apparently private meetings happening between RAC meetings where Representative Owens, likely with others, seemed to be exerting pressure on the Department. At one point, Representative Owens and others, derailed the RAC process and secured a long "break," during which they apparently went to the Governor's office to secure some undisclosed relief and presumably the funding and establishment of the Discussion Group process. Claims that petitioners were not being heard does not conform to my experience in the RAC.[5]

The fact that this lengthy, in-depth and exhaustive RAC process, where OWRD and outside facilitators went above and beyond, has only led to complaints about the process and to the Petition, may indicate that OWRD should reassess how it utilizes RACs to ensure that the extensive time and resources of the agency, and other RAC members who participated in good faith, are being well spent.

To learn more about the RAC process, review the 512 rulemaking webpage where you can see the depth and breadth of information provided and discussed, and view the participation of

[4] https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/Division-512-Rulemaking.aspx (all information on this OWRD's Harney (Division 512) Rulemaking webpage and all of its sub-pages is incorporated as if fully set forth here).

[5] Article III, Section 1 of the Oregon Constitution states: "The powers of the Government shall be divided into three separate branches, the Legislative, the Executive, including the administrative, and the Judicial; and *no person charged with official duties under one of these branches, shall exercise any of the functions of another*, except as in this Constitution expressly provided. [Constitution of 1859; Amendment proposed by H.J.R. 44, 2011, and adopted by the people Nov. 6, 2012]." (Emphasis added). We think that OWRD and the Commission should consider this requirement in the structuring and operation of RAC processes.

petitioners and others throughout the 78 hour and two plus years long RAC process, as well as information about the 30.5 hours of Discussion Groups.[6]

c) Conclusion

While we understand that emotions are high at this point, we urge OWRD and the Commission to not let any misleading narratives about process derail the agency from following the science and meeting statutory duties.

6. Petitioners' assertion that OWRD created the problem and so should not be permitted to act is off the mark on several fronts

Petitioners complain that OWRD should have stopped issuing new groundwater permits earlier than it did. However, it was irrigators – including irrigators who are petitioners – that continued to apply for new groundwater rights long after the point at which they now claim everyone knew there was a problem and OWRD should have acted.[7]

While there may be agreement now that it would have been better for OWRD to cease issuing new permits sooner, the reality is that seemingly at each and every turn when OWRD has tried to take action, this is met with opposition from the irrigators and their allies. Irrigators have challenged denials of new applications, denials of extensions, enforcement of the permit decline condition, and so on.[8] It's also the case that when the 2016 Division 512 rules were enacted, in more than half a dozen of the ~35 pending applications (meaning no permit had been issued), irrigation was already occurring in the place of use. In other words, applicants were illegally irrigating prior to receiving a permit. This is consistent with the award winning 2016 series in The Oregonian, *Draining Oregon,* in which one of the petitioners is reported as saying that he had started pumping groundwater without state approval and that it was common practice for

[6] https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/Division-512-Rulemaking.aspx (all information on this OWRD's Harney (Division 512) Rulemaking webpage and all of its sub-pages is incorporated as if fully set forth here).

[7] A search of Harney groundwater rights in OWRD's Water Rights Information System (WRIS) shows that petitioners, or their companies, hold many groundwater rights with priority dates later than 2010, and even as late as 2015. One petitioner, who we understood to be complaining that OWRD should have stopped issuing new groundwater rights in the 1990's, holds at least four new groundwater permits with application dates of 2008 or later, with one as late as 2012.

[8] *See e.g.* (not a complete history), Permit G-17966 in the name of Rattlesnake Creek Land And Cattle Co., successful 2019 protest to denial of an extension of time filed by applicant resulting in settlement to issue an extension of time (History, PFO and FO with Settlement Agreement available in WRIS); Attachment A, 5/25/2021 protest challenging OWRD denial of Application G-17638, for 10.66 cfs of new Harney Basin groundwater irrigation of 640 acres, claiming in part that "OWRD's finding that groundwater is over-appropriated and not available for the proposed use is in error and deficient…"; challenge filed in Court of Appeals to OWRD denial of extensions of two groundwater permits in the Harney Basin, *Golden Rule Farms LLC v. Oregon Water Resources Dept.,* 321 Or App 43 (2022); multiple challenges to OWRD's attempt to enforce the permit decline condition (*see* example at Attachment B). Notably, all of these challenges to OWRD's actions to better protect the resource were filed by Schwabe, Williamon and Wyatt, PC – the same firm that drafted the Petition (Attachment C, p. 3, 5).

ranchers in Harney to do so.[9] There has also been other concerning illegal use.[10] This is not a picture of irrigators who were waiting or begging for agency action to better protect the resource. Indeed the filing of the Petition itself further undermines Petitioners' assertion that they would have accepted earlier or more robust OWRD action.

More importantly, even if an agency has bent to the will of a resource using group in the past (known as regulatory capture), that does not mean that the agency is excused from following, or may never again follow, the science and the law. To the contrary, regulatory capture at one point in history does not necessitate, or excuse, perpetual regulatory capture. Agencies can and should improve over time and especially as the science, such as the USGS-OWRD Groundwater Study and USGS numerical model, become available to guide better decisions.

An important lesson to be learned from petitioners' argument is that OWRD and the Commission should not allow themselves to be rebuffed from doing what analysis, science and law shows is needed to protect the resource. Such accommodation may seem like it is avoiding conflict and creating good will, but this situation makes clear that it will only be held against the agency later as a reason that the agency can't act. The Commission and OWRD should not make that mistake again and should do the scientifically and legally correct thing here and that is to increase groundwater protections in the Agency Proposed Rules and adopt them.

In sum, history indicates that irrigators were, at a bare minimum, willing participants in the over-issuance of groundwater permits up to the time OWRD put the breaks on and that OWRD's efforts to protect the resource have been repeatedly met with resistance, just as we see with the Agency Proposed Rules. Certainly the County Court and the irrigation community had the power to bring about change faster. In any case, petitioners' apparent argument that OWRD should be barred from acting lawfully and responsibly now because it did not act faster in the past does not hold water and should be rejected.

7. Petitioners' complaints about the model are undercut by the Petition's deletion of the Adaptive Management program in the Agency Proposed Rules.

Petitioners complain about the USGS numerical model that has been used to test scenarios. They complain that it may not perfectly predict the response of the groundwater over time and that they lacked the ability or resources to run the model themselves.

First, the Agency Proposed Rules, at the request of the community and the RAC (including petitioners), contain an Adaptive Management program that, by design, would allow for adjustments of the curtailment schedule (in either direction) based on whether the groundwater

[9] The Oregonian, Draining Oregon (2016), stating "Some irrigators are so confident their permits will be approved, they sink wells first and file the paperwork later. Andy Root, a Harney County rancher who began pumping without state approval, said it has long been common practice in the area. He's since applied to obtain a water permit years after he began pumping." Available here: https://media.oregonlive.com/environment_impact/other/Draining_Oregon_0826d.pdf (visited 10-7-2025).

[10] *See e.g.,* 2019 Groundwater Re-Review for a transfer application T-12359 finding illegal use in Weaver Springs ongoing since 2014 (six years), stating "Analysis of Landsat imagery clearly indicates that the proposed POU has been irrigated without the benefit of a water right since 2014, contributing to the long term year-to-year water level declines in this area." (Available in WRIS).

level trend was responding as the model had predicted. *Agency Proposed* OAR 690-512-0080. However, inexplicitly, the Petition deletes this program, and proposes no method for addressing model performance. (*Petition Proposed* OAR 690-512-0130 is titled "Adaptive Management and Co-Management" but it does not seem to actually include any such adaptive management elements). Deleting the Adaptive Management program is exactly the wrong thing to do if one is sincerely concerned about model accuracy. Second, given the claimed and reported annual value of irrigated alfalfa in the basin ($58 million according to EcoNW), and the fact that two irrigation companies had reportedly spent a total of $80,000 as of a few weeks ago apparently for lobbying and legal help in the RAC process and to draft the petition (Attachment C, p. 3, 5), the notion that petitioners found themselves unable to hire a modeler to run a publicly available model is pretty hard to believe.

As further discussed in #10(c) below, we urge OWRD and the Commission to retain and improve upon the Adaptive Management program in the Agency Proposed Rules to ensure the flexibility to adjust if conditions are not as predicted by the model.

8. *Petition Proposed* OAR 690-512-0150, Burns Paiute Tribe and Harney Basin Co-Stewardship, generally exceeds the scope of the rulemaking discussion and its effects are unclear.

Petition Proposed OAR 690-512-0150, Burns Paiute Tribe and Harney Basin Co-Stewardship, contains provisions that may affect the effectively of the 512 rulemaking as a whole, or are complex and owed significant analysis. These proposals were not brought forth for discussion in the rulemaking process.

> For instance, *Petition Proposed* OAR 690-512-0150(2) states:
>
> (2) *OAR 690-512-0010 to OAR 690-512-0140*, including the critical groundwater area designations, and any contested case process and regulatory orders associated with the critical groundwater area designation, *shall not apply to the Burns Paiute Tribe's water rights or to waters within Tribal lands* without the express written consent of the Burns Paiute Tribe. Consent may be conditioned and may be revoked by the Burns Paiute Tribe at any time.

(Emphasis added). On its face, this proposed rule would appear to exempt any groundwater beneath Tribal lands from the entirety of Division 512 – including classification and critical groundwater area requirements – regardless, for example, of who applies for or holds the right. This raises many questions, including, but not limited to, whether non-tribal irrigators could secure in, or transfer existing groundwater rights into, this area that would then not be subject to Division 512.

The *Petition Proposed Rules* would also require OWRD to, within 12 months of rule adoption, "initiate a co-stewardship process with the Burns Paiute Tribe and basin stakeholders to support collaborative management of Harney Basin water resources." *Petition Proposed* OAR 690-512-0150(5). We are not aware of any "co-stewardship" program related to management of

groundwater in Oregon. While this may be a concept that the state and Tribe want to explore further, we do not support its inclusion in the 512 rules at this late juncture.

OWRD and the Commission would need to fully understand and analyze the proposed rule language, including the potential effects on efforts to stabilize groundwater in the basin and meet the requirements of the Groundwater Act.

While we do not support including the *Petition Proposed* OAR 690-512-0150 rule language in the Division 512 rules, we do think that exempting the Tribe's three existing rights from curtailment could make sense here and hope the agency will consider that and work with the Tribe on its additional ideas outside of the Division 512 rules process.

9. The Petition misquotes the very water code it claims to be implementing.

> The Petition cites ORS 536.220 to assert that:
>
> "The agency is tasked with the responsibility to maintain "the present level of the economic and general welfare of the people of this state" while also fostering "future growth and development of this state for the increased economic and general welfare of the people.""

(Petition at 9). That is not what the statute says. The partial quotes do not convey the actual language and meaning of the statute, which actually states:

> "The maintenance of the present level of the economic and general welfare of the people of this state and the future growth and development of this state for the increased economic and general welfare of the people *thereof are in large part dependent upon a proper utilization and control of the water resources of this state, and such use and control is therefore a matter of greatest concern and highest priority*."

ORS 536.220(a) (emphasis added). Contrary to the Petition's representation, this provision does not direct the agency to maintain economic levels, but rather supports the Department's efforts to ensure proper utilization of the water resources. It is concerning that a petition purporting to implement the water code is misrepresenting what the statute says for the apparent purpose of persuading the Commission to elevate certain economic interests.

10. Additional Comments on the Agency Proposed Rules

a) Concessions should be revaluated

The Agency Proposed Rules include a number of significant concessions to irrigators that led to rules that fall short on groundwater protection in significant ways. For example:

- The rules use median well level trends to determine success instead of more protective metrics, such as an 80% standard or a "median plus" standard. Use of the median standard will allow half the wells to decline beyond the standards set, and lacks a mechanism to address wells with significant or even extreme declines;

- Providing a lengthy 30-year glide path before groundwater levels would stabilize. This 30-year period comes after a lengthy period of decline that has already been allowed to occur. This timeline should be reduced substantially;
- Adding a one-way adaptive management valve prior to curtailment. *Agency Proposed* OAR 690-512-0080(2). This valve allows scheduled curtailment to be reduced to zero if the median annual groundwater level in 2027 meets or exceeds anticipated conditions, but does not allow any increased curtailment if that level is worse than anticipated.

We urge the Department and Commission to use this extra process period to reevaluate whether these and other concessions are appropriate or should be adjusted to better protect the resource.

b) Groundwater dependent ecosystems, native vegetation and domestic wells must be added back in as criteria for evaluating the management scenario.

