



DESCHUTES RIVER
CONSERVANCY

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Oregon Water Resources Department
Laura Hartt - Water Policy Analyst / Rules Coordinator
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via email to: Laura.A.Hartt@water.oregon.gov

RE: Groundwater Allocation Rules

Ms. Hartt:

The Deschutes River Conservancy (DRC) is a 501(c)3 non-profit based in Bend, Oregon with a mission to restore streamflow and improve water quality in the Deschutes Basin. The DRC was formed by the Confederated Tribes of the Warm Springs, irrigation, and environmental interests in 1996. Using a coordinated, collaborative, and voluntary approach, together with our partners we have restored over 300 cubic feet per second (cfs) to basin rivers while increasing the reliability of agriculture water rights and operations, and water supply for cities. We have accomplished this through conservation, market-based incentives, collaborative partnerships, and innovative programs. The DRC's Board of Directors includes diverse representation from tribal, environmental, irrigated agriculture, and hydropower interests as well as federal, state, and local government.

Thank you for the opportunity to participate in and provide comments on the Groundwater Allocation Revised Rules and for the DRC seat on the Rules Advisory Committee (RAC). The Deschutes Basin, like many throughout the state, faces unique challenges and barriers in its effort to balance water needs to support agriculture, rivers and communities while maintaining resiliency. The Deschutes Basin has a long history of collaborative success with the DRC, partners and stakeholders developing and implementing water conservation and water marketing projects that restore streamflow, support agriculture, and help meet the needs of growing cities. We recently completed the data-rich Upper Deschutes River Basin Study, which was succeeded by the Deschutes Basin Water Collaborative, a group of 46 stakeholders currently working to use Basin Study information to develop a comprehensive Deschutes Basin Water Plan that prioritizes integrated implementation strategies. We believe we are on track to be a model for how we can solve water issues for rivers, aquifers, and communities at the basin level through close collaboration and with OWRD participation. A changing climate, persistent drought, and growing populations and communities only increase the urgency of this work.

We would also like to recognize the hard work of the OWRD staff in taking on this difficult and complicated rulemaking to update groundwater allocation rules to be more protective. The additional technical sessions were helpful, as were the two additional RAC's, which allowed for more in-depth discussions and important additional changes to the proposed rules. The majority of the work we do at the DRC stems from a legacy of over-appropriating rivers over a century ago. We appreciate the state's proactive approach to addressing the very real prospect of over-appropriation. As you well understand, restoring balance to an over-appropriated system is challenging work. It's preferable to protect a resource on the front end. We appreciate rules that are protective of existing water right holders, both in and out of stream, and the forward-looking sustainability

approach to reviewing groundwater allocations and are committed to work in a collaborative space to find creative solutions to water supply issues in the Deschutes Basin to avoid additional over-appropriation. A holistic view of water resources that truly strives to manage water conjunctively and that helps us understand tradeoffs of various water management scenarios on both surface and groundwater will help us best adapt to the dynamic conditions we will be facing in the future.

The ability to look at individual basins and their unique attributes within the Groundwater Allocation Rules (690-008-0001(9)(d)) allows for more scientific data to be collected or supplied that may support a different outcome from review. The decades of efforts in the Deschutes Basin to find creative and collaborative solutions that have multiple benefits and involve stakeholder participation in rebalancing water uses could be further explored with respect to sustainable use of groundwater. We appreciate that this will allow the state to consider that basins can differ dramatically and that the state rule may not be one size fits all once additional scientific information is available. We also recognize that we are fortunate in the Deschutes Basin to have some level of this data already available. This may be more difficult for other basins, as well as for additional data for the Deschutes as it is costly to collect the data necessary to develop basin specific programs. This is something that is important across the state and for which funding assistance within the state budgets will be helpful in assuring equity. Funding (and OWRD staff) to support basin specific rules - additional studies, groundwater conservation efforts, and to capitalize water banks and water markets to meet new demands will be integral to sustainability in our water supplies.

DRC appreciates the addition to 690-008-001(9)(b)(B) relating to reference levels - which allows a consideration for review of anthropogenically-enhanced recharge when setting reference levels. This will be important in the Deschutes Basin as leaky canals are increasingly piped for surface water conservation, reducing artificial recharge veining through the basin.

We would like to make several high-level points that touch on the Groundwater Allocation Rulemaking and its interconnection with water management in the Deschutes Basin as a whole.

1. Surface and groundwater are well studied and intimately connected in the Deschutes, and we would be well-served to look at the entire system holistically. We are supportive of the state's efforts to protect groundwater, AND we are trying to make up for a legacy of streamflow over-appropriation. A holistic view of water resources that truly strives to manage water conjunctively and that helps us understand tradeoffs of various water management scenarios on both surface and groundwater will help us best adapt to the dynamic conditions we will be facing in the future.

