

Division 512 Harney Basin Groundwater Proposed Rules

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Presentation Outline

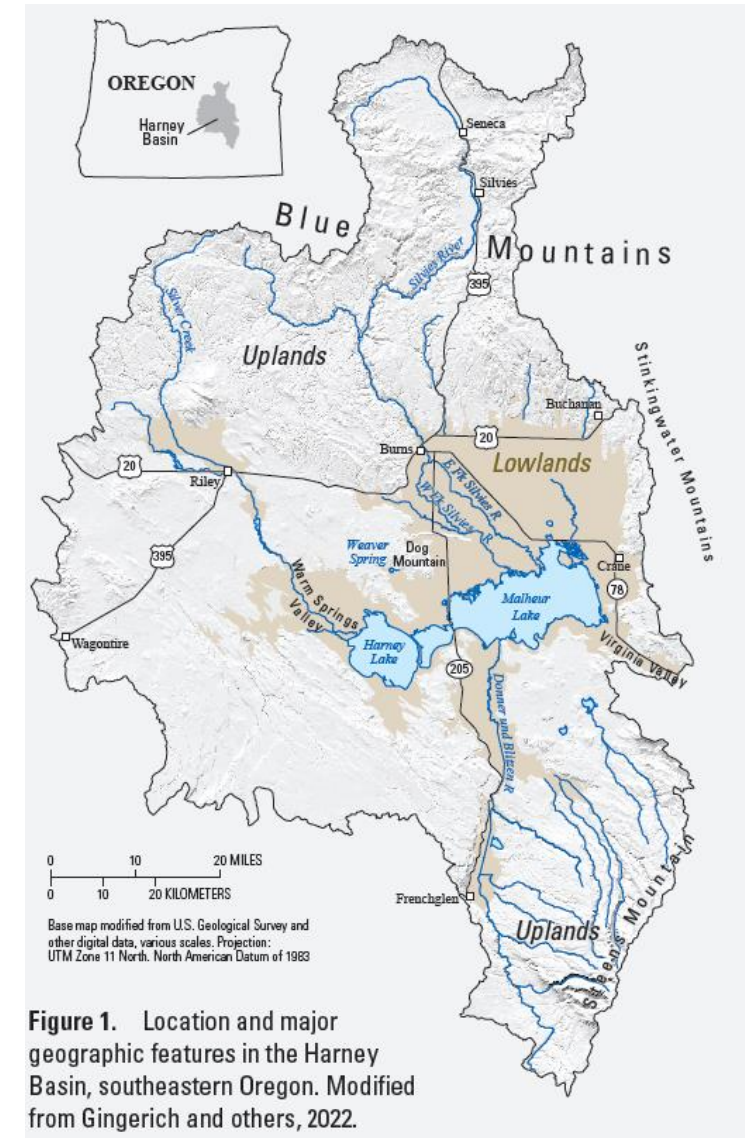
- Rulemaking background
- Division 512 Rulemaking Process
- Summary of Themes of Comments
- Rule Language Changes
- Amending Cost Compliance
- Alternatives for Commission to Consider



Rulemaking Background

Groundwater Reservoir

- One groundwater reservoir
- Occurs in multiple connected geologic units (aka "rocks")
- Behaves differently through different geologic units
- Rates and magnitudes of recharge and discharge vary based on location



Groundwater Conditions

Critical Groundwater Area (CGWA) criteria met:

- Groundwater levels have **declined excessively** (> 50 ft total decline) and are **excessively declining** (decline > 3ft per year for at least 10 years)
- The available groundwater supply is being or is about to be **overdrawn** (pumping > recharge)

Strategies in Proposed Rules

- **Protect recharge** by classifying the groundwater reservoir for exempt use only
- **Reduce groundwater use** by implementing a critical groundwater area and corrective controls
- **Achieve accountable groundwater use** by requiring metering and reporting through a serious water management problem area (SWMPA) designation

Division 512 Rulemaking Process

Rulemaking Process

Four areas of input helped shape the noticed rules:

Rules Advisory
Committee

Discussion
Groups

Coordination
With Affected
Local
Governments

Tribal
Coordination
and
Consultation

Rules Advisory Committee

RAC Membership

32 RAC Members, consisting of:

- Burns Paiute Tribe
- County Governments
- Irrigators
- Ranchers
- Well Drillers
- Domestic Well Owners
- Water Rights Expert
- Consultants
- Local Small Business Owners
- Environmental Organizations
- Malheur Lake Wildlife Refuge

Noticed Rules Informed by RAC Input

- **Focus on stability** over recovery, requiring smaller groundwater use reductions
- **Reductions begin in 2028** and are phased in over 24 years
- **Subareas reduced from 15 to 7** to increase flexibility and broaden participation in voluntary agreements
- **Adaptive management framework** includes checkpoints to adjust reductions based on groundwater trends
- **Success defined** as stable water levels in 50% of monitored wells
- **Curtailment based on actual use**, not water rights on paper

Discussion Groups

Discussion Groups

- 14 discussion groups facilitated by Oregon Consensus
- Provided a forum for RAC members and members of the public to assess and comment on the Div 512 rules
- Intent was to further promote transparency and public dialogue with division 512 rulemaking process
- Recommendations formed by the discussion group were brought back to the RAC meetings