The USGS numerical model can estimate the impacts of proposed pumping amounts on spring and stream discharge, native vegetation and domestic wells. Model runs were performed by OWRD that set limits (albeit higher limits than we would have liked to see) on the allowed impacts to these critically important components of the groundwater system. This resulted in constraining the pumping amounts that could be allowed in various sub-areas OWRD then removed these limits, resulting in increases in allowed pumping. As outlined in WaterWatch's August 13th comments, the rules must protect these components and as such, we request that OWRD reinstate these criteria as limitations for the pumping scenario.

We do recognize that the frontloading of some of the curtailment, as outlined in the Agency Proposed Rules, will help lessen the rules' allowed pumping impacts on spring and stream discharge, native vegetation and domestic wells. This frontloading, though we do not think it is enough, is none the less critical to maintain in the rules.

We also support including language (similar to the Petition's but not linking it to customary quantities of water rights) to require monitoring and developing programs to protect spring discharge. *Petition Proposed* OAR 690-512-0010(1)(c). We suggest including such a requirement not only in the Blitzen-Voltage sub-area but basin-wide.

c) Adaptive Management program

We urge the agency to specify that, as part of the Adaptive Management program, it may reduce the Permissible Total Withdrawal (PTW) in any sub-area a needed to stabilize groundwater. As written, OWRD can adjust the schedule of curtailment but not the PTW. It is critically important to have an Adaptive Management program and accompanying rules that can pivot to adjusting the PTW – and not just the curtailment schedule – as needed to stabilize the groundwater. The current limitation in the Adaptive Management program may render the rules ineffective and should be addressed with this requested change.

Conclusion

Thank you for considering these comments, and for considering our written comments of August 13th and October 1st, and our oral comments provided at the October 3rd Commission meeting, which these supplement.

We appreciate the work and thoughtfulness of the Department and Commission that has brought the rulemaking process to this point. We urge OWRD and the Commission to amend the Agency Proposed Rules to improve the level of groundwater protection provided, as outlined above and in previous written comments, and adopt those rules in December. We urge denial of the Petition, but with consideration to exempting the Burns Paiute Tribe's three existing groundwater rights from curtailment under the 512 rules.

Sincerely,

/s/ Lisa A. Brown

Lisa A. Brown
Staff Attorney
lisa@waterwatch.org

Attachments:
Attachment A (Protest Of Superseding Proposed Final Order To Deny Application G-17638)
Attachment B (Petition for Reconsideration of Final Orders)
Attachment C (Community Action Needed_Support the Harney Basin Water Petition)

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application G-17638, in the name of SUNNYSIDE DAIRY LLC	PROTEST OF SUPERSEDING PROPOSED FINAL ORDER TO DENY APPLICATION G-17638

INTRODUCTION

This protest is filed on behalf of the above-named applicant, Sunnyside Dairy (hereafter "Sunnyside"), pursuant to ORS 537.621(8), OAR 690-310-0160, and OAR 690-002-0030. Sunnyside requests a contested case hearing.

The Oregon Water Resources Department ("OWRD" or the "Department") proposes to deny Sunnyside's Application G-17638 to appropriate water for irrigation of 640.0 acres from 6 wells at a rate of 10.66 cubic feet per second (cfs) in Harney County (the "Application"). On June 3, 2014, the Department issued a proposed final order to approve the application (the "2014 PFO"). WaterWatch of Oregon filed a protest, and the Department took no further action until completing a Groundwater Re-Review on July 28, 2020 (the "2020 Groundwater Review"), over six years later. The 2020 Groundwater Review superseded the original review completed on June 18, 2013 (the "2013 Groundwater Review"). Based on the 2020 Groundwater review, OWRD reversed course and issued a superseding proposed final order to deny the Application on April 13, 2021 (the "2021 PFO").

OWRD proposes to deny the Application on the basis that "groundwater is over-appropriated and will not likely be available within the capacity of the resource without injury to existing groundwater rights." (2021 PFO, Findings 7, 13, 14 and Conclusion 1.) The Department also asserts that "the proposed use, if authorized, will injure other water rights." (2021 PFO, Findings 8, 13, 14 and Conclusion 1.) The Department also found that "the proposed groundwater use is located within the Greater Harney Valley Groundwater Area of Concern,"

(the "GHVGAC").[1] However, the Department did not cite this GHVGAC finding as a reason for denial of the Application.

For reasons described below, the Department's findings and conclusions are deficient and in error. The 2021 PFO is not supported by substantial evidence; is, without explanation, inconsistent with agency rules or officially stated positions and prior agency practice; does not comply with the law; and is outside the range of discretion delegated to OWRD. ORS 183.482. For each of these reasons, which are explained further below, the 2021 PFO is deficient and in error. Sunnyside therefore requests that OWRD issue a final order modifying its findings and conclusions, and approving the Application.

The elements of a protest, as required by OAR 690-310-0160(1) and OAR 690-002-0030(1), are addressed as follows:

1. Protestant's Name and Address and Telephone Number (OAR 690-310-0160(1)(a); OAR 690-002-0030(1)(c)).

Sunnyside Dairy LLC
4581 Maple Grove Rd
Sunnyside, WA 98944
(509) 840-4099

2. Description of the Protestant's Interest in the PFO (OAR 690-310-0160(1)(b)).

Protestant Sunnyside is the applicant, and is therefore directly and adversely affected by the 2021 PFO to deny the proposed use of groundwater.

3. Detailed Description of How the Action Proposed in the PFO Would Impair, Be Detrimental to or Adversely Affect or Aggrieve the Protestant's Interest (OAR 690-310-01601(1)(c)).

Sunnyside intends to make economic use of the real property in question through the use of water for irrigation of crops. Without water rights, the land is far less valuable. Denial of Application G-17638 will significantly adversely affect and aggrieve Sunnyside by depriving it of the planned economic use of the property.

[1] The GHVGAC was created by administrative rule, with an effective date of April 15, 2016. OAR 690-512-0020.

4. Detailed Description of How the PFO is in Error or Deficient and How to Correct the Alleged Error or Deficiency (OAR 690-310-0160(1)(d)); Statement of Facts Sufficient to Show that the Protestant is Entitled to the Relief or Action Requested (OAR 690-002-0030(1)(a)).

For reasons described below, the 2021 PFO is in error and deficient. The Department should correct the errors and deficiencies by issuing a final order modifying the 2021 PFO and approving the Application.

A. OWRD Wrongly Concluded that Groundwater is Not Available.

OWRD's finding that groundwater is over-appropriated and not available for the proposed use is in error and deficient for the following reasons.

OWRD is required to determine whether water is available prior to approving an application for groundwater use. OAR 690-310-0130(1)(b). Groundwater availability is one of four criteria reviewed by the Department to determine whether it may presume that the proposed use will ensure the preservation of the public welfare, safety, and health as described in ORS 537.525. ORS 537.621(2). If the presumption is established and not otherwise overcome, the Department approves the proposed use. *Id.* Where the Department finds that the presumption is not established, it may make specific findings to demonstrate that the proposed use will not impair or adversely affect the public welfare, safety, and health under ORS 537.525 and propose approval of the application with appropriate modifications or conditions. *Id.*; OAR 690-310-0140(2).

As a part of its water availability determination, OWRD considers whether water is available within the capacity of the resource to support the requested use. This analysis stems from the policy that "waters of the state shall be allocated within the capacity of the resource and consistent with the principle that water belongs to the public to be used beneficially and without waste...." OAR 690-410-0070(1); *see also* ORS 537.525(3) ("Beneficial use without waste, within the capacity of the resource, shall be the basis, measure and extent of the right to appropriate ground water."). OWRD has defined "capacity of the resource" as "the ability of a … groundwater resource to sustain a balance of public and private uses without causing over-

appropriation or otherwise significantly impairing the function or character of the resource." OAR 690-400-0100(4). "Over-appropriation" is, in turn, defined as "a condition of water allocation in which…[t]he appropriation of groundwater resources by all water rights exceeds the average annual recharge to a groundwater source over the period of record…." OAR 690-400-0010(11).

The 2021 PFO relies on the 2020 Groundwater Review to support findings that the aquifer is over-appropriated and groundwater is not available for the proposed use. (2021 PFO, Findings 7 and 13.) The 2021 PFO and 2020 Groundwater Review is in error in the following respects:

1. The 2020 Groundwater Review states that "[a]nalysis by the Department confirms the volume of groundwater permitted for annual use exceeds the average annual volume of recharge to groundwater" and that "[p]reliminary results of the USGS-OWRD Harney Basin groundwater study support these findings." But neither the 2020 Groundwater Review nor the 2021 PFO make any effort to describe, or even summarize, the data relied on to reach these conclusions with respect to Sunnyside's proposed use. The cited "analysis" and "preliminary results" are not a part of the record for Application G-17638. As a result, the Department's findings are not supported by substantial evidence in the record and carry no more weight than unsupported assertions. ORS 183.482(8)(c). These deficient "findings" are the basis for OWRD's findings and conclusions that the groundwater resource is over-appropriated, the public interest presumption is not established, and the proposed use will impair or adversely affect the public interest. (See 2021 PFO, Findings 7, 13, 14 and Conclusion 1.) Sunnyside cannot address unknown data, analyses or preliminary results of the USGS-OWRD study, and therefore reserves the right to raise any related issues at hearing to the extent that they cannot be reasonably ascertained and addressed at this time.

2. "Over-appropriation" occurs when "[t]he appropriation of groundwater resources by all water rights exceeds the average annual recharge to a groundwater source over the period

of record…." OAR 690-400-0010(11) (emphasis added). Sunnyside notes that the above definition requires actual "appropriation of groundwater resources" to exceed average annual recharge, whereas the 2020 Groundwater review states that "the volume of groundwater permitted for annual use exceeds the average annual volume of recharge[.]" (p. 5) (emphasis added). Actual appropriation and permitted volume are two different things, and OWRD's reliance on permitted volume not only conflicts with its own rules but exaggerates the impacts to the aquifer. OWRD is currently in the process of eliminating large volumes of undeveloped permitted groundwater, primarily by denying all applications for permit extensions within the GHVGAC. This effort will result in cancellation of many undeveloped permits, in whole or in part. It is therefore disingenuous and inaccurate for OWRD to substitute permitted volume for actual appropriation in determining whether the groundwater resource is over-appropriated. For these reasons, the Department's determination of over-appropriation is in error and deficient, outside the range of discretion delegated to the agency by law, inconsistent with an agency rule (with no adequate explanation), and not supported by substantial evidence in the record (since the wrong data set was used). ORS 183.482(8).

3. Regarding water availability, the original 2013 Groundwater Review indicated that groundwater "cannot be determined to be over appropriated…" (2013 Groundwater Review, item B1.a.) It explained that over-appropriation could not be found "based on the significant distance" between the proposed wells and known areas of water level declines and "the lack of local water-level data with an adequate period of record to conclude whether or not water levels are stable." In contrast, the 2020 Groundwater Review finds that the "[t]he proposed wells are within, near, or surrounded by an area of observed groundwater level decline," but fails to discuss the particulars. Sunnyside is left to wonder whether OWRD now possesses "local water-level data with an adequate period of record to conclude whether or not water levels are stable" within the immediate vicinity of the proposed wells – data that was lacking at the time of the 2013 Groundwater Review. The Department cannot rely upon generalized assertions of water

level declines without discussing specific, localized data in the vicinity of the proposed wells. The Department has failed to adequately explain how the 2020 data set was different from the 2013 data set, and how such differences (if any) justify a reversal in the Department's position on this specific application. ORS 183.482(8). The Department also should have evaluated the area of the proposed use as distinct from the regional aquifer and independently assessed the local aquifer and its unique characteristics to determine groundwater availability. Again, the Department's findings regarding over-appropriation are not supported by substantial evidence in the record. *Id*.

4. In reviewing recent transfer applications, the Department has explained that the aquifer system in the Harney Basin constitutes "a single groundwater flow system" and that "sub-watersheds within the basin contribute recharge to different parts of the system depending on groundwater flow-paths from recharge to discharge areas." *See, e.g.* April 6, 2020 groundwater review for T-13363, p. 3. Given that understanding, the Department has taken the position that "[i]n general, within these sub-watersheds water within the aquifer system is sourced from a common recharge area, and can therefore be considered a single source." *Id*. In other words, the Department views different parts of the aquifer system as different source aquifers. Further, the Department's rules tie the concepts of water availability, capacity of the resource, and over-appropriation to a single "groundwater source." OAR 690-400-0100(4) & (11). To be consistent in delineating groundwater sources in the Harney Basin for purposes of both permit applications and transfers, the 2020 Groundwater Review and 2021 PFO should have included a discussion of sub-watersheds and recharge areas for purposes of water availability, over-appropriation and injury determinations. The Department cannot deny transfers on the basis that different parts of the aquifer are different sources, while at the same time denying permit applications on the basis that all wells in the GHVGAC are drawing from the same source. The Department has failed to adequately explain the different treatment of transfers and permit applications, and its 2020 Groundwater Review and 2021 PFO make no effort to provide

evidence or explanation (must less substantial evidence) supporting the different outcomes. ORS 183.482.

