



June 14, 2024

Oregon Water Resources Department
Laura Hartt, Water Policy Analyst/Rules Coordinator
725 Summer Street NE, Suite A
Salem, OR 97301
WRD_DL_rule-coordinator@water.oregon.gov

Re: Notice of Proposed Rulemaking for Evaluating and Issuing New Groundwater Rights in Oregon

Dear Oregon Water Resources Department,

Central Oregon LandWatch (“LandWatch”) appreciates the Oregon Water Resource Department’s (“OWRD”) rulemaking process to modernize and move toward a more sustainable groundwater allocation policy. As part of this process, LandWatch submitted general feedback on the rulemaking in October 2022 via OWRD’s online survey, as well as more detailed comments to the Rules Advisory Committee on November 6, 2023. We submit these comments on the Notice of Proposed Rulemaking in support of the proposed changes, and to specifically highlight considerations related to incorporated cities in the Upper Deschutes Basin, above Lake Billy Chinook.

LandWatch is an Oregon non-profit, public interest organization with over 900 members, located in Bend. LandWatch’s mission is to defend and plan for Central Oregon’s livable future, and we have advocated for the preservation of natural resources in Central Oregon for over 35 years. For the last 10 years, much of our advocacy has focused on water management concerns and collaboration throughout the Upper Deschutes River Basin.

LandWatch supports the draft rules’ approach of only allocating new beneficial uses when OWRD makes a finding that water is available. These rule changes will begin to address the realities of groundwater limitations across the state, and further incentivize groundwater users to pursue conservation measures that protect water resources. We commend this conservation-forward approach, and we support OWRD in adopting the draft rules.

LandWatch’s comments center on two themes related to the management of groundwater in the Deschutes Basin. First, the rulemaking offers an important opportunity for OWRD to emphasize the nexus between groundwater allocation and Oregon’s land use laws; planning for land and water use in Oregon must be a coordinated effort. This is especially true when it comes to managing for responsible and sustainable growth within incorporated cities. Second, the proposed rules largely do not address specific groundwater concerns in the Deschutes Basin, where our hydrology, aquifer, and management framework make this basin’s groundwater issues unique within the state. In keeping with these themes, our comments focus on clarifications to the proposed rules related to the nexus with land use laws, while also highlighting important upcoming opportunities for OWRD to further improve groundwater management in the Deschutes Basin.



I. Recommendations on Statewide Groundwater Allocation Rulemaking

A key strength of the draft rules in addressing the nexus between groundwater management and Oregon’s land use laws is the pathway to establish local processes for groundwater allocation. To that end, OWRD should clarify the pathway to locally supersede the statewide rules, including more specific direction on the process for establishing basin-specific definitions of “reasonably stable” groundwater and “substantial interference” with surface water. Thoughtful development of this pathway will be critical to protecting the groundwater resource and ensuring that incorporated cities can continue meeting statewide land use planning goals where new groundwater uses might otherwise be denied under the proposed rules.

a. Emphasize the Nexus Between Groundwater Allocation and Oregon’s Land Use Laws

Oregon’s land use laws require that state agency actions that affect land use comply with the 19 statewide land use planning goals (“Goals”; ORS 197.180(1)(a)). Per its own administrative rules as required by ORS 197.180, OWRD must comply with the Goals (OAR 690-005-0030) and with local acknowledged comprehensive plans (OAR 690-005-0035).

For their part, cities are obligated under Goals 9, 10, 11, and 14 to accommodate urban population growth and, particularly under Goal 11, provide public services and infrastructure to serve that growth. The incorporated cities of the Upper Deschutes Basin (Bend, Redmond, La Pine, Sisters, Prineville, Madras, Culver, and Metolius) all have acknowledged comprehensive plans that accommodate present and future land uses and anticipate urban population growth over their respective planning horizons. For these cities to comply with statewide land use planning goals and their own comprehensive plans, and for OWRD to conform with ORS 197.180, cities must have a pathway for securing municipal water rights—whether through conservation efforts, transfers, or obtaining new water rights—to serve urban population growth.

