



WaterWatch of Oregon Protecting Natural Flows In Oregon Rivers

Oregon Water Resources Commission

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Sent via email to: Mindy Lane, Mindy.J.LANE@water.oregon.gov

June 11, 2024

RE: WRC Agenda Item K - Groundwater Allocation Rulemaking (6-14-2024)

Dear Chair Quaempts and members of the Commission:

Thank you for the opportunity to comment on the critically important proposed Groundwater Allocation Rules (Proposed Rules). WaterWatch was a member of the Groundwater Allocation RAC. We have provided comment to the Commission a few times previously in support of the rulemaking. WaterWatch is very supportive of the Proposed Rules and appreciative of the OWRD's thoughtful, in-depth work and robust public engagement that went into developing the Proposed Rules.

WaterWatch will be submitting a detailed comment letter to the rules coordinator, including proposed language to add clarity to certain provisions and to advocate for strengthening certain resource protections, but writes here to express our support for the Proposed Rules, address a few specific issues, and urge your support.

Testimony from the public rulemaking process needs to be utilized and considered

As you are likely aware, there were four public rulemaking hearings held around the state in April and May, and a written comment period that closes June 14th. A great many people offered thoughtful and compelling oral testimony at the hearings in support of the Proposed Rules. This was the official public rulemaking process and we urge the Commission to watch the testimony, which is available on OWRD's Groundwater Allocation webpage. This includes testimony from an April 4th hearing in Bend, which included local people and organizations testifying in support of the rules and the central Oregon municipal interests sharing their perspectives. Comments in support of the rules outnumbered comments of concern at the April 4th Bend hearing. Many additional thoughtful comments in support were voiced at the May 21st hearing in Salem, which included an option to testify virtually and support for the rules was voiced at each of the four hearings. We flag this because it would be an unfair and unbalanced process if the added opportunity to comment directly to the Commission on June 14th erased, or undermined, all of the effort that went into testifying during the original, official rulemaking hearings. We similarly urge full consideration of the comments that will be submitted by the June 14th deadline.

Key reasons WaterWatch supports the Proposed Rules

- **Alignment with Oregon's 1955 Groundwater Act (ORS 537.505 *et seq.*)**

The Proposed Rules would align with statute. The existing rules, in contrast, do not align with statute as demonstrated, for example, by the plummeting groundwater levels in places like the Harney Basin caused

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by over-issuance of groundwater permits, and the fact that the existing permitting process fails to protect senior water rights from injury caused by pumping. Importantly, the Proposed Rules define and maintain (with regard to new allocations) reasonably stable groundwater levels, better protect groundwater use for human consumption, better protect senior water rights (including instream water rights), and would limit issuance of new permits to when water is available for the use.

- **Science-based and data-driven.**

The proposed Division 9 rules related to pumping affecting streamflow are consistent with the best available science in Oregon and beyond. Within Oregon, groundwater studies by the U.S. Geological Survey (USGS), in cooperation with OWRD, in major basins like the Klamath, Deschutes, Willamette, and Harney demonstrate the influence of groundwater pumping on streams. Recent nationwide studies across the United States also provide evidence for pervasive impacts to streamflow due to groundwater pumping. Further, the proposed Division 8 rules defining “reasonably stable” are based on an OWRD analysis of thousands of groundwater levels across the state that was peer reviewed by USGS. The ‘dynamically stable’ concept applied in the rules uses groundwater level trends to determine sustainability, which is a modern and up-to-date approach also supported by recent studies.

- **Implements a “Default to No” approach to avoid over-allocation where data is lacking.**

The Proposed Rules reverse OWRD’s decades-long damaging “Default to Yes” approach, whereby when reviewing a groundwater permit application, if data was lacking to determine whether groundwater was already over-allocated, the permit would be issued. This “Default to Yes” approach led directly, most recently, to the extremely challenging (and expensive) groundwater over-allocation problem in the Harney Basin. In contrast, the Proposed Rules establish the type and amount of data needed to determine whether groundwater levels are reasonably stable, and then change the default so that a lack of data will result in denial, or “Default to No.” This is a major and critically important change.

- **Implements a significantly more robust protection for senior rights on hydraulically connected surface water.**

For decades, the existing rules have resulted in issuance of groundwater permits that have reduced streamflows and injured senior surface water rights, in contravention of the Groundwater Act and the foundation of prior appropriation. This is because the existing Division 9 rules only require consideration of a fraction of the pumping impacts. The Proposed Rules remedy this by requiring full accounting of the impacts of proposed pumping on hydraulically connected surface water, combined with consideration of whether the surface water is over-appropriated, or withdrawn, in determining whether to issue a new groundwater right.

- **Important security for existing domestic well users.**

Many people in rural areas of Oregon rely on exempt domestic wells to provide drinking and household water. While exempt wells can pose their own problems in certain contexts, jeopardizing access to drinking water for existing domestic well owners by over-allocating groundwater to other junior uses is clearly problematic. It should be noted that simply drilling domestic wells deeper is not always workable due to water quality problems that can be encountered at increasing depths. Further, there is a significant expense associated with deepening domestic wells. The Proposed Rules’ implementation of the 1955

Groundwater Act's requirement to determine and maintain, with regard to new allocations, "reasonably stable" groundwater levels will provide important security for this drinking water source.

