A Shifting Framework for Curtailment and Voluntary Joint Action

This document includes a compilation of written and spoken remarks made by the Water Resources Department (OWRD) in the Division 512 rulemaking process regarding reductions achived through regulatory curtailment or voluntary action in the Harney Basin.

Prior to December 2024 the Department consistently discussed a framework of "high priority" and "low priority" areas in the basin that would be handled differently due to severity of groundwater declines. Specifically, the Department conveyed the following:

1) Groundwater conditions and levels vary across the basin.
2) "High priority" areas with excessive declines and where "curtailment criteria" had been met would be the focus and would be curtailed through regulation.
3) Voluntary actions and agreements would be encouraged in the "low priority" areas so long as pumpage did not exceed 2018 levels and groundwater levels did not exceed some amount of decline, which would "trigger" regulatory action.
4) The Department supported voluntary agreements and actions alongside of or in lieu of regulatory approaches, seeing that they could provide flexibility in meeting goals as well as the timeline to meet goals.

This framework of "high" and "low" priority areas with a mix of regulatory and voluntary approaches was well understood by the RAC based on repeated statements made by the Department. Between December 2024 and April 2025 the Department modified this foundational framework. The April 2025 draft rules included curtailment from 2018 pumpage levels for all areas regardless of "priority" or subarea specific conditions. This change in the initial framework was altered based on "optimized" model runs that were predicated upon the following policy positions stated and reinforced by the Department:

1) The Harney Basin is a single groundwater reservoir;
2) *Portions* of the groundwater reservoir (notably the "high priority" areas of Weaver Springs and Northeast Crane) meet the criteria for a critical groundwater area;
3) Because *portions* of the reservoir meet the criteria for a critical groundwater area the entire basin can be designated a single contiguous critical groundwater area;
4) Subareas are necessary to ensure that corrective controls produce "timely, measurable, efficient, and similar responses" in the groundwater reservoir;
5) The entire groundwater reservoir *must* meet the "target groundwater level trend" of zero feet of decline by 2058 regardless of subarea specific conditions;
6) Reductions will be calculated from "wet water," which was determined to be modeled 2018 pumpage;
7) The model is best suited to determine the "optimal" permissible use.

October 12, 2022 Groundwater Study Advisory Committee Meeting – Meeting Summary

At a GWSAC meeting to review the final groundwater study, the Department stated that a mix of voluntary and regulatory approaches would be pursued in the basin to pursue reasonably stable groundwater levels. Department staff recommitted themselves to partnership with the community.

> Upcoming November 3rd Groundwater Study Community Meeting
> Justin Iverson (OWRD) shared with the group that the Department has a vested interest in continuing to partner with the community to pursue reasonably stable groundwater levels through both regulatory and voluntary approaches. This dual approach will be covered more in-depth at the upcoming November 3rd Groundwater Study Community Meeting.

April 25, 2023 RAC Meeting #1 – Transcript

OWRD describes that the rules can include a permissible total withdrawal (PTW), but setting a PTW does not necessarily mean that the Department will curtail water use in those areas through a contested case process. A two-step process is described whereby the rules are providing an overarching framework for future regulation. The PTW would describe "allowable use" for each area, but would not necessarily be regulated so long as certain unspecified conditions were maintained.

> **Tim Seymour:** The second thing is a provision determining the permissible total withdrawal of groundwater in the critical area each day, month, or year. So this is where a provision can be set or the critical area or how much water is allowed to be used within that critical area and with
>
> 01:24:56 our division 10 rules we've stated that we can also break that down into sub-areas within the critical groundwater area. So it's not just total for the entire area but it can be total for the entire area and then with sub areas within that can be broken down even further and obviously all the sub areas should add up to the total area of water usage. So that's another thing that's allowed to be written into rule here. Key difference here, though, is this rule does not curtail any water use yet so even if this rule is adopted
>
> 01:25:30 water use cannot be curtailed until we have gone through a contested case process and everybody has had their opportunity to contest any order curtailing use. So while we may set an actual limit to the water use for a critical area, no water use gets shut off until final orders have been issued by the Water Resource Commission after a contested case hearing has been held. So there's two steps to

this process to curtail use the first is to set in rule what the total use can be and then the second process would happen after

01:26:05 those rules are adopted. There would be orders from the Water Resource Commission curtailing use and then the implementation of those curtailment orders after a contested case. So there's multiple steps to this process. **In this process the division 512 rulemaking what we're looking at is setting the total permissible withdrawal for that critical groundwater area and for those sub areas. So setting how much water can be used** and we won't be looking at specifically what the orders will be curtailing that use. We'll absolutely talk about who would be affected,

01:26:43 what that looks like, but we will not have an order issued until after these rules are adopted.

Ivan Gall: This is really I think an important part for everybody to understand is how involved the critical area of designation is just the rule process for setting up the boundary, setting up sub areas, possibly doing some of these other things here. But nobody gets shut off, nobody's regulated by that process, there's no curtailment, no changes to exempt use wells. Everybody keeps using the same amount of water that they've been using with the process that

01:27:25 **we're dealing with the rules here today. Going beyond that, so when these rules get adopted in 18 months or longer... so that's a year and a half out. Continue what we're doing for that long. That gives folks a lot of time to start looking at these sub areas, it gets folks to start figuring out priority dates within the sub areas. We'll have water use numbers and estimates for each of those sub areas and we'll also have what we believe to be based on the data and the rate of groundwater level decline in those sub areas what's the**

01:28:05 **reasonably stable or sustainable annual yield is the term that we use a lot. How much can be pumped to only have one foot of decline per year, or a half foot of decline per year, or five feet of decline increases. We can provide those numbers and they're going to be pretty accurate. That information is going to help place-based planning. It's going to help local groups so the groundwater pumpers get together and be like wow it looks like we might need to do X if we want to get to this condition. So they'll start to have numbers and can start**

01:28:41 **to have conversations about how are we, as a water user community in this sub area, going to start reducing our groundwater use in order to get to some target that we think we have to be at. I don't know that the**

Department's going to agree with the target that the water users want to agree, that's going to be the squishy stuff. How fast do we get there and where do we end up or really the two critical questions I think that are out there for folks. But understand that we're really embarking on a fairly lengthy process here and that's

01:29:20 **step one of step two and step two is actually a much more involved and lengthy process. If voluntary agreements don't get us to the reductions in groundwater voluntarily and through the CREP program. Graham's here tonight, he can talk about the CREP program that we're working on. Other options and alternatives that the community can come up with to reduce groundwater pumping to stabilize those groundwater levels. If those things in total don't get us to where we need to go across the basin or within these sub areas then the Department's tool is the next**

01:29:59 **step, step two, of the critical groundwater designation and that is a long involved process.** We haven't designated a critical area and done curtailments in over 30 years. So I'll leave it at.

[...]

Mark Owens: Mark, thanks Ivan, your explanation of the committee will probably provide options for the different areas to work through slowing down the rate of decline so that helps a lot of the conversation, that it's just not to check the box. That we're going to be actively... so let me just help summarize so the designation of a critical groundwater doesn't have to lead to curtailment of water to regular irrigators.

Ivan Gall: Correct.

Mark Owens: So if a critical groundwater designation is made there still would be options even

01:32:36 **in sub areas to get community input on what would be the best way to meet desired goals and how to reduce use**

Ivan Gall: Yes.

Voluntary approaches were highlighted by OWRD as well as implementation of the place-based plan.

Alexandria Scott: For folks online this is Alexandria Scott with the Oregon Water Resources Department. I just want to highlight something that maybe we didn't

mention earlier, but back in November of last year we had a community meeting and we talked a little bit about the

00:35:13 integrated approach and how we were thinking about groundwater level stabilization in the Basin**. We actually highlighted there's two sides of the coin. So there's regulatory and there's voluntary. Voluntary is really where the place-based planning, the voluntary agreements, those gain traction.** And we have folks from the place-based planning group on our rules advisory committee. I meet with them every month and give them updates on how to prepare for the rule making. So we do have folks at the table to help advocate

00:35:45 for some of the strategies in the groundwater portion of their place-based planning. So just for newer folks in the audience or folks online, that's just another thing to consider today is that we do have folks that can advocate for the kind of voluntary strategies and ideas. We do have folks involved and their voices heard at the table today.

April 25, 2023 RAC Meeting #1 – Meeting Summary

In its presentation OWRD describes that the criteria for a critical groundwater area designation have been met in *parts* of the Harney Basin, which they are defining as one groundwater reservoir. OWRD focused its presentation on regulatory tools to reduce groundwater use and invited conversation about the goals as well as the timing and amount of reductions. Voluntary approaches and place-based planning were also briefly mentioned as ways to reduce groundwater use. The Department indicated that there are "significant management issues" in some parts of the basin and other parts of the basin are still "theoretically open to groundwater development." This highlights the different conditions and the consideration of both regulatory and voluntary approaches.

Questions and comments from the RAC on this agenda item

RAC Member: Are classification, SWMPA and CGWA designations really the only tools that the Department has to reduce groundwater use? Are we just going to repeat what we have done in other basins are or are we going to try and do something different? That is what I am trying to figure out.
Answer: Ivan said we are here to listen. What Kelly is presenting here are the tools the Department has available to us in rule. Voluntary agreements are briefly mentioned in statute in a generic way and there is also a place-based planning process that is going on down here. We are trying to get us to a point where we can deal with the significant management issues in the area. We have an ability to continue allocation in this basin, even though the groundwater was classified in 2016 within the GHVGAC area within the Study area. What the Study found was that we're dealing with one groundwater reservoir system up in Grant County down to the Donner and Blitzen system. Some of those areas are still theoretically open to groundwater development which is an issue we would like to address sooner rather than later. It is going to take us years to address these issues. Help us figure out how we should engage with the public and at what frequency.

OWRD acknowledged that critical criteria were met in a portion of the basin and indicated that they would bring a proposal of the critical groundwater area boundary to a future meeting but could also consider different management approaches in subareas.

Scope of rulemaking (Tim Seymour)
What we know is that we have met the criteria of excessive groundwater declines in areas of the Harney basin (excessive decline 3ft/year for 10 years or have declined 50 ft/year) and we have also met the criteria of the groundwater supply is or is about to be overdrawn. To address these issues OWRD has 3 regulatory tools: classification (limits future use), CGWA (curtails current use) and SWMPA (measuring and reporting current use) designations. Tim highlighted for the group that the Harney Basin Study area is what we consider the groundwater reservoir and is the max area we could pursue based on the excessively declined criteria for a CGWA. OWRD will bring a proposal of the boundaries and criteria to the next RAC for discussion so we will not be discussing that today. Tim walked through the corrective control provisions within a CGWA rule that ORS 536.735 authorizes (see slide 27 of the PowerPoint for the full list).

Questions and comments about this agenda item
RAC Member: What about subareas it isn't just one area we are seeing declines and we are seeing them at different rates?
Answer: Tim answered yes, we can do that in these rules.

August 29, 2023 RAC Meeting #2 – Transcript

OWRD presents an initial "15 subarea" framework and reiterates that it does not anticipate curtailing all areas and emphasizes that this is open to discussion.

> **Darrick Boschmann**: **I want to be clear that the department does not anticipate requiring curtailment in each of these 15 subareas. So how that curtailment process is timed**
>
> 00:24:31 **and implemented is open to discussion. There's a lot more conversation that'll be had with the RAC about how that moves forward.**

OWRD highlights the Silver Creek area and describes that area as having a relatively small magnitude of decline and indicates the Department does not have serious concerns about this area.

> **Darrick Boschmann:** The Upper Silver Creek sub area is an example of one of the larger sub areas that we proposed here. So this sub area covers land surrounding the Silver Creek Valley
>
> 00:40:24 including Silver Creek and the lower reaches of its primary tributaries. Chickahominy Reservoir, Moon Reservoir and the surrounding Upland areas. The sub covers from the Western margin of the Basin over to the head of Sagehen Creek and from dry Mountain down to the bottom of Moon Reservoir. Groundwater levels

in the upper Silver Creek sub area have declined over 10 feet in some areas with a median annual decline rate of half a foot per year. So this is a relatively slow rate of decline and a relatively small

00:41:00 magnitude of decline as seen in some other parts of the Basin. So this map here again shows the distribution of total decline values across the area. And you can see that you know the majority of wells have declined less than 5 feet. **This is not an area where we're seeing serious declines or where we have serious concerns at this point about the rate of decline occurring over there.**

August 29, 2023 Meeting #2 – No Meeting Summary.

No meeting summary available.

October 25, 2023 Meeting #3 – Transcript

Members of the RAC expressed concern about whether or not it would be explicitly stated in the rule that areas without significant declines would not be subject to curtailment. OWRD indicated that the permissible total withdrawal in those areas would be set at current levels of pumping or authorized use to make it clear that curtailment would not occur. Curtailment would be focused in overdrawn areas with significant declines.

Lorissa Singhose: So we have all the sub areas now. Are we 100% set, like the whole basin is going to be

00:58:40 considered critical groundwater area or we going to have a discussion if things actually are going to definitely be put in or not

Tim Seymour: So the… it is still a proposal that the entire GHVGAC boundary be used as the critical grounder area boundary. I think if you have strong feelings about that and you want to discuss that we absolutely should do that.

Lorissa Singhose: I don't know, maybe I'm the only one but I don't think that every sub basin warrants putting in just because I guess I don't… maybe the question is, in the rules is it going to

00:59:21 say what each sub basin, you know, like, **obviously some of these are going to have their own little rules of, you know, curtailment. But the ones that aren't subject to curtailment, is it going to specifically say that in the rules? Because I don't want to like sit here and we get it all done and two years later you get a letter in the mail and say oh by the way surprise you guys are being curtailed because you are in a critical groundwater area and we're allowed to do that because it says that in the rules.**

Tim Seymour: So in,

00:59:55 yes, so that's a really good question so in the critical groundwater area rules we have to define in rule what the boundaries are and then what the permissible total withdrawal is right and the PTW is the amount of pumpage allowed per sub area and for the entire critical groundwater area. **So if we decide not to curtail in a sub area, let's call it sub area A to keep everything hypothetical, if in sub area A we're not going to curtail, then we would write in rule that the permissible total withdrawal for that area is going to be**

01:00:32 **X and likely that would match either the current groundwater use or the authorized groundwater use within that area. And so without a rule change we could not curtail that sub area because we could not go and issue an order, and by we I mean the commission as a whole, could not issue an order curtailing use to below that number. So having the sub areas defined does not mean that they'll be curtailed and whatever ends up in the final rule sets up the future management schema for that sub area and any orders**

01:01:13 **have to match with those rules**

Lorissa Singhose: **Okay so if you're not going to curtail a sub area why put it in the critical... Why designate it critical if you're not going to do anything with it?** Because it could be added later

Tim Seymour: Correct so remember that curtailment is not the only tool we have in a critical groundwater area. We can also deny all applications

Lorissa Singhose: Right but could that not be a separate thing that's not... because you're not in a critical area?

Tim Seymour: It is not possible for the Department to deny applications outright outside of a critical ground

01:01:45 water area. We do have have the authority

Lorissa Singhose: But couldn't it be put in Basin rules?

