OREGON
WATER RESOURCES DEPARTMENT

Groundwater Allocation Process Rulemaking

Oregon Water Resources Department

Rules Advisory Committee Meeting

September 13, 2023

Welcome & Agenda

OREGON WATER RESOURCES DEPARTMENT

Meeting Agenda

Schedule	Topic	Lead/Presenter
8:30 am	Welcome & Agenda	Annette Liebe
	RAC Meeting 5 - Draft Summary	Travis Brown
	Proposed Rule Revisions • Divisions 300, 8, 9, 400, 410 • Flow Charts	Justin Iverson
Break		
	Follow-Up Items • Artificial Recharge (AR) / Aquifer Storage & Recovery (ASR) • Limited Licenses / Drought Permits • Transfers	Justin Iverson
	Draft Statements • Need, Racial Equity Impacts, Fiscal & Economic Impacts	Laura Hartt
Break		
	RAC Roundtable – Discussion	Annette Liebe
11:30 am	Public Comment	Annette Liebe
By noon	Schedule, Wrap-up, & Next Steps	Annette Liebe

RAC 5 Meeting Summary

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RAC 5 Meeting Summary

Any questions, comments, corrections?

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Objective Reminder

Update groundwater allocation rules to be more sustainable and protective of existing water right holders, both instream and out-of-stream.

Revised Draft Rules

OREGON WATER RESOURCES DEPARTMENT

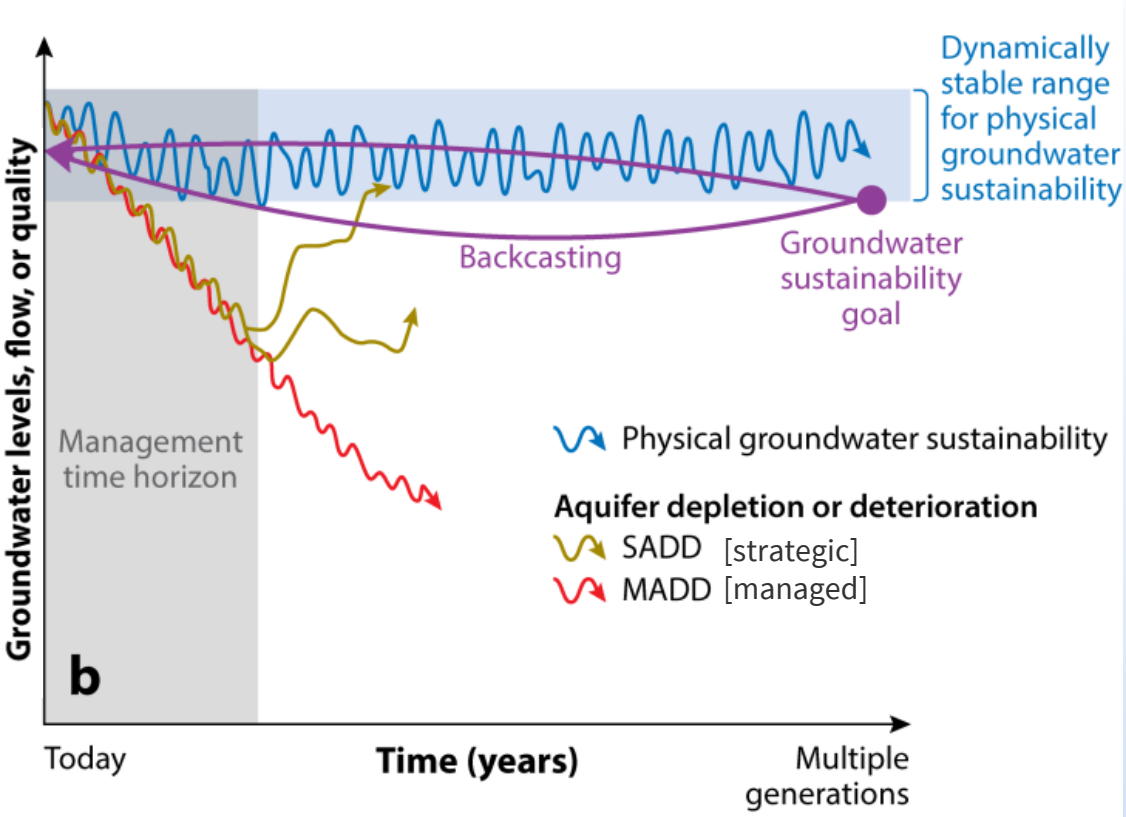
Changes from RAC#5

- Removed “capacity of the resource” as a criteria for “water is available” in Div 300
  - Still can be considered under ORS 537.621
- Therefore, making no changes to Division 400
- Minor changes to Divisions 300, 8, 9, and 410

Sustainable Means:

"Groundwater sustainability is maintaining long-term, dynamically stable storage [water levels] and flows [from recharge to discharge areas] of high-quality groundwater ..."

– Gleeson et al, 2020



Excerpted and modified from: Gleeson and others, 2020, Annual Review of Earth and Planetary Science, 48, 431-63 (Figure 2b). Available at: https://www.annualreviews.org/doi/10.1146/annurev-earth-071719-055251

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Water Is Available Flowcharts