Specific Comments (again, WaterWatch will be submitting detailed comments on the rules but we wanted to highlight a few important things to the Commission in advance of the Bend Commission meeting):

1. The 'considerations' in the basin specific rule option should be retained and strengthened.

The Proposed Rules allows for a basin specific approach to defining and applying the statutory term "reasonably stable" groundwater levels. Specifically, the rules state:

"The limits in part (a) of this definition may be superseded by limits defined in a basin program rule adopted pursuant to the Commission's authority in ORS 536.300 and 536.310. Any proposed superseding basin program definition *must consider*, at a minimum, the anticipated impacts of the new definition on:

(A) the number of wells that may go dry; and

(B) the character and function of springs and groundwater dependent ecosystems; and

(C) the long term, efficient, and sustainable use of ground water for multiple beneficial purposes."

Proposed OAR 690-008-0001(9)(d) (emphasis added). These are common-sense considerations that are important to Oregonians *and* that are consistent with the 1955 Groundwater Act. Further, there is certainly nothing unworkable or burdensome about 'considering' the impacts of a basin rule definition on these factors. OWRD included the basin specific rules option to address concerns raised by certain water user groups in the RAC about basin specific hydrology, resulting in flexible Proposed Rules.

While the Proposed Rules rightly require that basin rules consider the impact of any new definition on these factors, we note that these factors closely link to requirements of the 1955 Groundwater Act that must be met. We therefore suggest that, not only is it critically important to retain these considerations, but that including stronger sideboard requirements for the basin specific option would help ensure transparency and alignment with the statute. This would also help support stronger basin rules that better meet the needs of all interests.

We also note that while the basin rule option offers local flexibility, the Proposed Rules already account for variations in hydrogeology and hydrology across the state, because those are part of what drives the groundwater levels, groundwater level trends, and hydraulic connection to surface water that are required to be considered in the permitting process contained in the Proposed Rules.

2. The Proposed Rules implement important pieces of the Integrated Water Resources Strategy.

The 2017 Integrated Water Resources Strategy (IWRS) calls on the state to "Develop Additional Groundwater Protections" (Recommended Action 11.D). This recommendation expands upon a number of needed actions identified in the 2012 IWRS, including a call for the protection of groundwater in the regulatory and permitting processes (2012 IWRS actions 10F,10G). The Proposed Rules bring agency practices into alignment not only with statutory directives, but also with the recommendations in the IWRS.

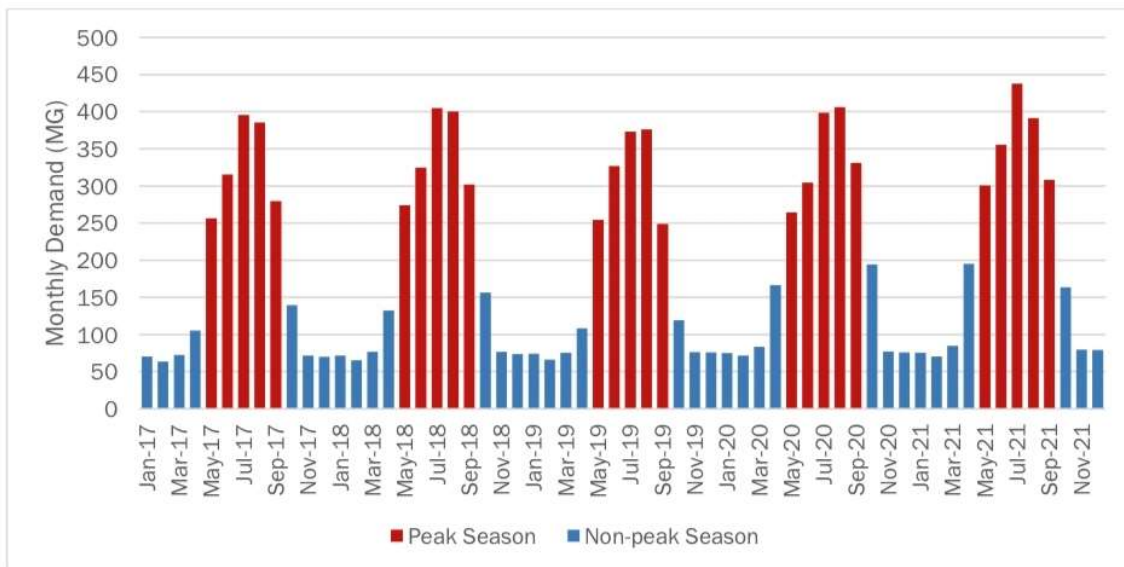
3. Cities have the water rights and tools to work within the Proposed Rules to meet reasonable water needs including providing additional housing.