Tim Seymour: Even in basin in rules we cannot prevent... because the statute specifically states it has to be a critical groundwater area in order to outright deny an application

Mark Owens: You could not process them though for an eternity

Tim Seymour: We can classify but any applicant could ask for a waiver from the commission against that classification and potentially get a waiver from the commission and get a groundwater permit approved. The critical groundwater area would allow us to block

01:02:26 the submittal of an application completely. And so that's one potential reason. Another reason is that it will allow us, or could allow us, to set ourselves up for thresholds at which point we would come back and do a future rulemaking to curtail. **So we have groundwater declines happening throughout the entirety of the critical groundwater area, like within the GHVGAC boundary and they're happening at different rates and they're happening at... and we have different magnitudes. And so by putting it all into a framework**

01:03:04 **with thresholds we can help incentivize voluntary groundwater reduction because it would let everyone in that sub area know that when we cross this threshold then we're looking at going back to a rulemaking and further action from a regulatory standpoint. And so it sets up the Basin as a whole to continue to focus on voluntary reduction of groundwater use to prevent crossing certain thresholds. So that would be another reason why we are considering a larger boundary with sub areas within it for**

01:03:48 **targeting or prioritizing curtailment in specific areas.**

Fred Otley: So go on upper Silver Creek and you go south of Malheur Lake which now has two sub areas: upper Blitzen and lower Blitzen. Like in that particular area you have very few wells, irrigation wells, ground water usage wells, until you get to the northeast corner. And again, there's lots of diversity in there. What is the benefit? There's not a lot of data there

01:14:57 either. What is the benefit of that area, or the Upper Silver Creek for that matter, to a little lesser degree, but still somewhat similar, to the department. How to create a system of management and water use planning overall. All I see is, I guess, I see lots of negatives from being in that particular area when the level of data is just almost nonexistent till you get the two primary irrigation areas and they're small. **I guess I don't see, I won't say a benefit, but I don't see a**

01:15:46 **real reason to have that whole southern part in the critical groundwater area and for that matter Silver Creek either.** But anyway I'm sure the department disagrees with me on that but, you know, we've changed their mind, they've changed their mind on how those flows actually function in that area and where the recharge areas primarily are so I just don't see a lot of positives from

groundwater use perspective of having that part of the critical area. It kind of gives everyone in these areas… it kind of gives

01:16:37 everybody… I like the differentiation of the sub areas because at least then we can argue a case and we're not lumped automatically in. So I like that part of it because there's a lot of different subareas. I just really have a hard time…Malheur lake is a separation. I grant water, all groundwater is connected, I understand, it's such a different cat from everything to the north. I just… anyway so I basically disagree with it being in the critical groundwater area.

Tim Seymour: Okay so can I ask a question then. Can you expand on… then if there's no curtailment in

01:17:30 those areas. **Let's just say that there's not going to be curtailment. But as I said one of the strategies is to try to put thresholds in place to make sure we don't see groundwater declines past a certain point. What are those negatives that you said of being in the critical area or having those sub areas in the critical area**?

October 25, 2023 Meeting #3 – Meeting Summary

OWRD led a discussion about what curtailment criteria would be used in the basin to trigger curtailment. Generally speaking, the proposed criteria followed the criteria for critical groundwater area designation and relied on groundwater level declines as the metric for determining when curtailment would occur.

Gerald Grondin led a presentation of the possible criteria for curtailment with other OWRD staff providing additional information and insight. RAC members shared the following questions, concerns and requests:

- The following concerns about data and what is representative of a subarea were shared:
  - Should be an average of wells for rate and magnitude.
  - If not an average, then some sort of weighted average using priority date could be considered
  - Would like to see statistics around data – range, median, mean, maximum, minimum.
  - How do we normalize the data?
  - How do we deal with the shallow wells versus the deep wells?
  - Is the data punishing people with old wells because they have longer periods of record?
  - Historic data and recent data should feed criteria.
  - Consider fluctuation of water levels
  - How are areas of recharge, from one subarea to another, considered?
- Consistent feedback was provided that OWRD should not focus on 4080 above mean sea level (amsl) as an arbitrary cutoff line as it may spatially bias the process.
- Questions and concerns were expressed about what constitutes a well-defined cone of depression.
- The data should clearly separate the conversation into multiple parts:
  - Criteria for ranking subareas for curtailment
  - Characterizing the status of each subarea
  - Setting thresholds for when to curtail
  - Goal of curtailment - reduce rate of, halt, or recover declines.
- Curtailment goals should be different by subarea based on conditions.
- Timeline for implementation of curtailment needs to be laid out. Could the timeline be tied to data confidence?
- Move forward regardless of data concerns since we'll never have perfect data. Build in the requirement for review.
- The value of setting unattainable goal numbers was questioned.
- Concern was expressed about the potential negative economic impacts to the community from curtailment. There is interest in a glide path to not let this impact the community significantly by building in phased curtailment, flexibility to the rule, and implementing subarea specific public processes to explore voluntary agreements and alternative land uses that could help with community buy-in and momentum for future subarea curtailment.

October 25, 2023 Meeting #3 – PowerPoint Presentation

In the PowerPoint Presentation developed and delivered by OWRD the Department examines subareas as well as prioritization of subareas and criteria for curtailment in each subarea. OWRD suggests subareas can be used for voluntary agreements. OWRD shows areas with different conditions, contrasting an area with excessive declines and an area with minor declines. OWRD focuses its examples for curtailment in the Weaver Springs area. OWRD emphasizes that not all areas will be subject to curtailment.

What is a subarea?

A CGWA subarea is a portion of a groundwater reservoir that shares similar hydrogeologic properties and similar groundwater conditions including groundwater level elevations, seasonal and annual water level trends, and response to natural and human stresses.

The intent of dividing a CGWA into subareas is to group wells that similarly impact the local portion of the groundwater reservoir and where reductions in groundwater pumpage, through voluntary or regulatory action, will have a timely, measurable, efficient, and similar groundwater response within that sub area.

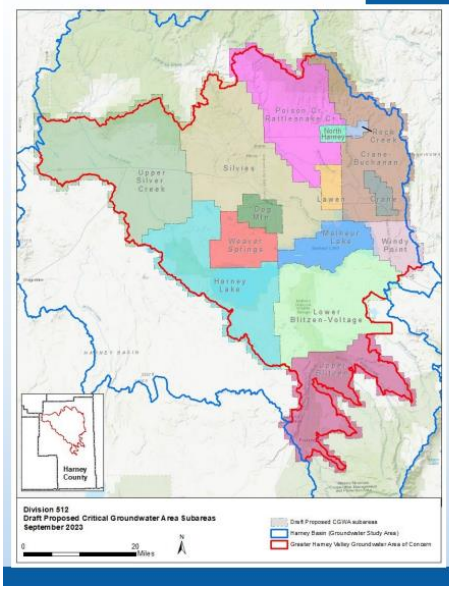
How can subareas be used?

Subareas can be used in several ways:

- Voluntary Agreements: Subareas clarify which groundwater users could work together on a voluntary agreement within that portion of the groundwater reservoir.
- Curtailment: Subareas can facilitate targeted curtailment implementation within the CGWA with the goal of reducing groundwater level declines within portions of the groundwater reservoir where declines are most severe. This approach attempts to minimize the impact to groundwater rights not located in areas of greatest decline.
- Transfers: Under consideration is the concept that subareas could be useful to help assess "same source" for the purposes of transfers, meaning that transfers within a sub area could be allowed and transfers between sub areas may not. Again, this relates to timely, efficient, and similar impacts with respect to establishing subareas.
- Water use measurement and reporting (SWMPA): Subareas can facilitate targeting water use measurement and reporting requirements to specific areas, which may delay the cost and burden of measurement and reporting in other portions of the CGWA.

OREGON WATER RESOURCES DEPARTMENT

Harney Basin Critical Groundwater Area Proposed Subareas



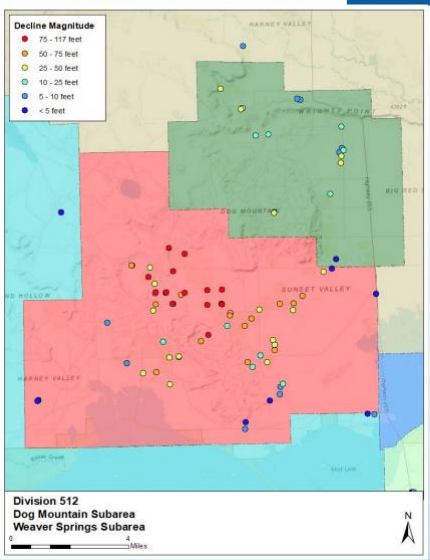
15 Proposed Subareas:

1. Upper Silver Creek
2. Harney Lake
3. Weaver Springs
4. Dog Mountain
5. Silvies
6. Poison Creek – Rattlesnake Creek
7. North Harney
8. Rock Creek
9. Crane – Buchanan
10. Crane
11. Lawen
12. Malheur Lake
13. Windy Point
14. Lower Blitzen – Voltage
15. Upper Blitzen

The Department does not anticipate curtailment in all subareas. How the curtailment process is timed and implemented is open to discussion and has not been determined.

OREGON WATER RESOURCES DEPARTMENT

Harney Basin Critical Groundwater Area Dog Mountain & Weaver Springs



Dog Mountain Subarea:

Groundwater levels:

- Declined over 35 feet in some areas
- Median annual decline rate of about 1.5 feet per year.

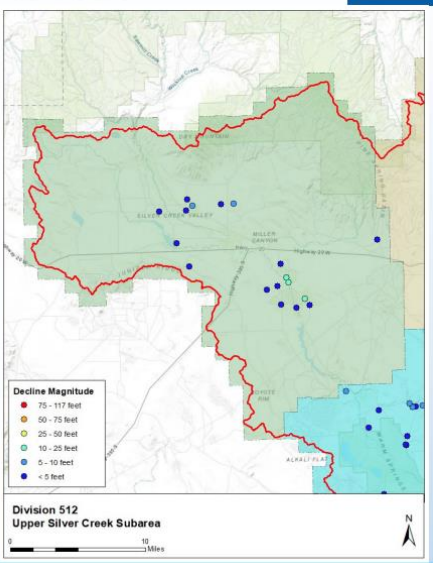
Weaver Springs Subarea:

Groundwater levels:

- Declined over 100 feet in some areas
- Median annual decline rate of more than 5 feet per year.

OREGON WATER RESOURCES DEPARTMENT

Harney Basin Critical Groundwater Area
Upper Silver Creek Subarea



Upper Silver Creek subarea:

Groundwater levels:

- Declined over 10 feet in some areas
- Median annual decline rate of less than 0.5 feet per year.

OREGON WATER RESOURCES DEPARTMENT

Proposed Curtailment Priority Criteria

Proposed Criteria for Prioritizing CGWA Subareas for Curtailment

prioritize subareas for curtailment based on the following

1. **Greatest to least groundwater level decline rate (one or more wells)**
2. **Greatest to least total groundwater level decline (one or more wells)**
3. **Deepest to least groundwater elevation below 4080-feet amsl (one or more wells)[3]**
4. **A well-defined groundwater level cone of depression dominates the subarea[4]**

1 4080-feet amsl elevation is below the bottom of Harney Lake (amsl = above mean sea level)
2 Closed GW level contours indicating a depression (a "sink" or low point)

OREGON WATER RESOURCES DEPARTMENT

Proposed Curtailment Priority Criteria

Proposed Criteria for Prioritizing CGWA Subareas for Curtailment

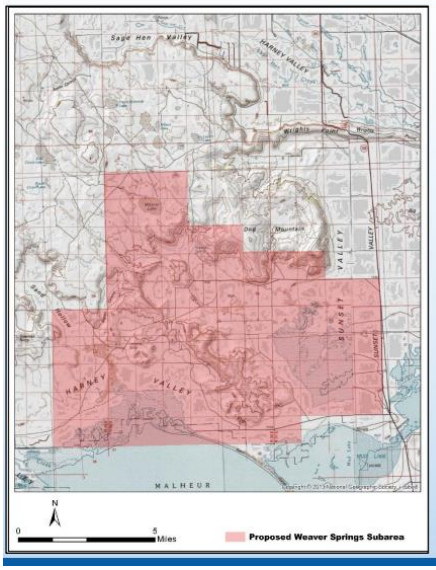
(Example: prioritize subareas where one or more of the following occurs)

1. A GW level decline rate of 3-feet per year or greater exists within the subarea[1]
2. A total GW level decline exceeding 50-feet exists within the subarea[2]
3. A GW elevation below 4080-feet amsl exists within the subarea[3]
4. A well-defined GW level cone of depression dominates the subarea[4]

1 Adapted from OAR 690-008-0001(6)(b)
2 Adapted from OAR 690-008-0001(4)(d)
3 4080-feet amsl elevation is below the bottom of Harney Lake (amsl = above mean sea level)
4 Closed GW level contours indicating a depression (a "sink" or low point)

OREGON WATER RESOURCES DEPARTMENT

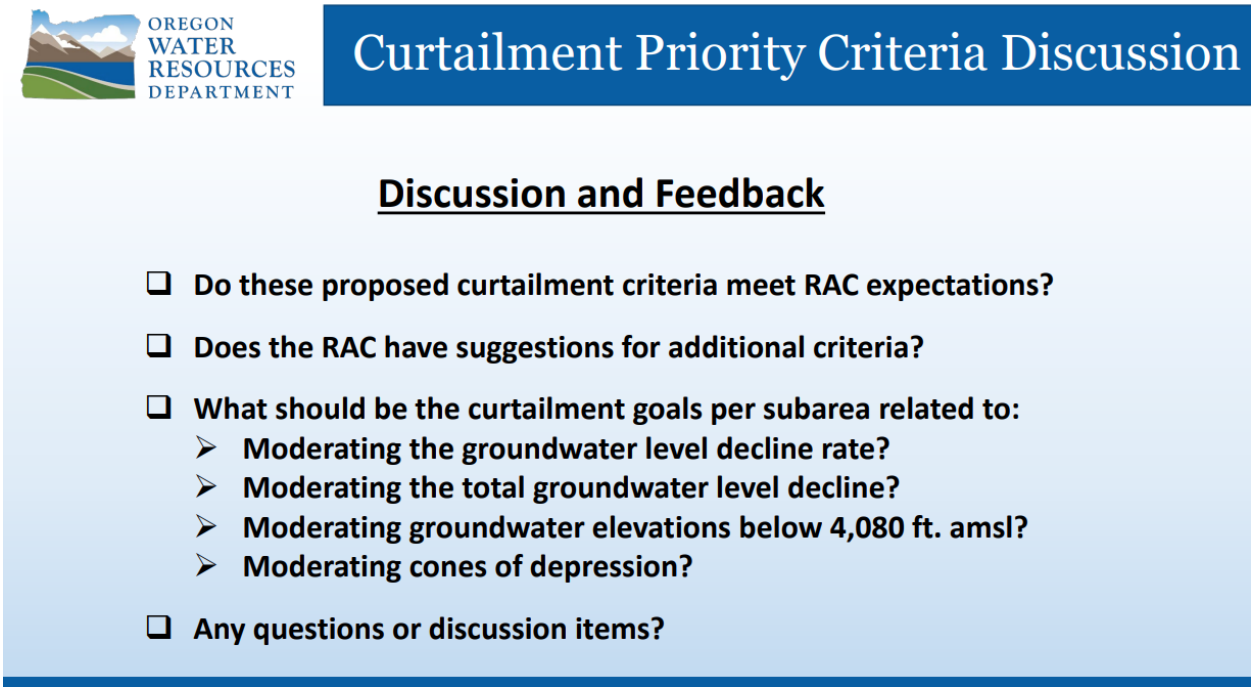
Curtailment Criteria Example



Proposed Weaver Springs Subarea

(all of the example prioritized curtailment criteria occur)

1. A GW level decline rate of 3-feet per year or greater exists within the subarea.
2. A total GW level decline exceeding 50-feet exists within the subarea.
3. A well-defined GW level cone of depression dominates the subarea.
4. A GW elevation below 4080-feet amsl occurs within the subarea.



