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June 14, 2024

Via Email Only

Laura Hartt

Email: WRD_DL_rule-coordinator@water.oregon.gov

RE: Oregon Cattlemen's Association's Comments in Opposition to OWRD's Proposed Groundwater Allocation Rules

Dear Ms. Hartt,

Please accept these comments on behalf of the Oregon Cattlemen's Association ("OCA") in response to the Oregon Water Resources Department's ("OWRD's") proposed groundwater allocation rules. Founded in 1913, OCA serves as the voice of the cattle industry in Oregon. Our members are engaged in agriculture and ranching across the State, providing food and essential byproducts within Oregon and throughout the world. Water is of critical importance to OCA and its members for growing crops and raising livestock. For the reasons explained below, OCA is opposed to the proposed rules, and asks the Oregon Water Resources Commission to **reject** the proposed rules. OCA was a member of the Rules Advisory Committee ("RAC") for the proposed rules, and also voiced these concerns through oral and written comments during the RAC process.

First, the test for "reasonably stable" water levels under the proposed rules will inappropriately shift an insurmountable burden to property owners to conduct many years of expensive groundwater studies that OWRD has a responsibility to complete before proposing new groundwater allocation rules.

Under the proposed rules, OWRD must determine that groundwater levels are "reasonably stable" to approve a new application for use of groundwater. This proposition sounds sensible, but its application is haphazard and illogical. The rate of allowable decline chosen by OWRD is a one-size-fits-all approach that is arbitrary when applied to all aquifers in the State. Additionally, to determine the rate of decline at a specific location, the proposed rules require at least five years of data from "representative wells." If such data does not exist, OWRD puts a heavy burden on the applicant to conduct five years of expensive aquifer studies to then provide data to OWRD, with no guidelines, required procedures, or guarantees that OWRD will then accept the private study results. OWRD has been very unwilling to accept private studies from landowners in the past. OWRD has very few, and even no representative wells in certain areas of the State, meaning that the proposed rules will undoubtedly result in a tremendous burden on private landowners.

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. 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 provide necessary information for any rulemaking to allocate the groundwater resources of the State. Thus, the proposed rules premature. The Oregon Water Resources Commission should pause the groundwater allocation rulemaking until the HB 2018 studies are complete, or until such studies, at a minimum, provide adequate scientific information from which to base new groundwater allocation rules.

Second, the revised definition of “potential for substantial interference” will result in new application denial in nearly all areas of the State. This revised injury test, when combined with the negative impacts from the test for “reasonably stable” water levels, will create a *de facto* moratorium on all new groundwater development in the State, without the need or justification to do so.

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. “Substantial for potential interference” relates to the potential of a new groundwater use to impact existing water rights. The enacting statute specifically refers to “interference with existing rights to appropriate surface water.” ORS 537.525(9). The current test for substantial interference under the current rules is aimed at avoiding noticeable and measurable estimated interference with known, existing water rights.

The proposed rules broaden the “potential for substantial interference” test so that interference with existing water rights is no longer the test. Instead, the proposed test is whether there is a capability for the new groundwater use to cause *any theoretical impact to any surface water or groundwater source, at any time in the future, regardless of any actual impact on any existing water rights*. OWRD staff acknowledged in a RAC meeting 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.

Finally, OWRD has existing tools to address groundwater concerns without causing the vast harm that will result from the proposed rules.

Where there are existing areas of concern, OWRD has already designated areas where water allocations are paused pending further groundwater studies. Most recently, OWRD exercised this control in the Harney and Walla Walla basins. OWRD must act more quickly and decisively to avoid harm when warranted by the circumstances.

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’s lack of understanding regarding groundwater resources has impacted its ability to make decisions based on such information, which HB 2018 was intended to correct. 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.

Oregon needs measured and reasonable groundwater allocation, informed by scientific study of groundwater aquifers. OWRD’s one-size-fits-all, permit-moratorium approach will create poor water policy, and will result in immense harm to this State and its residents. OWRD’s proposal is a static, rigid mandate, which will result in an end to groundwater appropriation, regardless of whether groundwater resources in certain areas can support further sustainable development.

For these reasons, OCA asks the Commission to reject the proposed groundwater allocation rules. OCA 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 demands and complexities therein. OCA looks forward to participation in future groundwater allocation rulemaking efforts, which should be supported by adequate science, and address local conditions.

Sincerely,

OREGON CATTLEMEN'S ASSOCIATION

A handwritten signature in black ink, appearing to read 'McElligott'.

Matt McElligott, President
Chair

A handwritten signature in blue ink, appearing to read 'Sarah Liljefelt'.

Sarah Liljefelt, Water Committee