

Water Resources Department
Attn: Ms. Laura Hartt, Rules Coordinator
725 Summer Street NE, Ste. A
Salem, OR, 97301

May 2024

Subject: Comments for the proposed 2024 Ground Water Allocation Rulemaking

To Whom It May Concern,

This letter is written anonymously because I work in the water right sector and am certain that OWRD staff will punish me if they found out who I am. I am sure that hundreds of water users and other water right professionals agree with much of the following letter, but have not and will not bring such issues up because of fear of backlash from OWRD. While this letter may come from one source, it represents the thoughts of hundreds of people that are experienced with OWRD. OWRD has become very difficult to deal with, perhaps the worst state agency to work with. Many people within OWRD agree with things in this letter, but don't dare speak about it.

This bill is a just another way for OWRD to stop water use and make it more expensive to use. It seems OWRD believes all water needs to be replaced back into the ground and back into the streams as it was before white man came to Oregon. But we all know that water can be managed wisely and we can get much more use out of the resource if managed properly. Wise water management requires the use of the water, not leaving it where it would go naturally without management, and the latter is what OWRD seems to be pushing for on all fronts.

Below is specific comments on the Groundwater Allocation Rulemaking, followed by other matters that shown a pattern at OWRD.

There has not been enough time for people to review these proposed rules. While I am right in the middle of this industry, I have only recently heard of the proposed rules, but not from OWRD. Again, although I work in the industry, I have not been made aware of these proposed changes. OWRD has not given people enough time to figure out what the rules will mean, and how to respond in a reasoned manner. Most everyone I know in the industry has no idea of these changes and feel they have had no say whatsoever in the rules.

In fact, it seems OWRD has already been implementing the rules because applications have already denied only because there was no proof that water was available. Because of this, *I had assumed the rules had already been approved.* For example: a recent ground water application was crafted to meet all of the current OWRD rules and regulations and OWRD agreed to that, but despite every other criteria being met, OWRD denied the application because there is insufficient evidence to prove if the ground water resource has water available. This means to me that OWRD is already implementing the rules. OWRD typically changes rules and interpretations without notifying the water right community.

In the document that is up on the website, the Affect on Racial Equity section appears to be full of odd assumptions and erroneous claims. Even though I find this section is very one-sided, I waste no time in addressing these issues. It seems they will have no impact on whether OWRD implements these rules or not.

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In the document that is up on the website, the Cost of Compliance section does not consider the costs to Oregon taxpayer and Oregon industries. The long-term costs to not allowing industries start or expand is huge. This cannot be overstated. Denying most new (probably all) ground water applications and denying transfers of ground water will stop growth of farming, industry and commercial activities. These businesses use other businesses and the multiplier effect to hurt Oregon's future economic growth is enormous.

The Cost of Compliance section says OWRD expects *many* new ground water rights will be denied; but the readers should expect *all* will be denied or almost all *whether there is plenty of water or not*. It will be the same for transfers that are ground water related. This is not a wise use of OUR water! This is wasting OUR water, and the current rules are fine if OWRD would do their job.

The section also talks about the impacts of less wells being constructed. This entire section misses the point. The new water rights and water right transfers enable whole businesses to start or expand. Each business employs people, but also causes new growth many other businesses to service the one using the right. The loss of well drilling due to this rulemaking is almost insignificant when compared to the other business that will also be stopped. These rules will needlessly put a stranglehold on new business and the economy of the state as a whole. The current rules are fine and fair. OWRD just needs to do their job and do the work to find out where water is available or not and enforce junior/senior rights.

The proposed rules reverse the current rules, which are fine and match with the other rules for water rights. One cannot know how these new rules will affect all of the other current rules. It is such a drastic change.

The rules now basically say ground water applications will be approved if there is no proof that there is NOT water available; where in the future they will say ground water applications will be denied if there is no proof (suitable to OWRD) that water IS available. The current rules work because if a senior user is impacted, then the junior water user has to shut off their water. The current rules work because if there is an area where levels are declining and/or users are running out of water, that is evidence that there is not enough water and a new ground water application will be denied. This works perfect. OWRD just does not want to enforce the junior/senior rights, as that will take work.