Providing a pathway for incorporated cities to secure water rights is also critical to limiting perverse incentives for development outside of urban growth boundaries (UGBs). We appreciate that the draft rules have incorporated a pathway to this end; however, LandWatch would like to see OWRD engage directly with the intersection of land use and water rights more explicitly moving forward.

b. Clarify Pathways for Basin-Level Groundwater Allocation Rules

Our state land use system promotes certain land uses in certain places, and discourages certain land uses in others. For example, agricultural and forest lands outside UGBs are protected by Goals 3 and 4 for farm use and forestry use. Non-farm and non-forest uses, like purely residential and commercial land uses, are generally disallowed. In contrast, residential and commercial land uses are promoted inside UGBs, and as described above, cities are responsible under Goal 11 for providing public services, including water, to those uses. OWRD’s groundwater allocation policy should operate in tandem with the land use system by ensuring that water use serves the land uses promoted in a given area. If the result of the proposed rules is to make it more difficult to serve residential, commercial, and other urban land uses, while exempt wells to serve rural residential uses are still allowed by statute, then the proposed rules will have created significant conflict

between regulation of water use and regulation of land use. The State of Oregon should strive for harmony amongst its various regulatory efforts, not conflict.

Water use projections show that cities in the Upper Deschutes Basin should have ample water to meet their anticipated needs in the coming decades. This includes cities like Redmond, where some of the larger groundwater declines have been observed (GSI Water Solutions, Inc., 2023). However, with additional clarity, the pathway to locally supersede these rules can provide greater assurance to cities that they may continue meeting Goal 11 obligations well into the future, should all additional conservation measures prove insufficient to meet water demand.

LandWatch recommends that the proposed rules move forward with some additional clarification of both the process for establishing basin-specific rules, and which entities are eligible to pursue this type of alternative pathway. To ensure that the statewide rules align with the intentions of the Groundwater Act of 1955 and remain compatible with statewide land use planning goals, the pathway for local rules should only apply to incorporated cities in the Deschutes Basin, not to the issuance of new groundwater rights for non-municipal uses. In addition, the pathway must provide for sufficient environmental review at both the site level and throughout the applicable aquifer to protect the long-term integrity of ecological resources.

II. Future Opportunities for Improving Groundwater Management in the Deschutes Basin

The Upper Deschutes Basin’s porous geology means that groundwater and surface water are inextricably and uniquely linked. The vast majority of streamflow in the Deschutes Basin comes from groundwater (Gannett et al., 2017), so groundwater depletion amounts to surface water depletion, and vice versa.

To address the direct effects of additional groundwater pumping on surface water availability and rights, and State Scenic Waterway flows, the Deschutes Basin Groundwater Mitigation Program (“Mitigation Program”) was implemented in 2002. Since then, the Mitigation Program has required mitigation credits as a precondition for any new groundwater permits in the Deschutes Basin, which have been generated via instream transfers or leases of surface water rights. While this program—which already supersedes portions of the existing administrative rules under Chapter 690, Division 9—has served the Deschutes Basin’s particular needs in some ways, it has by no means solved basin-level groundwater allocation and depletion issues.

On its own, this rulemaking will not solve these issues either. Comprehensively improving groundwater stability, availability, and rate of decline in the Deschutes Basin also requires addressing site-specific pumping impacts, regulating exempt wells, and advancing conservation efforts for both surface water and groundwater. To meaningfully improve groundwater management and fully adhere to the spirit of the Groundwater Act of 1955, OWRD should focus upcoming efforts on:

- Updating the Deschutes Basin Groundwater Mitigation Program;
- Establishing and promoting further water conservation measures, such as volumetric pricing and other market-based conservation incentives; and
- Regulating Oregon’s exempt wells.

While we acknowledge that these will be new, separate processes, the current rulemaking sets the stage for addressing these critical, interconnected issues moving forward.

III. CONCLUSION

We applaud OWRD for taking on this rulemaking to modernize how we allocate groundwater in the state, and we appreciate the shift toward a thoughtful, data-backed approach to approving new groundwater permits. Given the important connections between Oregon's land use and water laws, we encourage OWRD to more clearly articulate the compatibility of this rulemaking with statewide land use planning goals. Building from the strength of this groundwater allocation modernization effort, we look forward to OWRD's continued leadership on key water issues across Oregon, including those highlighted in this comment.

Sincerely,



Jeremy Austin
Wild Lands & Water Program Director
Central Oregon LandWatch
2843 NW Lolo Dr St. 200
Bend, OR 97703
Jeremy@colw.org

CC: Ben Gordon
Executive Director
Central Oregon LandWatch
Ben@colw.org

Dr. Brenda Bateman
Director
Oregon Department of Land Conservation and Development
dlcd.director@dlcd.oregon.gov

REFERENCES

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