



Oregon

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Testimony for Senate Bill 710
Senate Committee on Natural Resources
Senator Jeff Golden, Chair

Submitted by: Bryn Hudson, Legislative Coordinator
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Thank you for the opportunity to provide information related to Senate Bill 710, which defines criteria for jointly managing groundwater and surface water. This testimony is provided for informational purposes and the Department is not taking a position at this time.

The Department's Understanding of SB 710 and Implementation

SB 710 affects the joint management of groundwater and surface water in the evaluation of new groundwater right applications (ORS 537.629), controlling groundwater interfering with a senior surface water right (ORS 537.525), and in Department rulemaking (ORS 537.780).

Senate Bill 710 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 and senior surface water rights. OWRD is still evaluating if and how these changes may interface with state scenic waterway laws.

The bill introduces a standard for "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 individual groundwater right. In addition, for new 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, which are based on a percentage of expected streamflow for a connected stream, among other criteria in OAR 690-009 (noted below).

The bill allows a registered geologist to submit site-specific data for an individual groundwater use and declares that site-specific data are 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 the data requires entry onto the property of a junior water right holder. Finally, even if all of the body of evidence contradicts one piece of site-specific data submitted by a registered geologist, the bill would result in that one piece of site-specific data being elevated above all other data and evidence.

Under section 2, it appears there is a drafting error under subsection 9; it makes the entire section “subject to” ORS 537.796, instead of previous text that stated it was “except as specified” in ORS 537.796.

Lastly, this bill removes the Commission’s police powers pertaining to groundwater, which may limit the Commission’s authorities and reduce the ability of the Commission to take actions to protect groundwater resources.

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, distance between a well and a hydraulically connected surface water source, 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 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 hydraulically connected to, and within one mile of tributaries to Upper Klamath Lake were regulated off beginning in 2014 and ending in 2018 under OAR 690-009 and later 690-025 in response to validated calls made by a senior instream determined claim holder. Following a decision in Marion County Circuit Court in 2019 related to 690-025, no additional groundwater regulation has occurred in the Klamath Basin.