Coordination with Affected Local Governments

Coordination with Affected Local Governments

Draft Harney Basin Critical Groundwater Area Report

- Posted June 21, 2024, and sent to Harney County and to the cities of Burns and Hines. All were invited to meet with the Department to discuss the groundwater management plan

Harney County

- Met with a Harney County Commissioner on April 15 and 24, 2025
- Harney County Commissioners were a part of the RAC

City of Burns and Hines

- Burns and Hines did not respond to an invitation to discuss
- Members of the Cities and Burns were invited to volunteer to be on the RAC

Tribal Coordination and Consultation

Tribal Coordination and Consultation

- December 16, 2022, OWRD invited all nine federally recognized Tribes to engage, through staff-to-staff coordination (including RAC participation) and/or government-to-government consultation.
- June 21, 2024, OWRD provided the Groundwater Report for the Harney Basin CGWA Rulemaking to Oregon's Nine Tribes, inviting coordination and/or consultation.

Tribal Coordination and Consultation

Burns Paiute Tribe

- April 2023, OWRD convened its first RAC, with a Burns Paiute Tribal representative serving
- Burns Paiute Tribe was offered engagement outside RAC participation
- Formal government-to-government consultation conducted August 12, 29, and September 29, 2025
- October 15, 2025, Burns Paiute Tribe given a briefing outside of public comment

Public Comment

Highlight of Noticed Rules

- Classification for exempt uses and non-consumptive geothermal
- Critical Groundwater Area Designation which includes:
 - Dividing the basin into 7 subareas
 - Establishing the allowable pumpage for each area (PTW)
 - Defining a process for allotting water to each right
 - Defining a process for scheduling reductions to the PTW
 - Establishing a process for adaptive management
- Groundwater use metering and reporting required

Public Comment

- Six informational sessions
- Ten public hearings
- Two public comment period extensions
- In total, during the public comment, the Department received **260 written** and **68 oral** comments
- The 260 written public comments contained 1,157 individual comments

Groundwater Advisory Committee (GWAC) Comments

GWAC Comments

GWAC agrees:

- There is a need for corrective controls to reduce groundwater use
- The three proposed tools - Classification, CGWA, SWMPA - are appropriate and provided additional advice on CGWA boundary. (majority, not consensus)
- The boundaries for implementation of the Classification and SWMPA are appropriate
- The basin is one hydraulically connected groundwater reservoir, but the committee has questions about the upper Blitzen area being included in the CGWA (majority, not consensus)
- With six of the seven subarea designations; Upper Blitzen is the exception
- Using the USGS numerical model of the Harney Basin to determine PTW and minimize economic impact was appropriate

GWAC Comments

GWAC Agrees:

- The adaptive management framework is a very important inclusion in the proposed rules.
- An initial PTW designation based on water right duty of 2.5 ACFT/ac is appropriate.
- Actual “wet” water use is the appropriate benchmark for initial allocation.
- A 30-year implementation timeline is appropriate for balancing community economic concerns with groundwater level stabilization.
- A target water level trend as stated in rule is a good starting point. GWAC additionally recommends acknowledging and accounting for outliers (individual wells that may continue to show substantial declines).

GWAC Comments

GWAC recommends:

- The Water Resources Commission consider Voluntary Agreements to increase flexibility of water use within the subareas.

Themes of Comments

- Definitions
- Classification
- Target Water Level Trend
- Subareas
- Municipal Use
- Permissible Total Withdrawal (PTW)
- Initial Allotment
- Schedule for Reductions
- Adaptive Management
- Water Use Measurement and Reporting
- Rulemaking Process
- Science Concerns
- Impact of the Rules (Domestic, Environmental, Economic)
- Authority
- Rule Formatting and Errors
- Voluntary Actions
- Petition for Rulemaking
- General Comments
- Outside of Rulemaking Scope

Rule Language Changes Post Public Comment

Definition of “Regulated off” 512-0010(7)

Comment:

- Department should add definitions for “regulated off” and “reduce” to ensure there is no question about the legal terminology related to limiting water use and the intent of the rules.

Change Made:

- Added a definition for “regulated off” and “reduce” to indicate this is an action taken through a regulatory order.

Reasoning:

- Provides clarity for readers regarding the process of water use reductions.

Target Water Level Trend 512-0041(1)

Comment:

- Department should extend the period of data used to calculate the groundwater decline rate

Change Made:

- Target water level trend is calculated so the groundwater level decline rate is calculated using six years of data instead of five years

Reasoning:

- Helps match the timeline for evaluation of the target water level trend with the schedule for adaptive management

Initial Allotment 512-0061(2)

Agency Initial Approach:

- In noticed rules, allotment included an evaluation of each water right in the proposed critical groundwater area to determine actual use through analysis of applied water

Change Made:

- Allot a maximum of 2.5-acre feet for each acre beneficially irrigated in the period between 2020 and 2024

Reasoning:

- Provides more certainty when quantifying the total allotment of water for each groundwater right and does not punish users who have invested in highly efficient irrigation methods.