5. The 2021 PFO is deficient and in error to the extent that the Department's undisclosed "analysis" of average annual recharge and "preliminary results" of the USGS-OWRD study rely on the fact that the proposed wells are located within the GHVGAC. Although this does not appear to be a basis for the Department's recommendation of denial of the Application, the 2020 Groundwater Review and the 2021 PFO refer to the fact that the proposed wells are in the GHVGAC. Sunnyside reserves the right to make any and all arguments at hearing related to application and relevance of the GHVGAC rules. The 2020 Groundwater Review correctly notes that the GHVGAC rules do not apply to this Application (p. 4), but the 2021 PFO is silent on this issue.

B. OWRD Erred in Finding that the Proposed Use will Result in Injury.

The Department found that "[t]he proposed use, if authorized, will injure other water rights" (2021 PFO, p. 2) and relied on that finding to conclude that the public interest presumption was not met and therefore the proposed use would impair or adversely affect the public interest (2021 PFO, Findings 7, 8 and 13, and Conclusion 1). The 2021 PFO is in error and deficient as to injury for the following reasons:

1. Neither the 2021 PFO nor the underlying 2020 Groundwater Review cite any evidence or analysis in support of the Department's injury finding. In fact, the 2020 Groundwater Review makes no mention of injury. The form provides a box for the reviewer to check if they determine that groundwater will not be available in the amounts requested without injury to prior water rights. (2020 Groundwater Review, p. 5.) For this Application, the reviewer left the box un-checked. The form also includes a space for the reviewer to "describe injury," which the reviewer of this Application left blank. *Id*. The Department's finding of injury is nothing more than a bald assertion, unsupported by substantial evidence in the record. ORS 183.482.

2. Although it is not entirely clear, the 2021 PFO seems to unlawfully *assume* injury based on the finding of over-appropriation. (See Finding 7.) The Department's own rules define injury as causing another existing water right to no longer receive previously available water to which it is legally entitled. OAR 690-380-0100(3). The Department made no effort to apply this standard in determining whether or not other wells in the vicinity of the proposed wells would be deprived of previously available water to which they are legally entitled. The agency therefore acted inconsistent with its own rules, without providing an explanation. ORS 183.482.

3. If the Department chooses to withdraw the 2021 PFO to undertake a proper injury analysis, it must do so in accordance with long-standing agency practice and interpretations of its own rules. In officially published interpretations, including legal filings with the Office of Administrative Hearings, OWRD has explained that in the context of groundwater, injury means that a senior groundwater appropriator must experience "substantial or undue interference." Substantial or undue interference means "the spreading of the cone of depression of a well to intersect . . . another well, or the reduction of the ground water gradient and flow as a result of pumping, which contributes to . . . [t]he ground water level being drawn down to the economic level of the senior appropriator(s); or [o]ne or more of the senior ground water appropriators being unable to obtain either the permitted or customary quantity of the ground water, whichever is less, from a reasonably efficient well that fully penetrates the aquifer where the aquifer is relatively uniformly permeable…." OAR 690-008-001(8)(b)-(c).

Neither the 2021 PFO nor the 2020 Groundwater Review make any attempt to apply the above-described injury standard to the subject Application. The mere possibility of injury occurring at some unspecified well and in some unspecified, future timeframe cannot serve as a basis for denying an application. OWRD would need to find actual injury to other existing groundwater rights in order to deny the Application on that basis.

4. The 2020 Groundwater Review indicates that the proposed use, in combination with existing undeveloped permits, will contribute to groundwater level declines. (p. 5.) The

2021 PFO is in error and deficient to the extent that it relies on such statements to support a finding of injury. The type of generalized declines mentioned in the 2020 Groundwater Review do not equate to a finding of substantial or undue interference, i.e., injury, to other groundwater rights. General statements regarding water level declines suggest the Department did not carefully review available water level data, water rights, well logs, or the local geology in coming to its conclusion that the Application would result in injury to other groundwater rights. Again, the Department's finding of injury is unsupported by substantial evidence in the record. ORS 183.482.

C. The 2021 PFO does not meet minimum requirements

A proposed final order "shall include…[a]n assessment of water availability…[and] [a]n assessment of whether the proposed use would result in injury to existing water rights." OAR 690-310-0150. For reasons stated elsewhere in this Protest, the Department's "assessments" of water availability and injury are improper, and as to injury non-existent. The 2021 PFO is deficient and in error because it fails to make adequate findings based on substantial evidence in the record, including proper assessments of water availability and injury. The most critical findings (Findings 7, 8, 13 and 14) are devoid of explanation, with the 2020 Groundwater Review providing no additional discussion of injury and only minimal and generalized discussion of water availability. The 2021 PFO reads like a template with a few words filled in here and there, providing very little substance. This makes it difficult for Sunnyside to understand the bases for OWRD's findings and raise issues in this Protest. Sunnyside therefore reserves the right to raise any and all issues not reasonably ascertainable at this time due to the defective nature of the 2021 PFO and 2020 Groundwater Review.

5. Detailed Description of How to Correct the Error or Deficiency (OAR 690-310-0160(2)(d)); Statement of Specific Relief or Action Requested (OAR 690-002-0030(1)(a) & (b)).

Sunnyside requests that OWRD modify the 2021 PFO; find that groundwater is available to support the proposed use; find that the proposed use will not cause injury; find that the criteria

have been met for the Department to presume that the proposed use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525; find that the Application complies with the rules of the Water Resources Commission; and issue a Final Order approving the Application.

6. Citation of Legal Authority to Support the Protest, if Known (OAR 690-310-0160(2)(e); OAR 690-002-0030(1)(d)).

Legal authority known to Sunnyside at this time includes the statutes and rules listed under "Authority" in the 2021 PFO, p. 1, and the following:

- ORS 537.505 to ORS 537.796 pertaining to groundwater.
- ORS 536.410 regarding withdrawals of unappropriated waters.
- ORS Chapter 183 pertaining to agency orders.
- OAR Chapter 690 Division 002 relating to protests and contested case hearings.
- OAR Chapter 690 Division 010 relating to critical groundwater areas.
- OAR Chapter 690 Division 085 relating to serious water management problem areas.
- OAR Chapter 690 Division 310 relating to water right applications, protests and contested case hearings
- OAR Chapter 690 Division 400 relating to state water resources policy.
- OAR Chapter 690 Division 410 relating to state water resource management.
- OAR Chapter 690 Division 510 relating to the Malheur Basin Program.
- OAR Chapter 690 Division 512 relating to the Malheur Lake Basin Program and Greater Harney Valley Groundwater Area of Concern.

7. Protest Fee (OAR 690-002-0030(1)).

A check in the amount of $410.00 is enclosed to cover the applicant's protest fee.

8. Request for Contested Case Hearing (OAR 690-002-0010(6)).

Sunnyside requests a contested case hearing.

CONCLUSION

The above described facts and legal arguments demonstrate that Sunnyside is entitled to relief. The specific action requested is that the Department issue a Final Order modifying the 2021 PFO and approving the Application. A contested case hearing is requested. However, Sunnyside welcomes the opportunity to engage in informal discussions to seek a resolution of this matter with the Department prior to proceeding to a contested case hearing.

Sunnyside reserves the right to raise additional issues that could not be readily identified or reasonably ascertained during the time allowed for filing this Protest or due to the abbreviated form of the 2021 PFO.

Dated: May 25, 2021.

SCHWABE, WILLIAMSON & WYATT, P.C.

Shonee D. Langford
530 Center St. NE, Suite 730
Salem, OR 97301
Telephone: 503-540-4261
E-mail: slangford@schwabe.com
Of Attorney for Protestant Sunnyside Dairy LLC

CERTIFICATE OF FILING

I certify that on May 25, 2021, I sent the PROTEST OF SUPERSEDING PROPOSED FINAL ORDER TO DENY APPLICATION G-17638 via UPS Overnight Delivery to the Oregon Water Resources Department at 725 Summer St. NE, Suite A, Salem, Oregon 97301.

Dated: May 25, 2021.

SCHWABE, WILLIAMSON & WYATT, P.C.

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Of Attorney for Protestant Sunnyside Dairy LLC

Schwabe

March 17, 2025

Elizabeth E. Howard
Admitted in Oregon and Washington
D: 503-796-2093
C: 503-312-8765
ehoward@schwabe.com

BY HAND DELIVERY

Ivan Gall, Director
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

RE: Petition for Reconsideration for Silver Sage Farms, LLC and Charles and Louanna Eggert
Our File No.: 138230-266586

Dear Director Gall,

Please find enclosed a Petition for Reconsideration of the two Final Orders dated January 16, 2025 ("Final Orders") with attachments, filed on behalf of Silver Sage Farms LLC and Charles and Louanna Eggert.

Sincerely,

Elizabeth E. Howard

EEH:cwe
Enclosure

cc: Silver Sage Farms LLC (Via E-Mail)
Charles and Louanna Eggert (Via E-Mail)
Jason Spriet, Eastern Region Manager (Via E-Mail)
Will Davidson, OWRD Protest Coordinator (Via E-Mail)

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of the Final Order Re: Groundwater Use and Regulation of Certificates 96740, 95741, 95742, 95743, 96174, 96175, and Permit G-17943, In the Matter of the Final Order Re: Certificates 96926, 93846, and T-13409 Silver Sage Farms, LLC, Charles & Louanna Eggert *Petitioners*	**PETITION FOR RECONSIDERATION OF FINAL ORDERS**

Pursuant to ORS 183.484(2), Silver Sage Farms, LLC, and Charles and Louanna Eggert, ("Petitioners") petition the Oregon Water Resources Department ("WRD") to reconsider and permanently withdraw the attached final orders (Attachment A) and (Attachment B), dated January 16, 2025 ("Final Orders").

The Final Order

The Final Orders require Petitioners to cease all groundwater withdrawals from specific wells associated with Certificates 96926, 93846, 96740, 95741, 95742, 95743, 96174, 96175, Permit G-17943, and Inchoate T-13409, starting March 1, 2026. Specifically, the orders state that both Petitioners are, "regulated off from all groundwater use from the following water supply wells for lands on the above listed water rights."

The Final Orders also state that "Annual water level measurements indicate a water level decline of 25 or more feet in the above listed wells." Based on these "Ultimate Findings of Fact," WRD issued orders that require "[t]he use of water for irrigation from your water supply wells identified above . . . shall be limited to a total volume of zero (0) acre-feet per year starting March 1, 2026. This Order shall remain in effect until further notice." The Final Orders require

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ongoing annual March static water level measurements and reporting "to see how groundwater levels respond to the reduction in pumping."

Water Right Background

Petitioners hold several groundwater rights including Certificates 96926, 93846, 96740, 95741, 95742, 95743, 96174, and 96175, Permit G-17943, and Transfer T-13409, with priority dates ranging from July 20, 1995, to June 7, 2012 (the "Water Rights"). Together, these Water Rights authorize irrigation on more than 3,000 acres. Many authorize water use from the same well(s).

The Decline Conditions

Certificates 96926, 93846, 96740, 95741, 95742, 95743, 96174, 96175, and Permit G-17943, have a 25-foot decline condition (the "Decline Condition"). It states that, "The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur: . . . C. Annual water-level measurements reveal a water-level decline of 25 or more feet . . ." It further states that:

> The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with senior water rights. The water user shall not allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

Transfer T-13409 modifies Certificates 93885 and 94527. Certificate 93885 does not include a decline condition.

The Final Orders are in Error and Inconsistent with the Terms of the Rights

As an initial matter, the Final Orders mandate the complete cessation of all groundwater use "until further notice." This directive is inconsistent with the plain language of the Decline

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Condition for two reasons. The certificates' terms give *the water user* the option of how to proceed. They allow the user either to discontinue *or* reduce the rate or volume of withdrawal from the identified wells. The use of the disjunctive "or" makes clear that complete cessation is not the only option. Indeed, subsequent versions of the Decline Condition do not include this language and specify concretely that water use must cease completely.

Second, one of the water rights associated with T-13409, Certificate 93885, does not have a decline condition. Thus, the Final Order wrongly asserts that Petitioners must cease water use under this Certificate.