October 2023 RAC Meeting #3 – Subareas Explainer Memo

The subareas explainer memo distributed in **October 2023** describes the original framework outlined by the Department. This framework proposed 1) regulation in priority areas with more severe declines and, 2) use of "curtailment criteria" in other areas to incentivize voluntary agreements and limit the need for curtailment by regulation in other areas. Select quotations are included below.

> "Please note that while there are 15 proposed subareas, the Department does not intend to propose curtailment in all of them."
>
> **"Will all subareas have groundwater use curtailed?** The Department will discuss at RAC #3 OWRD proposed curtailment criteria and RAC alternative ideas. One possible approach is to apply the criteria adopted to each subarea to determine if or when groundwater use should be curtailed. The Department does not anticipate curtailment in all subareas. How the curtailment process is timed and implemented is open to discussion and has not been determined."
>
> **"How will curtailment criteria be applied to subareas? The Department anticipates establishing curtailment criteria for the entire CGWA that are applied universally when evaluating each subarea for a possible need for curtailment. The criteria could function as a curtailment threshold for each subarea. If the curtailment threshold is crossed, curtailment implementation would follow applicable statutes and rules. The Department hopes the**

curtailment threshold would function as an incentive for voluntary agreements between water users within a subarea to prevent crossing the threshold and subsequent regulation within that subarea."

November 29, 2023 RAC Meeting #4 – Transcript

The RAC discussed the potential for three subarea rankings related to groundwater level declines – high, medium, and low – with a focus primarily on the presence or likelihood of excessive declines.

Zach Freed: Yeah thanks. Well I like the coupling of magnitude declines with rates of decline because that helps reduce the impact of period of record. The rates of decline only accounting for the recent six or seven years that's agnostic to how long the well has been around as long as it's been around for six or

02:11:12 seven years. So that's useful. I would add that I think maybe it could be worth looking at three possible buckets. I like the idea of bucketing these different sub areas by priority. That's a useful framework to give a shared understanding of where are we going to focus first for voluntary agreements or curtailment or other actions. I would suggest having a high, a medium, and a low bucket. So having three instead of two as currently proposed. And the reason for that is I was kind of looking for inspiration at

02:11:46 what does Oregon already have that we can borrow from and don't have to reinvent. And what Oregon already has is the declined excessively conditions. One declined excessively condition with respect to groundwater levels is 50 feet or more decline between the highest known water level and present day. The other condition is three feet or more per year. And they don't match perfectly to the analysis that Darrick has presented but they're useful starting points for the discussion. And if you

02:12:22 look at it through that lens then you have six of the sub areas that meet at least one of those two conditions and comparing my approach to the OWRD proposed approach: Crane/Buchanan would qualify as a high priority under what I think is a reasonable approach because Crane/Buchanan has a greater than 50 foot decline in at least one of its wells. **But anyway the benefit of having high, medium, and low could be that high priority are sub areas where wells are excessively decline. Medium priority**

02:12:55 **could be sub areas where wells have not met excessive decline conditions but are going and trending in that direction, that are likely to meet those excessively declined conditions in the near future. And low priority could**

be sub areas with wells that aren't close to meeting either the rate or the magnitude of excessively declined conditions. And I want to be clear we're not really talking about excessive decline rules to my understanding in this rulemaking. It's simply an existing standard that we can borrow from. So I'm

02:13:27 just thinking about it as useful from that perspective.

OWRD emphasized that regulatory reductions would be focused in high priority areas with incentives in place to reduce use in lower priority subareas.

Tim Seymour: So the next step is to talk about goals for curtailment and really at the end of the day what we're trying to talk about here is reduction of use. And so I wanted to sort of bring us back to the opening goal for this entire process back in April. We talked about this. And at the end of the day we're looking to reduce water use Basin wide through straightforward and transparent rules.

02:19:52 That would be the epitome of a goal for us. That's what we're trying to achieve, that's what we're trying to stay focused on here. From a management perspective, as Mark called out, **high priority sub areas are going to be the focus for reducing use in the short term. It's voluntary reduction, regulatory curtailment. That's where we're going to focus. And then lower priority sub areas are going to need some sort of thresholds for future action to incentivize reduction of use. So it's not that lower priority sub**

02:20:22 **areas don't have to bear any of the burden, it's that they're not the top priority for regulatory action going forward.** And so I really want to highlight that. If we can pair the two together as Karen was talking about we can have a focused impact on the areas of most severe decline while also putting in place the structure to start reducing use in all sub areas across the Basin and trying to balance that Basin wide budget. So as we think about curtailment there's inputs we need in order to make effective decisions.

OWRD described the various approaches that could be used to determine PTW, downplaying the need or value for a numerical model and suggesting that timelines for achieving PTW did not need to be included in the rules.

02:37:09 **Ivan Gall: I think we have the data in front of us that we need for the rules unless I'm missing something. The coming up with.... so target water level trend if we stick with that term and that concept, it is what it is. It's either zero or something greater than zero and our approach would be let's shoot for no further declines and we should be able to calculate pretty accurately**

because we have the study of groundwater use in the Basin for a particular sub area or sub Basin. These

02:37:54 **are the trends and water levels we see and this is the amount of use. We should be able to calculate pretty accurately an estimate of the permissible total withdrawal to get us to a decline of zero or of one foot per year or two feet per year. Whatever the number is. The economic model is not going to shed any light on that and the flow model really isn't going to shed any light on that.** I also went through my presentation before the commission meeting with the groundwater advisory committee on

02:38:30 Tuesday of that week and got some good feedback from them. And we were initially thinking we had three tools to come up with the permissible total withdrawal and it really is two. The third tool was the flow model, but the flow model is built on water level data and groundwater use data and so it's not really an independent methodology or tool. Built into it are the first two pieces of data there that would go into establishing a permissible total withdrawal. The rules themselves, mostly what we're talking about today

02:39:10 are the boundaries of sub areas or sub basins. That should be in the rule. That probably will be helpful for us moving forward. The permissible total withdrawal has to be in the rules for the sub basins or the sub boundaries. But the scheduling of groundwater use reduction whether it's done via voluntary agreements, enrollment in the CREP program, or curtailments through the critical groundwater area process none of that is part of the rules that we're working on here today.

OWRD emphasizes that the basin is complex and groundwater levels will respond differently, highlighting the need to manage by subarea.

02:50:57 **Tim Seymour: So the last point is that the groundwater system is complex and thus response to reductions in use are going to be complex. And we've tried to minimize that complexity with sub areas and grouping wells together that track together and that will likely have timely and efficient responses together but it will still be complex. There's no way around that.**

OWRD emphasizes that the rules will not include timing of reductions and those will be specified through voluntary agreements.

03:12:33 **Ivan Gall:** I guess kind of saying it in a different way this is a very complicated and lengthy rules process. The departments embarked on a couple of those at the same time with the ground waterer allocation that's going on. But

writing rules and changing rules is a straightforward process. Agencies do it all the time. We're getting better and faster at it. We don't have to check all the boxes with this process this time around but we need to make significant progress and the community has to recognize

03:13:18 that **in some sub areas or some sub basins significant amounts of groundwater reduction are going to need to occur through some mechanism. How fast we get there is really the question. The rules aren't going to deal with the how fast part. That's going to come through voluntary agreements, whatever details are in the voluntary agreement, the CREP program.** Ground water reductions will occur within 3 to four years, probably, and then they will stop on those Acres that are enrolled. Those things will go dry(?).

03:13:56 And then their curtailment process through the contested case hearing process that's sort of where the scheduling and scoping of how much reduction and on what schedule would go through that contested case process. Weather that storm and see where it comes out at the other end. But that process is not part of the rules process. Really the main thing is boundaries, sub basin boundaries or sub area boundaries. We should get those into the rules so we know what we're dealing with geographically and groups of water users

03:14:35 can start forming and talking. **And then this concept of permissible total withdrawal. Those initial calculations or estimates however you want to characterize it need to get into the rules. They can be changed. It's just open up the rules, change them down the road, close the rules again and move forward. So we do have ways to be adaptive** but we want to get as far down the pathway with this process as we can for any number of different reasons. Your time is valuable, our time is valuable, and we

03:15:13 need to start managing the system that we've got as quickly as we can.

Zach Freed: A quick followup Ivan. That's really helpful context and I don't know that that's a shared understanding. That certainly wasn't my understanding. I thought that the RAC would have to try to wrestle with the rate of change leading to eventual PTW. That's sort of what I thought this slide was about here. But you're saying that the committee's goal is to identify sub areas. The committee's goal is to identify the total PTW but not

03:15:52 necessarily the time to achieve the PTW? Can you reiterate that if I got that wrong?

Ivan: Yeah, Zach. And sorry. I guess it wasn't complete. To get to the PTW we have to have, unless somebody has a better approach, we have to have a target water level trend so the guys can then figure out how much groundwater pumping can continue on to achieve that trend over time. So we do need the target water level trend which gets us to the PTW. **The target water level trend isn't necessarily part of the rules explicitly but it's built into that PTW**

03:16:33 **calculation**. Darrick and Jerry have, I believe, started working on PTWS for each of the 15 sub areas that we've proposed. If we consolidate sub areas into sub basins those can just be added up unless I'm missing something. We'd still have those numbers available to us at that point in time. So does that help?

OWRD and the RAC discussed the conservation practices that have been occurring in the basin and how those can continue to be implemented and tracked over time

03:21:23 **Ivan Gall: Yeah. I think you bring up a good point and you're kind of alluding to maybe where some of these**

03:22:20 **conversations are going about pivoting to that discussion about how the community adapts through changes in practice, through land use changes, through voluntary agreements, through the CREP. There are these things out there that I think are a part of this conversation**. Maybe we've been waiting for the data. Maybe we can just go ahead and get started. Or we need a little bit more. But what you're bringing up is kind of getting to that key point where that's a

03:22:48 discussion that's probably looming now for everybody to start to wrap everyone's heads around what changes need to be made.

Fred Otley: Well it is going on, it is changing. A lot of people are automatically reducing their use due a number of practices going on like Gary brings up. I want to remind everybody we've had a lot of conversations on it. You need to be rewarded… strong word…

Female: Incentivized

Fred Otley: Well that too. **But I was thinking when these changes of conservation have been going on you need to get credit for them as you go**

03:23:32 **forward so day zero isn't today when you've been doing those kinds of practices for five years. So that comes into play here too and it does get into the rule a little bit on how you implement those.**

Kristin Shelman: **Well I think that feeds into the voluntary agreement discussion though within a sub basin a voluntary agreement could include having modifications to irrigation and those are places where that would drill down in these specific areas and having agreements because that would automatically reduce and within that**

03:24:09 **subbasin a certain amount of usage. And so I think we're all itching to see what a voluntary agreement could actually look like on the ground in a sub-basin because that's where the rubber meets the road of how much reduction you can actually get to without going to Priority B (meaning curtailment).** But the thing I want to make sure, and I know I'm speaking to the choir here, but we do not forget the impact to our utilities. If irrigation gets shut off in this County none of us will be able to afford the power. There won't be a homeowner

03:24:46 left in this County that can afford their power bill if all irrigation shuts off. Our irrigation subsidizes our utilities and that impact we don't even have the ability to wrap our head around currently.

OWRD again describes its intended approach to focus primarily on areas of the greatest amount of decline.

Ivan Gall: Again, I'll go back to one of my general statements. The approach that we've been working from, and it's based on the agency's history and being more reactive than proactive, is **we're focusing a lot of**

03:40:20 **our attention on the areas where the decline totals, the magnitude of the decline, is significant and where the rate of decline is high**. And we want to get that slowed down as quickly as we can so that that doesn't get worse because with those rates we've tried to get people thinking about that and I tried to get our committee thinking about that. Time really matters. At 10 feet per year in 10 years, and we've been at this for eight, since 2015. We're going to lose another 100 feet a head. Weaver Springs is below 100

03:41:03 feet we'll be at 200 ft on its way down. These things don't self correct. We have to fix it or we have to absorb the costs of those continued declines. And so **our focus has been on the four, five, 6 sub areas that have the cones of depression and the fast rates of decline. We really haven't considered the broader Basin and the broader water budget question: what should be done there. It's a lower priority for us, I guess, is the way that I would look at it. We'll have more time because the damage being**

03:41:41 **done there, the decline rate isn't as bad. And so those cumulative totals over the next five or 10 years are acceptable to us. That's not a great word but we've only got so much capacity to handle it.** If you guys think a better approach is taking a look at the Basin as a whole, the whole critical groundwater area, kind of what Chris Hall was getting at, we can look at options to do that and see what that would look like but it's either going to be… The one thing that I would say, and I'll look

03:42:24 to Jerry and Darrick here for confirmation… I'm gonna use rough numbers. I forget what the data is, Weaver Springs current use is something like 25,000 acre ft year. A 10,000 acre foot reduction in Weaver Springs is going to show a positive change in water level declines. We'll see those start to flatten out. If we take the Silver Creek Basin and spread 10,000 acre feet of reduction across the Silver Creek Basin we aren't going to see anything. We'll know that there's a reduction in use and we'll know that

03:43:07 we're heading in the right direction but the results of that aren't going to be obvious for some time. And so that's just something else for all of us to kind of consider along those lines. So Jerry, Darrick, any thoughts on that?

Jerry Grondin: I'm here. I don't really have much to add to that.

Ivan Gall: So again the Department's been focused on the areas with big declines and fast declining groundwater levels. We can pivot and take a look at the sub basin approach and see what that would

03:43:58 look like. We can present PTW's for these 15 sub areas and sum those up for the sub-basins and compare and contrast those to the current water use estimates within those same areas there. But we're sort of faced with the same issue. **We've got to start reducing water use through some means and there's lots of Alternatives: LESA systems, the voluntary reductions, CREP, curtailment through the contested case process. And then the big question is how fast… when we start and how fast we progress down that path?**

November 29, 2023 RAC Meeting #4 – Meeting Summary

The RAC discussed three subarea rankings related to groundwater level declines focused primarily on the presence or likelihood of excessive declines.

Data Discussion (2:20-3:00 PM)

Darrick Boschmann led a presentation of the available data and how it is interpreted with other OWRD staff providing additional information and insight.