DRAFT - for discussion purposes only

Figure 1. Public Interest Presumption

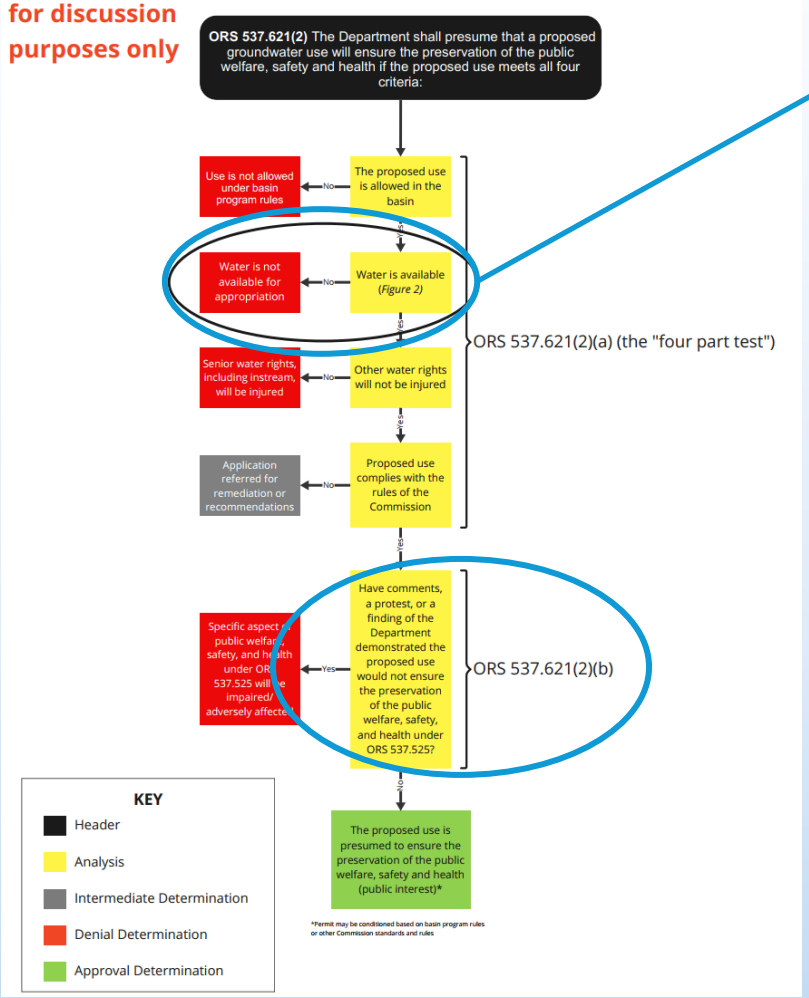

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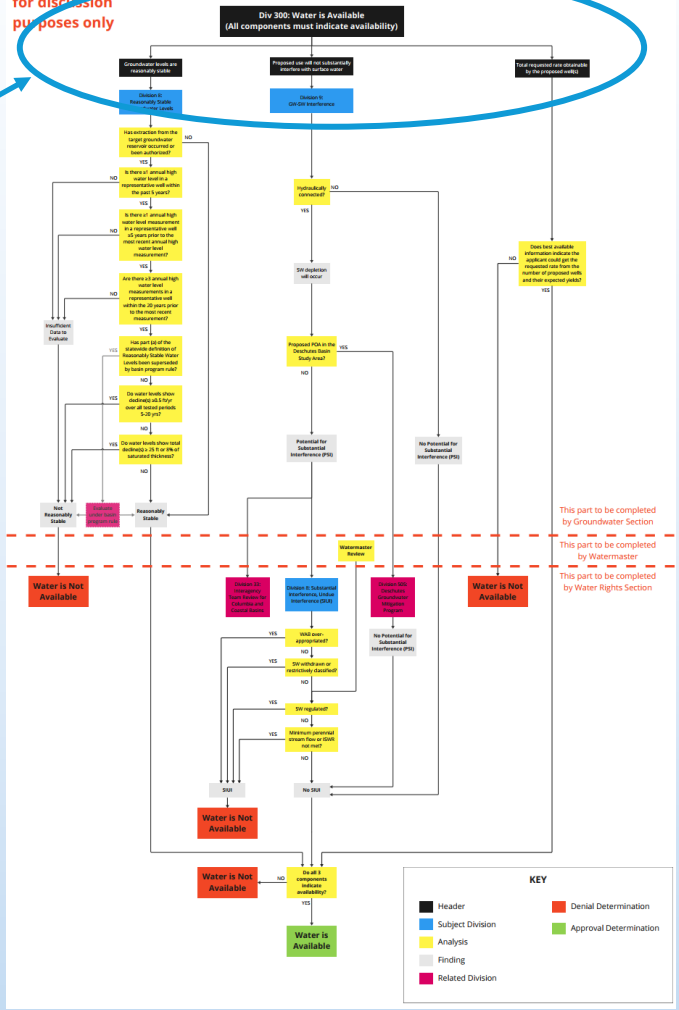
Figure 2: Updated (Ground)Water Availability (09/6/2023)



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Draft Rule Text Format Guide

Black text – current rule language

Red text – proposed new/revised rule language

~~Grey strikethrough~~ – deleted current rule language

Yellow highlight – revisions since RAC 5

Division 300

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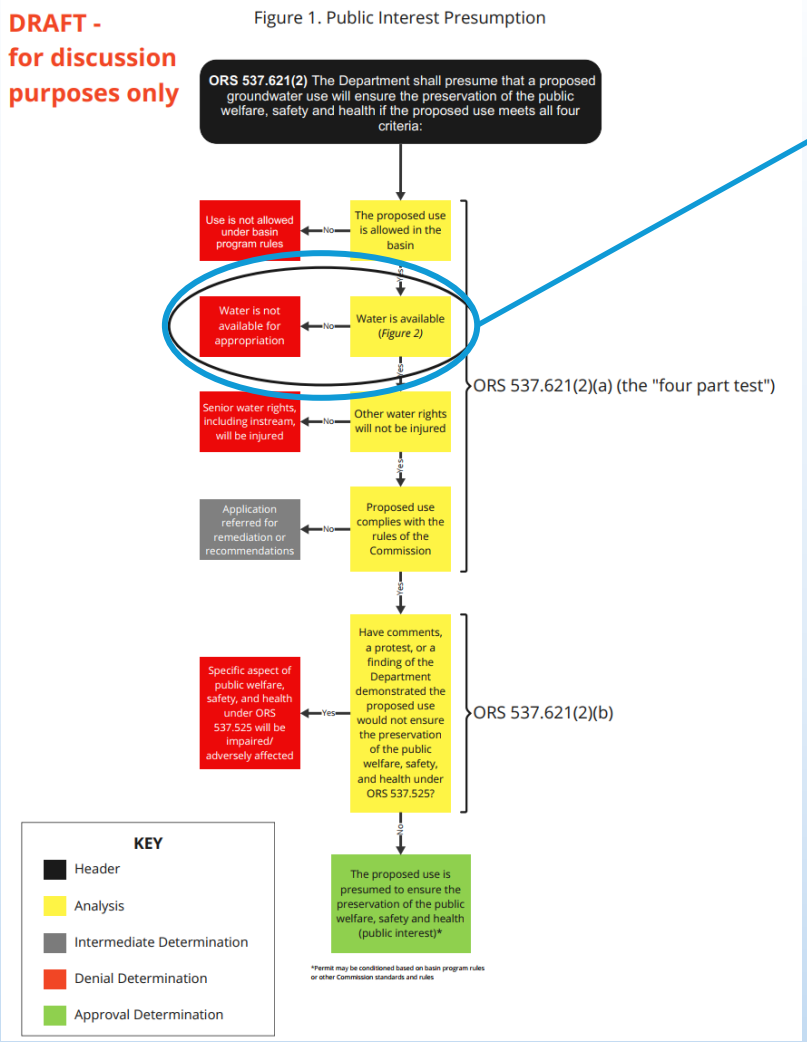
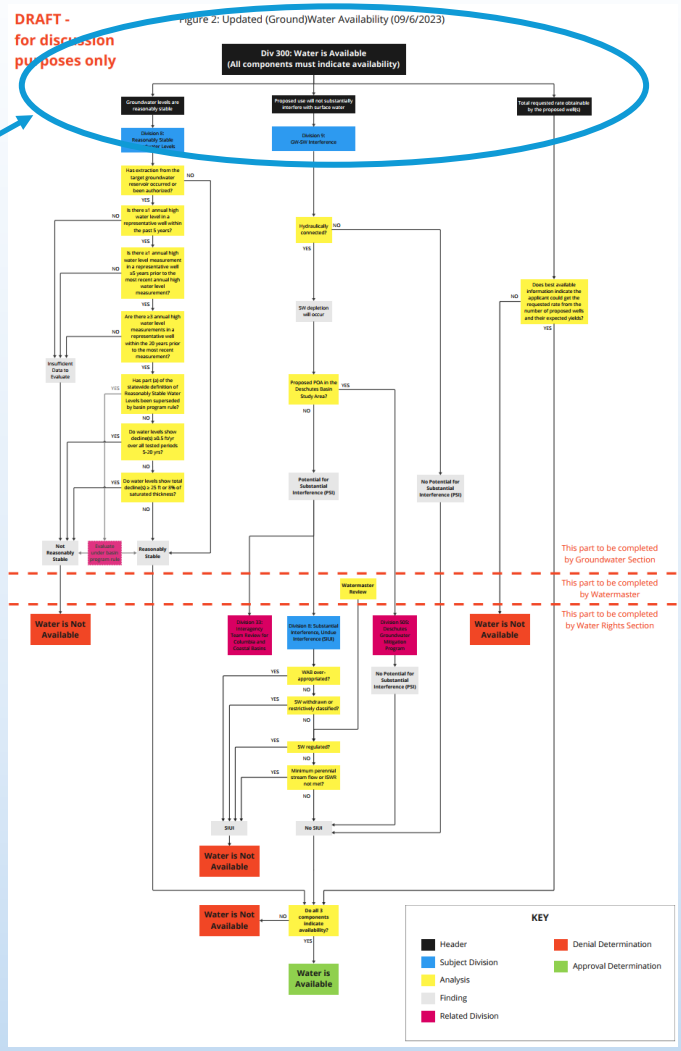
Water Is Available Flowcharts





