

May 15, 2024

Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301
Email: WRD_DL_rule-coordinator@water.oregon.gov

RE: Groundwater Allocation Rules

Dear Ms. Hartt,

Please accept these comments on behalf of Wallowa County in response to the Oregon Water Resources Department's ("OWRD's") proposed groundwater allocation rules. For the reasons explained below, Wallowa County believes the proposed rules will be harmful to the County and the State of Oregon, and asks the Oregon Water Resources Commission to reject the proposed rules.

Wallowa County is located in the northeast corner of Oregon. It is a frontier county whose water is fed by pristine high mountain lakes and streams flowing from the southeast to the northwest. Our county is home to approximately 7000 people.

Wallowa County is uniquely situated, in that very little groundwater has been developed in the County to date. As a consequence, Wallowa County is not experiencing groundwater declines. According to OWRD's presented data, wells in Wallowa County are among the sparsest in the State, amounting to 1-16 wells per 40 acres in most areas of the County. See Figures 1 and 2 below, which were prepared by OWRD. These figures show the low occurrence of groundwater development, and lack of groundwater over-allocation in Wallowa County.

Figure 1:

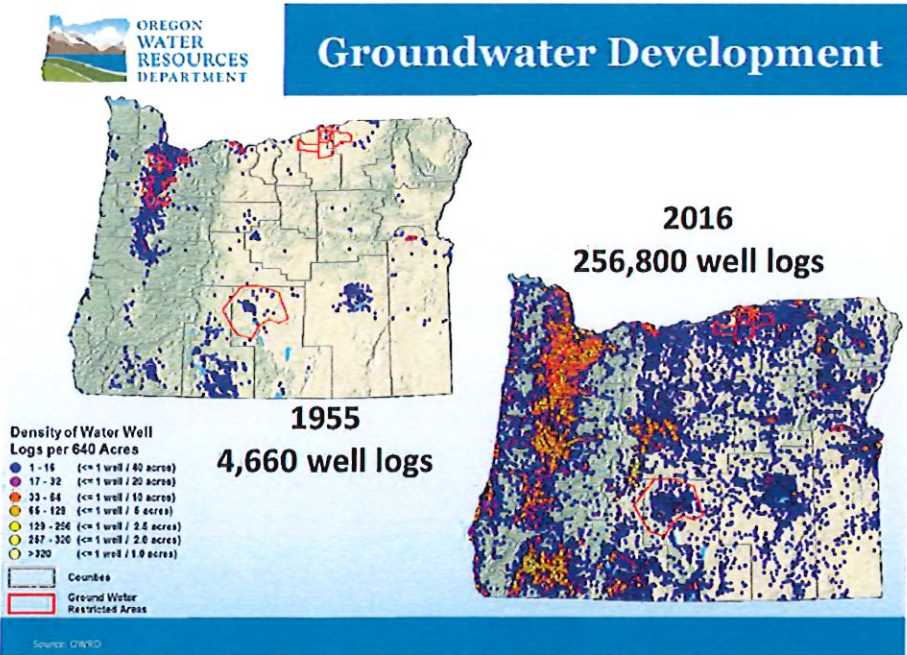
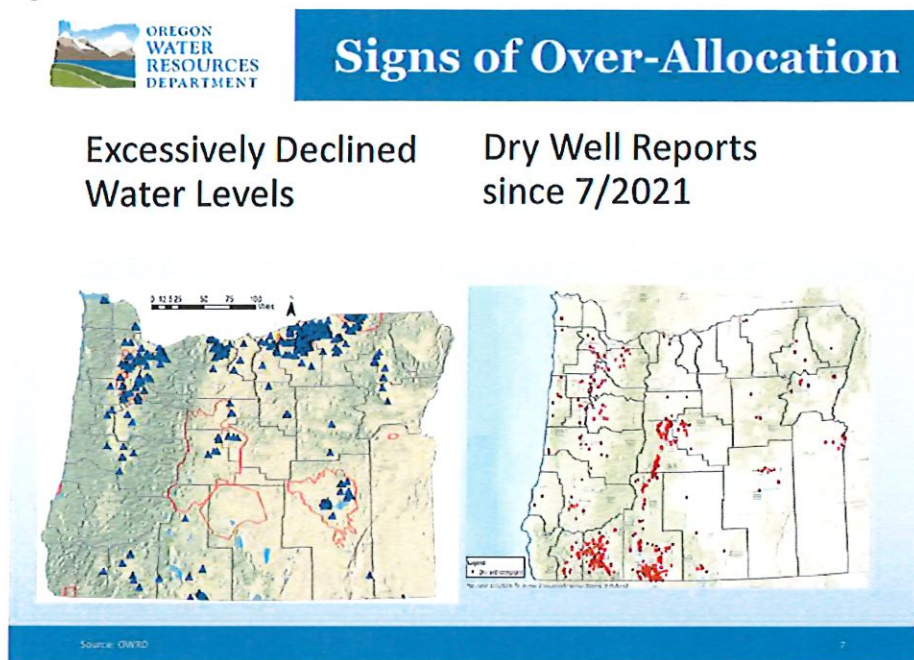