WRD indicates it draws its authority for the Final Orders from OAR 690-250-0050(1), which authorizes the watermaster to take corrective action when water use is inconsistent with the terms of the water right and is therefore unlawful. But this rule does not authorize WRD to take action that is inconsistent with the terms of the water right; and the Final Orders seek to do just that. The Final Orders are inconsistent with an agency rule and outside the range of discretion delegated to the agency by law. ORS 183.454(5).

WRD Has Not Explained Its Sudden Decision to Enforce the Decline Condition

For twenty years, WRD has not enforced the 25-foot decline trigger, allowing Petitioners and their predecessors access to water as groundwater levels declined beyond 25 feet from the referenced static water levels. The reason WRD has suddenly departed from longtime practice is not provided in the Final Orders. Absent a reasonable explanation for this departure from the agency's past practice, the Final Orders are unlawful and violate ORS 183.484(5)(b)(B).

The indefinite nature of the shutdown orders further compounds the harm. The Final Orders do not establish a timeline for reassessment or provide any benchmarks for determining when water levels have sufficiently recovered to allow Petitioners to resume use. Instead, the Final Orders simply state that curtailment will remain in place "until further notice." This vague and open-ended directive is tantamount to an effective cancellation of a vested water right without proper procedure. Under ORS 537.250(3), a certificated water right is a "vested property

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right" that cannot be revoked or rendered unusable absent a formal cancellation proceeding under ORS 540.631. By imposing a permanent and indefinite curtailment without following the required statutory process for cancellation (or for creating a critical groundwater area that authorizes curtailments by priority date), WRD has exceeded its lawful authority.

Violation of Prior Appropriation Doctrine

The Final Orders mandating the complete curtailment of Petitioners' water use based on the Decline Conditions undermines the fundamental principle of Oregon's water law: specifically, the doctrine of prior appropriation. Oregon law is clear that in times of water scarcity, senior water rights holders maintain priority over junior appropriators. Priority of right must govern regulation. "When there is a shortage of water, the senior water right holder is entitled to receive their entire share of water before the next most senior water right holder can receive their share." (*TPC, LLC v. Oregon Water Res. Dep't*, 308 Or App 177, 194 (2020) (emphasis added). *See also Benz v. Water Resources Commission*, 94 Or App 73, 81, 764 P2d 594 (1988) ("[U]nder the law of prior appropriations, see, e.g., ORS 537.120, a senior appropriator who applies water to a beneficial use and thereafter continues to do so holds a water right that is superior to any water right obtained by a subsequent junior appropriator.")). To further reinforce this principle, ORS 540.045(1) mandates that the watermaster shall "regulate the distribution of water among the various users in accordance with the users' respective rights of record." This statutory obligation requires WRD to administer water rights according to priority dates, protecting senior appropriators. This obligation also requires WRD's discernment when a water rights-holder maintains a portfolio of rights spanning decades. The more senior of Petitioners' rights should *at the very least* remain available to them during a shortage.

The Final Orders upend the prior appropriation system, undercutting Petitioners' ability to manage their own water right portfolio, which in turn has significant consequences for their business. WRD requires Petitioners to measure declines against a static water level set near the time of permit issuance, but junior water rights with similar conditions are being measured

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against a deeper (lower) static water level that post-dates that of the senior right. Petitioners organized their business with the prior appropriation system in mind. Specifically, they sought out and acquired more senior water rights specifically because they understood that a less senior right would be less likely to be shut off than more junior rights. Further, Petitioners designed their farm operations with prior appropriation in mind as the governing law. To discard it has severe implications for Petitioners' investments and business operations.

Though WRD argues it has authority to condition water rights to assure groundwater use within the capacity of the available source to protect the public welfare, safety, and health (citing ORS 537.525), WRD does not have the authority to implement permit conditions in such a way as to undermine the prior appropriation doctrine, which is the bedrock of Oregon water law. WRD's interpretation of its authority to enforce Decline Conditions to this effect is an erroneous interpretation of a provision of law. A correct interpretation compels WRD to withdraw its Final Orders and regulate water rights based on priority.

WRD Fails to Support its Final Orders with Substantial Evidence

The Final Orders are legally deficient because they are not supported by substantial evidence, as required by ORS 183.484(5)(c). "Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding." ORS 183.484(5)(c). A final order must also be supported by substantial reasoning. (*TTC-The Trading Co., Inc. v. Dept. of Consumer & Bus. Servs.*, 235 Or App 606, 612 (2010) (a final order "must demonstrate 'the *reasoning* that leads the agency from the *facts* that it has found to the *conclusions* that it draws from those facts.'") (Emphasis added)).

The Final Orders conclude that groundwater-level declines in some of Petitioners' wells, were caused by Petitioners' use under specific certificates, but not others. However, WRD cannot tell whether use of one or another water right has in fact triggered the Decline Condition for any specific water rights because many wells are associated with more than one water right. HARN51817 and 51445 are examples of wells associated with two certificates (Certificate

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95741 and Certificate 95743). And, there are many other examples where the Final Order relies on a well or wells as triggering the Decline Condition though that well or the wells are associated with more than one or multiple water rights. Due to this overlap, WRD cannot establish that the use under each water right they are seeking to regulate off actually triggered the Decline Condition associated with that particular water right.

The Decline Condition allows curtailment only if declines occur "as a result of use under this right." This language establishes a clear causation requirement: For WRD to enforce curtailment against Petitioners under a specific water right, it must first demonstrate the measured declines were caused by Petitioners' withdrawals *under that water right*. WRD cannot conduct this analysis here as a result of the fact that wells are being used for multiple certificates. Because it has not and cannot conduct this analysis, WRD has not met and cannot meet its evidentiary burden. As such, the Final Orders are and will remain unlawful and should be withdrawn. ORS 183.484(5)(c).

WRD's Failure to Enforce Created a Legitimate Expectation of Continued Use

WRD's choice not to enforce the Decline Condition, despite possessing accumulated evidence of water level declines, constitutes a waiver of its right to impose sudden curtailment and grounds for equitable estoppel based on Petitioners' reasonable reliance. As a general proposition, a governmental agency may be estopped from asserting a claim inconsistent with a previous position it has taken. (*See, e.g., Dept. of Transportation v. Hewett Professional Group*, 321 Or 118, 126 (1995). A waiver occurs when a party intentionally relinquishes a known right through a clear and unequivocal act. *See Wright Schuchart Harbor v. Johnson*, 133 Or App 680, 685-86 (1995). Silence can be an act for the purpose of equitable estoppel if a party has a duty to speak. *Knapp v. Daily*, 96 Or App 327, 332 (1989). The duty to speak arises where "the party against whom the estoppel is urged knew or should have known that a failure to speak would probably mislead the other party to act to his or her detriment." *Id.*; *Guardian Mgmt., LLC ex rel. Villa v. Zamiello*, 194 Or App 524, 530, 95 P3d 1139, 1142 (2004)).

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Here, WRD had knowledge of persistent groundwater declines and, despite that knowledge, chose not to enforce Petitioners' Decline Condition for many years. Petitioners acquired their water rights in this same area over a number of years, and at no point in the proving-up, transfer, or beneficial use processes did WRD alert Petitioners that the Decline Condition would be enforced prior to implementation of the critical groundwater rules. By adopting this hands-off approach and later initiating a critical groundwater area rule-making committee, WRD signaled to Petitioners that the agency did not intend to enforce the Decline Condition. This led Petitioners to reasonably assume that future regulatory actions would occur after the critical groundwater area rules were adopted and the related contested case finalized, and Petitioners made significant investments in irrigation infrastructure and long-term planning strategies. Under these circumstances, WRD has waived its right to impose curtailment based on the Decline Condition.

Furthermore, WRD's sudden reversal violates ORS 183.482(8)(b)(B), which prohibits agency actions that are "inconsistent with prior agency practice if the inconsistency is not explained by the agency." (*See also Belton v. Buesing*, 240 Or 399, 411, 402 P2d 98 (1965) (holding that agencies may be estopped from taking a position inconsistent with past conduct)). WRD offers no justification for why it failed to enforce the Decline Condition but now suddenly deems full curtailment necessary in light of the upcoming critical groundwater area rulemaking process. Because WRD's prolonged inaction created a legitimate expectation of continued use, and because Petitioners relied on that expectation in making substantial investments, the Final Orders should be reconsidered and withdrawn.

The Final Order Undermines the Critical Groundwater Area Rulemaking Process

WRD's regulation of Petitioners outside of the broader groundwater management strategy also circumvents the current rulemaking process for declaring a Critical Groundwater Area ("CGWA") in the Greater Harney Groundwater Area of Concern ("GHGAC"). ORS 537.730 and ORS 537.735 require that when groundwater declines reach concerning levels,

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WRD must engage in a formal process to assess the sustainability of the resource and determine whether regulatory actions are necessary. The purpose of the Rule Advisory Committee ("RAC")—which began meeting nearly two years ago, in April 2023—is to develop science-based, long-term management strategies that minimize economic disruption while achieving reasonably stable groundwater levels. The Final Orders preempt this process and undermine the efforts of the RAC. Indeed, the modeling and analysis of long-term groundwater stability under discussion by the RAC do not anticipate or incorporate the impact of decline condition-based curtailments on groundwater levels at all. Thus, the Final Orders confound efforts to develop a rule that is based on substantial evidence and sound management principles. WRD should withdraw the Final Orders; allow the rulemaking process to conclude (which is expected in the near term); and address curtailment based on seniority of priority dates in accordance with Oregon's "first in time, first in right" prior appropriation system under the Division 512 critical groundwater area rules.

Also, as WRD is aware, an effort is underway to develop voluntary agreements for water users in the critical groundwater area. WRD has been working on guidelines for these agreements, and stakeholders have been providing feedback and input on those guidelines. WRD is to encourage, promote, and recognize voluntary agreements. ORS 537.745. WRD has recently taken the stance that a water right holder who triggers a decline condition is automatically excluded from any voluntary agreements. This positioning exacerbates the effect of the Final Orders on Petitioners and is inconsistent with ORS 537.745.

WRD's decision to enforce permit decline conditions at this juncture, in disregard of the broader rulemaking process, undermines good-faith efforts to develop a community-based solution and threatens to further destabilize the local economy. The Final Orders override nearly two years of work by the RAC and subverts the required regulatory process.

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Economic and Practical Implications

The mandated zero-acre-foot withdrawal restriction imposes severe, immediate, and potentially irreparable economic damages on Petitioners. Such abrupt cessation risks the viability of ongoing agricultural operations, threatens the financial stability of the enterprise, and represents a significant departure from the stable regulatory environment upon which Petitioners' operational and financial planning was based. The significant disruption caused by this regulatory shift threatens the economic stability of Petitioners' farming operations and their substantial investment in irrigation infrastructure and management plans. WRD's unexpected enforcement prior to the rulemaking has left Petitioners without the time to shore up their investments and plan for any curtailments.

Requested Actions

Given the above concerns, legal errors, and substantive issues with the Final Orders, Petitioners request that WRD withdraw the Final Orders, suspend enforcement of the Decline Condition, and maintain the status quo until the rulemaking process is complete and/or voluntary agreements have been reached between groundwater users in the proposed critical groundwater area.