690-0300-0010 - Preamble

690-300-0010
Definitions

The following definitions apply in OAR chapter 690, divisions ~~15~~, 310, 320, 330, 340, ~~and~~ 350, and 380 and to any permits, certificates, limited licenses, or transfers issued under these rules:

690-0300-0010(57) - "Water is Available"

(57) "Water is Available," when used in OAR 690-310-0080, 690-310-0110 and 690-310-0130, means:

(a) The requested surface water source is not over-appropriated under OAR 690-400-0010 and 690-410-0070 during any period of the proposed use; or

(b) If the requested surface water source is already over-appropriated for any portion of the period of use proposed in a new application:

(A) The applicant can show the proposed use requires surface water only during the period of time in which the requested source is not already over-appropriated;

(B) The applicant has obtained or has shown the applicant can obtain authorization to use water from an alternate source to provide water needed during any period of use in which the source is over-appropriated; or

(C) If the applicant has shown they can obtain authorization to use water from an alternate source during the time water is unavailable, the department conditions the approval of the application to require that prior to diversion of water the applicant obtains authorization for use of water from the alternate source.

690-0300-0010(57) - "Water is Available"

(57) "Water is Available," when used in OAR 690-310-0080, 690-310-0110 and 690-310-0130, means:

...

(c) For surface water applications received before July 17, 1992, the provisions of subsection (a) of this section shall apply except that the determination of whether a requested source is over-appropriated under OAR 690-400-0010 and 690-410-0070 shall be based upon whether the quantity of water available during a specified period is not sufficient to meet the expected demands for all water rights at least 50 percent of the time during that period.

(d) The requested groundwater source exhibits reasonably stable water levels, as defined in OAR 690-008-0001; and

(e) The proposed groundwater use will not substantially interfere with existing rights to appropriate surface water, as per the definition of "substantial interference" in OAR 690-008-0001 and the rules governing groundwater interference with surface water in OAR 690-009-0010 through 0040; and

690-0300-0010(57) - "Water is Available"

(57) "Water is Available," when used in OAR 690-310-0080, 690-310-0110 and 690-310-0130, means:

...

~~(f) The proposed use is available within the capacity of the resource as defined in OAR 690-400-0010(4).~~

(f) The total requested rate of groundwater allocation is obtainable by the expected yield of the well(s) proposed in the application given best available information.

Major Changes Summary (Div 300)

Existing; water is available if:

- The requested source is not over-appropriated:
  - allocation < average annual recharge
  - doesn't further deplete over-appropriated surface water
- Proposed use is within capacity of the resource

Proposed; water is available if:

- Water levels are reasonably stable
- Substantial interference with surface water is avoided
- Requested rate is reasonable given expected well yield

Division 8

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Water Is Available Flowcharts

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Figure 1. Public Interest Presumption

