



Subject: Comments Regarding Groundwater Allocation Rules Impact on Public Drinking Water Supply in Oregon

May 30, 2024

Dear Chair Quaempts and Members of the Oregon Water Resources Commission,

We write on behalf of the Oregon Water Utility Council (OWUC), Special District Association of Oregon (SDAO), League of Oregon Cities (LOC) and the Oregon Association of Water Agencies (OAWU), to provide comments about the proposed Ground Water Allocation rules amendments. The Oregon Water Utility Council (OWUC) is a member committee of the Pacific Northwest Section of the American WaterWorks Association representing 75% of water providers in the State of Oregon. The League of Oregon Cities represents all 241 incorporated cities in Oregon on legislative and regulatory issues related to the broad spectrum of public services provided by cities. The Special Districts Association of Oregon represents approximately 950 districts across the state providing nearly 32 types of different services statewide. SDAO membership consists of 97 domestic water and 45 water improvement districts, many of whom would be impacted by these proposed rules. Delivering safe, clean and reliable drinking water to communities in Oregon is our top priority.

Water providers agree that protection of our critical water resources and existing water rights is important, and we support efforts preventing the overallocation of Oregon's groundwater resources. We share the States' interests in sustainable long-term planning, protection of water resources and existing water supply infrastructure. We also acknowledge the interconnectivity between surface and groundwater resources and understand the need to have rules to address the connections. However, it is critical that water rights allocation is based on the characteristics of each individual basin or water source and existing water rights, and that appropriate data and a science-based approach is applied when allocating new water rights. This approach is consistent with Oregon's Integrated Water Resources Strategy (IWRS) specifically place based planning. The guiding principles of the IWRS and recommended actions should be a lens for updating rules impacting Oregon's groundwater use. To this end, Oregon drinking water providers have the following concerns about the proposed Groundwater Rule Amendments.

1. The proposed rule amendments are a one size fits all approach that does not consider the unique characteristics of the various groundwater basins in the State of Oregon, their unique hydrogeology and hydrology, water demands and risks. Although some concession for basin specific approaches were included in the language after feedback, the rule amendments place significant constraints on the implementation of basin specific planning that will make it incredibly difficult to implement and is contrary to place based planning principles. Water providers are concerned that pursuing this approach will take an extraordinary amount of time and

resources. Oregon water utilities request language in the rule that will require basin specific studies and allocation based on this information.

2. Water providers are concerned the proposed rule amendments are not sufficiently science and data based. Examples of specific deficiencies in the rule amendments include:
 - a. Definitions like “potential for substantial interference,” “effective and timely,” and “hydraulic connection” are inadequate, insufficient and too broad. They should be more specifically defined relative to each groundwater basin.
 - b. Division 9 rules should go beyond “generally accepted hydrogeological principles...” based on literature from the 1940s to 1970s. The rules need to reflect the state of the practice for studying, analyzing, and managing groundwater systems with use of site-specific data and conceptual models of the groundwater aquifer system, and then using data analyses, numerical models and other tools to test these conceptual models before using this tool box of information to analyze groundwater-surface interactions for regulatory purposes.
 - c. The current set of rules allows for oversimplification of real-world groundwater-surface interactions. Basin specific data collection or testing out conceptual models of how the real-world system functions should be the foundation for groundwater management.
 - d. The groundwater allocation rules put the burden of proof on the water rights applicants when the assumptions are not representative of the basin characteristics. This requires extensive data gathering and modeling and water providers are concerned that OWRD has a history of not accepting new data.
 - e. No methodology is provided on how OWRD will determine if there is “*the potential for substantial interference with a surface water source*” in a real-world situation (not a simplified system in the literature). The literature cited from 1940 and 2012 do not provide a methodology.
 - f. The rules provide no guidance or guarantee OWRD will go beyond simple assumptions and simple conceptual models to analyze site specific conditions and regulate water rights.
 - g. There is a striking difference between the level of specificity between how DEQ regulates water quality in surface water bodies vs. how OWRD regulates groundwater. The former being specific on time and space for temperature standards and regulation (for example) and the latter picking a broad brush approach for the whole state.
 - h. The Division 9 and 410 rules need to approach groundwater management in a similar approach to what DEQ does for the temperature standard, where specific definitions for hydraulic connection, substantial interference, and effective and timely are developed on a basin specific-basis, specific groundwater goals need to be developed for each basin, and a published Internal Management Directive (IMD) should be developed by OWRD on how groundwater-surface water systems will be analyzed and where simplified assumptions may be appropriate and where site-specific data and models are more appropriate. There should be a published IMD by OWRD on data quality objectives for groundwater data and a regular call (as DEQ does for surface water quality data) for groundwater data from the community and users before a science-based basin study is undertaken or groundwater wells are regulated. These science-based processes and objectives are missing from Division 9 and 410 rules, and inconsistent with Oregon’s IWRs to develop basin specific planning for water resources management.