Water Rights Spanning Multiple Subareas 512-0041(7)

Comment:

- Department should clarify how rights with points of appropriation in more than one subarea will be addressed

Change:

- Specified that any water right with points of appropriation split between two or more subareas will be subject to the rules applicable to the subarea where the majority of the points of appropriation exist

Reasoning:

- Provides clarification for water right holders around which subarea rules will be used for management of their right

Removing Upper Blitzen Permissible Total Withdrawal 512-0050:

Comment:

- Remove Upper Blitzen from the critical groundwater area

Change:

- Removed the proposed permissible total withdrawal (PTW) for the Upper Blitzen subarea from the rules

Reasoning:

- CGWA goal can be achieved without reduction in use in Upper Blitzen
- CGWA designation prevents new water right applications

Restoring Use 512-0080(5)

Comment:

- The rules should include a mechanism to rescind reductions if recovery occurs

Change:

- Ten percent of the reductions implemented shall be rescinded if:
 - At a management checkpoint, the water levels recover above 2028 median levels and;
 - No wells are declined excessively or excessively declining

Reasoning:

- Appropriate to include a path to rescind reduction orders

Metering and Reporting Requirements 512-0110(2):

Agency Initiated Change:

- Added language detailing what it means to disconnect or decommission a well from water use infrastructure

Reasoning:

- Included disconnecting from power and plumbing to clarify

Removing 2027 Check-in 512-0080(2):

Agency Initiated Change:

- In noticed rules, a pause in corrective controls would occur in 2028 if the target water level trend was achieved and water levels were at or above 2022 levels

Change:

- Check removed from the proposed rules in favor of the alternative of delaying regulatory reductions for the subareas with the least severe groundwater declines

Reasoning:

- Allows users an opportunity to develop voluntary measures to delay corrective controls and sets clear targets for those voluntary actions

Delaying Reductions in Silvies, Silver Creek, and Lower Blitzen-Voltage 512-0070(2):

Comment:

- Consider delaying reductions in subareas where groundwater levels show minimal declines.

Change:

- If a 10% voluntary reduction in use compared to 2018 estimated use occurs in the Silvies, Silver Creek, Lower Blitzen-Voltage subareas prior to 2028 then reductions will be delayed.
- Groundwater levels will be assessed at each adaptive management checkpoint: if levels are on or above the trend needed for 30-year stability, reductions will be delayed; if below, reductions will be accelerated as laid out in 512-0080

Reasoning:

- Allows users to address declines through self-management. Voluntary approaches will be evaluated for effectiveness based on actual groundwater trends in the subarea

Exemption for Burns Paiute Tribe 512-0041(8)(c), 512-0110(2)

Comment:

- Burns Paiute tribe should be exempt from any corrective controls and measurement or reporting requirements

Changes:

- Rules explicitly exempt any state issued groundwater rights or federal reserved groundwater claims held by Burns Paiute Tribe from corrective control measures and water use measurement and reporting requirements

Reasoning:

- Honors and recognizes the sovereignty of Burns Paiute Tribe By exempting these rights from the rules

Exemption for Municipal and Quasi-Municipal 512-0041 (8)(b)

Comment:

- Municipal and Quasi-municipal uses should be exempt from any corrective controls to avoid restricting growth

Changes:

- Municipal and quasi-municipal are exempted from corrective controls
- Water used under municipal and quasi-municipal will be accounted for in reductions at each checkpoint

Reasoning:

- Recognizes and prioritizes the unique status of municipal and quasi-municipal rights in providing water for human consumption

Amending Cost of Compliance Post Public Comment

Amending the Cost of Compliance

Comment:

- Cost of compliance didn't include impacts on other state agencies

Change:

- Cost of compliance was amended to include costs for the Department of State Lands and Department of Veterans Affairs

Alternatives for Commission to Consider

Land Use Considerations

- Department staff have evaluated land use considerations related to Statewide Planning Goals
- The Department's recommended rules are based on a finding that the rules comply with the Statewide Planning Goals because the rules will protect important groundwater resources consistent with Statewide Planning Goal 5.

Why adopt?

The proposed rules are:

- Developed through a robust, multi-year rulemaking process
- Informed by thoughtful input from the RAC and public
- A balanced approach for achieving stable water levels and sustainable use within a generation
- How to ensure groundwater is available for current and future Oregonians

Alternatives

The Commission may consider the following alternatives:

1. Adopt proposed Division 512 rules as proposed in Attachment 15, including the findings recommended by the Department in support of adoption
2. Adopt proposed Division 512 rules as proposed in Attachment 15, with modifications
3. Do not adopt proposed Division 512 rules, directing staff to return at a later date with a revised version of the rules for Commission consideration

Director's Recommendation

The Director recommends Alternative 1- Adopt proposed Division 512 rules as proposed in Attachment 15, including the findings recommended by the Department in support of adoption.

- I move to adopt the proposed Division 512 rules as proposed in Attachment 15, including the findings recommended by the Department in support of adoption with the following modifications related to 690-512-0060(1) and 690-512-0070(1).

690-512-0060(1) Modification

- 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. For each groundwater right not exempt from corrective controls as defined in OAR 690-512-0041(8), the initial allotment 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 of authorized on the water right.

690-512-0070(1) Modification

- For the purpose of scheduling reductions, the total reduction in groundwater use for each subarea will be calculated as the difference between the **total** initial allotment **for the subarea** plus the greatest single year quantity of municipal **and** quasi-municipal use between the years 2020 and 2024 **within that same subarea**, and the permissible total withdrawal.