Dated this 17th day of March, 2025.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: _____

Elizabeth E. Howard
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Oregon
Tina Kotek, Governor

Oregon Water Resources Dept.
39155 Pocahontas Rd.
Baker City, OR 97814
541-523-8224

January 16, 2025

CERTIFIED – RETURN RECEIPT REQUESTED AND FIRST CLASS

Silver Sage Farms, LLC
18555 SW Teton Ave
Tualatin OR 97602-8842

RE: **GROUNDWATER USE AND REGULATION – PLEASE READ THIS ENTIRE NOTICE**

To Whom it May Concern:

Water right records at the Oregon Water Resources Department (OWRD) indicate that you are the owner, in full or in part, of the water rights listed below. **If you are not the property owner or are leasing the lands covered by these water right(s) to another operator, please contact us immediately.**

Certificate 95740
Certificate 95741
Certificate 95742
Certificate 95743
Certificate 96174
Certificate 96175
Permit G-17943

REQUIRED ACTION: Silver Sage Farms LLC, or any lessee or operator **are hereby regulated off from all groundwater use from the following water supply wells for lands on the above listed water rights:**

1. HARN 1096 authorized on Certificate 96174 (WELL 8) and Certificate 96175 (WELL 8).
2. HARN 1097 authorized on Permit G 17943 (WELL 2)
3. HARN 1098 authorized on Permit G-17943 (WELL 1)
4. HARN 1322 authorized on Permit G-17943 (WELL 4)
5. HARN 1323 authorized on Permit G-17943 (WELL 3)
6. HARN 50315 authorized on Permit G-17943 (WELL 8)
7. HARN 50640 authorized on Permit G-17943 (WELL 11)
8. HARN 50887 authorized on Permit G-17943 (WELL 5)

9. HARN 51272 authorized on Certificate 95740 (WELL 7), Certificate 95741 (WELL 7), Certificate 95742 (WELL 7), Certificate 95743 (WELL 7), Certificate 96174 (WELL 7), Certificate 96175 (WELL 7)
10. HARN 51445 authorized on Certificate 95740 (WELL 13) and Certificate 95742 (WELL 13)
11. HARN 51507 authorized on Permit G 17943 (WELL 13)
12. HARN 51508 authorized on Permit G 17943 (WELL 12)
13. HARN 51694 authorized on Permit G 17943 (WELL 14)
14. HARN 51720 authorized on Permit G 17943 (WELL 15)
15. HARN 51760 authorized on Certificate 95740 (WELL 11), Certificate 95741 (WELL 11), Certificate 95742 (WELL 11), Certificate 95743 (WELL 11)
16. HARN 51765 authorized on Certificate 95740 (WELL 10), Certificate 95741 (WELL 10), Certificate 95742 (WELL 10), Certificate 95743 (WELL 10), Certificate 96174 (WELL 10), Certificate 96175 (WELL 10)
17. HARN 51817 authorized on Certificate 95740 (WELL 12), Certificate 95742 (WELL 12), Certificate 95743 (WELL 12)
18. HARN 51836 authorized on Permit G 17943 (WELL 16)
19. HARN 51871 authorized on Certificate 95740 (WELL 14), Certificate 95741 (WELL 14), Certificate 95742 (WELL 14), Certificate 95743 (WELL 14), Certificate 96174 (WELL 14), Certificate 96175 (WELL 14)
20. HARN 51970 authorized on Certificate 95740 (WELL 15), Certificate 95741 (WELL 15), Certificate 95742 (WELL 15), Certificate 95743 (WELL 15), Certificate 96174 (WELL 15), Certificate 96175 (WELL 15)
21. HARN 52028 authorized on Permit G 17943 (WELL 17)
22. HARN 52121 authorized on Certificate 95740 (WELL 16), Certificate 95741 (WELL 16), Certificate 95742 (WELL 16), Certificate 95743 (WELL 16), Certificate 96174 (WELL 16), Certificate 96175 (WELL 16)
23. HARN 52154 authorized on Certificate 95740 (WELL 17), Certificate 95741 (WELL 17), Certificate 95742 (WELL 17), Certificate 95743 (WELL 17), Certificate 96174 (WELL 17), Certificate 96175 (WELL 17)
24. HARN 52170 authorized on Certificate 95740 (WELL 18), Certificate 95741 (WELL 18), Certificate 95742 (WELL 18), Certificate 95743 (WELL 18), Certificate 96174 (WELL 18), Certificate 96175 (WELL 18)

AUTHORITY

The Oregon Legislature has recognized and declared 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 ensure the preservation of the public welfare, safety and health it is necessary that beneficial use without waste, within the capacity of available sources, be the basis, measure and extent of the right to appropriate groundwater. ORS 537.525.

The Oregon Water Resources Department (Department) conditioned the issuance of the above-listed permits with decline conditions that assure groundwater use under the water rights is within the capacity of the available source and so is consistent with the protection of the public welfare, safety and health. The conditions require the holder to measure and report static water

levels and to discontinue use of or reduce the rate or volume of withdrawal from wells, if annual water level measurements reveal water level declines at specific levels within specific time periods as identified in the right(s).

The Department shall regulate or cause to be regulated the controlling works of wells to secure compliance with the water right(s) if the Department finds that a person is using or attempting to use any groundwater or is operating or permitting the operation of any well owned or controlled by such person except upon compliance with ORS 537.505 to 537.795 and any applicable rule of the Oregon Water Resources Commission (Commission). ORS 537.777. Rules of the Commission include OAR 690-250-0050(1) which authorizes the watermaster to take corrective action when water use is inconsistent with the terms of the water right and is therefore unlawful.

If after oral or written notice to the holder to stop unlawful water use, the unlawful water use is continued, the watermaster may take control of the controlling works of a well and reduce the amount of water diverted by the amount unlawfully used and may continue regulation until the unlawful use is eliminated. When taking control of the controlling works of a well, the watermaster shall post a notice of control, and any person that interferes with the watermaster's regulation may be prosecuted under ORS 540.710. ORS 540.045(1)(d); OAR 690-250-0050(2).

FINDINGS OF FACT

1. The water rights identified above contain performance conditions that require the water user to discontinue use of, or reduce the rate or volume of withdrawal from the well, if any of the following events occur:

   a. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or

   b. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or

   c. Annual water-level measurements reveal a water-level decline of 25 or more feet; or

   d. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

2. The reference levels and groundwater level data for the above listed wells are provided in Table 1.

3. Current static groundwater levels measured in the above listed wells, showed a decline of greater than 25 feet below the reference level.

ULTIMATE FINDINGS OF FACT

1. Annual water level measurements indicate a water level decline of 25 or more feet in the above listed wells.

CONCLUSION OF LAW

1. The holders of permit G-17943, Certificates 95740, 95741, 95742, 95743, 96174, and 96175 are in violation of the conditions of those water rights, and any pumping of groundwater from the wells listed above and in Table 1 for these rights constitutes an unlawful use of water.

2. The Department may take control of the controlling works of the above listed wells and may reduce the amount of groundwater pumped until the unlawful use is eliminated.

ORDER

The use of water for irrigation from your water supply wells identified above and associated with permit G-17943, Certificates 95740, 95741, 95742, 95743, 96174, and 96175 shall be limited to a total volume of zero (0) acre-feet per year starting **March 1, 2026**. This Order shall remain in effect until further notice.

The water user shall continue to report annual March static water level measurements to monitor the static groundwater levels of your wells to see how groundwater levels respond to the reduction in pumping. This information will aid staff in making future groundwater management decisions. If you have any questions regarding this order, please contact me at (541) 523-8224 or by e-mail at Jason.d.spriet@water.oregon.gov.

Final Order

This is a FINAL ORDER other than contested case. This final order is subject to judicial review under ORS 183.484. Any petition for judicial review of the final order must be filed within the time specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Sincerely,

Jason Spriet
East Region Manager

CC: Ivan Gall –Director, Ivan.K.Gall@water.oregon.gov
– Field Services Division Administrator, @water.oregon.gov
Kris Byrd – Well Construction & Compliance Manager,
Kristopher.r.byrd@water.oregon.gov
Donald Swindlehurst - Watermaster, District 10,
Donald.S.Swindlehurst@water.oregon.gov
Silver Sage Farms, LLC – Property owner

Oregon
Tina Kotek, Governor

Oregon Water Resources Dept.
39155 Pocahontas Rd.
Baker City, OR 97814
541-523-8224

Table 1. Points of appropriation, water rights, reference levels and recent static water levels.

POA	Reference Level (ft blsd)	Recent Static Water Level (ft blsd)	Decline From Reference Level (ft)
HARN 1096			
Cert:96174 (WELL 8)	77.7	156.35	78.65
Cert:96175 (WELL 8)	80.34	156.35	76.01
HARN 1097			
Permit: G 17943 (WELL 2)	68.1	134.67	66.57
HARN 1098			
Permit: G 17943 (WELL 1)	58.78	123.4	64.62
HARN 1322			
Permit: G 17943 (WELL 4)	70.25	127.69	57.44
HARN 1323			
Permit: G 17943 (WELL 3)	73.04	136.92	63.88
HARN 50315			
Permit: G 17943 (WELL 8)	36	84.56	48.56
HARN 50640			
Permit: G 17943 (WELL 11)	31.38	61.52	30.14
HARN 50887			
Permit: G 17943 (WELL 5)	64.8	134.23	69.43
HARN 51272			
Cert:95740 (WELL 7)	114.6	144.43	29.83
Cert:95741 (WELL 7)	108.8	144.43	35.63
Cert:95742 (WELL 7)	108.8	144.43	35.63
Cert:95743 (WELL 7)	108.8	144.43	35.63

Silver Sage Farms
Page 7

POA	Reference Level (ft bisd)	Recent Static Water Level (ft bisd)	Decline From Reference Level (ft)
Cert:96174 (WELL 7)	108.67	144.43	35.76
Cert:96175 (WELL 7)	108.1	144.43	36.33
HARN 51445			
Cert:95740 (WELL 13)	92	162.8	70.8
Cert:95742 (WELL 13)	92	162.8	70.8
HARN 51507			
Permit: G 17943 (WELL 13)	23	88.21	65.21
HARN 51508			
Permit: G 17943 (WELL 12)	21.6	65.57	43.97
HARN 51694			
Permit: G 17943 (WELL 14)	41.63	109.91	68.28
HARN 51720			
Permit: G 17943 (WELL 15)	24.44	86	61.56
HARN 51760			
Cert:95740 (WELL 11)	104	186.26	82.26
Cert:95741 (WELL 11)	131.91	186.26	54.35
Cert:95742 (WELL 11)	104	186.26	82.26
Cert:95743(WELL 11)	131.91	186.26	54.35
HARN 51765			
Cert:95740 (WELL 10)	104	204.95	100.95
Cert:95741 (WELL 10)	120.77	204.95	84.18
Cert:95742 (WELL 10)	104	204.95	100.95
Cert:95743 (WELL 10)	120.77	204.95	84.18
Cert:96174 (WELL 10)	104	204.95	100.95
Cert:96175 (WELL 10)	104	204.95	100.95

POA	Reference Level (ft bisd)	Recent Static Water Level (ft bisd)	Decline From Reference Level (ft)
HARN 51817			
Cert:95740 (WELL 12)	78.23	127.4	49.17
Cert:95742 (WELL 12)	78.23	127.4	49.17
Cert:95743 (WELL 12)	78.23	127.4	49.17
HARN 51836			
Permit: G 17943 (WELL 16)	42.3	91.55	49.25
HARN 51871			
Cert:95740 (WELL 14)	94	173.5	79.5
Cert:95741 (WELL 14)	109.35	173.5	64.15
Cert:95742 (WELL 14)	94	173.5	79.5
Cert:95743 (WELL 14)	94	173.5	79.5
Cert:96174 (WELL 14)	94	173.5	79.5
Cert:96175 (WELL 14)	94	173.5	79.5
HARN 51970			
Cert:95740 (WELL 15)	95.66	177.8	82.14
Cert:95741 (WELL 15)	110.45	177.8	67.35
Cert:95742 (WELL 15)	95.66	177.8	82.14
Cert:95743 (WELL 15)	95.66	177.8	82.14
Cert:96174 (WELL 15)	95.66	177.8	82.14
Cert:96175 (WELL 15)	95.66	177.8	82.14
HARN 52028			
Permit: G 17943 (WELL 17)	70.59	140.91	70.32
HARN 52121			
Cert:95740 (WELL 16)	92	147.93	55.93
Cert:95741 (WELL 16)	92	147.93	55.93
Cert:95742 (WELL 16)	92	147.93	55.93
Cert:95743 (WELL 16)	92	147.93	55.93

Silver Sage Farms
Page 9

POA	Reference Level (ft blsd)	Recent Static Water Level (ft blsd)	Decline From Reference Level (ft)
Cert:96174 (WELL 16)	92	147.93	55.93
Cert:96175 (WELL 16)	92	147.93	55.93
HARN 52154			
Cert:95740 (WELL 17)	132	177.75	45.75
Cert:95741 (WELL 17)	132	177.75	45.75
Cert:95742 (WELL 17)	132	177.75	45.75
Cert:95743 (WELL 17)	132	177.75	45.75
Cert:96174 (WELL 17)	132	177.75	45.75
Cert:96175 (WELL 17)	132	177.75	45.75
HARN 52170			
Cert:95740 (WELL 18)	92	148.4	56.4
Cert:95741 (WELL 18)	92	148.4	56.4
Cert:95742 (WELL 18)	92	148.4	56.4
Cert:95743 (WELL 18)	92	148.4	56.4
Cert:96174 (WELL 18)	92	148.4	56.4
Cert:96175 (WELL 18)	92	148.4	56.4

Oregon
Tina Kotek, Governor

Oregon Water Resources Dept.
39155 Pocahontas Rd.
Baker City, OR 97814
541-523-8224

January 16, 2025

CERTIFIED – RETURN RECEIPT REQUESTED AND FIRST CLASS

Charles & Louanna Eggert
18555 SW Teton Ave.
Tualatin, OR 97062-8842

RE: **GROUNDWATER USE AND REGULATION – PLEASE READ THIS ENTIRE NOTICE**

To Whom it May Concern:

Water right records at the Oregon Water Resources Department (OWRD) indicate that you are the owner, in full or in part, of the water rights listed below. **If you are not the property owner or are leasing the lands covered by these water right(s) to another operator, please contact us immediately.**

Certificate 96926
Certificate 93846
Inchoate: T-13409

REQUIRED ACTION: Charles and Louanna Eggert, or any lessee or operator **are hereby regulated off from all groundwater use from the following water supply wells for lands on the above listed water rights**:

1. HARN 51973 authorized Inchoate: T-13409 (WELL 7)
2. HARN 52169 authorized on Certificate 96926 & Inchoate: T-13409 (WELL 8)
3. HARN 51259 authorized on Certificate 93846
4. HARN 52639 authorized on Inchoate T-13409 (WELL 10)

AUTHORITY

The Oregon Legislature has recognized and declared 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 ensure the preservation of the public welfare, safety and health it is necessary that beneficial use without waste, within the capacity of available sources, be the basis, measure and extent of the right to appropriate groundwater. ORS 537.525.

