



MEMORANDUM

TO: Water Resources Commission

FROM: Justin Iverson, Groundwater Section Manager
Harmony Burright, Planning Coordinator
Dwight French, Water Rights Services Division Administrator
Ivan Gall, Field Services Division Administrator

SUBJECT: Agenda Item H, June 11, 2020
Water Resources Commission Meeting

Harney Basin Groundwater Management Update

I. Introduction

This informational report provides an update on the Department's groundwater-related work in the Harney Basin, including work that has been prioritized in anticipation of planned rulemaking in 2021. The Department has continued to perform its core functions as the groundwater study and place-based integrated water resources planning (place-based planning) processes have progressed over the past several years.

II. Background

In 2015, initial groundwater level data analysis and aquifer recharge estimates indicated annual groundwater use and other discharges of groundwater likely exceeded annual recharge in the Greater Harney Valley Area. As a result, no new permits could be issued without harming existing water users or appropriating water beyond the capacity of the resource. Consequently, the Commission modified the basin program rules (Oregon Administrative Rules Chapter 690, Division 512) in April 2016 to allow a limited permits to be issued if another water right of the same size was voluntarily cancelled. In addition, the Department began the Harney Basin Groundwater Study.

III. Harney Basin Groundwater Study and Next Steps

The groundwater basin study findings will be peer reviewed and published by the end of 2020; however, preliminary results from the study confirm that the current level of groundwater development exceeds available groundwater supply, resulting in declining groundwater levels across the basin. The rate and magnitude of groundwater level declines in some areas are worse than anticipated in 2015, and actions will be necessary to help achieve reasonably stable groundwater levels in these areas. A more detailed staff report and presentation on the preliminary findings of the groundwater study are anticipated in the fall of 2020. Once the study is published, a rules advisory committee will be convened in 2021 to provide input on rule changes to further address declining water levels consistent with Oregon Administrative Rule 690-512-0020(12).

IV. Harney Basin Groundwater-Related Activities

The Department has continued to perform its core functions as the groundwater study and place-based integrated water resources planning (place-based planning) process have progressed over the past several years. These responsibilities include collecting and analyzing groundwater, surface water, and water use data, issuing and tracking rights to use water, processing water rights transactions, distributing water in accordance with water rights, regulating unauthorized uses of water, inspecting wells and ensuring compliance with well construction standards, and working with the community to plan for the long-term security of water resources. Some activities such as processing claims of beneficial use from the basin, have been prioritized in anticipation of the planned rulemaking in 2021.

The Department has reported regularly to the Commission regarding the place-based planning effort, the groundwater basin study, and required reporting on items listed in the basin program rules. The Department continues to communicate with and reach out to area stakeholders and will continue to do so in the future. Information will also be posted on the Department's website at: www.oregon.gov/owrd/programs/administrativebasins/harney-and-malheur-lakes-basin/. The following subsections describe additional management activities the Department is engaged in.

Water Rights Processing and Transactions

- A. Groundwater permits – Six new permits have been issued within the Greater Harney Valley groundwater area of concern (GHVGAC) since April 2016. Refer to the May 1 Director's Report to the Commission for details.
- B. Extensions of time –A permit holder may apply for an extension of time to develop their water use consistent with their permit. Although each extension is evaluated individually, at this time extensions are not likely to be approved to allow additional development of irrigated lands and increased use of water. Permit holders were notified last fall via a letter from the Department. Since April 2016, the Department has issued 35 Final Orders regarding extension of time requests for groundwater permits located within the GHVGAC. In addition, in May 2020, the Department mailed letters (Attachment 1) to permit holders, cautioning against further development of irrigated lands given the preliminary study findings and need to reduce groundwater use in the basin. The Department also issued a press release available at: www.oregon.gov/owrd/newsroom/.
- C. Claims of beneficial use – The Department continues to process claims of beneficial use, which is a necessary step before a permit is certificated. There are an estimated 85 groundwater right permits authorizing irrigation of approximately 20,000 primary acres that have yet to submit a claim of beneficial use. Approximately 93 water rights (roughly 17,000 acres) have claims of beneficial use pending before the Department to determine if a certificate should be issued.
- D. Transfers – Since April 2016, approximately 90 transfer applications in the Malheur Lakes Basin have been filed with the Department. Transfers propose to change the point of diversion, point of appropriation, type of use, place of use, or any combination of these. Groundwater transfers need to occur within the same groundwater source and

cannot result in enlargement or injury. The Department is applying its understanding of the same source to reflect best available information from the groundwater basin study.

Groundwater Distribution and Enforcement

- A. Unauthorized water use – The Department continues to identify and respond to complaints alleging unauthorized water use. Several users have been regulated off for irrigation without a groundwater right. Most users are sent either a regulation notice, or are voluntarily complying after a conversation with the watermaster. One notice of violation was issued along with an assessment of civil penalties as a result of unauthorized use in 2019.
- B. Enforcement of permit conditions – The Department has regulated several groundwater users who were not in compliance with their permit conditions.
- C. Well construction compliance – The Department has found a number of wells constructed without the appropriate paperwork, with inadequate seals, and in locations that are not authorized on permits. These have led to enforcement actions taken against drillers in the area, including the revocation of one license and the assessment of civil penalties. One notice of violation was issued to a landowner for wells constructed on their property without any associated well reports.
- D. Well interference complaints and groundwater concerns – The Department recently developed a formal process to receive, respond to, and track well interference complaints in response to interests and concerns expressed by water users in the basin. Since that formal process was developed in 2018, one formal well interference complaint has been filed with the watermaster.