OREGON



WATER RESOURCES
DEPARTMENT

Thank you!

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[@OregonGovWRD](https://www.youtube.com/@OregonGovWRD)

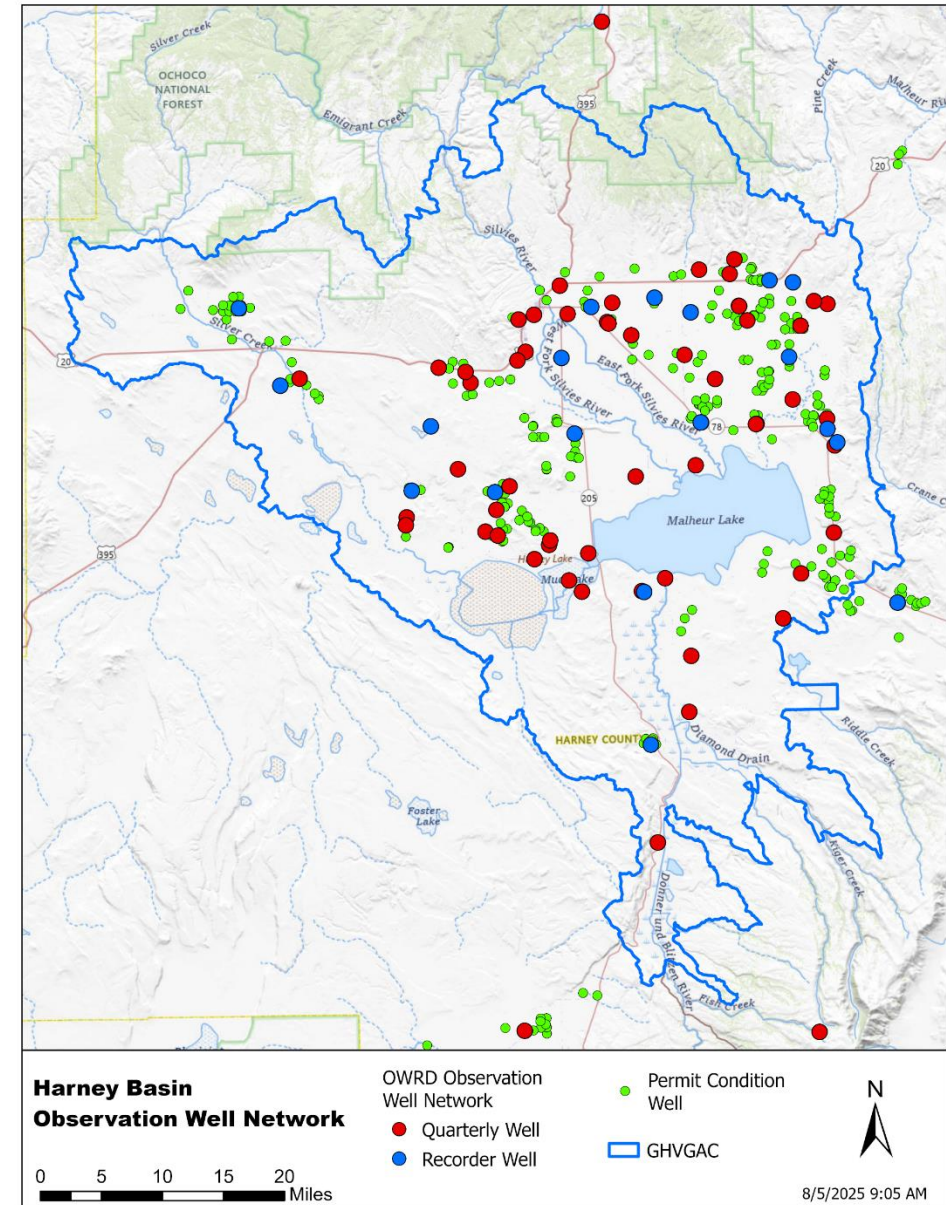


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Observation Well Network

Harney County Obs Wells:

- Quarterly Wells: 89
- Recorder Wells: 26/89
- Permit Condition Wells: 295

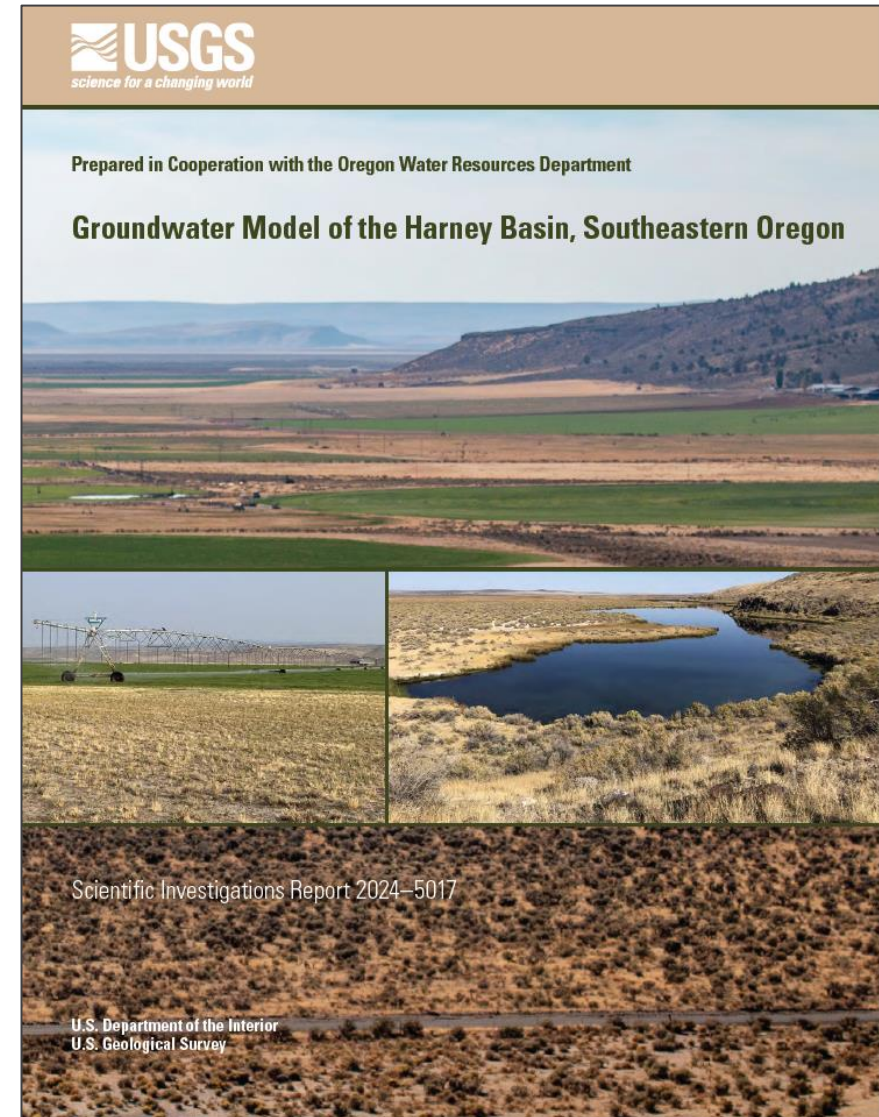


Tools overview

| Regulatory Tool | Description | Strategy | What does it control? |
|---|--|-------------------------------|------------------------------------|
| Classification | Classify type and quantity of water use allowed | Protect recharge | Future groundwater appropriation |
| Critical Groundwater Area (CGWA) | Control current groundwater use to prevent further decline | Reduce groundwater use | Current groundwater use |
| Serious Water Management Problem Area (SWMPA) | Require reporting and measurement of water use | Achieve accountable water use | Current and future groundwater use |