Subarea Rankings (3-3:30 PM)

Tim Seymour led a presentation of the draft subareas rankings with other OWRD staff providing additional information and insight. RAC members shared the following questions, concerns and requests:

- Add mid bucket: There are 2 available measurements (50+ feet of decline and 3+ feet of decline per year). Restructure groups:
  - High (excessive decline): Areas that have met a measurement
  - Medium: Nearing a measurement
  - Low: No excessive decline

NEXT STEP: *OWRD will re-evaluate number of buckets and criteria*

Goals for Curtailment (3:30-4:30 PM)

Tim Seymour led a presentation and discussion on curtailment goals with other OWRD staff providing additional information and insight. RAC members shared the following questions, concerns, and requests:

- If you want to halt decline you are going to kill the community.
- Irrigation subsidizes the power company and the utility infrastructure.
- OSU developing an economic study tool that can provide some insight
- 110 of 135 feet of reduction is OWRD's aspirational target
- Curtailment model will tell us the extremes: If you shut off all the wells and if you don't stop pumping
- Time cuts both ways: Faster will have less impact on subarea neighbors but will come at significant economic cost

November 29, 2023 RAC Meeting #4 – PowerPoint Presentation

OWRD presented on the proposed "ranking" and prioritization of subareas using existing data.

OREGON WATER RESOURCES DEPARTMENT

Groundwater Level Decline Magnitude

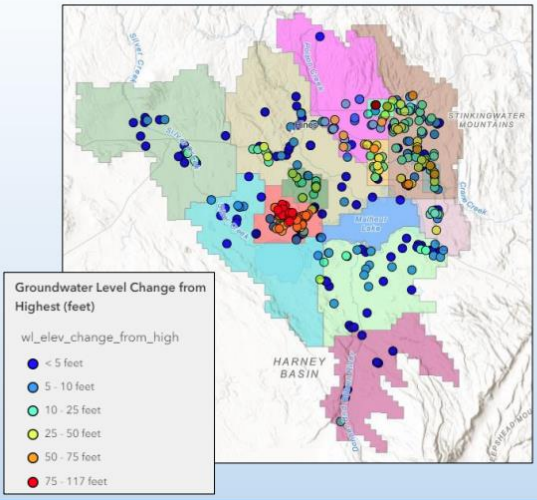


Table 1: Summary statistics of groundwater level decline magnitude by subarea. Negative values indicate a declining trend. (n= the number of wells for which decline magnitude could be calculated).

Subarea	Minimum Magnitude (feet)	Maximum Magnitude (feet)	Average Magnitude (feet)	Median Magnitude (feet)
Weaver Springs (n=64)	-116.9	-0.1	-49.0	-49.9
North Harney (n=9)	-83.0	-9.1	-38.7	-33.1
Crane (n=24)	-68.8	-2.7	-25.2	-22.0
Lawen (n=21)	-59.6	-0.1	-21.7	-19.0
Dog Mountain (n=18)	-37.2	-1.5	-17.9	-17.0
Rock Creek (n=16)	-69.8	-4.7	-19.0	-15.0
Windy Point (n=10)	-25.7	0.0	-13.7	-13.9
Crane-Buchanan (n=50)	-52.0	-0.9	-16.5	-12.5
Poison Ck-Rattlesnake Ck (n=25)	-45.3	-0.2	-14.2	-12.1
Lower Blitzen-Voltage (n=42)	-39.8	0.0	-5.9	-4.4
Silvies (n=32)	-29.3	-0.3	-6.9	-4.2
Upper Silver Creek (n=17)	-13.2	-0.7	-5.0	-3.5
Harney Lake (n=16)	-9.0	-0.1	-3.7	-3.2
Upper Blitzen (n=7)	-10.4	-0.1	-2.1	-1.1
Malheur Lake (n=2)	-0.7	-0.5	-0.6	-0.6

- n=number of wells evaluated

Groundwater Level Decline Rate

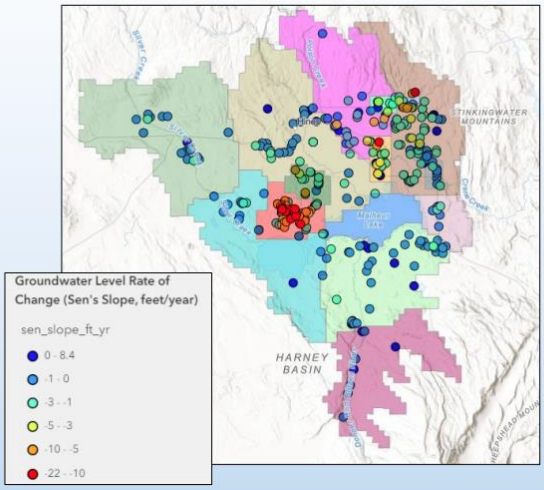


Table 2: Summary statistics of groundwater level decline rate by subarea. Negative values indicate a declining trend. (n= the number of wells for which decline rate could be calculated).

Subarea	Minimum Rate (ft/year)	Maximum Rate (ft/year)	Average Rate (ft/year)	Median Rate (ft/year)
Weaver Springs (n=58)	-22.0	8.4	-5.9	-5.4
North Harney (n=9)	-4.8	0.4	-1.7	-1.0
Crane (n=23)	-4.9	2.0	-1.1	-1.0
Lawen (n=21)	-13.7	0.8	-2.5	-2.0
Dog Mountain (n=19)	-5.6	-0.5	-2.2	-1.5
Rock Creek (n=16)	-14.0	-0.1	-4.5	-4.6
Windy Point (n=7)	-1.1	0.0	-0.7	-0.9
Crane-Buchanan (n=49)	-4.0	8.2	-1.0	-1.4
Poison Ck-Rattlesnake Ck (n=26)	-3.2	1.7	-1.0	-0.9
Lower Blitzen-Voltage (n=40)	-1.4	2.0	-0.2	-0.3
Silvies (n=31)	-2.5	1.8	-0.5	-0.5
Upper Silver Creek (n=17)	-1.7	1.5	-0.5	-0.4
Harney Lake (n=16)	-1.1	0.3	-0.5	-0.4
Upper Blitzen (n=8)	-0.9	1.8	-0.1	-0.2
Malheur Lake (n=1)	-1.5	-1.5	-1.5	-1.5

- n=number of wells evaluated

Groundwater Level Trends: Data Considerations

Key Takeaways:

1. Data from multiple sources is reviewed for quality control.
2. We must understand the specified parameters to interpret the calculations.
3. There is variation within each of the 15 subareas.
4. A small number of subareas have more significant declines.

OREGON WATER RESOURCES DEPARTMENT

Proposed Curtailment Priority Criteria

Proposed criteria for prioritizing CGWA subareas for curtailment

1. Groundwater level decline rate
2. Total groundwater level decline magnitude
3. Groundwater elevation below 4080-feet amsl[1]
4. A well-defined groundwater level cone of depression dominates the subarea[2]

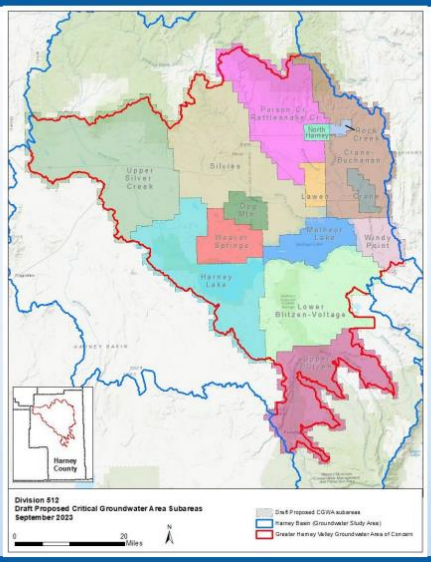
1 4080-feet amsl elevation is below the bottom of Harney Lake (amsl = above mean sea level)
2 Closed GW level contours indicating a depression (a "sink" or low point)

OREGON WATER RESOURCES DEPARTMENT

Subarea Priority Ranking

High Priority Subareas:

- Crane
- Dog Mountain
- Lawen
- North Harney
- Rock Creek
- Weaver Springs

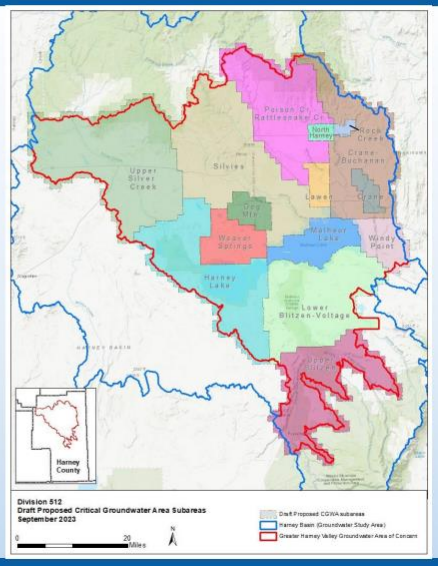


OREGON WATER RESOURCES DEPARTMENT

Subarea Priority Ranking

Lower Priority Subareas:

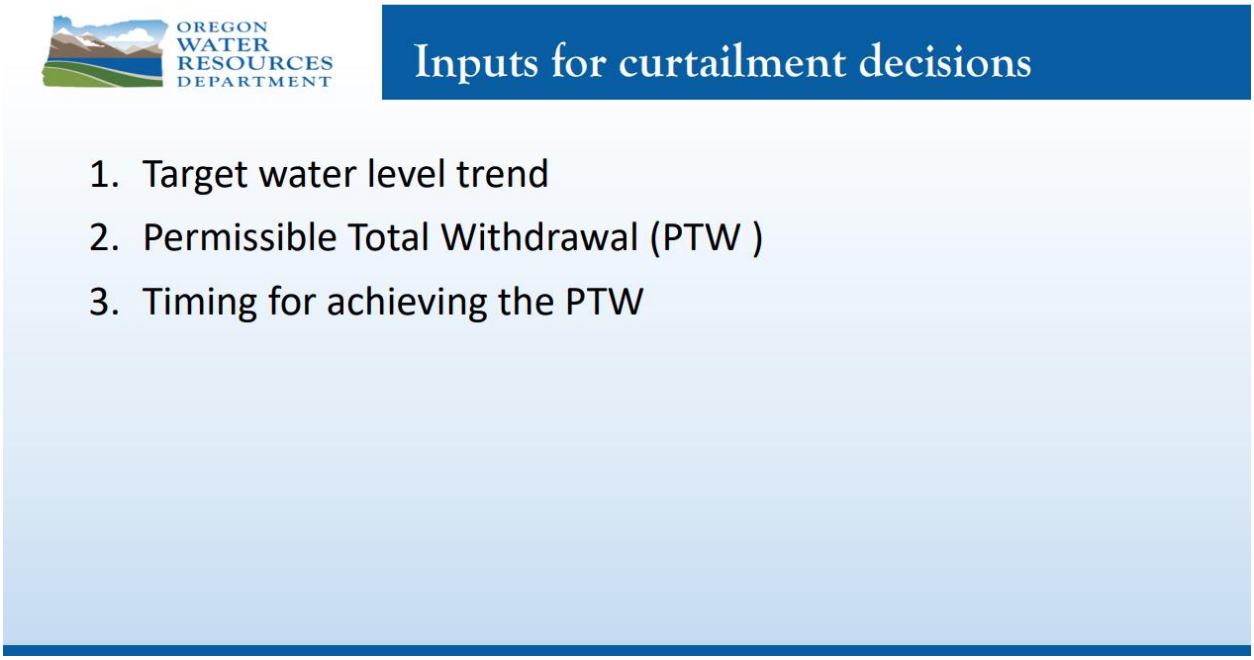
- Crane-Buchanan
- Harney lake
- Lower Blitzen – Voltage
- Malheur Lake
- Poison Creek – Rattlesnake Creek
- Silvies
- Upper Blitzen
- Upper Silver Creek
- Windy Point

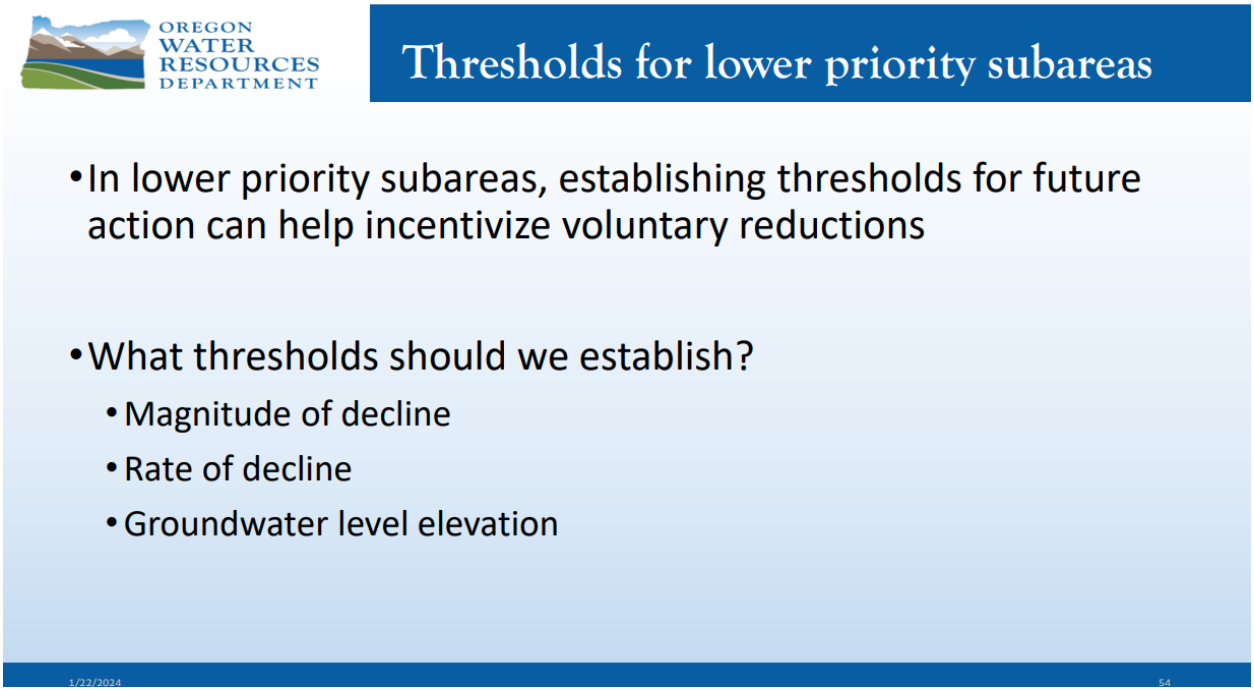


OREGON WATER RESOURCES DEPARTMENT

Management Strategy

- Reduce water use basin-wide through straightforward and transparent rules
- High priority subareas will be the focus for reducing use
  - Voluntary reduction
  - Regulatory curtailment
- Lower priority subareas will need thresholds for future action to incentivize reductions in use
  - Voluntary reduction





December 20, 2023 – Email from Kelly Meinz

An email from OWRD states that groundwater reduction efforts will be focused in the areas with excessive declines and reiterated a hope for voluntary approaches to address declines.