The new rules will allow OWRD to deny most all new ground water applications and transfers even when there is no evidence at all that water is not available. If there have been no complaints in the area and levels are not declining, why is OWRD wanting to deny all new applications? This is a horrible idea. The current system works fine. OWRD just has to enforce the junior/senior rights issue; and I think that is one of their true goals – OWRD doesn't want to enforce junior/senior rights. *With these new rules in place, it will give an incentive to OWRD to not do research to find water is available; this rulemaking is horrible.*

The proposed rules affect all water basins statewide, which is completely wrong. Oregon has many, many different aquifers and basins and to treat them all the same in this manner is terribly wrong. In areas where there are problems, use that data to deny new applications and transfers, but to stop everything statewide based on no evidence is completely wrong.

OWRD assumes that all ground water contributes to surface water. But this is also completely wrong; do not believe this. Some ground water does contribute directly to streams. For example, I know of an

area in central Oregon where rain seeps into the ground to become ground water which flows down through the soils until it hits an impervious layer. The water in the area flows along this impervious layer to the local stream which is at the level of this impervious layer. In this area most or all of the ground water ends up as surface water. But there are cases where, contrarily, surface water contributes to ground water, and in a big way. Many streams do not have a solid rock or impervious bottom, rather they can be silt, clay, or cobbles, too. The static water levels in the area will be below the level of the stream because the stream is "leaking" into the ground adding water to the aquifer. It's clear that pumping any amount of water from these wells will have little effect on the stream. OWRD is misstating facts to get this bill approved.

I saw in an OPB article that Justin Iverson of WRD states that people can currently get a permit to pump more water than precipitation can replenish. This makes it sound like the current rules are completely bad, and that new rules are needed. While the described situation is probably possible, the current rules work just fine, and he neglects to state that. For example, if the permit holder pumped more than can be replenished, then the permit holder will not be able to pump much the next year; the problem is self-fixing under current rules. And if in an area, the static water levels are declining and there are complaints about wells going dry, current rules allow OWRD to stop the new use based on the known problems. Again, the current rules are fine.

In the article, Mr. Iverson also states that there's not enough consideration for long-term impact on existing water right holders and streams. Because Mr. Iverson cannot quantify the long-term effects of a very small pumping well on a stream 5 miles away, doesn't mean one should stop all new water rights and transfers. The junior/senior method works, but admittedly sometimes it's hard to find out who is causing the senior right to be damaged. It is possible that groundwater can take years to move through certain fine-grain soils, but if so, not a lot of water is moving and impacts are obviously not big. Mr. Iverson is making a big deal out of something that is minor and does not exist in reality very often. OWRD needs to do their job and enforce the junior/senior right issues.

The new rules proposed that people will need to prove there IS water available to get a new right. But reads should be advised that the real process will be that one would need to prove *to the satisfaction of OWRD* that there is water available. What I have seen in practice is that OWRD will just deny the applications anyway and say your proof is not enough. Then you have to fight OWRD, when *they* make the rules. OWRD knows that many small users don't have the time or the money to fight OWRD, so they demand things that they do not have the legal ability to demand. OWRD has just gotten out of control.

OWRD is known to often not follow its own rules and "interpret" laws and rules. Their interpretations are typically NOT in favor of water users. I fear these new rules will allow OWRD to harass and regulate current users in ways that we have not seen. I fear for the current water users, too.

These new rules seem to be part of OWRD's true long-term strategy to deny new farming activities or possibly all new water rights as well as diminish all current water rights. For example, OWRD has made most applications and transfers more and more difficult and limiting. Most processes take years, even if for a simple temporary transfer!

WRD adds new conditions to certificates now with no good reason. TRANSFERS AND METRS

You need to realize that most, if not all, of the OWRD personnel that have developed these new rules, have never gone through their own process, they are not big water users, and they therefore cannot know the true impacts of these rules. Current users, consultants, and others need to be utilized to review these rules in detail. This rule change basically turns all water rights on it's head. It's a huge change for the worse.

The new rules apply to Oregon as a whole when Oregon is one of the most diverse states for surface water and ground water patterns in the nation. This one policy for the whole state is completely wrong and unfair. While we don't know everything about ground water flows, we do know a lot. So why throw out all of that knowledge? I believe OWRD just doesn't want to do their job. Why deny new ground water permits and transfers when there IS plenty of water? It's totally flawed logic, and the current rules are fine if OWRD would do their job.