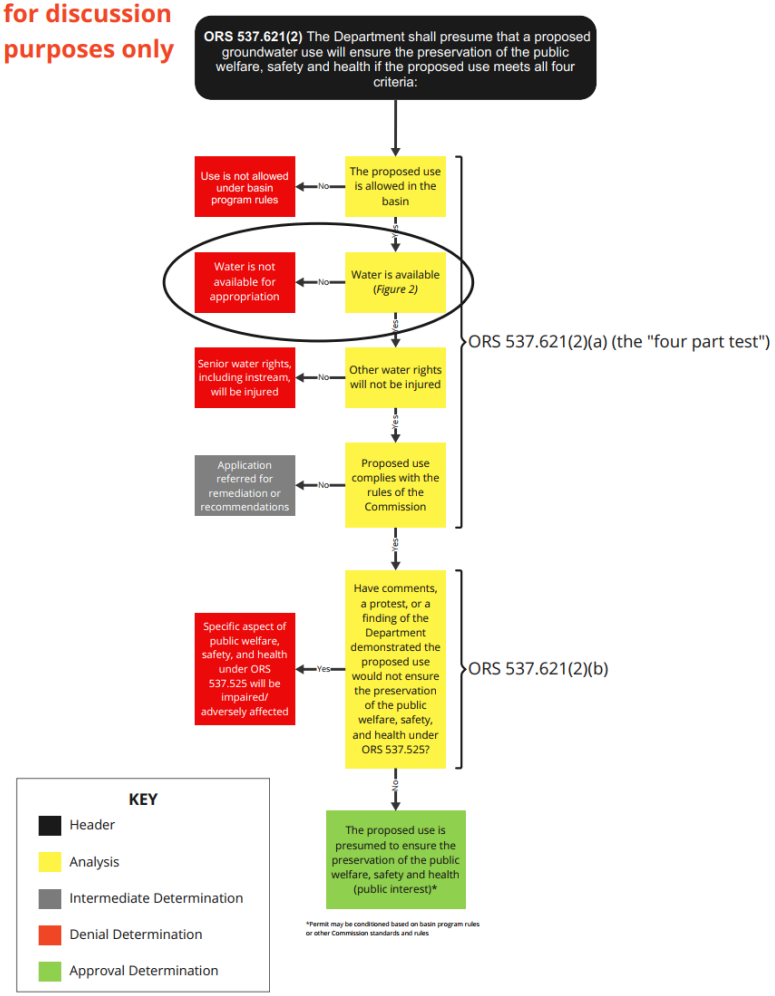

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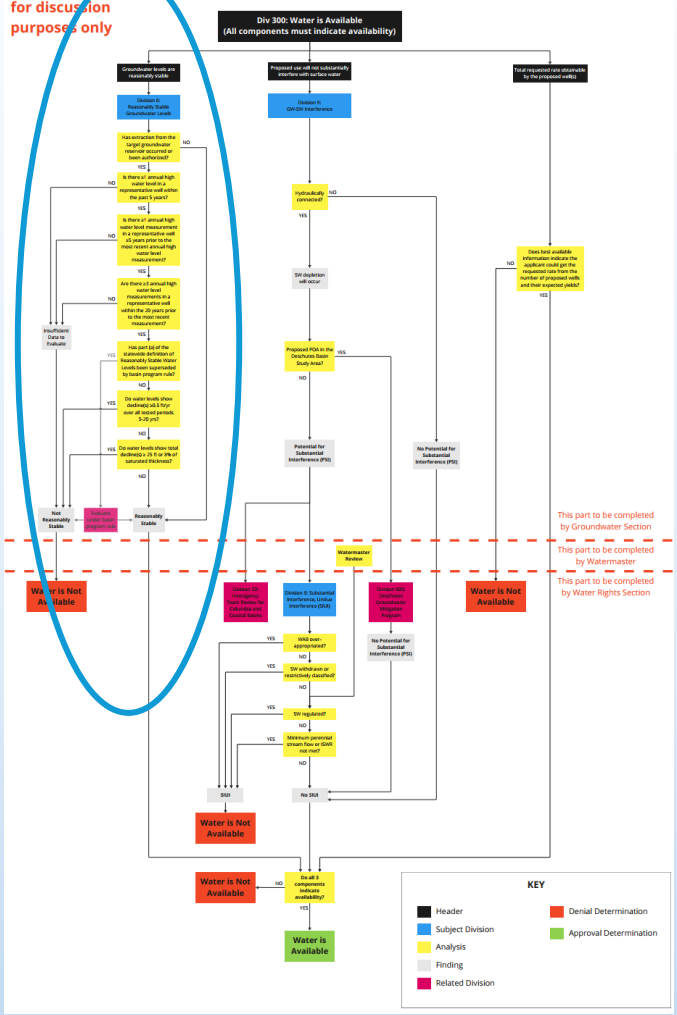
Figure 2: Updated (Ground)Water Availability (09/6/2023)



690-008-0001(1)-(2) - "Annual High Water Level"; "Aquifer"

STATUTORY ~~GROUND WATER~~GROUNDWATER TERMS

690-008-0001
Definition and Policy Statements

A number of terms are used in the statutes, ORS 537.505–537.795, prescribing the management of ~~ground water~~groundwater in Oregon. These rules define terms to qualify and clarify the statutes. In all statutes and rules employed in the management of ~~ground water~~groundwater by the Water Resources Department and Commission, the following definitions shall apply, unless the context requires otherwise:

(1) "Annual High Water Level" in a groundwater reservoir or part thereof means the highest elevation (shallowest depth) static groundwater level that exists in a year.

(2) "Aquifer" means a ~~water-bearing body~~geologic formation, group of ~~naturally occurring earth materials that is sufficiently~~formations, or part of a formation that contains saturated and permeable material capable of transmitting water in sufficient quantity to ~~yield useable quantities of water to~~ supply wells ~~and/~~or springs and that contains water that is similar throughout or varies gradually with location with respect to characteristics such as potentiometric head, chemistry, and temperature.

690-008-0001(3) - "Critical Groundwater Area Boundary"

~~(2~~(3) "Critical ~~Ground Water~~Groundwater Area Boundary" means a line established in a critical ~~ground water~~groundwater area order on a map that surrounds an area in which one or more of the statutory criteria for critical area declaration are met and which is located either:

(a) Physically by coincidence with natural features such as ~~ground water~~groundwater reservoir boundaries, hydrologic barriers, or recharge or discharge boundaries; or

(b) Administratively by surrounding an affected area when that area does not coincide with an area bounded by natural features.

690-008-0001(5)(a)-(c) - "Declined Excessively"

~~(4~~(5) "Declined Excessively" means any cumulative lowering of the ~~water levels~~Aannual Hhigh Wwater Llevels ~~(OAR 690-008-0001(1))~~ in a ~~ground water~~groundwater reservoir or a part thereof which:

(a) Precludes, or could preclude, the perpetual use of the reservoir; or

(b) Exceeds the ~~economic pumping level~~Eeconomic Ppumping Llevel ~~(OAR 690-008-0001(6))~~; or

(c) Constitutes a decline determined to ~~be interfering~~ substantially interfere with a surface water source as defined in OAR 690-008-0001(8)~~:~~

~~(A) A surface water diversion having a priority date senior to the priority dates of the causative ground water appropriations; or~~

~~(B) A surface water body that has been administratively withdrawn with an effective date senior to the priority dates of the causative ground water appropriations unless the causative ground water appropriations are for uses that are exceptions to the withdrawals; or~~

~~(C) An adopted minimum stream flow or instream water right, or closure having an effective date senior to the priority dates of the causative ground water appropriations; or~~

~~(D) A surface water body which has a classification that is senior to the priority date of the causative ground water appropriation(s) and the use or uses to which the ground water is being put are not included in the classification.~~

690-008-0001(5)(d)-(f) - "Declined Excessively"

~~(4~~(5) “Declined Excessively” means any cumulative lowering of the ~~water levels~~Annual High Water Levels in a ~~ground water~~groundwater reservoir or a part thereof which:

…

(d) Constitutes a lowering of the ~~annual high water level~~Aannual Hhigh W~~w~~ater L~~l~~evel ~~(OAR 690-008-0001(1))~~ -within a ~~ground water~~groundwater reservoir, or part thereof, greater than 50 feet below the highest known static water level; or

(e) Results in ~~ground water~~groundwater pollution; or

(f) Constitutes a lowering of the ~~annual high water level~~Aannual Hhigh W~~w~~ater L~~l~~evel ~~(OAR 690-008-0001(1))~~ greater than 15% of the greatest known saturated thickness of the ~~ground water~~groundwater reservoir. ~~the~~The saturated thickness shall be calculated using pre-development water levels and the bottom of the ~~ground water~~groundwater reservoir, or the ~~economic pumping level~~Eeconomic P~~p~~umping L~~l~~evel ~~(OAR 690-008-0001(6))~~, whichever is shallower.-

690-008-0001(8) - "Overdrawn" or "Overdrawing"

~~(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.~~

~~9~~(8) "Overdrawn" or "Overdrawing" means ~~to issue~~ the total authorized groundwater ~~rights~~ use from a groundwater reservoir, or part thereof, has a combined annual volume that exceeds the average annual recharge to that groundwater reservoir.