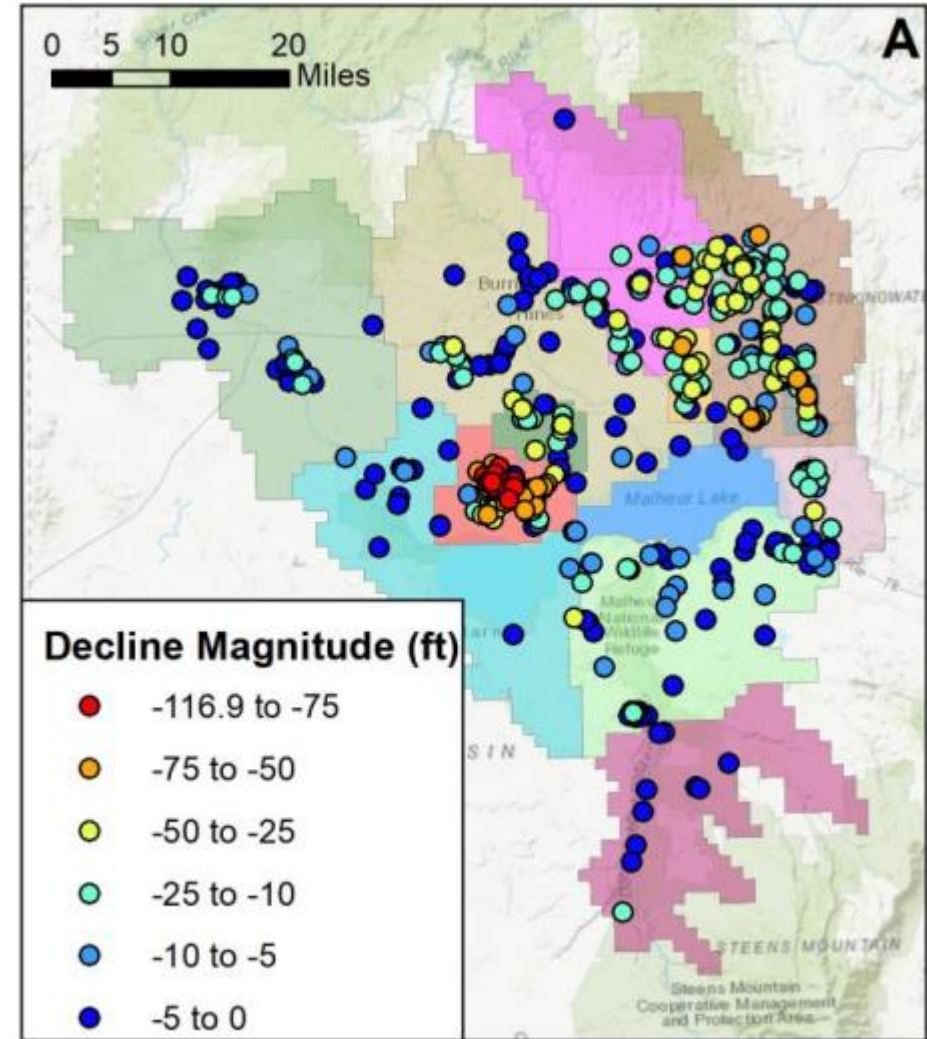
Harney Basin Groundwater Model

- 3-dimensional numerical model
- Simulates movement of water within the groundwater system from recharge to discharge areas
- Characterizes both natural processes (streams, springs, evapotranspiration) and human use (wells)
- Covers an area of about 11,269 square miles
- Grid consists of 78,064 cells, each covering 2,005 by 2,007 feet and 10 layers (780,640 total cells)
- Calibrated to hydrologic conditions from 1930-2018



Groundwater Level Trends Analysis

- Provides summary statistics of groundwater level trends across the GHVGAC
- Both rate and magnitude
- Uses data through 2024
- Uses both OWRD measurements and reported permit condition data



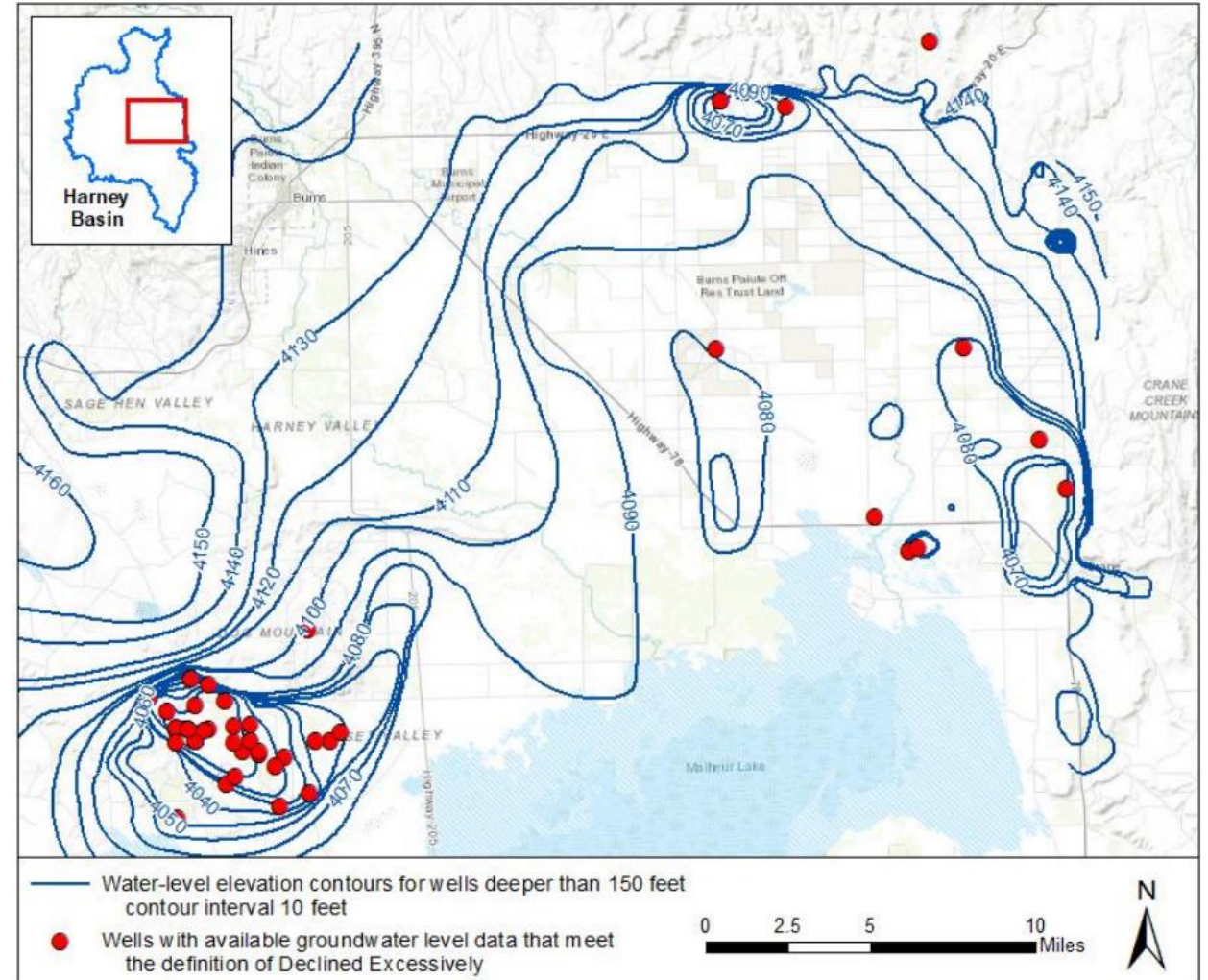
[Link: Groundwater Level Trends in the Proposed Harney Basin Critical Groundwater Area](#)

