



Testimony for Senate Bill 791

Senate Committee on Environment and Natural Resources

Senator Michael Dembrow, Chair

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Thank you for the opportunity to provide information related to Senate Bill 791, which defines criteria for managing groundwater and surface water. This information is provided for informational purposes and the Department is not taking a position at this time.

The Department's Understanding of SB 791 and Implementation

SB 791 affects the conjunctive management of groundwater and surface water in the evaluation of new groundwater right applications (ORS 537.629), the distribution of water for a senior surface water right (ORS 537.525), and in Department rulemaking (ORS 537.780). Specifically, Senate Bill 791 establishes a standard in statute for determining whether the use of groundwater impairs or interferes with a senior surface water right. Currently, this standard is identified in rule (OAR 690-009).

The bill limits the interference analysis to the impacts from an individual junior groundwater right or from a new individual groundwater application on a surface water source that supports a senior surface water right. As a result of this individual analysis, it appears that the bill would not allow for an analysis of the cumulative impacts from all groundwater uses on a surface water source for a senior surface water right.

The bill introduces a standard of "impairment or interference" defined as 0.1 cubic foot per second (cfs; approximately 45 gallons per minute) of reduced streamflow within one season of use of the senior right. Based on an initial analysis of how this would affect allocations of new groundwater rights, it appears that the individual criteria of 0.1 cfs would be more protective on larger streams and less protective on smaller streams in comparison to how the Department currently evaluates new allocation requests.

The bill allows a registered geologist to submit site-specific data for an individual groundwater use and declares that site-specific data is substantial evidence. The bill does not address the standards for such data, the type or nature of the data, or what to do if two different registered geologists submit site-specific data with interpretations that contradict each other. In addition, it is unclear how the senior water right holder can obtain site-specific data if collection of that data requires entry onto the property of a junior water right holder. Finally, even if the body evidence contradicts one piece of site-specific data submitted by a registered geologist, the bill would result in that one piece of data being considered "substantial evidence."

Current Application of Law Governing Groundwater and Surface Water

Under the current [OAR 690-009](#) rules, the Department evaluates new groundwater right applications for impacts to surface water using a number of different criteria. These criteria include the rate of appropriation, a percentage of the natural flow or a percentage of the instream water right (if present) of the nearest stream reach, and the calculated stream depletion following 30 days of pumping. OAR 690-

009 also includes an allowance for consideration of the cumulative impacts from pumping wells on surface water.

OAR 690-009 allows regulation of junior groundwater uses either individually or cumulatively to protect senior surface water rights when the regulation would provide effective and timely relief to the surface water source. Junior groundwater users within ¼ mile of the lower Umatilla River have been regulated off most summers since the early 1990s in response to validated calls made by a senior irrigation district. Junior groundwater users within one mile of tributaries to Upper Klamath Lake were regulated off in 2018 under OAR 690-009 in response to validated calls made by a senior instream determined claim holder. In addition, between 2015 and 2017, junior groundwater users in the Upper Klamath Basin were regulated under basin-specific rules based on the Upper Klamath Basin Comprehensive Agreement, terminated in December 2017 by the Secretary of the Interior. In April 2019, the Water Resources Commission will be considering adoption of interim local rules, while further engagement is conducted in the Upper Klamath Basin to develop a longer-term approach for groundwater management.