Good afternoon, Division 512 RAC members,

We thank you for your participation and thoughtful input since we kicked off this rulemaking in April and wish you a happy holiday! We wanted to follow up before the New Year to clarify a couple of points from our last RAC meeting:

No Further Decline: The Department's goal is to halt groundwater declines within the proposed Critical Groundwater Area. It is important to note that the Department has not decided how much groundwater reduction needs to occur, nor over what time frame. Our hope is that the water user community aggressively pursues enrollment in the CREP and other voluntary reductions. The Department will continue to follow the rulemaking and contested case processes defined in the OAR Chapter 690 Division 10 rules to reduce groundwater pumping within the Critical Groundwater Area

As discussed in the last RAC, we will focus our groundwater reduction efforts on the 6 high-priority subareas below:

- **Crane**
- **Dog Mountain**
- **Lawen**
- **North Harney**
- **Rock Creek**
- **Weaver Springs**

We are interested in hearing from the RAC your thoughts on how much and how soon reduction in groundwater use should occur. Again, our hope is this will occur through voluntary programs, but we will immediately begin the contested case process following adoption of the rules, as this process will likely take several years."

January 24, 2024 RAC Meeting #5 – Transcript

OWRD describes the flexibility they see associated with voluntary agreements as it relates to timing of reductions.

Kelly: Great. I'm hearing a lot of questions about mechanisms written in the rules for re-checked conditions, Roger, and so I'm hoping with this conversation I can answer those questions. So the intent of this part of the PowerPoint is to kind of lay out what we can and cannot do and

01:13:42 what regulatory framework we need to follow in terms of a critical groundwater area and where the flexibility can come and play with the rules. And the reason why we are having this conversation and Tim, Ivan, Bryant, stop me... I can't

really see the room so stop me if there's questions please. Just interrupt me. So the reason why we're having this conversation right now is that, like Mark said, we have heard that the community wants flexibility and creativity and we've received questions to kind of define well what

01:14:14 are the sidebars that OWRD needs to follow. And so hopefully after this short presentation here I can lay out very clearly what we need to follow and where the creativity and flexibility comes into play. So key takeaways right. The first one if I'm talking to you on the screen you're gonna blank me out these are the four things I want you to remember. **One, WRD tends to achieve stable groundwater levels through target water level trend of zero decline. Ivan talked about**

01:14:50 **the reasonably stable so we're creating groundwater levels to be reasonably stable in the Basin at our target water level trend of zero decline.** Then ORS 537.735 here. That is the critical groundwater statutes. One of the statutes, there are four of them. But that one lays out specifically what we have to do in the rules and what we may add to the rules when we're drafting up critical ground related rules. Next point I'm make during this rule is that the adoption of the 512

01:15:27 rules by the commission does not immediately result in curtailment orders. So I'm going to make that point again. As soon as these rules are adopted in December curtailment does not happen. We need to follow a contested case process which is laid out in division 10 rules of how we need to curtail groundwater users. We just point out, and I'll put it in the chat later, but we did an informational session and we laid out all the steps we need to follow here so if you want more details on that point

01:15:59 I'm glad to share that with you. And then lastly I heard a lot of questions about how are we allocating the permissible total withdrawal so I'm going to walk you through a simple example of what allocation would look like for a PTW on this PowerPoint slide. Okay, so when in my mind when we're talking about groundwater management in Harney County we have the two buckets, right. So we have bucket number one, that's our management bucket. And when I speak management bucket I mean I'm talking

01:16:38 specifically about the critical groundwater area management. There are other tools that we have that we can briefly discuss if there's questions. **And then we have the voluntary bucket. So within the management bucket that contains all our rules, our statutes, what we need to do as a department, what**

we need to follow. And in the voluntary bucket that's really where the creativity and the flexibility can lend to the community. First we're going to start talking about this management bucket, right, so what do

01:17:11 we have to do in rules and what really we cannot do in the rules. So first we need to define the boundaries. Over the past four RACs we've been talking with you guys about this idea of the 15 sub areas. So the statute says that we need to define what the critical groundwater area is and then within the division 10 rules we say that we can define within the critical ground area boundary as a whole, we can delineate it into 15 sub areas. Then we also need to in rule define the permissible total withdrawal which is

01:17:49 just the volume of water allowed to be pumped. Okay, the third one is, then this is to Roger's comment about is there a mechanism where we can check if this PTW is working, well we do have that and it's required. So in our rules we need to set a basin condition review. So what that means is that at least once every 10 years we need to go check the condition of the Basin and what I mean by that is, okay, what's the water level trend now and then if we need to adjust the PTW, the stricter or looser,

01:18:27 whatever the data is then we have to start a rule making process and adjust that PTW. But we need to do that every 10 years. I think the plan is do it about six, correct Tim? Every six years is our plan?

Tim: Yeah, we haven't decided on an exact plan yet. But at least once every 10 years, yes.

Kelly: Okay so then our next one here is our permit decline conditions. This is not really in the critical groundwater statutes but we have the regulatory authority to every water right, not every water right, but certain

01:19:08 water rights have a permit decline condition so if the water level drops to a certain level then we can regulate that groundwater user off. So that's another tool we have in our management bucket. Okay and then the next one is curtailment through the contested case. This is simply just our administrative process that we need to follow to curtail groundwater users. Again, that doesn't happen until after adoption of the division 10 rules. And

01:19:43 **then timing of curtailment and this is really in my mind where the flexibility piece comes into play for voluntary agreement. The voluntary bucket and the management bucket, right? And the question is how long do we give the community to develop a voluntary agreement, right? And whether that be with**

the three large sub basins or the small sub basins, we're having a conversation actively now. But this is where we're like okay how long do we take to get to a voluntary agreement or how long do we implement to

01:20:15 **get to a PTW? Those are the kind of questions that I think we need to have with you guys as a RAC**.

OWRD asserts that "reasonably stable" means zero decline and provides an overview of the statutory provisions requiring review of rules that restrict groundwater use.

Kelly Meinz: As both Tim and Ivan have said that ORS 537.525, I believe it's section seven but

01:21:42 don't hold me to that, says that **we need to define what reasonably stable is and manage reasonably stable groundwater levels. So in our plan when we say a static water level trend of zero decline that we're managing to, what we believe to be a stable water level outside of the climatic changes, right, so it's going to go up and down based off of the 20-year drought that I've heard. And so we need to manage that water level. So that's the first thing, right, so we need to define**

01:22:16 **and manage reasonably stable groundwater levels**. And how we do that in Harney County is through the critical groundwater area designation through the statutes. So this is one of them, this is the main one which defines what must be in the critical ground rule. In ORS 537.735 it says that we must have in rule one, what we've been talking about for the last three or four RACs and continue to have a very good conversation about: the boundaries of the critical groundwater area. So we need to define the

01:22:58 boundaries of critical groundwater area and then, again**, it needs to contain a provision requiring a periodic review of conditions of the critical ground area at least once every 10 years. And then in that time if we see that okay the PTW might be too strict then we start a rule making up again and we adjust the PTW. So it's not a leave it and forget it. We need to come back and we need to keep**

01:23:31 **adjusting** and I think the legislators saw in the past how we designated critical ground area, and I'm totally happy to get in history if you guys are interested, and required the department to actively manage the critical ground area. And then another statute I think that's important is ORS 537.780. So this is the powers of the commission. This is not necessarily related to a critical groundwater

area but what that says is that if we are restricting groundwater use then we need to review the rules specifically every

01:24:10 three years and that requires having a public hearing and a public meeting and a comment period as well. So there's two different mechanisms that the department needs to follow. **Every 3 years review the rules, once every 10 years we need to conduct a review of conditions within that Basin and we have to do that**.

OWRD tells the RAC that they would intend to pursue contested cases by subarea and highlights the Department's discretion to proceed with the contested case process.

Tim Seymour: Yeah so Fred's question was basically what will the contested case entail? Like what is the issue at hand in the contested case? Is that right Fred?

Fred Otley: And is it specific to a small area or an individual water right or what triggers it for one thing?

Tim Seymour: I'll just take this one Kelly if that's alright with you.

Kelly Meinz: Thank you

Tim Seymour: If the corrective control order was going to be just one water right then it would be just one water right. **If we're**

01:29:46 **working on curtailment of more than one water right we believe that what we would do is roll that process up by a sub area. So we would issue corrective control orders for all of the rights that were going to be curtailed within that sub area based on what the PTW is and we would then go to contested case with all those rights and that's what would be the issue at hand in that contested case.**

Fred Otley: What would be… is there different triggers that would occur on how that is initiated and when

01:30:21 **other your review of conditions?**

Tim Seymour: So whatever gets set in rule as the PTW is the number that we would curtail to and when we got to contested case would depend on the Department's ability to do the administrative work to make the contested case happen. So we have to pull together all the information related to both the water rights and our substantial evidence supporting the decision to curtail and then go through our notification process to notify the water right holder and to essentially follow all those steps and

01:31:01 then move forward. **So there is nothing in rule that says essentially as soon as the rule making is done the department will implement. It is up to the regulatory discretion of the department to go through that process.**

OWRD and the RAC talk about the importance of distinguishing between allocation and pumpage when setting the starting point for reductions.

Darrick Boschmann: And so I think there's a couple of important numbers and I think we mentioned them last time and we'll probably talk more about them later today. The amount of ground water that's been allocated, the paper water right, far exceeds 2018's use. There's a difference in the last five years. We've developed more. But it far exceeds how much water was used in 2018 and

01:48:15 so do we honor and regulate and manage based on what's being used or what has been allocated? And that's something for you all to think about and happy to discuss further and take comments on that but for those who have invested and developed and for senior users who are sitting on a lot of paper but haven't been using and put to beneficial use... some of those water rights are likely subject to forfeiture because they haven't been used and to allocate their full paper right doesn't really follow the practice of

01:48:59 Oregon water law where you have to use it or you lose it. So those are some things for you guys to consider as we have these discussions about Productions and use out there.

Mark Owens: And I think that's really important when you take PTW to 2018. Because, I mean, if you look at... We're going to pick on Lorissa at Silver Creek. PTW of Silver Creek is only 64.73% of the allocated or legally drawing things out there. So if you went with what Tim said the option the department has in prior appropriation last meeting is exactly what Kelly put up here you're really

01:49:39 **shutting off 36% of the paper water which could be those that are actually irrigating. So you could be shutting off 36% of the irrigation that's occurring up there.** Or, Fred's not here, but Upper Blitzen. 41 Acre feet, PTW 68 acre feet. It's probably one user and you're shutting off 60 some odd percent of that use and that well's never going to pump. **So I think it's very important that we work through that because it changes the whole conversation.**

Darrick Boschmann: It really does. It's what's your starting point? Is it paper or is it actual use and there's 100 and

01:50:22 **something thousand acre feet of difference between those two.**

Mark Owens: Because someone hasn't been using you're going to give them a value that's quite a lot by saying hey you're the oldest even if you haven't used water for five years, here you go

Zach Freed: I would chime in and say that the unused paper water isn't contributing to cones of depression. The problem we're trying to solve for here is from the actual water being applied which is, yes, paper water but I think what I prefer to focus on as a starting point is the wet

01:50:58 water being applied because the unused paper water is not contributing to the issue that we're trying to solve as a committee. If it were developed it would be. But if it hasn't been developed, if it hasn't been used then that's not part of the starting point. That's my preference.

OWRD describes that the rules cannot include "if-then" statements and that any adjustments to PTW must be made in rule, but that they can be revisited and revised during the statutorily required review periods. OWRD indicates that a voluntary agreement could be a mechanism to allow for temporary transfers. OWRD begins to tie PTW to voluntary agreements, suggesting that voluntary agreements must meet PTW.

Kelly Meinz: Yep, sure am. All right, that was a really great discussion everybody. So we just kind of talked about what we have to do, what we can do in the rules. Let's kind of briefly talk about what we can't do in the rules, right. So again to Zach's point, to Tim's comments/

01:54:02 conversation. **We cannot adjust the PTW without a rule making, right? So that's where the 10-year evaluation comes into play.** We cannot write an if-then statement in rule. So meaning if the static levels are X, then we'll adjust the PTW by Y. We cannot do that and the reason we cannot do that is that it needs to be based off of substantial evidence and that's a guesstimation. And third we cannot, and I say this a lot, but we cannot implement curtailment without a contested case. **Okay, so, let's talk about the second bucket,**

01:54:46 **the voluntary agreement bucket, right. So we've been talking about what we can do in terms of management. This is the bucket where that flexibility and that creativity comes into play, right, and that comes mainly in the form of the voluntary agreements and the rule language that we write within 512 with the voluntary agreements. So some options that we've considered, like for a water market option within voluntary agreements, we considered allowing temporary transfers within those voluntary agreements.** And to

01:55:19 that fourth point here, right, really this is where in rules we can we have to set sidebars for the voluntary agreement. **So what are the goals for success for both the department and the community when we're talking about voluntary agreements? At the least we could say that it needs to meet a PTW of a sub area or the Basin, whatever way we go, right.** I'm hearing some conversation again about the three sub basins and doing the 15 sub basins. But the rules need to define the sidebars that the voluntary

01:55:48 agreement needs to meet. So we've talked about this before, we did an informational session, but just to clarify for those members of the public. The voluntary agreement is ORS 537.745 and that's just simply an agreement between groundwater users within the same groundwater reservoir. In Harney County voluntary agreements can happen between sub areas because they are all the same groundwater reservoir. A voluntary doesn't need to happen between just one sub area, it could be multiple sub areas. Whatever which way

01:56:26 we go right. And then we can consider allowing temporary transfers within voluntary agreements.

Holly Mondo, the project manager with the community-based water collaborative, encourages the RAC to seriously consider recommendations from the integrated plan, including voluntary actions and voluntary agreements. She highlights the importance of considering these actions as they relate to the rules.

Holly Mondo: Hello everyone my name is Holly Mondo. I am the project manager for the community

01:58:07 based water planning collaborative that has been ongoing since about 2017. **I'm here to remind and kindly but firmly recommend that the RAC considers the groundwater plan that has been written and approved by consensus from the collaborative which is composed of so many community members including some of you that are sitting on the RAC and in this room. It's come to my attention that these voluntary bucket options aren't necessarily being, haven't been considered firmly by the RAC yet**. I'd like to share that the

01:58:47 collaborative did so much work to explore what a groundwater market might look like in this area. **We also did several studies to explore the feasibility of what a voluntary agreement might look like for this area**. The collaborative is the reason CREP exists here now and it's also the reason that the domestic well remediation fund exists now. So I would like to continue to attend these meetings

and continue to chat with you all about the collaborative and what we have to offer to help this RAC. We are are working

01:59:20 with the Department in place-based planning. **We've had funding by the department to help us and our goal was to finish the groundwater plan prior to the RAC convening so that the RAC would be able to utilize the groundwater plan in their refresh of these rules**. So I'm here and I will continue to be here to amplify that voice which is the community's voice and I'm here to answer any questions anybody might have about voluntary agreements, groundwater markets, CREP, domestic well remediation fund, and

01:59:57 the plethora of strategies that we developed in that plan. There are about 30 that we've developed and I'm happy to share those with you and we'll be here in March to start doing so. Thank you

OWRD highlights the flexibility contained in statute regarding voluntary agreements as it relates to subarea boundaries and how that might affect transfers.