690-008-0001(7) - "Excessively Declining Water Levels"

~~(6~~(7) “Excessively Declining Water Levels” (Note: “Excessively” as used in ORS 537.730(1)(a) is taken to modify both “are declining” and “have declined”) means any ongoing lowering of the ~~water level~~Aannual Hhigh Wwater Llevel ~~(OAR 690-008-0001(1))~~ in a ~~ground water~~groundwater reservoir or part thereof which:

(a) Precludes, or could preclude, the perpetual ~~us~~use 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.

690-008-0001(9)(b)-(d) - "Reasonably Stable Groundwater Levels"

(~~10~~9) "Reasonably Stable Groundwater Levels" means:

...

(b) Water level data must be available in the year under evaluation to perform the tests in (a). However, in the absence of current data, a finding of reasonable stability may be presumed to persist for a maximum of 5 years beyond the most recent Aannual H~~h~~igh W~~w~~ater L~~l~~evel ~~(OAR 690-008-0001(1))~~.

(c) If groundwater has not yet been extracted or authorized for extraction from the groundwater reservoir, then water levels may be presumed to be reasonably stable.

(d) The limits in ~~P~~part (a) of this definition may be superseded by limits defined in a basin program rule adopted pursuant to the Commission's authority in ORS 536.300 and 536.310. However, the maximum allowable rate of decline in the revised part (a)(A) may not exceed 3 feet per year, and the maximum allowable total decline in part (a)(B) may not exceed the smaller of 50 feet and 15% of the greatest known saturated thickness of the ground-water reservoir.

~~(e) Notwithstanding other components of this definition, groundwater levels may not be reasonably stable if they are either "declined excessively" (by OAR 690-008-0001(5)) (a), (b), (d), or (f), or "excessively declining." (by OAR 690-008-0001(7) (a), (b), or (c).~~

OREGON WATER RESOURCES DEPARTMENT

690-008-0001(9)(a) - "Reasonably Stable Groundwater Levels"

(~~10~~9) "Reasonably Stable Groundwater Levels" means:

(a) The A~~a~~nnual H~~h~~igh W~~w~~ater L~~l~~evels ~~(OAR 690-008-0001(1))~~ as measured at one or more representative wells in a groundwater reservoir or part thereof:

(A) indicate no decline or an average rate of decline of less than 0.5 feet per year over any immediately preceding averaging period with duration between 5 and 20 years. ~~Two~~ Four Annual High Water Levels ~~measurements~~ are required ~~sufficient~~ to calculate the rate of change, ~~but if there is not~~ and at least one ~~annual high water level (OAR 690-008-0001(1))~~ of these must have been measured between 5 and 20 years before the year under evaluation. If either of these conditions is not met, then data are insufficient to perform this test, ~~then~~ and the Department will presume that water levels are not reasonably stable; and

(B) compared with the highest known static water level, have not declined or have declined by less than the smaller of 25 feet and 8% of the greatest known saturated thickness of the groundwater reservoir.

690-008-0001(10)(a)(D)-(E) - "Substantial interference" et al.

~~(8~~(10) "Substantial ~~or Undue I~~interference," "substantially interfere," "undue interference," or "unduly interfere" means the spreading of the cone of depression of a well to intersect a surface water ~~body~~source or another well, or the reduction of the ~~ground water gradient and flow~~groundwater levels as a result of pumping or otherwise extracting groundwater from an aquifer, which contributes to:

(a) ~~A reduction in surface water availability to an extent that~~ Depletion of a surface water with which the groundwater use has the Potential for Substantial Interference (OAR 690-009-0020(4)) and that:

...

(D) is the source for one or more existing surface water rights that have been regulated off due to insufficient supply to satisfy senior surface water rights and that have priority dates senior to the priority date(s) of the contributive groundwater appropriation(s) or is subject to a rotation agreement to address limited surface water supplies among surface water rights that have priority dates senior to the priority date(s) of the ~~contributive~~ groundwater appropriation(s); or

(E) ~~(B) An adopted minimum streamflow or instream water right with an effective date senior to the causative ground water appropriations(s) cannot be satisfied~~ has a minimum perennial streamflow or instream water right that is unmet during any period of the year and has an effective date or priority date that is senior to the date(s) of the ~~contributive~~ groundwater appropriation(s).

690-008-0001(10)(a)(A)-(C) - "Substantial interference" et al.

~~(8~~(10) “Substantial ~~or Undue~~ Iinterference," “substantially interfere,” “undue interference,” or “unduly interfere” means the spreading of the cone of depression of a well to intersect a surface water ~~body~~source or another well, or the reduction of the ~~ground water gradient and flow~~groundwater levels as a result of pumping or otherwise extracting groundwater from an aquifer, which contributes to:

(a) ~~A reduction in surface water availability to an extent that~~ Depletion of a surface water with which the groundwater use has the Potential for Substantial Interference (OAR 690-009-0020(4)) and that:

(A) ~~One or more senior appropriators are unable to use either their permitted or customary quantity of water, whichever is less~~ is already over-appropriated during any period of the year and is the source for a surface water right having a priority date senior to priority date(s) of the ~~contributive~~ groundwater appropriation(s); or

(B) is administratively or statutorily withdrawn with an effective date senior to the priority date(s) of the ~~contributive~~ groundwater appropriation(s); or

(C) is restrictively classified with an effective date senior to the priority date(s) of the ~~contributive~~ groundwater appropriation(s); or

690-008-0001(10)(b),(c) - "Substantial interference" et al.

(8(10) "Substantial or Undue Iinterference," "substantially interfere," "undue interference," or "unduly interfere" means the spreading of the cone of depression of a well to intersect a surface water bodysource or another well, or the reduction of the ground water gradient and flowgroundwater levels as a result of pumping or otherwise extracting groundwater from an aquifer, which contributes to:

...

(b) The ground watergroundwater level being drawn down to the eco`nomic levelEeconomic Ppumping Llevel (OAR 690-008-0001(6)) of the senior appropriator(s); or

(c) One or more of the senior ground watergroundwater appropriators being unable to obtain either the permitted or the customary quantity of ground watergroundwater, whichever is less, from a reasonably efficient well that fully penetrates the aquifer where the aquifer is relatively uniformly permeable. However, in aquifers where flow is predominantly through fractures, full penetration may not be required as a condition of substantial or undue interference.