Figure 2:

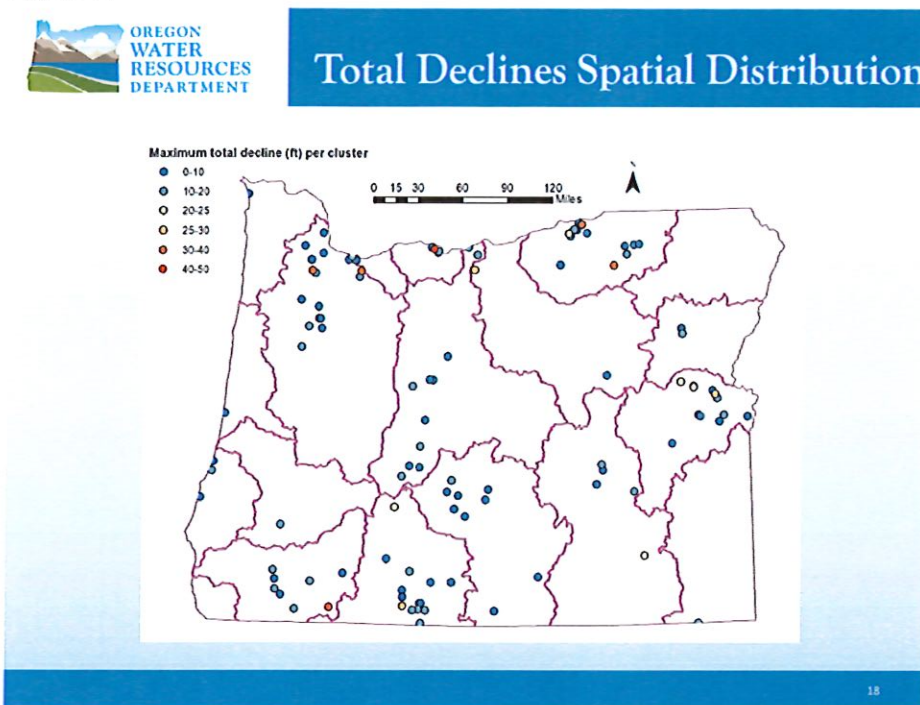


The proposed groundwater allocation rules will have negative impacts on Wallowa County and the entire State. First, the test for "reasonably stable" water levels will inappropriately shift an insurmountable burden to property owners to conduct many years of expensive groundwater studies. Second, the revised definition of "potential for substantial interference" will result in application denial in nearly all areas of the State. As explained further below, these proposals will together establish a *de facto* moratorium on all new groundwater development in the State, without the need or justification to do so.

Under the proposed rules, OWRD is not authorized to approve an application for new groundwater use unless the groundwater levels are "reasonably stable." This sounds like a sensible and worthwhile criterion, but application is anything but reasonable. The rate of allowable decline chosen by OWRD is arbitrary when applied to all aquifers in the State, which are each unique with their own numerous characteristics. Additionally, to determine the rate of decline at a specific location of proposed water use, OWRD must have at least five years of data from "representative wells." If such data does not exist, the full burden is on the applicant to conduct five years of expensive aquifer studies to then provide data to OWRD, in the hopes (with no guarantee) that OWRD will then accept the private study results in support of permit issuance.

Wallowa County residents will suffer from OWRD's lack of information regarding any groundwater declines in the County, as will be the case in many areas of the State where OWRD has not studied the groundwater resources in sufficient detail. During OWRD's rule advisory committee meetings, OWRD staff presented a small-scale review it conducted to estimate how restrictive the "reasonably stable" test of the proposed rules may be in practice. In order to estimate the impacts, OWRD reviewed "representative wells" in various areas of the State. It is notable that OWRD has no "representative wells" to use in Wallowa County. See Figure 3 below, which was prepared by OWRD to show the results of its review. This means, according to OWRD's explanations, that no Wallowa County groundwater applications will be approved absent many years of very expensive private groundwater studies, even though there is very little groundwater use and no over-allocation identifiable within the County.