The Oregon Water Resources Department (Department) conditioned the issuance of the above-listed permits with decline conditions that assure groundwater use under the water rights is within the capacity of the available source and so is consistent with the protection of the public welfare, safety and health. The conditions require the holder to measure and report static water levels and to discontinue use of or reduce the rate or volume of withdrawal from wells, if annual water level measurements reveal water level declines at specific levels within specific time periods as identified in the right(s).

The Department shall regulate or cause to be regulated the controlling works of wells to secure compliance with the water right(s) if the Department finds that a person is using or attempting to use any groundwater or is operating or permitting the operation of any well owned or controlled by such person except upon compliance with ORS 537.505 to 537.795 and any applicable rule of the Oregon Water Resources Commission (Commission). ORS 537.777. Rules of the Commission include OAR 690-250-0050(1) which authorizes the watermaster to take corrective action when water use is inconsistent with the terms of the water right and is therefore unlawful.

If after oral or written notice to the holder to stop unlawful water use, the unlawful water use is continued, the watermaster may take control of the controlling works of a well and reduce the amount of water diverted by the amount unlawfully used and may continue regulation until the unlawful use is eliminated. When taking control of the controlling works of a well, the watermaster shall post a notice of control, and any person that interferes with the watermaster's regulation may be prosecuted under ORS 540.710. ORS 540.045(1)(d); OAR 690-250-0050(2).

FINDINGS OF FACT

1. The water rights identified above contain performance conditions that require the water user to discontinue use of, or reduce the rate or volume of withdrawal from the well, if any of the following events occur:

   a. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or

   b. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or

   c. Annual water-level measurements reveal a water-level decline of 25 or more feet; or

   d. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

2. The reference levels and groundwater level data for the above listed wells are provided in Table 1.

3. Current static groundwater levels measured in the above listed wells, showed a decline of greater than 25 feet below the reference level.

ULTIMATE FINDINGS OF FACT

1. Annual water level measurements indicate a water level decline of 25 or more feet in the above listed wells.

CONCLUSION OF LAW

1. The holders of Certificates 96926 & Inchoate: T-13409 are in violation of the conditions of those water rights, and any pumping of groundwater from the wells listed above and in Table 1 for these rights constitutes an unlawful use of water.

2. The Department may take control of the controlling works of the above listed wells and may reduce the amount of groundwater pumped until the unlawful use is eliminated.

ORDER

The use of water for irrigation from your water supply wells identified above and associated with Certificate 96926, Certificate 93846, and Inchoate: T-13409 shall be limited to a total volume of zero (0) acre-feet per year starting **March 1, 2026**. This Order shall remain in effect until further notice.

The water user shall continue to report annual March static water level measurements to monitor the static groundwater levels of your wells to see how groundwater levels respond to the reduction in pumping. This information will aid staff in making future groundwater management decisions. If you have any questions regarding this order, please contact me at (541) 523-8224 or by e-mail at Jason.d.spriet@water.oregon.gov.

Final Order

This is a FINAL ORDER other than contested case. This final order is subject to judicial review under ORS 183.484. Any petition for judicial review of the final order must be filed within the time specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Sincerely,

Jason Spriet
East Region Manager

CC: Ivan Gall –Director, Ivan.K.Gall@water.oregon.gov
Kim Fritz-Ogren – Field Services Division Administrator,
Kim.L.FRITZ-OGREN@water.oregon.gov
Kris Byrd – Well Construction & Compliance Manager,
Kristopher.r.byrd@water.oregon.gov
Donald Swindlehurst - Watermaster, District 10,
Donald.S.Swindlehurst@water.oregon.gov
Charles & Louanna Eggert – Property owner

Oregon
Tina Kotek, Governor

Oregon Water Resources Dept.
39155 Pocahontas Rd.
Baker City, OR 97814
541-523-8224

Table 1. Points of appropriation, water rights, reference levels and recent static water levels.

POA	Reference Level (ft blsd)	Recent Static Water Level (ft blsd)	Decline From Reference Level (ft)
HARN 51973			
TransferT-13409 (WELL7)	87.40	114.58	27.18
HARN 52169			
Cert:96926 (WELL 8)	55.15	82.58	27.43
TransferT-13409 (WELL8)	47.79	82.58	34.79
HARN 52639			
TransferT-13409 (WELL 10)	127.00	153.65	26.65
HARN 51259			
Cert: 93846	55.6	108.38	52.78

CERTIFICATE OF FILING

I hereby certify that on this 17th day of March, 2025, I filed the foregoing **PETITION FOR RECONSIDERATION** with the Oregon Water Resources Department by HAND DELIVERY.

Elizabeth E. Howard
Email: ehoward@schwabe.com
Telephone: 503.796.2093
Attorneys for Silver Sage Farms, LLC and
Charles & Louanna Eggert

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
1211 SW 5th Avenue, Suite 1900
Portland, OR 97204
Telephone: 503-222-9981

[redacted]

[redacted]

Attachments: Support the Harney Basin Water Management Petition.pdf
Harney Full Water Petition.pdf

---------- Forwarded message ---------
From: **Sabrina Maki** <makis@acwinc.net>
Date: Wed, Sep 24, 2025 at 3:39 PM
Subject: Community Action Needed: Support the Harney Basin Water Petition
To: <administrator@ci.hines.or.us>, <albrechtfrms@yahoo.com>, Andy Root <andyjroot@gmail.com>, <ann_gilmour@msn.com>, <bachmanbayfarms@gmail.com>, <bachmanbaykennels@gmail.com>, <barbara@fizzleflat.com>, <bdifonzo@yturrirose.com>, <bellesfolk@yahoo.com>, <ben.kern@silversagefarms.com>, <Benmccanna@yahoo.com>, <bentzwill@yahoo.com>, <berbe@cityofburnsor.gov>, Kenneth Bierly <bierlykenneth@gmail.com>, <bigsword13@ymail.com>, <bill.hart@harneycountyor.gov>, <Bob.Long@cwmh2o.com>, <Brandon.mcmullen@co.harney.or.us>, <breanna.oconnor@or.nacdnet.net>, <brokencirclecompany@gmail.com>, <c_karges@yahoo.com>, <caitlinketscher@gmail.com>, <callahagle@gmail.com>, <camille@highdesertpartnership.org>, <campgaldebbie@gmail.com>, <candjshelman@yahoo.com>, <cbaravelli@mail.com>, Butkus, Conor L. <cbutkus@schwabe.com>, <christopher.hicks@burnspaiute-nsn.gov>, <clearwaterpandi@gmail.com>, <cliff.bentz@mail.house.gov>, <codymcconnell9294@gmail.com>, <colby@jettblackburn.com>, <coltonketscher@gmail.com>, <craig.neher@edstaub.com>, Curt Blackburn (curt@jettblackburn.com) <curt@jettblackburn.com>, <curtjettblackburn@centurytel.net>, <dankryger@cranehotsprings.com>, Darin Henry <darinhenrydvm@gmail.com>, <dave@telosdevelopment.com>, <davieskerns@yahoo.com>, <davieslou196@gmail.com>, <dcarollo@carollolegal.com>, <denise_kryger@yahoo.com>, <dennisr9900@earthlink.net>, Deanna Thrall <director@harneycounty.com>, <director@highdesertpartnership.org>, <dkotley7@yahoo.com>, <dominic_bachman@fws.gov>, <doverspike@hotchkisscompany.com>, <doverspikelivestock@gmail.com>, <dustin.johnson@oregonstate.edu>, Howard, Elizabeth E. <ehoward@schwabe.com>, <elderk@yahoo.com>, <ersteen3@gmail.com>, <excelsiorhay@gmail.com>, Fred Flippence <fflippence@hec.coop>, <Fordkong@aol.com>, <fredotley@hotmail.com>, <gajpmj@gmail.com>, <goldenrulefarms@gmail.com>, <harneycountyedc@gmail.com>, <HarneyCountyFarmBureau@gmail.com>, <harrisranch@yahoo.com>, Mark Owens <hayfarmer70@gmail.com>, <HCwatershedcouncil@gmail.com>, <hikv7l@gmail.com>, <hilda.allison@gmail.com>, <hmondo42@gmail.com>, <houckscott2@yahoo.com>, <jacobdavis12@gmail.com>, <jacobdavis1219@gmail.com>, <jakepotter78@outlook.com>, <jeffmackay@yahoo.com>, <jennifer@ecosourceseeds.com>, <jerwin@cityofburnsor.gov>, <jess_wenick@fws.gov>, <jfw.0124@gmail.com>, <johnshort@usa.com>,

<josey@highdesertpartnership.org>, <jweikeldvm@yahoo.com>, <karmafarmer1@gmail.com>, <keerins@rural-roots-ranch.com>, <keerins24@yahoo.com>, <ken@bentzrealty.com>, <kerns2873@gmail.com>, <kerryopie@gmail.com>, <ketang@live.com>, <ketschercattle@gmail.com>, <kirbyisaac1977@gmail.com>, <klelder66@gmail.com>, <kris@robbinsfarmeq.com>, <kristenshelman@hotmail.com>, <laurieoc53@gmail.com>, <lcltylerranch@gmail.com>, <LesleyRichman@gmail.com>, <lhoover@otec.coop>, <linda@downrightdrilling.com>, Louie Molt <louiemolt@yahoo.com>, <lsinghose@yahoo.com>, <maherquarterhorse@gmail.com>, <marla@highdesertpartnership.org>, <martint7758@gmail.com>, <maryjodavies@hotmail.com>, <matt.stashin@pacresmortgage.com>, <mcconnellann58@gmail.com>, <megan@frenzytofreedom.com>, <melinda_martinez@fws.gov>, <melissa@highdesertpartnership.org>, <merissa.moeller@stoel.com>, <mhawley@craneedu.org>, <mindy@elkhornmediagroup.com>, <mindysheley@gmail.com>, <mksmiller@earthlink.net>, <mondiehs81@gmail.com>, <monicahenry@mac.com>, <newca_3908@yahoo.com>, <nicholsdan70@gmail.com>, <nick@catalyst.win>, <one@gouveiaranch.com>, <oregoncher.cs@gmail.com>, <papwwow1@yahoo.com>, <patty.dorroh@harneycountyor.gov>, <pcollins@otec.coop>, <peilafam@gmail.com>, <phg@bctonline.com>, <phggek@bctonline.com>, <philip.klimbal@gmail.com>, <qtcircleyjlivestock@gmail.com>, <rachels@water-law.com>, <rdgomes@harneydh.com>, <reidscountrystore@aol.com>, <relderk@yahoo.com>, Rep Owens <Rep.MarkOwens@oregonlegislature.gov>, <riddle.ranch.inc@gmail.com>, <Rob.frank@harneycountyor.gov>, <roger.sheley@protonmail.com>, <Rsharp@blm.gov>, <rsharp80@icloud.com>, <ryan@oregonfb.org>, Stephanie Bowen <sbowen@hec.coop>, <schottagair@gmail.com>, <schroeder@water-law.com>, <scotley@live.com>, <sdietz@yturrirose.com>, <sen.mikemclane@oregonlegislature.gov>, <Sheena.MILTENBERGER@dsl.oregon.gov>, <slandau@yturrirose.com>, Langford, Shonee D. <SLangford@schwabe.com>, <steve@burns49.com>, <stevengrasty@hotmail.com>, <sue@ecosourceseeds.com>, <sue@hareinthegate.com>, <sueramsay@aol.com>, <suretapsprings@aol.com>, <svejcaj@eou.edu>, <TBhoward1974@gmail.com>, <teripeasley@gmail.com>, <tgahley@cityofburns.gov>, <titusranch5@gmail.com>, <tksinghose@aol.com>, <tony.svejcar@oregonstate.edu>, <tracy.kennedy@burnspaiute-nsn.gov>, <vinetoandre@gmail.com>, <wheelhousefloralandgifts@gmail.com>, <wmargarita02@yahoo.com>, <zach.freed@tnc.org>, <zrobfrank@gmail.com>, <chris.eggert@keystone-pacific.com>, Rosalio Brambila <rosalio@sunnysidedairy.com>, Ehrin Dawson <ehrindawson@gmail.com>, Smith, Will <will.smith@simplot.com>, <mmarthacorrigan@gmail.com>, <Roaringspringsranch@gmail.com>, <edavies8@gmail.com>, <rileystorellc@gmail.com>, <harneycountycattlewomen@gmail.com>, Matt Nonnenmacher <nonnenm@acwinc.net>, Katy Nonnenmacher <nonnenk@acwinc.net>, Ted Marshall <ted@burnsfordinc.com>

Harney County Residents & Supporters;

Community Action Needed: **Support the Harney Basin Water Management Petition**

Who is Affected:
This decision impacts all Harney County residents — our county, cities, tribe, irrigators, ranchers, businesses, schools, and future generations.