Groundwater Report Requirements

- Requirement of OAR 690-010
- The report must:
 - Identify the criteria met under ORS 537.730(1)(a) – (g)
 - Identify and characterize the GW reservoir
 - Identify corrective control measures
- Public comment accepted until end of comment period for the proposed rules

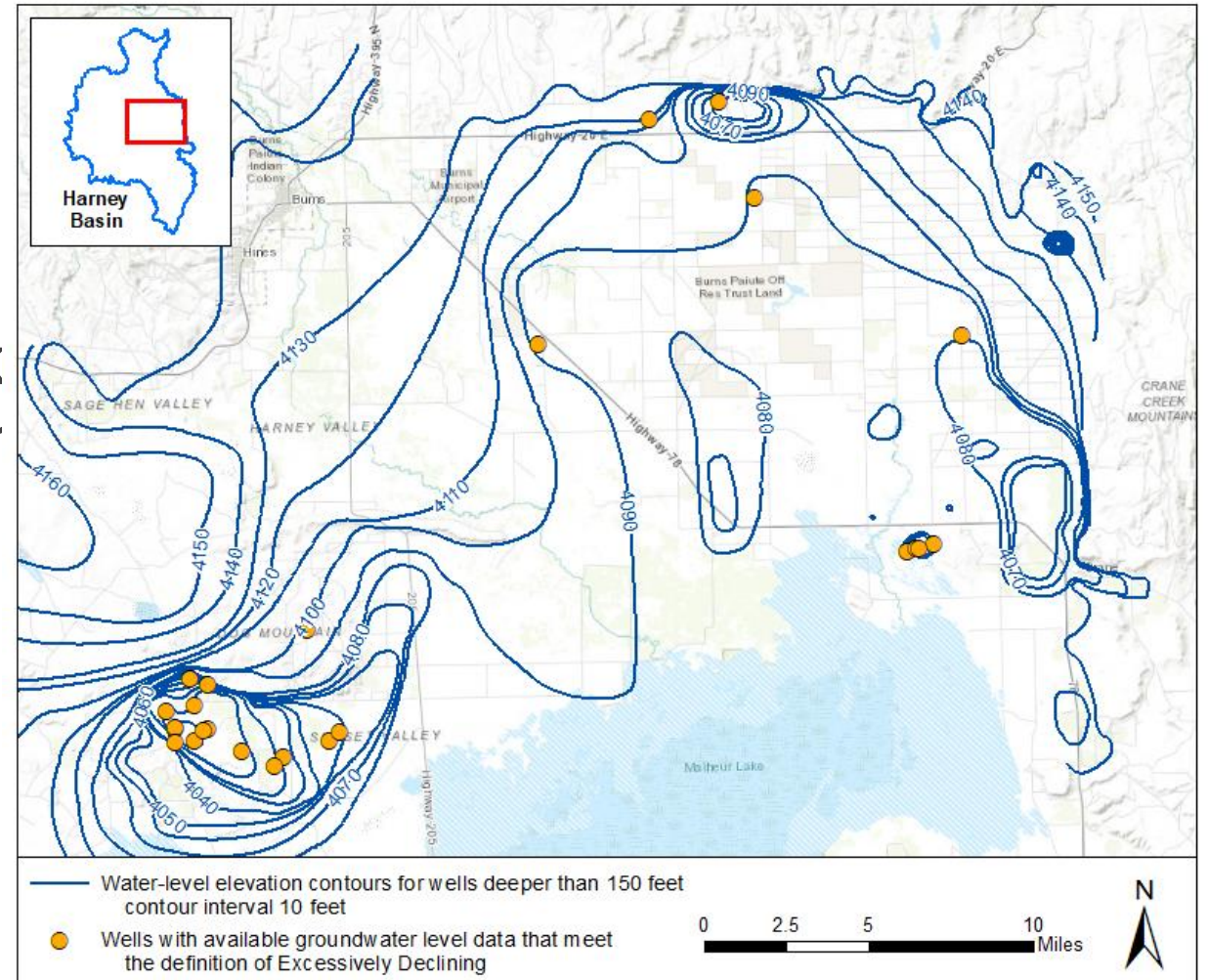
Declined Excessively

- Greater than 50 ft of decline from highest known levels
- Data on wells meeting this threshold is limited by:
 - Lack of **historic** measurements for wells
 - Lack of **current** measurements for wells
- More wells expected to reach this threshold within several years