690-008-0001(12),(13) - "Substantial Thermal Interference"; "Wasteful Use"

~~(10~~(12) "Substantial Thermal Interference" means the spreading of the radius of thermal impact of a low-temperature geothermal production well or low-temperature geothermal injection well to intersect a surface water ~~body~~source or another well, or the reduction of temperature or heat flow as a result of pumping or injection, which contributes to change in groundwater or surface water temperature to an extent that one or more senior appropriators of the low-temperature resource are unable to use water for the purpose(s) designated in the associated water right.

~~(11~~(13) "Wasteful Use (of ~~ground-water~~groundwater)" means any artificial discharge or ~~withdrawn~~withdrawal of ~~ground-water~~groundwater from an aquifer that is not put to a beneficial use described in a permit or water right, including leakage from one aquifer to another aquifer within a well bore.

Major Changes Summary (Div 8)

Existing:

- Reasonably stable water levels undefined, and qualitatively assessed under capacity of the resource to prevent allocation resulting in excessively declined
- Some definitions are redundant
- Some terms are defined differently than in other Divisions

Proposed:

- Defines reasonably stable water levels
- Removes redundant definition components
- Aligns definitions across Divisions
- Defines precise, quantitative thresholds

Division 9

OREGON WATER RESOURCES DEPARTMENT

Water Is Available Flowcharts

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Figure 1. Public Interest Presumption

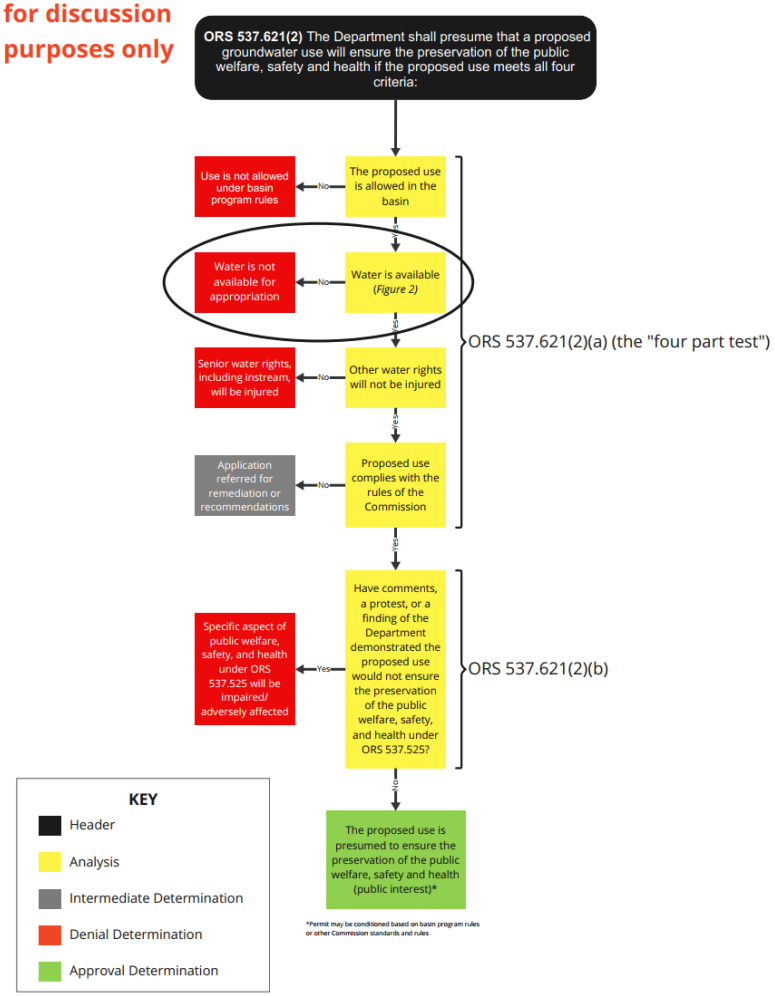

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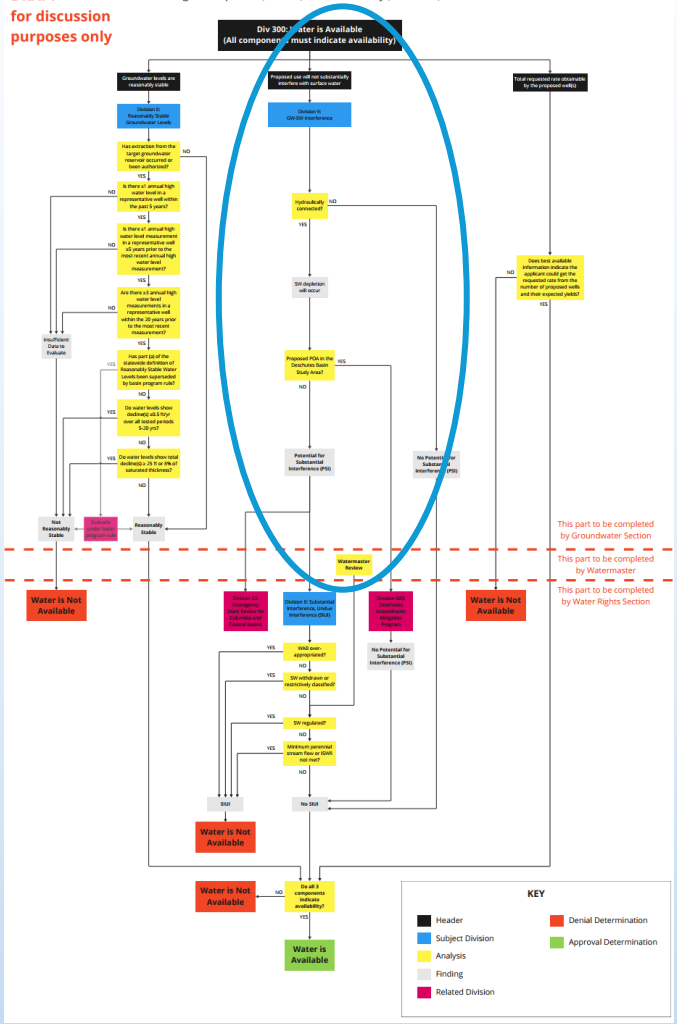
Figure 2: Updated (Ground)Water Availability (09/6/2023)



690-009-0010 – Basis for Regulatory Authority, Purpose, and Applicability

~~GROUND WATER~~ **GROUNDWATER INTERFERENCE WITH SURFACE WATER**

690-009-0010

Basis for Regulatory Authority~~and~~, Purpose, and Applicability

(1) The right to reasonable control of the ~~ground waters~~groundwater of the State of Oregon has been declared to belong to the public. Through the provisions of the Ground Water Act of 1955, ORS 537.505 to 537.795, the Water Resources Commission has been charged with administration of the rights of appropriation and use of the ~~ground water resources of the state. These rules govern the use of ground waters, pursuant to 537.730 and 537.775, where the ground water is hydraulically connected to, and the use interferes with, surface waters.~~groundwater resources of the state.