What We Need from You:

We're asking the community to step up in two key ways:

1. **Financial Contributions** – Donations of any size will help cover the legal costs of presenting and defending the community's petition.

2. **Letters of Support** – Submit a public comment in favor of the petition. All letters must be received by **October 7th.** Email to: wrd_dl_rule-coordinator@water.oregon.gov (Ideas on an attached flier.)

Why This Matters:

The Water Resources Commission (WRC) will adopt new water management rules for the Harney Basin this December. The Oregon Water Resources Department (OWRD) has already submitted their Proposed Rules. After being excluded from meaningful participation in the rulemaking process, the community developed an alternative petition—with rules that meet the state's policy goals for reasonably stable groundwater conditions, while recognizing the distinct aquifer systems in the basin and only regulating areas where necessary.

Our petition offers a balanced, science-based solution to groundwater management and ensures the community's voice is heard in shaping our future.

The WRC will likely adopt either:

- The OWRD Proposal,
- The Community Petition, or
- A combination of the two.

This is our chance to advocate for a better path forward—one that addresses groundwater challenges without devastating our community.

Background:

Efforts to address OWRD's mismanagement and over-appropriation have been ongoing for over a decade. Organizations like the High Desert Partnership, generous donors, and concerned residents have kept the community's voice in the process. In recent years, Badger Ventures and Rattlesnake Creek Land & Cattle retained a prominent water rights attorney to guide us through the RAC process and help draft this petition. Lobbyists and legal teams have spent many hours assisting us, and to date, over $80,000 has been spent fighting for a solution. We are now asking for your help to cross the finish line. Legal costs to present and defend the petition are anticipated to exceed $100,000. Your support is

critical to ensuring a sustainable, community-driven solution for the Harney Basin.

How You Can Help:

☑ **Donate**
Make checks payable to:
Schwabe, Williamson & Wyatt | Memo: C/M #142272-283550
Mail to or drop off at:
ACW, 524 Hwy 20 N., Hines, OR 97738

☑ **Submit a Letter of Support**
Email your letter before October 7th to:
wrd_dl_rule-coordinator@water.oregon.gov

☑ **Spread the Word**
Share this with your friends, neighbors, and networks. Every voice counts!

Learn More
The full petition is attached and additional information can be found on the Division 512 Webpage. Representative Owens shared some ideas to help draft public comments which are included in an attached PDF that can easily be shared.

Thank you for your support!

COMMUNITY ACTION NEEDED

Support the Harney Basin Water Management Petition!

Who is Affected:

This decision impacts all Harney County residents — our county, cities, tribe, irrigators, ranchers, businesses, schools.

What We Need from You:

We're asking the community to step up in a few key ways:

1. **Financial Contributions:** Donations of any size will help cover the legal costs of presenting and defending the community's petition. Make checks payable to:
   Schwabe, Williamson & Wyatt | Memo: C/M #142272-283550 | Mail or drop off at: ACW, 524 Hwy 20 N., Hines, OR 97738
2. **Letters of Support:** Submit a public comment in favor of the petition. All letters must be received by **October 7th.** Email to: wrd_dl_rule-coordinator@water.oregon.gov
3. **Spread the Word:** Share this with your friends, neighbors, and networks. Every voice counts!

Learn More: The full petition and additional information can be found on the Division 512 Webpage.

Why This Matters:

The Water Resources Commission (WRC) **will** adopt new water management rules for the Harney Basin this December. The Oregon Water Resources Department (OWRD) has already submitted their Proposed Rules. Our community developed an alternative petition that offers a balanced, science-based solution to groundwater management and ensures the community's voice is heard in shaping our future.

Background:

Efforts to address OWRD's mismanagement and over-appropriation have been ongoing for over a decade. Organizations like the High Desert Partnership, generous donors, and concerned residents have kept the community's voice in this process. In recent years , Badger Ventures and Rattlesnake Creek Land & Cattle retained a prominent water rights attorney to guide us through the RAC process and draft this petition. To date, over $80,000 has been spent fighting for a solution. We are now asking for your help to cross the finish line. Legal costs to present and defend the petition are anticipated to exceed $100,000.

Thank you for your support. Let's stand together for the future of the Harney Basin.

COMMUNITY ACTION NEEDED

Support the Harney Basin Water Management Petition!

Ideas to help Draft Public Comments:

All comments must be received by **October 7th.** Email to: wrd_dl_rule-coordinator@water.oregon.gov In your email, simply state that you support the **Harney Basin Community Petition** —and share why this issue matters to you, your family, or your livelihood. The state takes personal stories seriously. Here are a few points you might include in your comments:

• The petition recognizes that groundwater conditions are different in different parts of the basin and that groundwater will be more effectively managed as separate groundwater reservoirs rather than treating the whole basin as one groundwater reservoir.

• The petition focuses regulation in the areas where there are clear problems that meet the thresholds for regulatory action.

• The petition encourages voluntary actions in parts of the basin where groundwater levels are reasonably stable and expected to remain reasonably stable.

• The petition adjusts proposed boundaries to better reflect our understanding of groundwater conditions in the basin.

• The state is required by law to minimize economic impacts. The petition presents an alternative that minimizes economic impacts on small businesses and the community.

• Everyone in Harney Basin relies on groundwater for drinking water. The petition will assure that there are adequate and safe supplies of groundwater for people and livestock. The petition also recognizes the need for ongoing financial and technical assistance for shallow domestic wells that may be impacted by declines.

• The Harney Basin community cares about our ecosystem. The petition will continue to encourage the collection of information to target actions that restore or maintain the flow of springs important to the Malheur National Wildlife Refuge in partnership with the Refuge.

• The petition does a better job of protecting groundwater rights that were legally granted and the people who have dutifully followed all of the state laws.

• In the Harney Basin we have a track record of working together to solve problems collaboratively. The petition recognizes this history and invites the state to work with us.

• The petition encourages programs that will fairly compensate groundwater rights holders who voluntarily cancel their groundwater rights or can no longer use their water right due to regulation.

• The petition will minimize the likelihood of having to import hay from other places for Harney Basin ranches and will minimize the likelihood of having to increase electricity rates to homes across the basin.

• The petition protects public health, welfare, and safety, by preserving jobs, minimizing cuts to public services, protecting municipal water supplies, focusing regulation where domestic and stock wells have been most impacted, and allowing for an economic transition to absorb the impacts of cuts in groundwater use.

• The petition will reduce conflict and the costs associated with litigation and will allow our community and groundwater users to invest in water conservation instead.

• The state is required by law to seek public input to the maximum extent possible on rulemaking, especially input from those likely to be affected by the rule. The petition incorporates public input from those who are likely to be affected by the rule.

• The petition provides a pathway through which a critical groundwater area designation could be lifted if groundwater is being sustainably managed.

WaterWatch of Oregon
Protecting Natural Flows In Oregon Rivers

Oregon Water Resources Commission
Sent via email to: cassidy.a.fredlund@water.oregon.gov; kelly.a.meinz@water.oregon.gov

October 1, 2025

RE: Initial Written Comments on the Div. 512 Petition for Rulemaking for the October 3rd WRC meeting

Dear Oregon Water Resources Commission:

Thank you for the opportunity to provide these initial written comments in advance of your October 3rd meeting regarding the Division 512 petition for rulemaking filed by Representative Owens (petition). We will be filing more detailed comments by October 7th but wanted to ensure that the Commission had these in advance of the meeting.

We oppose the petition for reasons including but not limited to: it fails to stabilize or adequately protect groundwater, fails to meet relevant standards, abandons important components of the Department's Proposed Rules for Division 512 (Proposed Rules), and contains inaccurate information.

Comments

1. Voluntary Agreements

For all but two sub-areas, the petition proposes to replace required pumping reductions with language requiring the Oregon Water Resources Department (Department or OWRD) to "[p]romote and support a voluntary agreement among groundwater users." (*See* Petition, *Petition Proposed* OAR 690-512-0080(2)(a); -0090(2)(a); and -0010(2)(a) (*sic*), Ex. A at 16, 18, 22 (Adobe p. 52, 54, 58) for Silver Creek, Silvies River and Blitzen-Voltage sub-areas respectively). However, we do not see any language in the petition's proposed rules that require any irrigators to actually form voluntary agreements or to voluntary reduce any groundwater use through such agreements. Voluntary agreements are, by statute, agreements formed among groundwater users that can be approved by the Commission if meeting certain standards. ORS 537.745. While the petition requires the Department to "promote and support" voluntary agreements[1], this does not equate to irrigators actually forming any voluntary agreements, or accomplishing any level of curtailment result from any such agreements.

[1] Given that voluntary agreements are agreements among groundwater users (ORS 537.745), it is unclear why the irrigators feel that the Department needs to "promote" these or what that would entail.

In reality, the petition would allow for continued full pumping, and even increased pumping as any un- or partially developed permits are further developed,[2] in Silver Creek, Silvies River and Blitzen-Voltage sub-areas until groundwater levels drop 25 feet and OWRD undertakes an additional process to establish a permissible total withdrawal. (*Petition Proposed* OAR 690-512-0080(3); -0090(3); and -0010(3) (*sic*)).

The absence of any voluntary agreement to date for reducing groundwater pumping in the Harney Basin, despite groundwater declines being a known issue for almost two decades (Petition, Ex. B at 1 (Adobe p. 77)), demonstrates that in the absence of a regulatory requirement, irrigators are not forming these voluntary agreements. There is no reason to expect a different result under the petition.

Importantly, the Department's Proposed Rules already fully accommodate voluntary agreements, should any irrigators choose to use that tool. Under the Proposed Rules, irrigators can utilize voluntary agreements to come up with and implement alternative methods for meeting pumping reductions, rather than simply curtailing by priority date. As detailed below the Proposed Rules also contain an Adaptive Management program, which the petition deletes, under which curtailment would be reduced if groundwater levels trends are better than projected. This program would further accommodate voluntary agreements by cutting back on curtailment if irrigators' voluntary reductions stabilized groundwater faster than the Department projects.

In sum, the petition's reference to voluntary agreements for three sub-areas while failing to provide any required cutbacks on pumping will fail to protect groundwater and is unlikely to succeed. The Proposed Rules contain a much more robust opportunity to employ voluntary agreements in ways that can set the basin on a more sustainable path.

2. Adaptive Management Program

The Proposed Rules contain an Adaptive Management program that would, in lay person's terms, utilize data to determine whether the groundwater level trend is better or worse than the modelling projected it would be at that time. *OWRD Proposed* OAR 690-512-0080. The program then allows for the schedule and extent of curtailment to be reduced or increased accordingly. The idea for an adaptive management program came from the RAC and the Discussion Group that met between RAC meetings. The RAC spent considerable time discussing this program as it was being developed. By all accounts, the Adaptive Management program was well received and supported. While it could be improved in certain regards, this is an important program for ensuring the long term sustainability of the basin. Yet, despite many petitioners requesting this program, petitioners have dropped the program from their proposed rules.

3. The Department's Technical Evaluation of Petition to Amend Division 512 memorandum confirms deficiencies of the petition.

The Department's recently issued memorandum with the subject Technical Evaluation of

[2] The exclusion from the permissible total withdrawal of wells where construction was not initiated by December 31, 2024 would presumably not apply unless and until a permissible total withdrawal was set and not during any voluntary action period. (*Petition Proposed* OAR 690-512-0080(1)(a); -0090(1)(a); and -0010(1)(a) (*sic*)).

Petition to Amend Division 512 (Memo) confirms that, when compared to the Proposed Rules, the petition would result in lower groundwater levels; fail to stabilize groundwater levels; dry up significantly more domestic wells; and create more harm to groundwater dependent ecosystems and native vegetation.