Ivan Gall: So here are just a couple lists of the pros and cons for the larger sub areas or the sub basin approach. **We can be more flexible with transfers if we look at a subbasin as one source of water.** On the other hand we might be issuing transfer orders, and these would be permanent transfers of water from one part of the Basin to another, we may be creating other problems there and so we have to do that

02:38:02 carefully. Larger subbasin approach could mean that we engage more of the groundwater users in a particular conversation. **Now there's no reason that a voluntary agreement can't cover more than one of our sub area approaches.** I got to be careful with my sub-basin versus sub area. **And so voluntary agreement in our mind... do what you want. The statutes are very wide open, they're very flexible, they're very allowing in there.**

OWRD discusses the possibility of building sidebars into the rules for voluntary agreements as well as the flexibility to identify "areas" that are different from the Department's proposed subareas. OWRD begins to discuss the rules as a "regulatory backstop" if voluntary efforts don't result in a sufficient amount of reductions.

Ivan Gall: **We don't have to limit ourselves to three sub basins. We don't have to limit ourselves to 15 sub areas. I think we can build into the rules and opportunity to have both of those constructs there if the local community or some ground swell of groundwater users in a subbasin wants to approach the commission with a voluntary agreement then we can set up the rules to allow**

for that and provide some sidebars on what that voluntary agreement needs to contain. And in the event that there's

02:41:43 **not enough groundwater pumping reduction through voluntary agreements or the CREP program and then the department needs to pursue curtailment through the critical groundwater area process we would have already in place our 15 sub areas set up with the relevant PTWs that Darrick will be talking about here shortly and we can go down that path.**

OWRD indicates that they are supportive of voluntary agreements and that the statutes afford a lot of flexibility and room for innovation.

Ivan Gall: So from now there's at least two years before we're going to get into the

02:43:33 contested case hearing process and so **I think that affords all of you ample opportunity to work towards some sort of a voluntary agreement concept and have discussions amongst groundwater users to see what folks are willing to do. The Department's committed to supporting that effort and so we will be there to provide whatever technical information we can to help with that. We're going to have to provide and work together to come up with guidelines.** There have not been any voluntary agreements done in

02:44:08 the state of Oregon. Jason Spriet here... I mean he and I have worked on what we call rotation agreements. So amongst the surface water stream system senior and Junior user different ditches can come up with a rotation agreement. We've got some experience with those here in the state but it's not been done for groundwater Reservoir systems before. **And so again the statutes are pretty wide open which gives us a lot of opportunity to do some really innovative things** but in order to move this

02:44:39 process along fairly timely we do need to be thinking about those things now and get things started. So that's really all I have on the sub area. Happy to take comments, questions, concerns, anything on that and then we'll be moving into the PTW discussion which is going to kind of overlap with some of this as well.

The RAC discusses the importance of understanding the PTWs, how they are developed, and how they will be used, especially given the fact that the Department is considering how they will factor into voluntary agreements.

Mark Owens: So I think there's an important point, you know, some

02:48:24 things that I haven't brought up here so it's a good opportunity to provide some feedback. It's just the way I heard it is you have at least a two-year

window where you can utilize the subbasin approach through voluntary agreements to make reductions at which time ultimately the approach is there as a vehicle to make the necessary cuts if they weren't achieved through that voluntary process. So just a question. I mean Kristin asked it earlier and came with what would be the permissible total withdrawal in a hydrological basin. You said you

02:49:03 might not be able to come up with that number. **Kelly brought up that a voluntary agreement is going to have to at least come up with a reduction of permissible total withdrawal. So when would we understand what a permissible total withdrawal is? I mean we need that in order to plan for long term**.

OWRD describes the initial method and purpose for calculating permissible total withdrawals, with a focus on the high priority areas. PTW is presented as "the volume of groundwater that can be pumped without causing groundwater level declines" with a focus in the six "high priority" areas that were showing excessive declines. In "low priority" areas the Department would focus on maintaining 2018 pumpage and enforcing permit decline conditions.

Darrick Boschmann: And I think, like you said, this PTW conversation is tied to all the questions and the same types of questions will continue to come up and we can discuss that as we move through this. So in this presentation we're going to break it down into three basic pieces. We're just going to cover briefly what is PTW, permissible total withdrawal. We're going to spend the bulk of the presentation slides on the part about determining the PTW values and then in

03:04:06 the end there are some tables and some figures that summarize our current proposed PTW values within this 15 sub area construct that we're talking about here. So just really quickly, what is PTW? As you've heard it's the total volume of groundwater allowed to be pumped within a sub area of the critical groundwater area annually and that'll be a volumetric figure in acre feet. So that's acre feet per year basically. And moving forward we're thinking about how do we calculate this? This approach here is based on

03:04:44 this target water level trend of no decline and so in simple terms then **PTW is the volume of groundwater that can be pumped without causing groundwater level declines.** That's how those two pieces fit together. **So like I said most of our time today we'll be talking about how we calculate these PTW values and the majority of that is going to be focused on our approach for our six**

high priority sub areas. Again these are Weaver Springs, Dog Mountain, Lawen, Crane, North Harney, and Rock Creek. So in the high priority sub areas,

03:05:26 **these six sub areas, we're proposing to implement what we're calling the hydrograph approach and the goal of this hydrograph approach is to identify the level of pumpage that can occur within a sub area without causing groundwater level declines.** So the approach has three basic steps and we're going to keep coming back to these three basic steps through the presentation. So the first thing we need to do is identify the time at which declines began in that sub area. The next part is to identify what

03:05:59 the annual pumpage was in that sub area prior to the onset of those declines. So that's the amount of pumpage that could occur in that area without causing declines. And then finally we take that pumpage value, that historic pump value, and that becomes the PTW. The permissible total withdrawal for the sub area. So we're going to spend the next few slides walking through that approach, that hydrograph approach. **But first I'll just touch on our approach for the lower priority sub areas and these are the areas where we**

03:06:34 **recognize there are declines occurring but they're not nearly as severe in terms of rate or magnitude and so our proposal now was to set the PTW in those nine lower priority sub areas to the level of pumpage that was occurring in 2018. Along with this, and again, recognizing that in some parts of these lower priority sub areas we do have declines. So along with this 2018 pumpage limit we're also proposing to enforce the decline conditions in these areas of these lower priority sub areas that we**

03:07:07 **do have more concerning decline rates. We also see the lower priority sub areas as a real opportunity for voluntary actions to continue to reduce those declines that are occuring in those areas.**

A RAC member clarifies that current levels of pumpage may not meet OWRD's stated goal of zero feet of decline. OWRD states that they would hope to get to a zero decline goal in those areas with voluntary actions, with the assumption being that groundwater use would be reduced from 2018 pumpage levels. OWRD emphasizes that achieving zero rate of decline could be an iterative process over time.

Zach Freed: You are acknowledging with the data we have available that there are declines happening in the nine lower priority sub areas. They were happening in 2018 as well?

Darrick Boschmann: Correct

Zach Freed: So if you look at the declines happening in 2018 is the assumption here that just enforcing

03:09:06 the permit decline conditions would have stopped the declines in 2018?

Darrick Boschmann: **We have hope that with the 2018 limit and enforcement of decline conditions, where the declines are occurring, the steeper declines in these lower priority sub areas are in very isolated places so we're hopeful that with the 2018 limits and the enforcement of those decline conditions that we can get somewhere close to a no decline condition. Now, again, that may end up being an iterative process and it may it**

03:09:42 **may require some voluntary reductions as well through CREP or other mechanisms** but understood, your point's well taken.

Tim: So just a question for my own edification. Are we also considering the six high priority sub areas in the impacts there as potentially having a hydraulic gradient effect that would also be beneficial in these other areas?

Darrick: Certainly. If we're able to to reduce that hydraulic gradient driving groundwater into these cones of depression that should help to stabilize water levels outside of those areas as

03:10:19 well.

A RAC member indicates that figuring out the volumetric targets upfront would be beneficial for voluntary reductions in lower priority areas. OWRD emphasizes that achieving zero rate of decline could be an iterative process over time.

Lisa Brown: Yeah thanks. On the low priority sub areas, I mean, first of all I would think you could calculate, you could make some pretty solid calculations of about what kind of volume you would expect to recapture or recoup from implementing the permit decline conditions. I mean that's a known universe right and it should be

03:13:00 a fairly known volume and so I guess I would like to see that analysis done. And then as far as just... and maybe there's more detail on this later on in the presentation but it just seems like **just saying encourage voluntary reductions is not really that helpful. What we really need is a target water level or some volumetric targets. I mean I think this piece needs to be a lot more rigorous rather than just we hope it'll work.** Because there's going to be a

03:13:41 lot of effort to go through this whole rulemaking and set everything up and it would be a lot of work to reopen it in an iterative process so I just would really urge some more rigor around this piece of the puzzle.

Tim Seymour: We're getting there. Can I ask a follow up question there Lisa? **My thought around this is that if we have a target water level trend of zero, right, no decline and if we're releasing on some schedule updates on the**

03:14:27 **current water level trends in these areas and the water level isn't zero or the water level trend is not zero then everyone within that sub area would know that regulation and a change to the PTW or a reduction of usage is still necessary right? And so isn't that an incentive for a voluntary reduction because the other option is the department comes back and updates the rules and the PTW and does the regulatory action.**

Lisa: Yeah, I mean, I think if you provide more information as to what the target is and what the timeline is...

03:15:11 But once maybe you do that analysis you see like... yeah, I don't know how they all shake out. It looks like some of them have some pretty steep declines that are nowhere close to your reasonably stable definition. So what kind of a lift is it to get there and how much would these permit condition implementations, like, how much would that actually help in some of these areas? I think it just needs some more development.

A RAC member clarified that OWRD was encouraging voluntary reductions everywhere and another RAC member emphasized that voluntary reductions have already been occurring across the basin.

03:15:54 **Zach Freed:** Sorry Bryant, sorry Darrick. One more question. **Encourage voluntary reductions, that's in both high priority and lower priority sub areas right? The goal is to encourage voluntary reductions everywhere?**

Mark Owens: That's been going on for the last five years at least with the... especially putting in these LESA systems. I mean every pivot in the county is switching to these lower water usage systems and so you may be surprised to find out that they're having an impact

03:16:33 already.

January 24, 2024 RAC Meeting #5 – PowerPoint

OWRD explores what is meant by "halting declines" as the goal for the basin. Again, OWRD highlights that for the lower priority subareas the pumpage limit would be set at 2018 levels and voluntary reductions would be encouraged.

OREGON WATER RESOURCES DEPARTMENT

What does halting declines mean?

The goal of this work is to stabilize groundwater levels

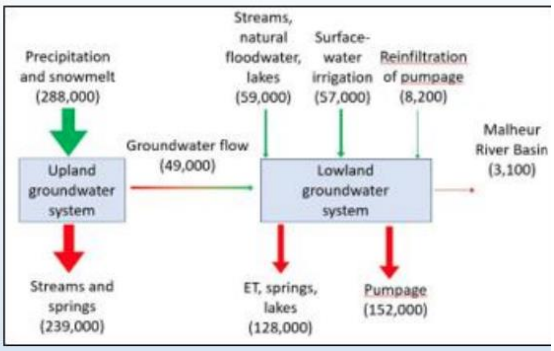
- There are many ways to say this:
  - Halting declines
  - Achieving a target water level trend of 0 (no decline)
  - Reducing usage so that groundwater level declines due to pumping slow and stabilize overtime
  - Stabilizing groundwater levels resulting in a new condition where changes in groundwater levels are due to climatic changes

OREGON WATER RESOURCES DEPARTMENT

What does halting declines mean?

Managing using a Water Budget

- A water budget is in balance pre-development (no pumping)
- If managing to the water budget then no pumpage can occur without causing groundwater level declines or reducing natural groundwater discharge (ET, springs, lakes, seeps)



OREGON WATER RESOURCES DEPARTMENT

Regulation Sidebars

Voluntary Bucket

Under the Voluntary Bucket

- Flexibility and creativity
- Voluntary Agreements can be made between subareas
- Water market options within a voluntary agreement – temporary transfers will be considered
- In Rule we can give flexibility for the voluntary agreements provided it meets the PTW

OREGON WATER RESOURCES DEPARTMENT

Regulation Sidebars

Voluntary Agreements

ORS 537.745 – Agreement between groundwater users within the same groundwater reservoir

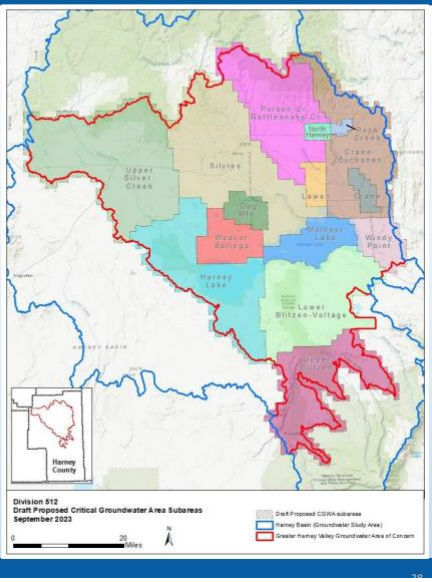
- In Harney county voluntary agreements can happen between subareas because they are all the same groundwater reservoir
- Temporary transfer within voluntary agreements

OREGON WATER RESOURCES DEPARTMENT

Permissible Total Withdrawal (PTW)

Determining PTW:

- High priority subareas (6)
  - Implement the "hydrograph approach"
    1. Determine when declines began
    2. Determine prior pumpage
    3. PTW=pumpage prior to declines
- Lower priority subareas (9)
  - Implement 2018 pumpage limit
  - Enforce permit decline conditions
  - Encourage voluntary reductions



OREGON WATER RESOURCES DEPARTMENT

Permissible Total Withdrawal (PTW)

PTW by Subarea – Lower Priority Subareas:

- PTW = 2018 pumpage in acre-feet

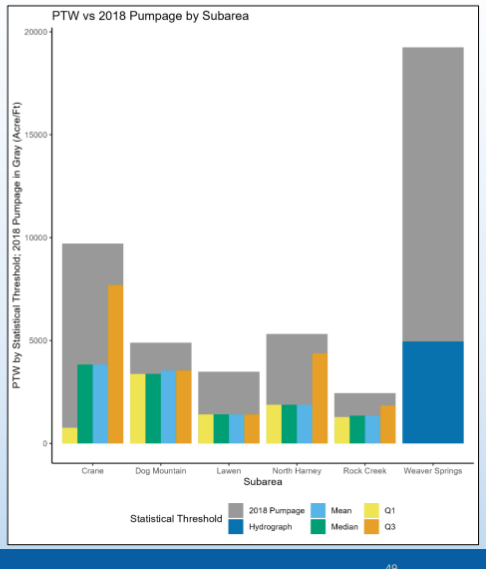
subarea	2018 pumpage (ac-ft)	PTW (ac-ft)
Crane - Buchanan	17,717	17,717
Harney Lake	910	910
Lower Blitzen - Voltage	13,648	13,648
Malheur Lake	0	0
Poison Creek - Rattlesnake Creek	13,812	13,812
Silvies	13,641	13,641
Upper Blitzen	68	68
Upper Silver Creek	20,382	20,382
Windy Point	9,118	9,118

OREGON WATER RESOURCES DEPARTMENT

Permissible Total Withdrawal (PTW)

PTW by Subarea – High Priority Subareas:

subarea	2018 pumpage (ac-ft)	threshold	PTW (ac-ft)	% curtailed from 2018
Crane	9,700	Q1	800	92
Crane	9,700	median	3,800	61
Crane	9,700	mean	3,800	61
Crane	9,700	Q3	7,700	21
Dog Mountain	4,900	Q1	3,400	31
Dog Mountain	4,900	median	3,400	31
Dog Mountain	4,900	mean	3,500	29
Dog Mountain	4,900	Q3	3,500	29
Lawen	3,500	Q1	1,400	60
Lawen	3,500	median	1,400	60
Lawen	3,500	mean	1,400	60
Lawen	3,500	Q3	1,400	60
North Harney	5,300	Q1	1,900	64
North Harney	5,300	median	1,900	64
North Harney	5,300	mean	1,900	64
North Harney	5,300	Q3	4,400	17
Rock Creek	2,400	Q1	1,300	46
Rock Creek	2,400	median	1,400	42
Rock Creek	2,400	mean	1,400	42
Rock Creek	2,400	Q3	1,800	25
Weaver Springs	19,200	hydrograph	5,000	74
*values rounded to the nearest 100				



January 24, 2024 RAC Meeting #5 – Meeting Summary

RAC Members indicate that there is not agreement on the Department's stated goal of "zero decline" and request a two-way conversation on groundwater goals.