(2) These rules establish criteria to guide the Department in determining whether a proposed or existing groundwater use will ~~impair,~~ substantially interfere (as defined in OAR 690-008-0001(10))~~, or unduly interfere~~ with a surface water source. These rules apply to all wells, as defined in ORS 537.515 (9), and to all proposed and existing appropriations of groundwater except the exempt uses under ORS 537.545. The authority under these rules may be locally superseded where more specific direction is provided by the Commission after the effective date of adoption of these rules.

690-009-0020 – Definitions

690-009-0020
Definitions

Unless stated otherwise, as used in these rules:

~~(1) "Confined Aquifer" means an aquifer in which ground water is under sufficient hydrostatic head to rise above the bottom of the overlying confining bed, whether or not the water rises above land surface.~~

~~(2) "Commission" means the Water Resources Commission.~~

~~(3) "Confining Bed": means a layer of low permeability material immediately overlying a confined aquifer.~~

690-009-0020(1)-(3) - Definitions

690-009-0020
Definitions

Unless stated otherwise, as used in these rules:

(41) "Department" means the Water Resources Department~~, and consists of the~~ , its Director~~ of the Department~~, and all personnel employed ~~in~~by the Department~~ including but not limited to all watermasters appointed under ORS 540.020 (536.039)~~.

~~(5) "Director" means the Water Resources Director~~

(2) "Effective and timely manner" ~~is a determination made on a case-by-case basis considering the best available information and reasonably accepted hydrogeologic methods and taking into consideration whether~~ means that regulation will result in the addition of any water to the surface water source during the relevant time period.

(6~~4~~3) "Hydraulic Connection" or "Hydraulic Interconnection" means saturated conditions exist that allow water to move between two or more sources of water, either between groundwater and surface water or between groundwater sources ~~means that water can move between a surface water source and an adjacent aquifer.~~

690-009-0020(4)-(6) - Definitions

(4) "Potential for Substantial Interference", or "PSI", means that a groundwater use will cause streamflow depletion based on the assessments described in OAR 690-009-0040, and therefore may cause or ~~has~~ may have caused ~~impairment to~~ substantial interference with ~~or undue interference with~~ a surface water source, based on the definitions in OAR 690-008-0001.

(5) "Proposed groundwater use" means an application to appropriate groundwater pursuant to ORS 537.621, ORS 537.143, or ORS 536.750 that is under consideration with the Department.

(6) "Streamflow depletion" means a reduction in the flow of a surface water source due to pumping a hydraulically connected groundwater source. Streamflow depletion encompasses both:

(a) captured groundwater that would otherwise discharge to a surface water source; and,

(b) induced infiltration from a surface water source to recharge the hydraulically connected groundwater source.

~~(7) "Unconfined Aquifer" means an aquifer in which the hydrostatic head at the upper surface of the ground water is atmospheric.~~

690-009-0040(1)-(2) - Determination of Hydraulic Connection and PSI

(1) Hydraulic connection and the potential for substantial interference with a surface water source shall be determined by the Department according to these rules. These determinations shall be based upon the application of generally accepted hydrogeologic principals using best available information concerning the hydrologic system of interest and the well(s) under consideration.

(a) Appropriate ~~I~~information that is provided in the application or in the public comment period for the application ~~by potentially affected parties~~ shall be considered in the process of making these determinations.

(b) Best available information includes, but is not limited to, pertinent water well reports, aquifer test analyses, hydrologic and geologic studies and reports, groundwater and surface water elevation data, available numerical and analytical groundwater flow models, and any other information that is used in applying generally accepted hydrogeologic principals and methodologies.

(2) A determination of hydraulic connection is a prerequisite for a determination of the potential for substantial interference.

690-009-0040(3)-(6) - Determination of Hydraulic Connection and PSI

(3) A determination of the potential for substantial interference with a surface water source shall at a minimum include application of the generally accepted hydrogeological principles described in the following subsections to the specific use and wells under consideration:

(a) "The Source of Water Derived from Wells: Essential Factors Controlling the Response of an Aquifer to Development" by C. V. Theis, 1940; and,

(b) "Streamflow Depletion by Wells – Understanding and Managing the Effects of Groundwater Pumping on Streamflow" by P. M. Barlow and S. A. Leake, 2012.

(4) The potential for substantial interference with a surface water source exists if the well(s) under consideration will, over the full term of the proposed or authorized groundwater use, obtain water from streamflow depletion.

(5) For the purposes of issuing a permit for a proposed groundwater use, a finding of potential for substantial interference with a surface water source may mean that water is not available for the proposed groundwater use if the use will substantially interfere~~, or unduly interfere~~ with a surface water source as per the definitions in OAR 690-008-0001 and OAR 690-300-0010.

(6) For the purposes of groundwater controls in OAR 690-009-0050, a finding of potential for substantial interference with a surface water source may precede the control actions described in that rule.

690-009-0050(1) – Ground Water Controls

690-009-0050
Ground Water Controls

These rules apply to the control or regulation of groundwater where it is determined that an existing groundwater appropriation will cause or has caused substantial ~~or undue~~ interference with a surface water source as described in OAR 690-009-0040 and OAR 690-008-0001(10)(a).

(1) The Department shall review existing ~~ground water~~groundwater appropriations to determine the potential to cause substantial interference with a surface water source on a case-by-case basis, in accordance with OAR 690-009-0040, whenever the Department has cause to believe that substantial interference with a surface water source ~~is suspected to~~ may exist ~~by the Department~~.

690-009-0050(2)(a) – Ground Water Controls

These rules apply to the control or regulation of groundwater where it is determined that an existing groundwater appropriation will cause or has caused substantial interference with a surface water source as described in OAR 690-009-0040 and OAR 690-008-0001(10)(a).

...

(2) Whenever the Department determines that substantial interference with a surface water supply exists, the Department shall control those groundwater appropriations that have been determined under section (1) of this rule to have the potential to cause substantial interference. The controls shall be similar to or compatible with, but not more restrictive than controls on the affected surface water source, in accordance with the relative dates of priorities of the ground water and surface water appropriations:

(a) Prior to controlling the use of any well greater than 500 feet from a surface water source, the Department shall determine whether any control would provide relief to the surface water supply in an effective and timely manner. The Department shall make the determination on the basis of the best available information, employing at least one of the following methods ~~set forth in OAR 690-009-0040(4)(d);~~:

(A) Suitable equations and graphical techniques that are described in pertinent publications (such as "Computation of Rate and Volume of Stream Depletion by Wells," by C.T. Jenkins, in Techniques of Water-Resources Investigations of the United States Geological Survey: Book 4, Chapter D1);

(B) A computer program or groundwater model that is based on such or similar equations or techniques

690-009-0050(2)(b),(3) – Ground Water Controls

These rules apply to the control or regulation of groundwater where it is determined that an existing groundwater appropriation will cause or has caused substantial interference with a surface water source as described in OAR 690-009-0040 and OAR 690-008-0001(10)(a).