3. Water providers are concerned the OWRD has not been collaborating with other state agencies, such as DEQ, OHA and DLCD related to state priorities and requirements from these agencies that are incompatible with the proposed Groundwater Allocation Rules Amendments.
4. Water providers are concerned the proposed Groundwater Allocation Rules Amendments will hinder economic development in many communities across the state such as efforts to attract and retain manufacturers that might be prematurely “shut-down” due to generalized rules that don’t reflect basin specific conditions.
5. Municipal water providers in Oregon are under increasing pressure to support the Governor’s housing goals, and this means rapidly making affordable, increased water supplies and water infrastructure available for new housing. In many cases, these goals for growth may exceed the 20-year Master Water planning that water providers currently have in place and may entail development of new supplies. It was stated during meetings of the Rules Advisory Council that future community water needs can be met by higher density construction, water conservation and transfers, however studies and experience from Oregon communities have indicated that while density can support reductions in per capita water use, the additional density, particularly with new housing goals will increase the per acre water use. The increased population density above the population projections currently used by municipalities that will result from the housing mandates can be expected to increase overall water demand, even with density and water conservation measures. In order for many communities to meet the housing goals, they will need to access new water supplies above and beyond what can be achieved by water conservation. Water conservation and higher density will only provide so much benefit and in some smaller communities, it’s not even feasible.
6. Water affordability is also a concern for municipal water providers and contributes to the overall cost of living in communities in Oregon. Groundwater is often the most affordable water supply available, in particular to small, rural and distressed communities. Driving communities to depend on more costly options that may include navigation of a water rights transfer, contaminated surface water that requires substantial treatment infrastructure, construction of additional storage, or building infrastructure and pipelines to bring in a source of supply from another community is costly and will make living in many areas in Oregon unaffordable. If a community is driven to a more costly and lower quality water resource when a groundwater resource is available but has been eliminated unduly due to the lack of science based and basin specific considerations, then Oregon residents do not benefit from these new rules. The costs for going to more expensive water sources will be borne by ratepayers and will directly impact these communities. Did OWRD study the fiscal impacts of these proposed rule changes? Did OWRD investigate and interview communities on how these rule changes would have a fiscal impact? The League of Oregon Cities conducted a survey related to infrastructure needs to meet the Governor’s housing goals. The survey responses revealed that water infrastructure is a driving need to meet these housing goals, which adds further burden on local communities:

According to a 2021 Infrastructure Study from Portland State University, water and wastewater needs from 120 responding cities are estimated at \$7.6 billion over the next 20 years. More recently, a survey response from 93 cities in Oregon confirmed that infrastructure investments remain a significant barrier to housing development, with over 234 projects valued at \$950 million of water-related infrastructure identified.

7. The rule amendments do not appropriately address the challenge of inter-state groundwater basins that are shared between Washington, Idaho, and California. The result may be continued issuance of groundwater permits in neighboring States, while water providers in Oregon are unable to access those same aquifers.
8. Lastly, water providers strongly advocate for better state agency coordination around water management. Implementing actions from the IWRS should be considered before embarking on rulemaking of this magnitude. The IWRS is the venue to thoughtfully bring agencies together to solve issues related to groundwater and instream needs versus a single agency approach. For example, as the draft rules for groundwater have been developed, ODFW is moving forward with applying for instream water rights across the state. This raises concerns for drinking water providers who are now being asked to seek alternative supplies to groundwater. Water providers want to be part of the solution to bring forward a cohesive strategy for providing drinking water to a growing population. The IWRS Guiding Principles include balance, collaboration, science-based, flexible approaches and actions that “empower Oregonians to implement local solutions; recognize regional differences, while supporting the statewide strategy and resources and take into account the success of existing plans, tools, data, and programs; do not lose commonsense approach; develop actions that are measurable, attainable, and effective.”

The Oregon Water Utility Council, Special District Association of Oregon and League of Oregon Cities are concerned that the proposed amendments will halt the issuance of all future permits on groundwater basins due to the lack of specificity in the rule language. We encourage the Oregon Water Resources Commission to seek a more specific, more defined, and more scientifically defensible approach to these amendments. Thank you for your attention to these concerns.

Sincerely,

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