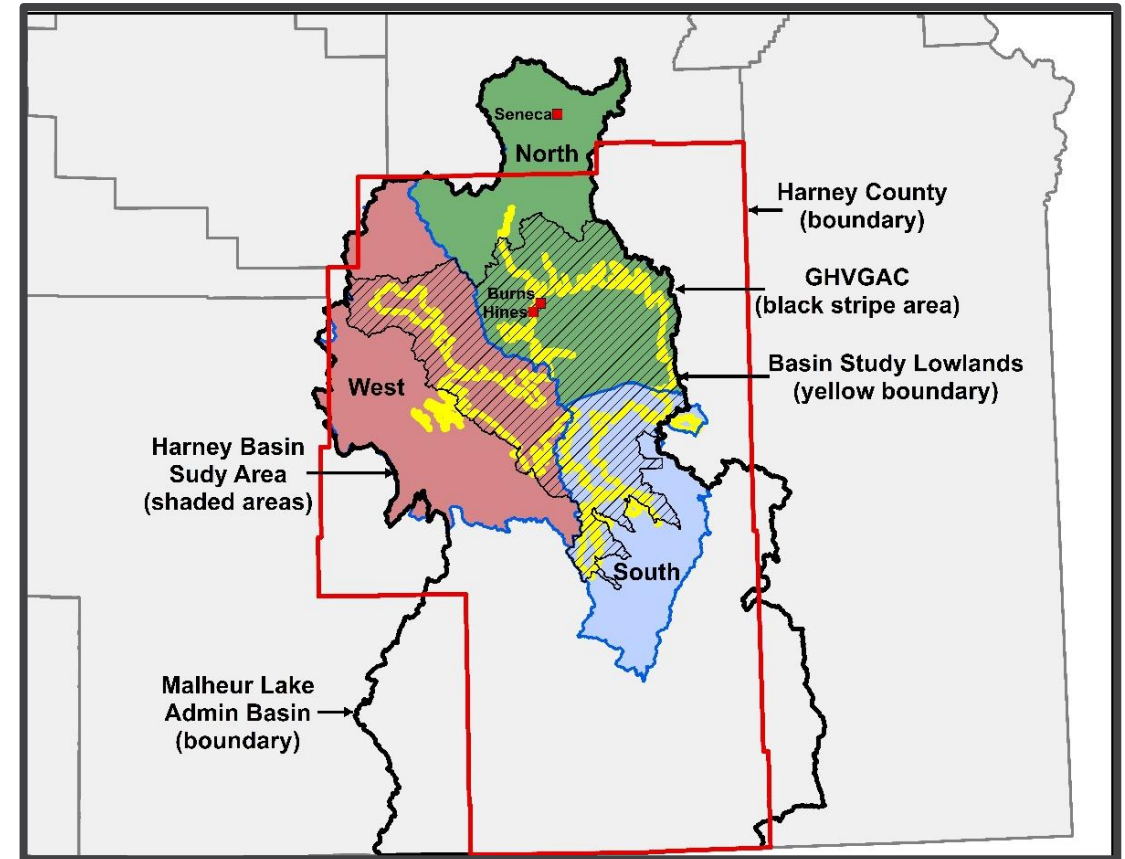
Excessively Declining

- Decline rate at least 3 ft per year for at least 10 years
- Data on wells meeting this threshold is limited by a lack of current measurements for wells
- More wells expected to reach this threshold within several years



Overdrawn

| Water Budget Region | Difference of lowland recharge and pumpage (AF/yr) | Difference of lowland recharge and authorized use (AF/yr) |
|---------------------|--|---|
| Northern region | -2,700 | -96,454 |
| Southern region | 26,400 | 10,557 |
| Western region | 4,500 | -18,204 |
| Harney Basin | 28,200 | -104,101 |



Proposed CGWA Corrective Controls

- Close the area to further appropriation
- Disposition of any outstanding permit applications
- Determine the annual permissible total withdrawal
- Other tools necessary to protect the public welfare, health and safety

Summary of Themes of Comments

Economic Impact

- Written and oral comments focused on economic impacts resulting in:
 - Groundwater users going bankrupt
 - Reduced revenue for schools
 - Increased power rates for all rate-payers
 - Impacts to medical service availability (EMS, hospital, etc.)
 - Reduced profitability of service and supply businesses

OWRD Response

- Reductions in use must occur to achieve long-term, sustainable groundwater use
- Continued declines will result in impacts to domestic wells, streams, springs, and groundwater dependent ecosystems
- Changes were made to the approach to reduce economic impact:
 - 30-year timeline to success
 - 24 year phased curtailment
 - Adaptive management
 - Median success metric
 - Defined subareas
 - Allot based on beneficial use

One Groundwater Reservoir

Common oral and written comments about the groundwater reservoir can be summarized as:

- The Harney Basin is not a single groundwater reservoir
- The Department should designate multiple separate groundwater reservoirs

OWRD Response

- ORS 537.515 (6) “Ground water reservoir” means a designated body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred
- In the Harney Basin, there are no known boundaries to groundwater flow
- The only ascertainable boundaries are those that define the basin itself

Model Uncertainty

- The model contains assumptions and uncertainties and should not be used for groundwater management

OWRD Response

- All groundwater flow models are simplifications of complex natural systems
- The model is the best available science
- The model provides an informed path to success
- Adaptive management mitigates against uncertainty
- Decisions based on actual, measured water levels taken in the future

Tribal Rights

Burns Paiute Tribe Tribal Rights

Oral and written public comments from the Burns Paiute Tribe centered around:

- Tribal sovereignty in general
- Department's perceived failure to consult
- Exemption of the Burns Paiute Tribe from the Division 512 Rules
- Interest in partnering with the Department on a co-stewardship framework

OWRD Response

- The Department believes it has met or exceeded consultation requirements
- The Burns Paiute Tribe has been exempted from corrective controls, resulting in groundwater reduction and measurement and reporting requirements within the Harney Basin Critical Groundwater Area
- The Department recognizes and respects Tribal sovereignty and is interested and committed to engaging further with the Burns Paiute Tribe on co-stewardship of the Harney Basin, resources allowing