



# Request for Decision on Petition for Rule Amendment or Rulemaking

Oregon Water Resources Commission

December 15, 2020

# Petition for Rulemaking

- October 5<sup>th</sup>: Stand Up to Factory Farms (Petitioners) submitted petition for rulemaking
- Requests limitation of stockwatering exemption
- Relates to Ordinance Critical Groundwater Areas (OCGWA)

# Background & History

- Declining ground water levels in basalt and alluvial aquifers
- 1976 – OCGWA established via Order
- Aquifers closed to further permitted appropriation
- Exempt uses (ORS 537.545) left intact
- Department adopted rule OAR 690-507-0070(3)(a)

# OAR 690-507-0070(3)(a)

- (3) Groundwater: Appropriation and use of groundwater in the Columbia-Umatilla Plateau subbasin shall comply with the following provisions:
- (a) Groundwater resources of the basalt aquifer and shallow gravel aquifer within the Ordnance Critical Groundwater Area are closed to further appropriation by Order of the Director dated April 2, 1976;

# Petitioner's Request

- “Effective [date of Petition], the Ordinance Gravel Critical Ground Water Area and the Ordinance Basalt Critical Ground Water Area are closed to further appropriation of ground water in excess of 5,000 gallons per day under the “stockwatering” exemption in ORS 537.545(1)(a).”

# Governing Law & Process

## Relevant Law

- ORS 183.390
- OAR 137-001-0070

## Required Actions

- Invite public comment
- Consideration of six factors
- Denial in writing or initiation of rulemaking within 90 days

# Public Comments

- Department invited public comment
- Two opportunities to provide written comments
- Received 1,088 comments
- 1,084 in support; 4 in opposition

# Comments in Support

- Threat of significant new exempt stockwatering in the OCGWA
- Regulation is complicated and costly solution
- Mitigation agreements are not sufficient to address the problem
- There is public sentiment in support of closing the stockwatering exemption “loophole” statewide
- Mega-dairies pose a danger to Oregon’s precious water resources
- See staff report and comments for more details



# Comments in Opposition

- Could set undesirable precedent for water management in the region
- Attempts to preempt local land use planning
- Targets specific agricultural industry
- Would re-direct resources from long-term sustainability efforts
- Not requesting a rule amendment
- See staff report and comments for more details

# Consideration of the Petition

## ORS 183.390(3) - Six Factors

- Nature of complaints or comments received
- Extent rule overlaps, duplicates or conflicts with other state, federal, and local regulations
- Complexity of rule
- Degree technology, economic conditions, or other factors have changed in subject area
- Legal basis for rule and petitioner's request
- Continued need for rule
- See discussion in staff report

# Key Considerations

- New large uses of groundwater in the OCGWA not sustainable
- Minimal risk of immediate new significant uses of the groundwater exemption for stockwatering in the OCGWA
- Complexity of paths forward: land use coordination, rulemaking, contested case
- Other competing needs: agency priorities and staff workload commitments

# Key Considerations

- Proposed rule does not appear to accomplish the petitioners' objectives
- Distinction between rules and orders
- Rule amendments are to restrict prospective uses
- Contested cases to restrict existing uses
- One or more wells of concern already used

# Alternatives

- Alternative 1: Deny the petition in writing.
- Alternative 2: Deny the petition in writing and direct Department staff to consider this issue in future priority-setting discussions.
- Alternative 3: Initiate rulemaking proceedings.

# Director's Recommendation

- Alternative 2: Deny the petition in writing and direct Department staff to consider this issue in future priority-setting discussions.

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# Commission Decision VOTE

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