A full discussion of cities' water data is beyond the scope here, but claims that the Proposed Rules' science-based, sustainable groundwater permitting approach would conflict with developing additional housing or meeting cities' water needs do not appear supported by data.

As an example, below is information from the 2022 City of Redmond Water Management and Conservation Plan (WMCP). It is important to note that **currently, the city’s average daily demand is only about 25% of its already permitted water rights, and by 2043 the city projects that average daily demand will still be well under 50% of its permitted water rights.** (City of Redmond WMCP, p. 5-5).

“Exhibit 2-6 shows total monthly demand, with the peak season of May through September in red and the non-peak season in blue. The average monthly demand was 337 MG during the peak season and 95 MG during the non-peak season. The MMD averaged 404 MG and these peaks occurred in July (2017, 2018, and 2021) and August (2019 and 2020).”

Exhibit 2-6. Monthly and Seasonal Demand, 2017 through 2021



Source: City of Redmond WMCP, Prepared by GSI Water Solutions, Inc., September, 2022 (p. 2-9).

On Figure 2-6, the red bars show the dramatic increase in water use due to outdoor summer water use (e.g. lawn watering and landscape watering). The graph shows that it is *not* household use driving water demand – it is strictly peak summer use driven by outdoor watering. The current water use could support water for far more households by addressing the high peak summer use, for example through better conservation practices including but not limited to landscaping that is more adapted for the amount of water naturally available during the summer months.

To examine this further, Exhibit 2-11 (also from the City of Redmond WMCP), shows how water use for multi-family residential use (shown in orange) is much more flat year round and does not contain the large outdoor water use peak currently associated with single family homes (shown in blue). There appears ample room for conservation practices to free up water needed for additional multi-family housing, or any housing not entailing extensive outdoor watering.

Exhibit 2-11. Monthly Consumption by Customer Category, 2017 through 2021



Source: City of Redmond Water Management and Conservation Plan, Prepared by GSI Water Solutions, Inc., September, 2022 (p. 2-12).

The City of Redmond WMCP also provided this analysis:

“Average monthly peak season water use in 2021 was 3.5 times higher than non-peak season water use for single-family residential connections (due to outdoor landscape watering associated primarily with large residential lots), down from 4.1 times higher in 2017. In addition to the City’s water conservation outreach activities, this reduction is likely attributable to a reduction in average lot sizes for single family homes driven by changes in zoning and real estate market dynamics. Average monthly peak season water use for multi-family water service connections is consistently 2.2 times higher than nonpeak season water use. The 2021 multipliers for commercial and City water use were 3.5 and 6.3, respectively.

These ratios suggest that conservation efforts focused on reducing outdoor use by single-family homes and certain commercial customers with large landscape water use, may help to address peak-season demand (see Exhibit 2-10).”

(P. 2-11). This analysis highlights opportunities to provide additional water that could be directed to additional housing through bringing down “outdoor landscape watering associated primarily with large residential lots.”

The City of Redmond WMCP also provides other data that highlight water saving opportunities, including a “Maximum Operational Demand,” which adds a significant peak to the maximum day demand caused by people turning on their outdoor watering during the same hours each day. (P. 5-3 to 5-5). Addressing that peak, for example with scheduling or reducing outdoor use, or in-city water tanks, could instead provide water for housing.

Finally, the population of City of Redmond was 37,342 in 2022, which the city projects will increase to 56,810 by 2043. (City of Redmond WMCP, p. 5-1). The Mayor of Redmond recently stated: “We have

enough water rights that we acquired over the last 20 years to meet a population of 75,000 people." (Redmond Spokesman, *State signals it's likely to deny Redmond's application for future groundwater*, October 16, 2023.) This means City of Redmond is many decades away from needing additional water, if ever, providing ample time to apply modern techniques, programs and transactions, such as implementing lawn watering schedules or restrictions and prioritizing xeriscaping – in order to sustainably meet the city's needs without causing added groundwater declines.

Further, there are many additional tools, such as water right transfers, water reuse, infrastructure improvements to bring down peak use (e.g. in-city water tanks), and the Conserved Water Act, that can all contribute to ensuring robust water supplies for the cities in a sustainable manner.

In sum, any statements that cities must be allowed to acquire additional new groundwater permits need to be objectively evaluated with available data, including data provided in the cities' WMCPs. Reviewing City of Redmond's WMCP, for instance, shows that there is ample opportunity to provide water for a great deal of additional housing, including by addressing the pattern of water use; that it is not household use driving peak water demand; and that the city's existing water rights provide for a long horizon to develop sustainable strategies.

Conclusion

Thank you for the opportunity to comment and for your continued work on this critically important issue. As noted above, we will be filing additional detailed comments to the rule coordinator. While the Proposed Rules could be more protective in some areas, WaterWatch is very supportive of the Proposed Rules because of the significant benefit they will provide for Oregon's water future and we therefore urge your support. We commend Oregon for taking this long-overdue action to correct course, using science and data, to more sustainably allocate the critically important resource of groundwater. We look forward to seeing rules adopted at your September meeting.

Sincerely,

/S/Lisa A. Brown

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