V. Conclusion

Preliminary findings from the groundwater basin study confirm that groundwater is over-allocated and that in some areas groundwater level declines are greater than initially expected. The Department will continue to be in communication with the Harney County Court, the members of the Groundwater Study Advisory Committee, the Community-Based Water Planning effort, water right holders, and other interested stakeholders and members of the public about next steps in the basin, including future rulemaking. The Department has signaled that rulemaking will likely commence in 2021 and that rule changes are needed to address over-allocation and areas of excessive water level decline in the basin.

Attachments:

1. Example letter to owners and agents of valid water right permits, May 2019

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Kate Brown, Governor

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May 28, 2020

OREGON DEPARTMENT OF STATE LANDS
1645 NE FORBES RD SUITE 112
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RE: Further development of groundwater right permit(s)
G 17318, priority date of 7/19/2013, completion ('c') date 11/26/2019
G 17319, priority date of 7/19/2013, completion ('c') date 11/26/2019
G 17320, priority date of 7/19/2013, completion ('c') date 11/26/2019
G 17350, priority date of 7/8/2013, completion ('c') date 2/12/2020
G 17363, priority date of 8/28/2013, completion ('c') date 5/14/2020

Dear Groundwater Right Holder or Agent,

In October 2019, the Department sent letters to you and other permit owners and agents with important information about requirements related to developing groundwater under your permit(s) and that extensions to allow further development of water were unlikely to be approved.

With this letter, we caution you against further investment in any undeveloped portion of your permit, including bringing additional lands into irrigated production, even if your permit allows for additional pumping to increase the amount of land being irrigated.

Groundwater level data collected during the Harney Basin Groundwater Study show that groundwater is being used faster than it can be replenished. This means the current volume of groundwater used each year is not sustainable, and increasing groundwater use beyond what is already being pumped will only make groundwater declines worse. Reductions in the amount of groundwater used are necessary to establish reasonably stable groundwater levels in many parts of the basin.

Publication of the full and final study results and a public outreach event to share the primary findings of the study are expected late in 2020. The Department will then convene a rule advisory committee in 2021 to gather input on next steps to achieve necessary reductions.

If you have completed development, please remember that you must submit a claim of beneficial use in order to obtain a water right certificate. The claim must be submitted within 1 year of your completion (c) date. Attached are links to several online resources detailing the water rights system and opportunities to engage in water management in the basin. We hope this information helps you make informed decisions regarding your groundwater right permit.

Sincerely,

Justin Iverson, Groundwater Section Manager

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Attachment: Water Right Resources and Additional Information

Cc: Application File(s):
G 17706
G 17707
G 17708
G 17698
G 17717

Water Right Resources:

- **Water Rights in Oregon Booklet (“Aqua Book”)**
<https://www.oregon.gov/OWRD/WRDPublications1/aquabook.pdf>
General description of Oregon’s water rights system.
- **Water Rights Information System**
<https://apps.wrd.state.or.us/apps/wr/wrinfo/>
The Department’s online record of your water right file. A PDF copy of your permit and other related documents are available under the “Scanned Documents” section.
- **Claim of Beneficial Use / Certification Information**
<https://www.oregon.gov/OWRD/programs/WaterRights/Cert/Pages/default.aspx>
Find forms and information necessary to file a claim of beneficial use to document the development of your water right and obtain a Certificate.
- **Extension of Time**
<https://www.oregon.gov/OWRD/programs/WaterRights/Cert/Pages/default.aspx>
Find forms and information necessary to file an extension of time request if necessary to come into compliance with certain time sensitive conditions as required by your permit.

Additional Information:

- **Malheur Lake Basin Groundwater Rules:**
<https://secure.sos.state.or.us/oard/view.action?ruleNumber=690-512-0020>
In April 2016, the Water Resources Commission established the Greater Harney Valley Groundwater Area of Concern (GHVGAC) in the Malheur Lakes Basin Program Rules. The Department will convene a rule advisory committee to reexamine these rules in 2021.
- **Groundwater Study Advisory Committee:**
<https://www.oregon.gov/OWRD/programs/GWWL/GW/HarneyBasinStudy/Pages/default.aspx>
In May 2016, OWRD and the Harney County Court appointed a Groundwater Study Advisory Committee to foster an open exchange of information, data, and ideas between Harney County residents, interested parties, and the USGS/OWRD groundwater study team.
- **Community-Based Water Planning:**
<http://hcwatershedcouncil.com/community-based-water-planning/>
In addition to the groundwater study, the Harney County Watershed Council and Harney County Court have undertaken a place-based integrated water resources planning effort in the basin.
- To receive future updates about Oregon Water Resources Department actions in the Harney Basin, please subscribe to the mailing list: <https://mailchi.mp/06af95c5f6a8/owrdharneybasin>.