The DRC works diligently to help move water from areas of excess to areas of need. Looking to the future, with rapidly growing cities and limited water supplies, we understand the cautious review of new groundwater allocations is necessary. We would also like to suggest that supporting growing communities with *established* population centers and economies (quasi-municipal or municipal) should be of priority over issuance of new groundwater rights to small irrigation uses or undeveloped or not-yet-developed quasi-municipal uses (such as for new centers of rural development).

2. Even specifically within the groundwater realm, extending the view to some topics outside the purview of the current rule-making would be helpful, namely the measurement and regulation of exempt wells. While these rules do not apply to exempt well uses, the increasing number and density of exempt wells warrants further attention from the state. Water uses that might best be served with a group domestic or small quasi-municipal water right can and have evaded the requirements of a permit by installing

clustered exempt domestic wells which are not subject to the same rules as permitted uses. Exempt wells are also impacted by over-appropriation and diminishing groundwater levels and do play a role in the water budget in the Deschutes basin.

3. Applying an even broader holistic filter, what are the connections between water policy and our land use goals in Oregon, land use goals that generally prioritize compact growth over sprawl, compact growth in cities being much more water-efficient per capita than non-agricultural development spread out into our rural areas? Where there are limited supplies for new allocations, shouldn't our water policies reflect these land use principles? This holistic view underlines the need to take an overall basin water management approach that is situated in a specific context and recognizes the implications and interconnections with other basin goals and policies. This holistic view may stretch the boundaries of the current rule-making and isn't meant to hold it up, but it underlines the need to take an overall basin water mgt approach that is situated in a specific context and recognizes the implications and interconnections with other basin goals and policies. Basin goals and land use policies should also recognize limitations related to water supplies. These should not be siloed.
4. Our final point is that you have good partners in the Deschutes Basin. In our efforts to restore streamflow while actively trying to ensure reliable agricultural water and future water supplies for cities, we have a long history of driving conservation and innovating solutions to meet multiple needs with limited water supplies. Along with our suite of streamflow restoration strategies, we are actively involved in the Deschutes Groundwater Mitigation Program, the only program of its kind in the state. DRC is the basin's active state-chartered temporary mitigation bank, generating temporary mitigation credits through instream leases while separately facilitating permanent instream transfers that generate credits and permanently protect streamflow. This program was designed to address the interference of new groundwater pumping on surface water flows, specifically lower Deschutes Scenic Waterway flows, while incentivizing restoration of upstream tributaries and allowing for some measured growth.

Basin partners have been able to develop tools to implement this program, and the program has had some success in achieving its goals, including restoring significant flows to the Middle Deschutes River (~40 cfs) and other tributaries. This demonstrates the basin's ability to adapt and innovate to meet water management challenges. We are committed to continuing to help Central Oregon cities secure water supplies whatever the new regulatory framework looks like- because in the Deschutes all the water supplies and demands are interconnected. While we are unsure of how the Deschutes Basin Mitigation Program will interface with the new Groundwater Allocation Rules it is important to recognize that the Deschutes Basin Mitigation Rules have an impending sunset in January 2029. While we are approaching the cap and may need additional time to update these basin specific rules, addressing the sunset is of utmost importance to allow breathing room to thoughtfully address the cap and collaboratively work on other updates and how they will interface with the new allocation rules.

This is all to say that we hope the state supports the basin and looks to us as a partner in continuing to meet multiple water demands with limited water supplies. We think you will find the basin partnerships to be well-suited to do this work.

We appreciate the long view toward sustainability. Over-allocation is costly in its impacts to existing water users, future water users who may make investments and then be regulated, to our surface waters – streams and lakes that we all love, to the wildlife fisheries and industries that rely on water in and out of streams, and in the costs to generations after us who may have to correct problems we create from lack of action. We are encouraged by

the state's efforts to update its groundwater allocation rules. In implementing these rules, we need to ensure we are managing for both groundwater and surface water sustainability and understanding the system holistically. Maintaining an awareness of the impact of these rules on current water uses and supplies and to future water needs and sustainable supplies is imperative. Finally, we know how to drive conservation and develop innovative solutions and we need to extend these tools fully to the groundwater resource. The DRC is committed to restoring and protecting our rivers and aquifers, and to helping ag and municipal partners meet future water supply needs in the context of scarcity.

We regularly hear cautionary stories of new areas, in the U.S. (AZ, CA, Ogallala) and other countries (Iran, Spain), that have had such significant groundwater declines that their ability to supply basic human needs is jeopardized. We also hear success stories of areas that have been recovering depleted groundwater and have even staved off the continuation of declines (AZ). We hope to be a success story in the Deschutes Basin and in Oregon.

Thank you for your consideration of these comments and for allowing the DRC the opportunity to participate and comment during this rulemaking process.

With sincere appreciation,

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