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To: Laura Hartt, Water Policy Analyst and Rules Coordinator, OWRD

Submitted by: Zach Freed, Sustainable Water Program Director, TNC

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Laura,

Thank you for the opportunity to comment on the proposed rule changes to Division 8, 9, 300, and 410. **The Nature Conservancy strongly supports the proposed Groundwater Allocation Rules**, which will help prevent further over-allocation of Oregon's aquifers.

The Nature Conservancy (TNC) is a science-based, non-partisan organization committed to conserving the lands and waters on which all life depends. In Oregon, TNC has over 80,000 supporters and members in every county. Based in communities around the state, we manage lands and waters in varied ecosystems and partner with ranchers, farmers, fishers, forest and environmental interests on some of the most challenging conservation issues facing people and nature.

We support the proposed rules, but advocate for one adjustment in the proposed Division 9 rules to align them with intent. Specifically: proposed OAR 690-009-0040(5) should be edited to remove the word "may", which—as written—implies that a permit can be issued even if there is a finding of potential for substantial interference with a surface water source. TNC recommends the following correction, which will ensure the rules correctly match the intent:

OAR 690-009-0040(5): "For the purposes of issuing a permit or limited license for a proposed groundwater use, a finding of potential for substantial interference with a surface water source **shall** mean that water is not available for the proposed groundwater use if the use will substantially interfere with a surface water source as per the definition in OAR 690-008-0001 and OAR 690-300-0010."

If that change is made, we believe the proposed rules will meet the Oregon Water Resources Department's rulemaking objective to "be more sustainable and protective of existing water right holders." There is abundant evidence that the existing allocation rules lead to aquifer depletion, streamflow reduction in over-appropriated rivers, and reduced access to drinking water for rural communities that rely on domestic wells. Oregon is already experiencing the impacts of over-allocation on declining groundwater levels, demonstrated by multiple

statewide analyses<sup>[1,2,3]</sup> and place-based studies in the Willamette<sup>4</sup>, Deschutes<sup>5</sup>, Klamath<sup>6</sup>, and Harney<sup>7</sup> basins. A recent report by the Oregon Secretary of State<sup>8</sup> noted the impact of dry wells and water scarcity on families, farmers, industry, and recreation.

The proposed approach to defining “reasonably stable” water levels as a key indicator of sustainability is consistent with the most modern science on groundwater sustainability<sup>[9,10]</sup>. While groundwater levels may fluctuate for other reasons (e.g., reducing recharge due to canal lining), the proposed rules allow for discretion by the Department to account for those fluctuations using the best available data<sup>11</sup>.

The proposed rules are well-aligned with Oregon’s Integrated Water Resources Strategy, which identifies sustainable groundwater management a statewide priority and suggests Recommended Action 11.E: Develop Additional Groundwater Protections<sup>12</sup>. Although the existing and proposed rules governing groundwater allocations are statewide in scope, there are processes already in place to help address regionally-specific groundwater concerns. To address concerns from stakeholders, the proposed rules allow for basin-specific definitions to be developed, as long as the basin-specific definitions consider impacts to wells, ecosystems, and long-sustainability of the resources<sup>11</sup>. These common-sense considerations will ensure that basin-specific definitions are consistent with priorities in Oregon’s Integrated Water Resources Strategy and aligned with the mission of Oregon Water Resources Department “to ensure the long-term sustainability of Oregon’s ecosystems, economy, and quality of life.” We strongly recommend keeping those considerations in place, as they will help guide future basin-specific conversations with stakeholders, OWRD, and the Oregon Water Resources Commission.

**The Nature Conservancy supports the proposed rules** because they meet the stated objective of the rulemaking: protecting existing water rights and sustainably managing Oregon’s finite water resources.

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<sup>1</sup> Saito, L., Freed, Z., Byer, S., & Schindel, M. 2022. The vulnerability of springs and phreatophyte communities to groundwater level declines in Oregon and Nevada, 2002-2021. *Frontiers in Environmental Science* 10:1007114.

<sup>2</sup> Scandella, B., & Iverson, J. 2021. Oregon groundwater resource concerns assessment. Oregon Water Resources Department, Salem, OR.

<sup>3</sup> New York Times. 2023. Uncharted Waters: America is Using Up Its Groundwater Like There is No Tomorrow. Available at: <https://www.nytimes.com/interactive/2023/08/28/climate/groundwater-drying-climate-change.html>

<sup>4</sup> Conlon, T.D., et al. 2005. Ground-Water Hydrology of the Willamette Basin, Oregon. USGS SIR 2005-5168.

<sup>5</sup> Gannett, M.W., et al. 2001. Ground-Water Hydrology of the Upper Deschutes Basin, Oregon. USGS SIR 2000-4162.

<sup>6</sup> Gannett, M.W., et al. 2007. Ground-Water Hydrology of the Upper Klamath Basin, Oregon and California. USGS SIR 2007-5050.

<sup>7</sup> Gingerich, S.B., et al. 2022. Groundwater resources of the Harney Basin, southeastern Oregon. USGS SIR 2021-5103.

<sup>8</sup> Oregon Secretary of State. 2023. Advisory Report: State leadership must take action to protect water security for all Oregonians. Report 2023-04.

<sup>9</sup> Gleeson, T., et al. 2020. Global groundwater sustainability, resources, and systems in the Anthropocene. *Ann. Rev. Earth Sci.* 48: 431-463.

<sup>10</sup> Cuthbert, M.O., et al. 2023. Defining renewable groundwater use and its relevance to sustainable groundwater management. *Water Resources Research* 59(9).

<sup>11</sup> Proposed rule: 690-008-0010(9)(d)

<sup>12</sup> Mucken, A., and Bateman, B. 2017. Oregon’s 2017 Integrated Water Resources Strategy. Oregon Water Resources Department. Salem, OR.