Figure 3:



In 2021, the Oregon Legislature passed House Bill ("HB") 2018, under which the Legislature directed OWRD to work with the United States Geological Survey to study groundwater resources and establish groundwater budgets in all areas of the State – a task long overdue in Oregon. OWRD has not completed that process, and, as such, lacks the requisite information to determine "reasonably stable" water levels in all areas of the State. The results of the HB 2018 studies will undoubtedly be extremely informative for any rulemaking undertaken with regard to groundwater stability and allocation of groundwater resources, making the proposed rules premature. Wallowa County is situated to suffer increased harm from the untimely proposed rules, in that there is very little data in the County from which application decisions can be made. This will shift a time-intensive, extremely expensive burden to Wallowa County residents, which is poor State policy, and unfair given the State's extreme delay of studying these groundwater resources itself, especially when such studies are now on the horizon.

Finally, the most severe change under the proposed rules is the change to the "potential for substantial interference" test, which will result in denial of nearly all groundwater applications regardless of "reasonably stable" groundwater levels. "Substantial for potential interference" relates to the potential of a new groundwater use to impact existing water rights, most notably, in practice, surface water rights. The enacting statute specifically refers to "interference with existing rights to appropriate surface water." ORS 537.525(9). As such, the current substantial interference test is aimed at avoiding noticeable and measurable estimated interference with known, existing water rights.

The proposed rules broaden the "potential for substantial interference" criteria to such an extent that interference with existing water rights is no longer the test. Rather, under the proposed rules, the test is whether there is a capability for the new groundwater use to cause any theoretical impact on any surface water or groundwater source, at any time in the future (even a millennia), regardless of any actual impact on any existing water rights. The proposed rules give no regard to the actual or estimated impacts of different proposed uses in the various aquifer systems, contrary to the authorizing legislation. OWRD staff advised participants in the rules advisory committee that this provision will result in denial of nearly all groundwater applications in the State, other than a

narrow subset in the Willamette Valley, which is the only place OWRD has found no hydraulic connection between groundwater and surface water. As such, Wallowa County residents, and others who are outside a small pocket in the Willamette Valley, will suffer from this harsh proposed rule that is disproportionate to the needs and realities of the various groundwater resources throughout the State.

Wallowa County agrees with the Oregon Water Resources Commission's direction to OWRD: to modernize the water allocation system and protect senior water users from declining water levels. However, OWRD's proposed rules are not a practical way to accomplish these goals. This State needs measured and reasonable groundwater allocation, informed by scientific study of the various groundwater systems. OWRD's one-size-fits-all, and automatic-denial approach is grossly unbalanced, and will result in immense harm to this State and its residents. OWRD's proposal is a no-growth, no-flexibility mandate, regardless of whether the resources in certain areas can support further wise development and beneficial use.

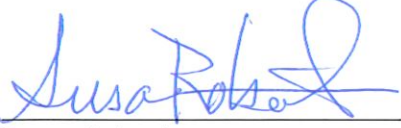
The flaws of the proposed rules are even more obvious when compared to the various existing alternatives to meet the Commission's goal without causing the vast harm that will result from the proposed rules. There are many ways to "do this right." Where there are existing areas of concern, OWRD has already designated areas where water allocations are halted pending further groundwater studies. Most recently, we have seen OWRD exercise this control in the Harney and Walla Walla basins. Additionally, OWRD has existing authority to deny specific applications when groundwater supplies cannot support the new use, or the proposed use will interfere with existing water rights. OWRD may continue to exercise its current authority while the HB 2018 studies and any other necessary studies are completed. Thereafter, once scientific information regarding each basin and sub-basin is developed, OWRD can establish basin plan rules that are specific to the demands and opportunities in each basin. The amount of resources OWRD has put towards enacting rules in short order is commendable, but the rules themselves are faulty because they put the cart before the horse. It is very unwise state policy to enact one-size-fits-all rules in a scientific vacuum. It is even more troubling that OWRD's proposed solution is a *de facto* moratorium on essentially all groundwater appropriations when groundwater is undoubtedly still available for beneficial use in many areas of the State.

For the reasons stated above, Wallowa County asks the Commission to reject the proposed groundwater allocation rules. Wallowa County further asks the Commission to direct OWRD to complete the HB 2018 studies, and any further groundwater studies needed, to enact rules in each groundwater basin that address the realities therein. The current proposed rules will be extremely harmful to Wallowa County residents and those throughout the entire State. It is imperative that these rules not be enacted.

Sincerely,



John Hillock
Wallowa County Commissioner



Susan Roberts
Wallowa County Commissioner

Todd Nash
Wallowa County Commissioner

CC: Governor Tina Kotek
Senator Rob Wagner, Oregon Senate President