What Does No Further Decline Mean?

Tim Seymour led a presentation and discussion of the definition of "no further decline" and the benefits of managing to the water level trend. The follow captures some of the key themes and questions that emerged from that discussion:

- Request to have a collaborative two-way conversation moving forward, less being presented at by the Department

RAC Members continue to be interested in how information from the rulemaking process may be used for voluntary agreements, expressing concern and caution.

Subarea Conversations

Ivan Gall led a presentation and discussion of the sub areas conversations, presenting and discussing the pros and cons of the 15 subarea and 3 sub-basin approaches. The follow captures some of the key themes and questions that emerged from that discussion:

- There was a request to better understand the 3-sub basin approach: What would be the PTW for the three basins? Will reductions be greater than the 15 subarea approach? How do these compare to Weaver Springs?
- The 3 subbasin approach is easier to understand for the community.
- The 15 subareas would circumvent the community's understanding of the water.
- It is a non-starter if you take basin down to the lowest level, subarea PTW in that basin, it needs to be an average. If you use less water the low spot will fill in. Taking it to the lower denominator is the simple answer.
- Need a target for lower priority sub area users to achieve with voluntary agreements
- OWRD could look at moving pumping away from cones of depression to see what the impact is to the basin.
- OWRD offered discussion regarding a hybrid approach that would provide for voluntary agreements within the 3 subbasin framework during all of 2024 and likely all of 2025 as the department gets ramped up with Rule 10. At the end of 2025, the Contested Case process would begin in the 15 subareas framework, and/or as staff has capacity to begin the process.
- Sidebars of voluntary agreements need to be defined
- Fold the Water Collaborative in with OWRD during the monitoring process to give the community more ownership.

RAC Members indicate the need to further discuss pumpage estimates if they will be used to establish PTW and could potentially limit voluntary agreements.

Permissible Total Withdrawal

Darrick Boschmann led a presentation and discussion about Permissible Total Withdrawal (PTW). Specifically, what it is, how it is determined, and the values for each subarea. The follow captures some of the key themes and questions that emerged from that discussion:

- Request to calculate the volume of water that would be added to the basin from regulating permit conditions.
- There needs to be a more rigorous review of the 2018 PTW for voluntary agreements to be successful.
- There were questions on the assumptions made with the PTW. RAC members recommended starting curtailment as conservatively as possible.
- Without water in Harney Basin, there is no economy.

March 6, 2024 RAC Meeting #6 – Transcript

Many members of the public showed up to this meeting to comment on the first draft of the rules, with questions about how the PTW was calculated and what it would mean. RAC Members voice concern that their input does not appear to matter and request to have a voice in coming up with ways to address the problems. Concerns are raised about the timing of the rulemaking process and how to facilitate meaningful conversations in the community about voluntary agreements. RAC Members express confusion about how the

PTW is calculated and how the PTW might be used to regulate users or constrain voluntary agreements.

Roger: No I'm just trying to

00:19:05 figure out whether we actually have a role to play or we're just here to hear what the state's going to do to us and there's a difference in how we handle ourselves and how we approach. **We're trying to authentically be constructive and to try to solve some of the problems and do it in the most economically and ecologically sensible way. We hope you're interested in that as well. And so far the dialogue's been, in my view guys and you can help me if I'm speaking out of the**

00:19:42 **turn here, but it's been one sided completely and I don't know what our responsibility is yet. Just to listen? And if that's the case it's not very useful. We're hoping we can have an interaction where we actually come up with some new ways of addressing the problem. I don't know if that's what you have in mind or not.**

Kristen Shelman: Well, can I just add to that? I think part of what the concern that I've heard from folks is we feel the timeline (of the rules) is a little aggressive to be able to have that depth of conversation

00:20:20 and **so as you present the timeline a presentation of a finished plan with full community input working through things, the state has never done a voluntary agreement, us as a community have to develop and have conversations in 15 sub basins. The timeline seems very aggressive to ever accomplish that unless this is just a box checking exercise and I don't feel that that's your intention and so I think in communicating some flexibility in the timeline that it'll go to the commission when we've actually had time**

00:20:54 **as a community to thoroughly work through these things that we're trying to achieve is going to be helpful to communicate because right now saying a December presentation to the commission... that feels a little trigger happy to most of us.**

Kelly Meinz: Okay I hear what you're saying.

Andy Root: And then I would like to add to it. So on your paper up here you have presenting 15 Sub Areas. There's probably 80 people in this room and there might be three or four of you that know how you calculated the PTW

00:21:34 or even what a PTW is. I'm on the RAC, I've been to the meetings, and I can't for the life of me figure out how you guys authorize 289,000 acre feet of water okay…then you estimated use of 137,000 feet of water and then proposed use of 106,000 acre feet of water. How did you create these calculations? I mean was it statistics?

OWRD requests that groundwater users come forward with recommended reductions.

Mark Owens: So with Tim's idea to flush it out. Are we thinking a different meeting to figure out zones of agreement? What are negotiable and what are not negotiable starting from the top? I mean

00:55:02 we're getting close. Let's, if you don't mind, let's not go on to something else till we all have a Collective Agreement. Where is that time frame?

Ivan Gall: I guess I would request that in three weeks I'd like to see the groundwater user communities ideas on amounts of reduction, what does reasonably stable mean to them, and the timeline to get to those reductions. We've started to lay out a starting position for the agency. That's what it is to get the discussion going. We've had no feedback from anybody else

00:55:38 **so we need that.** We'll schedule the next RAC meeting to be an informational meeting and we'll have four hours.

Roger Sheley: We have to know where those numbers came from, not just the numbers, but how they were gotten. How many of them, where they were taken from, how accurate are they? We need to know the details.

Ivan Gall: Not to get me to what I'm talking about Roger.

Roger Sheley: Oh for me it is. To make the estimates of what I think these numbers are I need to have the details of how these numbers were actually made.

Mark Owens: Ivan your questions,

00:56:13 I'm going to not let my blood pressure go up too much. **You're asking groundwater users that maybe they should have been paying attention but just now found out that maybe they're going to be in a critical groundwater designation because they're dropping 0.3 to 0.2 in just a year in different areas to come to you with what they're going to curtail? You're asking groundwater users that don't know what's going on, haven't talked to the community, in three weeks to come to *you* with suggestions??**

Ivan Gall: Yeah! I think bring us the

00:56:46 starting point Mark.

Mark Owens: And we can't get our questions answered here where we don't have agreements where there should be a critical groundwater designation and you want us to come to you with solutions?

OWRD discussed a different approach to delineating subareas. A revised approach lumped some lower priority subareas in with higher priority subareas.

So we'll take a little closer look at that and here is that example and this is the example we'll be moving forward with in this presentation. So in this particular example we end up with five areas, or sub basins. You'll notice that Weaver Springs and Malheur Lake remain separate in this example and this is for a couple of reasons. **There seem to be widespread agreement among RAC members at our last meeting that the hydrogeologic characteristics and the**

01:44:56 **groundwater conditions in the Weaver Springs sub area were unique from the rest of the critical area and should remain separate from these three larger subbasins. So there was widespread agreement and it's clear that the declines there are more severe than much of the rest of the Basin.**

Notice here that the north sub basin is made up of nine sub areas some of which are what we've called our high priority sub areas. Those are areas with with more significant declines and some of those nine are what we've called the lower

01:46:02 priority sub areas. These are areas with less severe declines. So we've lumped kind of a combination of decline severity into this North subbasin.

OWRD again emphasized that curtailment would be focused in high priority areas.

Tim Seymour: So I think that's exactly the approach we're laying out as we talk about 15 sub areas. **Rather than applying these curtailments across the entire area we are talking about starting with focus in these high priority sub areas where the most severe declines occur.** And what we're getting to here very shortly is how much more impacting we would have to be because of the prior appropriation in order to halt the declines in the deep cones of depression

01:55:52 which are surrounded by our sub areas, our high priority sub areas, the only way to halt those declines is to reduce pumping in those specific areas**. So reducing pumping out in Upper Silver Creek is not going to have a timely effect on groundwater level declines in Crane and that's what we're trying to get out here and make clear.** I want to ask Darrick if I said anything wrong there because

I'm not the hydrogeologist, he's the scientist. So how did you feel about my answer Darrick?

Darrick Boschmann: No, that was great Tim.

Members of the public reacted to the initial proposed PTWs, indicating that for some areas it is much higher than people anticipated it would be.

Ben: Tim. You seem to be a little baffled as to where's all this, why are there so many people here today? And where's this coming from? You've done all this ground, it's true, you guys have done a lot of groundwork but it wasn't until recently, literally within the past few weeks, that we had any idea the severity of the level of curtailment. That was news to everybody and that, you know, we had… I've been to most of these meetings. The number we threw around, maybe

02:28:59 30%, maybe 50%, in Weaver Springs. Nobody really knew but then to throw out a number of 74%…. I mean my goodness you want to talk about causing a panic, that's exactly what's happened and caused a major level of uncertainty so I think it's a little bit on fair to pretend that you're, well maybe not pretending, I don't question your sincerity, I know you guys are all sincere but really that information is new and that's why you have so many people here trying to figure

02:29:31 out just what the heck is going on because it was a surprise.

The project manager for the community-based water plan highlighted the importance of voluntary approaches contained in the plan, calling attention to voluntary actions and agreements, and emphasized that the rulemaking process should not constrain or overlook elements of the consensus-based plan.

Holly Mondo: Lastly, the collaborative has already explored groundwater markets and voluntary agreements. I'll mentioned that we did

02:55:15 not get consensus or seek consensus as a group on either approach but we do have a feasibility study on groundwater markets that's available for this RAC to utilize and we do have an analysis on voluntary agreements that this RAC can utilize.

02:56:12 moment but I think now is a good time to again link everything back together. During the last RAC meeting in January we learned that OWRD sees two buckets that encompass options for reducing the rate of decline. The management bucket that we've been spending a lot of time on during this meeting and also the voluntary bucket. These buckets are quite different and they each pose their own set

of questions but it's possible that they can work together maybe they can co-exist as two arms seeking to reach the

02:56:46 same goal. Since we have received information on the options in the management bucket let's chat about the voluntary bucket for now. **Last meeting the department shared that options in the voluntary bucket can be flexible and creative which sounds a lot like what the collaborative has been working on. They shared that voluntary agreements can be made between sub areas which the collaborative has a whole analysis on that we'll talk about in a couple slides. And they shared that there**

02:57:20 **could be a water market option within a voluntary agreement and the collaborative has a feasibility report on types of groundwater markets that might work right here in this Basin.** Now it's up to the RAC to consider using those materials in this process moving forward. When I made my presentation I was focusing on the 15 sub area approach and not the subbasin approach. That does not mean that the collaborative supports one option or the other, that simply means that there wasn't information about the sub Basin

02:58:03 approach yet so bear with me. OWRD has six priority areas that they have laid out and they have nine lower priority areas that they have laid out. In those six priority areas we learned last meeting that OWRD intends to enforce permissible total withdrawals, or PTWs, which is pumpage prior to when decline started and to curtail users. In those nine lower priority areas OWRD intends to enforce permit decline conditions and encourage voluntary reductions. I'm going to pause. OWRD people, did I get that right? Okay thank

02:58:50 you. So we are dealing with regulation in the management bucket and we are also dealing with voluntary options in the voluntary bucket. I'm not going to speak to which one is better. There are people in the collaborative that see both sides. What I am here to do today is to highlight some of the voluntary actions in the bucket that can be taken by this community to reduce groundwater in both those priority and lower priority areas. We have options that we can implement here and it's up to this RAC to make

02:59:33 sure that there's flexibility in the rules so that voluntary actions can be taken by this community to help reduce the rate of decline. Folks in the back, there's no way you're going to be able to see that. I'm really sorry about that. It's a lot to fit in one slide. So voluntary actions that can be taken in the nine lower priority areas. Let's start there. In those areas the strategies developed by the collaborative that

could be considered by RAC members as possible approaches to help reduce groundwater use include implementing

03:00:15 irrigation conservation measures, researching how to ensure that that conserved water remains in the ground, increasing the use of efficient irrigation technology, partnering with academic schools and the Agriculture Research Center to learn about alternative crops, implementing actions to protect and conserve groundwater dependent ecosystems, exploring how open ET or other remote sensing applications can be used as a tool to assess water use, and installing accountable water measurement devices on all non-exempt groundwater

03:00:55 points of diversion, and lastly OWRD can initiate cancellation of all known expired permits and water rights that haven't been beneficially used in 5 years. These are just some examples of the strategies that are laid out in the cooperative's groundwater plan. I'm not suggesting that this is the end all be all solution, I'm offering a glimpse into what this community has already done research on, has already looked into, and has already presented to the department and the

03:01:31 commission as possible alternatives to regulation. In the six priority areas the voluntary actions are pretty much the same and also there might be an opportunity to be the first voluntary agreement in the state. Again we're pioneers here so of course we have to be the first to do something. The collaborative's strategy was to analyze the provisions for voluntary agreements to explore whether using voluntary agreements could be useful in the Harney Basin. That strategy has been completed. We have a study on voluntary

03:02:20 agreements. Now the RAC can choose whether or not to use that. These next couple slides I'm going to detail the information that we have available on voluntary agreements. **For background the collaborative worked with Culp & Kelly which is a law firm and the Environmental Defense Fund or EDF to analyze how voluntary agreements might be developed and implemented in the Harney Basin to address groundwater issues. To assist the Harney collaborative their final report includes additional information, considerations**,

