



May 31, 2024

Laura Hartt
Groundwater Allocation Rules Coordinator
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

By email to: WRD_DL_rule-coordinator@water.oregon.gov

Re: Comments on Groundwater Allocation Rulemaking

Dear Ms. Hartt:

Thank you for the opportunity to submit public comments on OWRD's groundwater allocation rulemaking. The Oregon Winegrowers Association (OWA) represents hundreds of winery and grape growing members from every winegrowing region in Oregon, and our members represent two-thirds of Oregon's overall wine production. For more than 40 years, OWA has been the leading advocate for Oregon wineries and growers.

Wine grapes are an important value-added agricultural crop directly and indirectly contributing \$8 billion to the Oregon economy each year. Due to climate change, growing wine grapes in many parts of the state increasingly requires irrigating to establish new vines and sustain wine grape cultivation. The Oregon wine industry has long been a leader in sustainable farming practices and water conservation and has been committed to sustainable water use. Taking actions to manage resources for long-term reliable water supply is critical to not only the viability of vineyard farming in Oregon, but for meeting the needs of all water users who depend on healthy watersheds.

OWA is overall supportive of OWRD's efforts to amend Oregon's rules for groundwater allocation and consider water supply conditions around the state. Many groundwater basins have been over-appropriated in a way that does not allow sustainable recharge of aquifers. Combined with the effects of climate change, water resources around the state require better management to accommodate a multitude of water uses.

While OWA is overall supportive of the draft amended rules, OWA urges OWRD to consider the following comments when finalizing the groundwater allocation rules.

1. Impact of rulemaking on OWRD application review timelines

OWA supports a science-based approach to groundwater allocation to ensure that water is in fact available for appropriation before approving a proposed use. However, we are concerned the proposed regulations may impose an outsized burden on water right applicants. The proposed

rules provide significant discretion to OWRD in denying new water rights because of hydraulic connection and the potential of substantial interference based on “generally accepted hydrogeologic principles” and “best available information.” Prospective groundwater users may have to carry out multi-year groundwater studies to provide regional and site-specific hydrological data to satisfy OWRD’s new “general principles” which impose water right issuance standards that would function like a presumption in favor of denying new groundwater rights. OWRD would then have to review that data, which may very-well still result in a denial and a potential protest, considerably delaying the review and issuance of water rights. OWRD’s review of new water right applications or transfers already routinely takes two years or more. Some of OWA’s members have been waiting for months or years to receive decisions from OWRD regarding their water rights. In recent stakeholder communications from OWRD, staff acknowledged the need to identify opportunities for streamlining the water rights transaction process and is working on developing a legislative concept that would codify the modifications. OWA worries that adopting the proposed groundwater allocation rules without concrete plans to hire and train additional staff to review water right applications will be counterproductive to efforts to create efficiency in the water rights transaction process and make it impossible for water users to get a decision from OWRD within reasonable timeframes.

Accordingly, OWA urges OWRD to develop a plan to address existing problems and delays in the processing of water right transactions prior to or in concert with adopting new groundwater allocation rules.

2. Basin-specific rules

OWA is supportive of recent changes made to Division 8 and specifically OAR 690-008-001(9)(d), which provides an opportunity to seek basin-specific groundwater rules. As many commenters have observed, the characteristics and conditions of each groundwater basin greatly vary in the state, and while OWA understands OWRD’s desire to adopt new groundwater rules to address diminishing supplies and ensure sustainable water use for future generations, OWA worries that adopting a one-size-fits-all set of rules for the state without providing flexibility for basin-level standards is not workable. As such, it is important for basins with specific water supply, geological and hydrological conditions to have the ability to request basin-specific rules in the future.

OWA has members throughout the state that face very different water challenges: the Rogue Valley is different from the Willamette Valley, the Deschutes Basin, or the Walla Walla Basin. To ensure the sustainable use of water throughout the state and buy-in from water users in the various basins, it is fundamental to have tools that take into account the specific conditions of those basins. As such, the ability to adopt basin-specific rules is essential.

3. Exacerbating unlawful water uses

OWA’s third comment is somewhat related to the first comment. In light of water shortages around the state and of the considerable time OWRD needs to process water right transactions, some water users are turning to unlawful water use, diverting without a water right or in excess of their water right. This practice hurts water users who hold and comply with water

right limitations, but OWRD does not seem to have the resources to consistently enforce Oregon water laws and stop unlawful use. OWA worries that the proposed groundwater allocation rules, which will make obtaining new water rights harder and likely result in longer application processes, will make unlawful water use a bigger problem without giving OWRD the tools and resources to address this problem.

4. Focus on policy incentivizing efficiency and discouraging waste of water

OWRD's groundwater allocation rulemaking addresses the issue of diminishing water supplies around the state. As a follow-up to those efforts, OWA urges OWRD to consider additional options creating incentives for more efficient irrigation systems and upgrades to essential water infrastructure, providing more opportunities for water users to conserve water and increase access to the conserved water. Relatedly, the state should expand policy options that disincentivize wasting water while preserving existing water rights through water sharing and leasing, including expanding in-stream programs.

Sincerely,

A handwritten signature in cursive script that reads "Jana McKamey".

Jana McKamey
Executive Director
Oregon Winegrowers Association