We very much appreciate the Department's work on the Memo. However, we believe it was incorrect to model the Petition Proposal as though in Silver Creek, Silvies River and Blitzen-Voltage sub-areas, "10% voluntary reductions from 2017/2018 mean pumping are *required* by 2040." (Memo at 2 (emphasis added)). Again, we do not read the petition to require *any pumping reductions* in those sub-areas, but rather only to require the Department to "promote and support" voluntary agreements. (*See* citation in #1 above). Accordingly, we think that for these three sub-areas, the Memo's "Full Pumpage" scenario more accurately portrays the petition (though it may understate pumping impacts because it does not account for any new wells coming on-line), while the Memo's Petition Proposal assumes pumpage as though irrigators in all three sub-areas form and implement Voluntary Agreements that actually result in 10% pumpage reductions by 2040.

In sum, the Memo confirms that the petition provides considerably less protections for groundwater than the Proposed Rules and the "Full Pumpage" scenario appears to best demonstrate the effects that the petition would have the Silver Creek, Silvies and Blitzen-Voltage sub-areas.

4. Process

I participated in the 512 rulemaking as a member of the Rules Advisory Committee (RAC). The RAC met for 78 hours across 15 meetings (run by an outside facilitator) over a more than two year time span; between RAC meetings, a Discussion Group, run by two outside facilitators paid for by the state, met for an additional 30.5 hours, for a total of 108.5 hours of meetings.[3] Many of us also spent time reviewing materials and preparing between RAC meetings. Frequently, certain members of the RAC raised concerns with the process, prompting OWRD and the facilitators to make changes.

While people can certainly have different views on whether they accept the USGS groundwater study or the like, the narrative that the process was not exhaustive or responsive enough does not hold water. 108.5 hours is a lot of process and a quick review of the materials available on OWRD's Harney (Division 512) Rulemaking webpage[4] clearly demonstrates the depth and breadth of information that was shared and discussed.

Some RAC members seem to advance the narrative that the process was inadequate because OWRD did not put what they wanted in the rules and because there was no consensus statement from the RAC. This misunderstands the role of a RAC (and indeed it seems that any meaningful

[3] These numbers were calculated by adding up the meeting times shown on the publicly available agendas on the OWRD Harney (Division 512) Rulemaking webpage.

[4] https://www.oregon.gov/owrd/programs/policylawandrules/OARS/Pages/Division-512-Rulemaking.aspx (all information on this OWRD's Harney (Division 512) Rulemaking webpage and all of its sub-pages is incorporated as if fully set forth here).

consensus statement from the RAC was not possible here). The agency has a duty to propose rules that meet statutory requirements; it has no duty to put what every RAC member wants into the rules, which would have been impossible here due to the different interests of RAC members.

5. The petition misquotes the very water code it claims to be implementing.

The petition cites ORS 536.220 to assert that:

> "The agency is tasked with the responsibility to maintain "the present level of the economic and general welfare of the people of this state" while also fostering "future growth and development of this state for the increased economic and general welfare of the people. ""

(Petition at 9). That is not what the statute says. The partial quotes do not convey the actual language and meaning of the statute, which actually states:

> "The maintenance of the present level of the economic and general welfare of the people of this state and the future growth and development of this state for the increased economic and general welfare of the people *thereof are in large part dependent upon a proper utilization and control of the water resources of this state, and such use and control is therefore a matter of greatest concern and highest priority*."

ORS 536.220(a) (emphasis added). Contrary to the petition's representation, this provision does not direct the agency to maintain economic levels, but rather supports the Department's efforts to ensure proper utilization of the water resources. It is concerning that a petition purporting to implement the water code is misrepresenting what the statute says for the apparent purpose of persuading the Commission to elevate certain economic interests.

Conclusion

Thank you for considering these initial comments. We urge the Commission to deny the petition.

Sincerely,

/s/ Lisa A. Brown

Lisa A. Brown
Staff Attorney
lisa@waterwatch.org

October 5, 2025

From: Dry Mountain Ranch, LLC, Wayne Evans, Silver Creek Valley, Riley, Oregon

RE: Water Resources Department, Harney County Groundwater Petition

My name is Wayne Evans and my family and I together own the Dry Mountain Ranch in the Silver Creek Valley in Riley, Oregon. We have been ranching and farming in the Silver Creek Valley for the past 30 years raising alfalfa hay and cattle.

We began raising hay in the area in 1997 on acreage with pre-existing wells as well as began drilling additional wells and adding irrigation pivots to raise hay. We hired a hydrogeologist from Idaho who was very familiar with our area. He started by getting aquainted with the water veins off of Dry Mountain. He spent three weeks on the ranch determining the location of where the best wells would be. We started drilling various wells in those areas. We drilled three wells reaching water at 300-400 feet. All three wells were at different levels. The water was at 400 feet on one well and the water was at static level of 198 feet and the temperature of 68 degrees. The next well was at 325 feet with a static of 192 feet and water temperature of 55 degrees. The last well was at 550 feet with a static at 230 feet and this well had a water test with extreme high levels of boron and was not useable.

All three of these wells were on aquifers of different levels and different directions. All three wells were in a direction of south-west not at all toward the area of what water resources claimed. Over the next 30 years the static level has increased by four and a half feet. Our location is the most northerly of all the wells in Harney County.

When water resources started this ground water study the Riley area was not included. It was at the time deemed out of the questionable area. The recharge I this area is very inevitable . We feel that Oregon Water Resources does not have the right to include this area as the same as the ground water basin. It seems obvious that the Silver Creek Valley ground water conditions are vastly different that many other areas of the basin. Maintaining that the ground water reservoirs are separate for separate areas makes much more logical sense and allows for easier management than deeming the entire Harney basin as one ground water reservoir. We are not arguing that there has been some miss management that has caused issues and need some regulation but lumping everyone into the same group is not acceptable.

As I said before, we have ranched and farmed in the Silver Creek Valley for the past 30 years, raising our kids and grandchildren here and care deeply for our community and our county. The economic impact that would hit our county would be devastating! Our county relies heavily on the farming and ranching industry and these proposals would certainly effect the ability of our community to continue to thrive and prosper. The state should recognize that these heavy handed governmental regulations would cause undo impact on not just the farmers and ranchers

but our entire community as a whole. Working together to benefit the area versus forcing litigation seems like a more favorable path forward. The petition that has been proposed meets goals and works to find common ground and shows that collaboration is the most logical solution.

Please consider that the Harney Basin cares about not only the economy but also the ecosystem. The petition encourages partnerships between all of entities with in the county to work together toward a common goal of preserving the ground water but also the stability of the community.

Regards,

Wayne Evans
Susan Evans
Mick Miller
Kelsie Miller
Dry Mountain Ranch, LLC

Will Henry

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Do not agree what you are doing To Harney County

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OWRD
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01-126699

The Nature Conservancy
Protecting nature. Preserving life.™

The Nature Conservancy in Oregon
821 SE 14th Avenue
Portland, OR 97214-2537

tel 503 802-8100
fax 503 802-8199
nature.org/oregon

October 1, 2025

Comments on **Petition for Rulemaking – Division 512**

Kelly Meinz – Water Policy Analyst

Submitted by: Zach Freed, Sustainable Water Program Director,
The Nature Conservancy in Oregon

Dear Mr. Meinz,

Thank you for the opportunity to comment on a petition for rulemaking on groundwater management in the Malheur Lake administrative basin.

The Nature Conservancy has collaborated with community members in the Harney Basin for years towards development of voluntary solutions for sustainable water use. We look forward to continuing that partnership and supporting community-led initiatives that achieve results. The Nature Conservancy has also participated in the Division 512 Rulemaking Advisory Committee convened by Oregon Water Resources Department (OWRD) since April 2023. Through that process, we have seen the agency-proposed rules evolve and respond to RAC feedback in substantive ways, including the inclusion of a multidecadal timeframe for implementing rules, the addition of an Adaptive Management Framework, and the utilization of a groundwater flow model to achieve stability with the minimum amount of curtailment.

We offer the following comments on the petitioner's proposal.

Insufficient to achieve stability

According to a recent Technical Evaluation by OWRD (Scandella and Boschmann, 2025), model scenarios demonstrate that the proposed petition fails to achieve aquifer stability by 2058 for 90% of all wells in each petition-delineated subarea except Weaver Springs. This is in contrast to model scenarios of the agency-proposed Rules from the Rulemaking Advisory Committee, which successfully achieve aquifer stability by 2058 among all subareas delineated in the agency-proposed rules.

The Technical Evaluation uses a MODFLOW-6 model that has been specifically calibrated to and prepared for the Harney Basin. It is the best available evidence to assess the

likelihood of success among different approaches to achieve sustainable water use with long-term aquifer stability.

The model scenario assessed within the Technical Evaluation represents an optimistic, best-case scenario outcome of the proposed petition that assumes voluntary actions are successful in reducing pumping by 10% in three subareas (Silvies, Silver Creek, and Blitzen-Voltage) by 2040. The model scenario further assumes that groundwater recharge will continue to occur at historic rates, and does not incorporate any projected changes to future hydro-climate conditions. Despite those optimistic assumptions, the model scenario results in continued aquifer declines in all three voluntary action subareas as well as the Northeast-Crane subarea by 2058. The Technical Evaluation further estimates that 91% of all wells in the Greater Harney Valley Groundwater Area of Concern continue to decline through 2058 and beyond.

Therefore, even if the petition were fully successful in both voluntary and regulatory actions, 9 out of 10 wells in the Blitzen, Northeast-Crane, Silver Creek, and Silvies subareas would continue to experience long-term declines. These declines are in addition to aquifer declines that have already occurred in the region.

The Nature Conservancy continues to support and encourage voluntary action, but evidence suggests that the actions outlined in the petition will not be sufficient to achieve long-term stability of the aquifer.

Voluntary solutions already consistent with OWRD-proposed rules

The petition seems to emphasize voluntary solutions as a distinct approach that differentiates it from the agency-proposed rules. Although The Nature Conservancy sees voluntary action as an integral component of durable, long-term water management success, we note that the Agency-proposed rules already innately allow voluntary solutions to supersede regulatory action through the proposed Adaptive Management Framework.

The Adaptive Management Framework in the agency-proposed rules was developed with substantial community input during the Rules Advisory Committee process. The Framework specifically accommodates voluntary actions: if voluntary agreements, incentives, or other collaborative actions are sufficient to slow or halt aquifer declines in a given subarea, the Framework reduces regulatory curtailment partially or prevents it entirely.

This approach to incorporating community feedback into the agency-proposed rules during the Rules Advisory Committee to benefit voluntary solutions also resulted in other adjustments to the agency-proposed rules. For example, the multidecadal glidepath towards full curtailment offers more time for voluntary actions and responsible economic transition. Deciding to use a “median” well trend metric to

evaluate success allows half of all wells in a subarea to perform worse than the Target Water Level Trend, which increases flexibility within subareas for voluntary solutions.

Consideration of selected petitioner components

The Nature Conservancy does support some elements of the proposed petition. We urge the Commission to exempt groundwater rights held by federally-recognized Tribes such as the Burns Paiute Tribe by incorporating petition-proposed language from Exhibit A – 690-512-0060(11)(e).

We support and encourage the development of programs encouraging voluntary cancellation of groundwater rights that impact ecologically-significant groundwater dependent ecosystems, as mentioned in petition-proposed Exhibit A – 690-512-0050. The Nature Conservancy participated on the Technical Advisory Team to develop the federal proposal for the Harney Groundwater CREP for this reason, and we advocated for state match funding. We remain committed to supporting the Harney Groundwater CREP and we are interested in collaborating on additional future efforts.

We further agree with petitioners that monitoring springs in the Silver Creek and Blitzen-Voltage subareas, and developing voluntary solutions to mitigate impacts to springs, is a valuable approach that is currently absent from the agency-proposed rules.

Closing

The Nature Conservancy continues to support voluntary solutions in the Harney Basin that will result in long-term stability of the groundwater resource. Ideally, voluntary actions alone would be sufficient to achieve that goal: a vision that is enabled by the Adaptive Management Framework in the agency-proposed rules. However, evidence suggests that the petition-proposed actions are insufficient by themselves to address chronic groundwater declines in the Harney Basin.

The Nature Conservancy recommends that the Commission modify the agency-proposed rules to incorporate key provisions of the petition (e.g., exemption for Tribally-held groundwater rights). We recommend that the Commission strongly consider voluntary agreements that may successfully lead to aquifer stability. However, we urge the Commission to adopt rules that will result in long-term sustainability of the aquifer, rather than a petition that will continue chronic groundwater level declines.

Thank you for your consideration of our comments.