...

(2) Whenever the Department determines that substantial interference with a surface water supply exists, the Department shall control those groundwater appropriations that have been determined under section (1) of this rule to have the potential to cause substantial interference. The controls shall be similar to or compatible with, but not more restrictive than controls on the affected surface water source, in accordance with the relative dates of priorities of the ground water and surface water appropriations:

...

(b) The Department shall control the use of wells greater than one mile from a surface water source only through a critical ~~ground water~~groundwater area determination in accordance with ORS 537.730 through 537.740.

(3) As necessary, the Department shall determine the horizontal distance between any well in question and the nearest surface water source on the basis of the edge of the surface water source as also determined by the Department.

Major Changes Summary (Div 9)

Existing:

- Limits PSI findings to wells located within a mile and pumping impacts occurring within a year
- Allows for incremental, long-term, and cumulative impacts to already over-appropriated surface water sources

Proposed:

- Defines PSI as occurring where hydraulic connection exists with a surface water source, regardless of timing or magnitude of impact
- Substantial Interference when any of the Div 8 criteria are met.

Division 400

Division 400 – No Changes

"Water is available" definition in Division 300 no longer includes terms defined in Division 400.

Therefore, no changes to Division 400 are proposed.

Divisions 410

690-410-0070(1) - Water Allocation Policy

690-410-0070
Water Allocation

(1) Policy. The 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 without waste. Water shall be allocated among a broad range of beneficial uses to provide environmental, economic, and social benefits. The waters of the state shall be protected from over-appropriation by new out-of-stream uses of surface water or new uses of groundwater.

690-410-0070(2) - Water Allocation Principles

690-410-0070
Water Allocation

(2) Principles. Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

(a) The surface waters of the state shall be allocated to new out-of-stream uses only during months or half-month periods when the allocations will not contribute to over-appropriation. However, when a stream is over-appropriated, some additional uses may be allowed where public interest in those uses is high and uses are conditioned to protect instream values;

(b) The groundwater of the state shall be allocated to new beneficial uses only when the Department makes a finding that water is available for a proposed use as defined in OAR 690-300-0010. ~~allocations will not contribute to the over-appropriation of groundwater sources.~~ Restrictions on ~~allocations of water~~ additional appropriation for exempt groundwater uses may be considered when water is not available from a groundwater source ~~is over-appropriated~~;

Major Changes Summary (Div 410)

Existing:

- Issue new groundwater rights if source is not over-appropriated

Proposed:

- Issue new groundwater rights only if water is available from requested source

Review Objective, Framework, and Approach

Rulewriting Objective

Update groundwater allocation rules to be more sustainable and protective of existing water right holders, both instream and out-of-stream.

- Reasonably Stable Water Levels defined with focus on sustainable GW levels
- Impacts of GW development on SW sources assessed for full term of proposed new water right

Rulewriting Framework

Department's Framework (from RAC#1):

- Based in Law
- Based in Science
- Focused on groundwater allocation (availability) without affecting other rules (e.g., Div 33 and 505)
- Clear and concise language

Proposed Allocation Rules:

- Defined and relied on statutory terms
- Based RSWL and GW/SW interaction rules on generally accepted hydrologic principles
- Retained PSI as an intermediate policy assessment

Rulewriting Approach

General Approach

(from RAC#1):

- Be clear
- Edit surgically
- Edit at highest tier of dependent rules
- Remove redundancy where possible

Proposed Allocation Rules:

- Defined assessment for "Water is Available"in Division 300 w/o relying on other defined terms.
- Edited only rules directly related to "Water is Available" and Commission request.
- Removed redundant definitions in Div 8

RAC Discussion Follow Up Items

Follow Up Item - Artificial Recharge (AR) / Aquifer Storage & Recovery (ASR)

AR/ASR for water level stability

Potential uses of AR/ASR:

- Stabilize water levels (e.g., County Line Project, Ordnance CGWA)
- Individual use augmentation (e.g., Butter Creek CGWA)

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Permitting Choices: AR vs. ASR

Category	Artificial Recharge (1961)	Aquifer Storage and Recovery (1995)
Water Use	Irrigation, Industrial, Human consumption	Drinking water primarily
Recharge Method	Seepage systems, Injection wells	Injection wells only
Water Quality	Recharge water cannot impair or degrade ground-water quality	Recharge water must meet drinking-water standards
Water-Rights	New permits required to appropriate source water for underground storage and to pump recharged ground water	Existing water rights generally provide source water for storage, ASR license or permit to recover stored water
Governing Statutes/Rules	ORS 537.135 OAR 690-350- 0110 to -0120	ORS 537.531 to 537.534 OAR 690-350-0010 to -0030

Follow Up Item - Limited Licenses / Drought Permits

Time-Limited Water Rights

- Limited License Applications will follow the same technical review process as regular permits
  - Division 9 Hydraulic Connection and Potential for Substantial Interference assessments will be based on the proposed duration of the license

Time-Limited Water Rights

- Emergency Water Use Permit Applications will follow the same technical review process as regular permits
  - With an additional consideration of the drought emergency and the short-term nature of the proposed emergency use

Follow Up Item - Transfers

OAR 690-380 Transfers

Groundwater Section performs a technical review for transfer applications that evaluates only:

- Same source (aquifer) (OAR 690-380-2110(2))
- Injury (OAR 690-380-5000(1)(d))

Transfer applications are not evaluated for "Water is Available" (OAR 690-300-0010(57)) or "Substantial or Undue Interference" (OAR 690-008-0001(10))

Draft Statement of Need

OREGON WATER RESOURCES DEPARTMENT

Draft Statement of Need

Any questions or comments?

Draft Statement of Racial Equity Impacts

OREGON WATER RESOURCES DEPARTMENT

Draft Statement of Racial Equity Impacts

Any questions or comments?

Draft Statement of Fiscal & Economic Impacts

Draft Statement of Fiscal & Economic Impacts

Any questions or comments?

RAC Roundtable

Public Comment

Schedule/
Wrap Up/Next Steps

Schedule

RAC Meetings #1-5/6

Input on Draft Rules; Input on Draft Statement of Need, Racial Equity Impacts, Economic & Fiscal Impacts

April 2023 - Sept 2023

Notice of Proposed Rulemaking/

Start of 90-day Public Comment Period

Nov 1, 2023

Public Hearings

Nov 2023 - Jan 2024

Last Day of Public Comment Period

Feb 1, 2024

Review Public Comments

Revise Draft Rules as needed; Develop WRC Proposal

Feb 2024

WRC Decision on Proposed Rule Adoption

Spring 2024

Effective Date of Final Rule

Spring 2024

Wrap Up/Next Steps

Email Rules Coordinator (laura.a.hartt@water.oregon.gov)

- Any additional input regarding today's draft rules and other materials by **COB, September 29**.

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