OWRD uses data and information against wise water use, and these new rules are just another example. OWRD has a very good model that estimates surface water flows in streams around the state. It uses solid science and data to predict flows and flood events in water basins all over the state. It is a top-notch modeling system. Once surface water flows are computed, OWRD subtracts out water being used to decide if surface water is available for new rights (or not). This makes sense and is a good *plan*. However, OWRD does not subtract the water typically used, they decided to subtract the MAXIMUM amount that can be used by water right, which is completely wrong. Almost zero reservoirs need to be filled every year. How many ponds and reservoirs do you know are completely dry every year? Also, very few water users are using their maximum rate or volume in any year, let alone every year; but nevertheless, OWRD calculates it this way anyway. Therefore, there is FAR more surface water truly available than OWRD models predict. I realize this is off-topic, but it shows that OWRD has lost its way with using science and logic. Make OWRD use science and logic to make decisions and not just use ideals such as "we cannot pump water forever" to then stop all new rights and transfers.

Another example of OWRD bad decisions pertains to a type of transfer that is allowed by statute, but are no longer allowed by OWRD. Industry people called these "strip/drip" transfers among other names. These transfers enabled water users to produce a far, far larger amount of crops using the SAME amount of water as the original certificate. This was a huge beneficial type of transfer for all Oregonians. Yet, OWRD has decided to deny all of these transfers, stating that they expand water rights. They will tell you there is a path through IF you can prove to OWRD upfront that the transfer will work. But OWRD will always just say you didn't provide enough proof or the right data. By doing this OWRD is preventing wise use of water! Do not believe everything they tell you. OWRD will tell you there is a work-around and steer you to another convoluted process that requires the water user to give up some of their water rights forever. This just simply not fair, and not beneficial for Oregon.

Another issue OWRD has gone astray with is their treatment of springs. Springs are where ground water bubbles up and becomes surface water. Some springs are exempt from OWRD control per statute. OWRD want to deny these exempt uses, which is against statute, so OWRD creates unofficial procedures that don't allow these exempt springs to be recognized or practically utilized. OWRD just will not follow their own rules and it hampers wise water use and takes away rights of landowners.

Another example of OWRD over-reach is their new policy to require metering on any transfer that involves ground water. This is unfair. OWRD will say that they have to require the new metering rules to prevent enlargement of the right. But that's just not true in most cases. If a water user move their 40

acres of irrigation across the road and wants to use a different well in the same aquifer across the road, there is no chance of expansion of the right. Nevertheless, OWRD now requires metering on all of these transfers with no good reason. It is a violation of the rights of the water user. The metering does not really stop any illegal use of water anyway. It's just added expense and harassment by OWRD.

There are other situations where water users have paid extra money to OWRD to "expedite" their water right through the very slow OWRD processes. (By the way, this is an incentive for OWRD to continue to work even slower as they get paid more for these expedited processes.) OWRD has seemingly chosen to not process certain expedited applications even when the process has been paid for and the contract has been signed. It seems that OWRD is waiting until these new rules are approved so that then they can deny the application. This is just horrible and wrong. If one complains, they go slower.

The most obvious way to gain better use of water in Oregon is to promote new reservoirs. Oregon typically has a drought in the hot summer months, and that is typically when water is needed the most. An obvious way to exponentially use more water wisely is to store winter runoff in reservoirs, and allow the stored water to be used in the summer. Anybody with half a brain can see this sense in this. The federal government did this in the 1950's and 1960's and most of Oregon's valuable reservoirs could never be constructed now due to the new rules and OWRD thinking. OWRD and the other environmental agencies such as ODFW, DEQ, and DSL, seem bent on stopping and hindering all new reservoirs. OWRD will not admit to this, but believe me, many more applications would be pursued if OWRD and the environmental agencies wouldn't fight every reservoir and delay things for years and years. Reservoirs should be encouraged, not discouraged. This is not all OWRD caused, but they don't help with their process. Applicant's used to be able to respond to other agencies statement with science and logic, but this is very difficult if impossible, to do any more. So the best way to increase beneficial use of Oregon's water is being discouraged by OWRD and the other Oregon agencies. What a waste!

OWRD treats stored water as surface water. It is not truly surface water and this treatment has not allowed a lot of wise use of water. Ground water is under the ground, surface water is above the ground, and springs are where ground water bubbles up on the surface to become surface water. But stored water is taken (or appropriated) water from one of the above sources that is stored. But OWRD (now) treats all stored water as surface water, which limits its use. Natural reservoirs may need this designation, but using this designation for man-made reservoirs is completely wrong. I have seen where stored water was not allowed to be used because the water was already "appropriated". But when the water was permitted to be stored, THAT is when the rules state OWRD can decide if there is enough water from the source to "appropriate" the water *into* the reservoir. But if treated as surface water OWRD now wants the stored water owner to go through the appropriation calculation again to use their stored water and this is all wrong. OWRD statutes (pretty much) allow the owner of the stored water (yes, the landowner *owns* stored water and NOT the OWRD) to use *their* stored water anyway they want, and the water user needs to let OWRD know what the water is being used for. Yet OWRD has created a whole new list of criteria that limit when and where this water can be used and how to apply for any different use. The OWRD process is long and they don't allow a lot of good uses of the water. It makes no sense and most water users just go ahead and use the water anyway. OWRD is just so far away from wise water use and understanding farming these days. The processes to use your stored water need to get back to where they were and be simple. Allow the owners of stored water to beneficially use their water. This is just another example of where OWRD has created interpretations of

rules and they always seem to hurt the water user and not allow wise water use; and I am sure this will happen even more if the new rules are passed.

The reader of this document also needs to know the true time to get paperwork through OWRD. The times to get applications processed are much too long. Water users are constantly amazed at how slow things move at OWRD. It should not take 3 years to get an answer if an application will be approved. OWRD has no idea that businesses rarely can wait years to get an answer. Here are some examples.

Applications for an extension of time for a few years to finish a part of a water right permit. The time limit requested for a few more years came before the approval of the application! How can this be OK?

Anything with the Groundwater Section takes years on top of the years needed for the other OWRD "normal" processes.

An answer for an application for a *temporary* water right can take several years now. This makes no sense to anyone. One example is for applications for "Limited License". Typically, these are for the use of a well using drip irrigation (low water use) to establish a crop that does not have to have water after being established. The most common current crops in this category are Hazelnuts and grapes. But if it takes 3 years to get an answer, how can most businesses plan for this? Also, OWRD used to get these through relatively fast, in maybe a couple months. There is no risk to the public or the state because it is made clear that if anyone complains about their senior right being hampered, OWRD just cancels the Limited License. There is no reason for years to go through the Groundwater Section review, which didn't happen in the past. These rights are for a low water use (drip irrigation), they are temporary, and can be cancelled very easily. Why did OWRD add this huge time line to a temporary low water use? And now with these new rules, they will all be denied anyway. What a waste of water.

Farmers also have to leave fields bare and change crops depending on changing criteria such as expected crops prices and changing costs. Farmers need a way to change fields or crops temporarily while they get ready to deal with the ever changing conditions. But it takes at least a year or two to get these *temporary* changes through OWRD. It also takes time to prepare all of their forms. So the farmer is supposed to know 3 or more years ahead of time if he needs to change a crop and get a temporary transfer! This is just impractical in many situations.

The purpose of these example is to illustrate to the reader that OWRD is no longer an agency that helps people use their water, OWRD no longer is promoting wise use of water in many cases, OWRD is creating rules that hinder the wise use of water. And this rulemaking is just another in a long line of nonsensical rules.

OWRD needs to be required to evaluate applications in a reasonable amount of time. 6 months is a reasonable amount of time. 2 to 4 or more years is just wrong.

As I said earlier, it seems OWRD has been already applying the rules by denying any new ground water applications, only because there is not proof that water is available. The OWRD Groundwater Section has some good people, but the wrong ones are running the department. These proposed rules will completely stifle new business growth farming and for anything that does not get municipal water. While there some good people at OWRD, OWRD needs a big shakeup in personnel and needs to start following their own rules and logic and science, and these proposed rules are another sign of that.

OWRD knows that many people do not have the time and money to fight them so they unfairly deny or add conditions to water rights in hopes that water users do not have the resources to fight OWRD. Often an attorney is needed to push back against OWRD to make them to follow their own rules. This should not be happening over and over. This is over-reach by a state agency.

Perhaps the readers of this letter will be happy because all of this matches their goal of stopping new water use and stopping much new economic growth. It is hoped that some reader see that Oregon has lots of water and has a huge opportunity to manage this resource for the benefit of all of Oregon.

Signed Anonymous

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