03:03:01 **and recommendations. It has laid out information about the elements of a voluntary agreement that may be important for the Harney Basin.** It has listed potential legal constraints or considerations for executing and implementing voluntary agreements. It includes ways in which voluntary agreements could be implemented including the path and process to getting an agreement developed and approved. It also has information about how to

implement the terms of the agreement. It has a discussion of the questions and concerns raised by the

03:03:38 collaborative already and lastly it has information about where more research might be needed. Now before we get too deep into the voluntary agreement analysis I want to communicate that the RAC and OWRD do not have any mechanism or any authority to implement voluntary agreements but at the same time **it's important to ensure that the rules that this RAC is developing are not so restrictive that we can't implement strategies like a voluntary agreement that have been developed by this**

03:04:15 **community**. That said a voluntary agreement must come from the community. It must be presented to the commission and it must be approved by that commission. **An important question for the RAC to ask at this juncture is whether or not a voluntary agreement can be used as an alternative to curtailment to reach PTWs or permissible total withdrawals that were set by the department. Again I'm not saying that the collaborative is seeking that, I'm simply sharing this available information that we have and posing a question that the**

03:04:56 **RAC is going to have to grapple with. This community has been encouraged to take matters into their own hands through Place-based planning and it's worth exploring if they can continue to resolve their issues on a local level together. Now the details of the voluntary agreement. ORS 537.745 authorizes the Water Resources Commission to encourage, promote, and recognize voluntary agreements among groundwater users from the same groundwater reservoir. The statute creates an opportunity for groundwater users to**

03:05:43 **Implement locally defined measures to manage groundwater use so long as those measures are consistent with the intent, purposes, and requirements of the groundwater act. It's important for groundwater users to develop a voluntary agreement that clearly defines and explains how it meets statutory requirements and advances relevant legislative policies.** The use of voluntary agreements in this context has not been tested. There are significant uncertainties related to the development and implementation for the purposes of

03:06:23 groundwater management. However, we're Pioneers. If joint voluntary action is either not taken or it's ineffective at maintaining reasonably stable groundwater levels or achieving other stated management policies the commission

can still come back and control the use of groundwater via regulatory action. So if this community wants to do a voluntary agreement it has to come from you, it has to be presented to the commission, it has to be accepted by the commission, and you all have to be okay that if it doesn't

03:07:04 work that regulation can still occur. So a voluntary agreement: there are two main points to one. Point one, it must establish the area target for reduced water use and explain how that target advances the broader management objective and two, it needs to establish a procedure to review and approve exhibits to the agreement for participation in an agreement defined conservation program. So that's a lot of words that basically means you need to define how you're going to reduce groundwater and you need to have proof

03:07:54 that it's reducing groundwater use. So breaking up these points a bit further. Point one, again, an agreement can establish the area target for reduced water use. The area target in statute states that the voluntary agreement must be among users of the same groundwater Reservoir. Groundwater Reservoir is further defined within the same statutory chapter to mean a designated body of standing or moving groundwater having exterior boundaries which may be ascertained or reasonably inferred. Up to the RAC. And breaking down point two further,

03:08:46 again, point two was it needs to establish a procedure to review and approve exhibits to the agreement. Needs to have proof that there's participation in the agreement. The agreement itself can lay out conservation program eligibility and participation requirements. **Participants in the voluntary agreement must agree to the regulatory requirement, PTWs or permissible total withdrawals, but they can choose a variety of methods to achieve it.** Alternative crops that use less irrigation, efficient irrigation measures

03:09:32 Etc. And within the voluntary agreement folks that are agreeing to it can also receive incentives to do so also laid out in that same agreement. So again, folks in the back and probably in the front, there's no way you're going to be able to read that and that's okay. According to the authors of the voluntary agreement analysis, elements of collaborative strategies that I mentioned before can be included in a voluntary agreement. Those include irrigation conservation measures, researching policy to ensure

03:10:15 groundwater remains in the ground, implementing actions that protect and conserve groundwater dependent ecosystems, exploring open ET or other remote sensing applications, increasing the use of efficient irrigation

technology, and working with OWRD to enforce permit decline conditions, and working with OWRD to establish actions in the short term that they can use to reduce groundwater. Now again voluntary agreements are not the end all be all solution. One strategy that the collaborative has developed is not the

03:10:58 end all be all solution but we have a lot of tools in our tool box that we should use and that this RAC should consider and that this RAC should adopt flexibility in the rules so that we can make this work. **To conclude, the community has already spent, I think around eight years that I know of, possibly longer, collaborating on how these changes in groundwater use should occur and the department was a partner during that entire planning process so none of this is new to the Department.** The collaborative has identified a

03:11:46 number of tools that can be used to reduce groundwater pumping, that can be used to address the impacts of unsustainable levels. The collaborative looks forward to continuing to work with the department and this RAC to develop a good approach and effective rules to stabilize groundwater levels. And the last point that I want to reiterate is that the collaborative knows that the RAC has a process to follow and we knew a long time ago that this is where we were going to end up. We knew that irrigators in the room

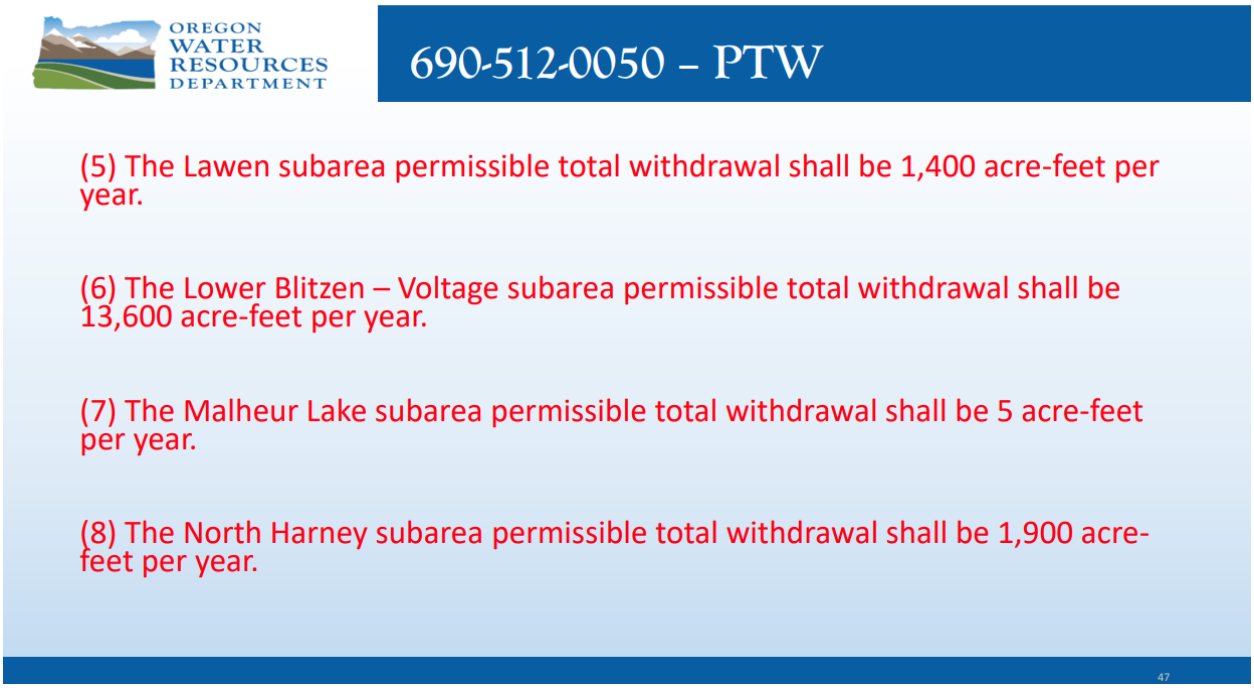
03:12:24 and others were waiting to know what the department was going to throw at them. We knew that. **What we're doing now is we're aiming to have the RAC realize that there are options to implement. We want to make sure that the rules aren't so restrictive that we can't implement other strategies that have been developed by the community. The significance of this community's engagement, of the Department's engagement, of the commission's engagement, tribes, Watershed Council, Etc is absolutely astounding and it**

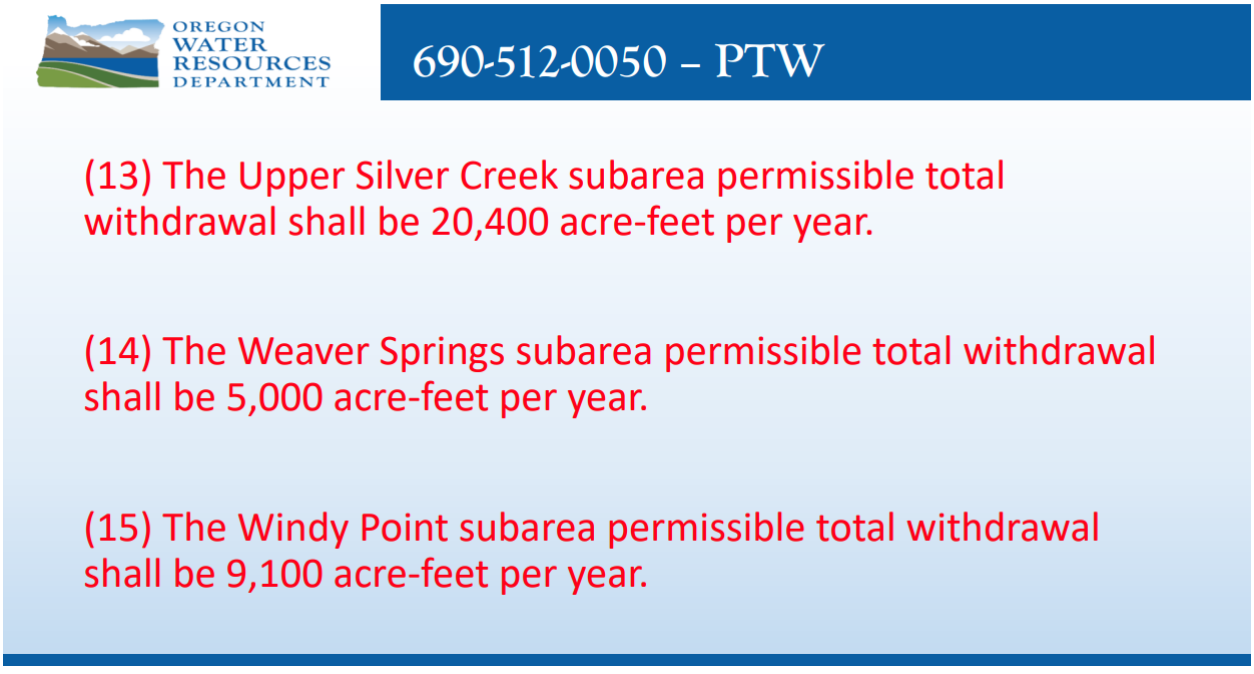
03:13:01 **should not be overlooked during this process.** Karen and I did the math. Karen did the math, not me. She estimates that **there have been around 14,000 Community hours spent on planning in the place-based planning process and the Watershed Council raised over $720,000 to do Place-based planning which is also astounding**. We've worked really hard and we have good options for you to use. Please use them. Thank you

March 6, 2024 RAC Meeting #6 – PowerPoint

For the lower priority subareas OWRD proposed to set the PTW at 2018 pumpage levels. For higher priority subareas OWRD was clear about the timeline for implementing PTW

through the contested case process and did not specify whether and when a contested case process would occur for lower priority subareas.





OREGON WATER RESOURCES DEPARTMENT

Proposal for Implementation of the PTW

Implementation of the PTW

- OWRD plans to bring the 6 High Priority Subareas into the contested first
- "Glide path" – implementation depends on rate of decline
  - Weaver Springs: Little to no glide path considered
  - Crane Dog Mountain, Lawen, North Harney and Rock Creek – A glide path can be considered

OREGON WATER RESOURCES DEPARTMENT

Proposal for Implementation of the PTW

Weaver springs

Proposal: Implement the full PTW immediately after issuance of the final order - completion of the contested case

- Reasons:
  - Weaver Springs has the most severe rate of decline, needs to be swiftly addressed
  - Immediate PTW implementation is needed

Proposal for Implementation of the PTW

Crane, Dog Mountain, Lawen, North Harney and Rock Creek

Proposal: Implement the PTW 3 years after the required Notice of Proposed Corrective Control Orders are issued

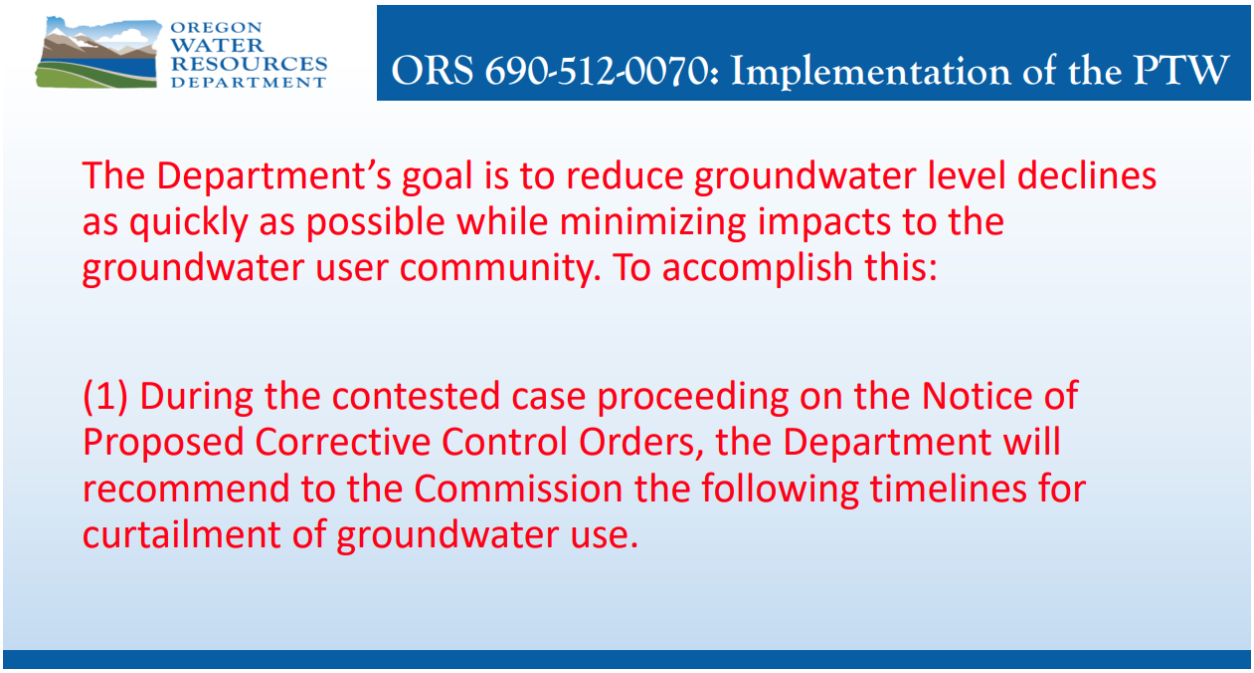
- Reasons:
  - These subareas are areas with less significant rate of decline
  - More flexibility to implement in these areas

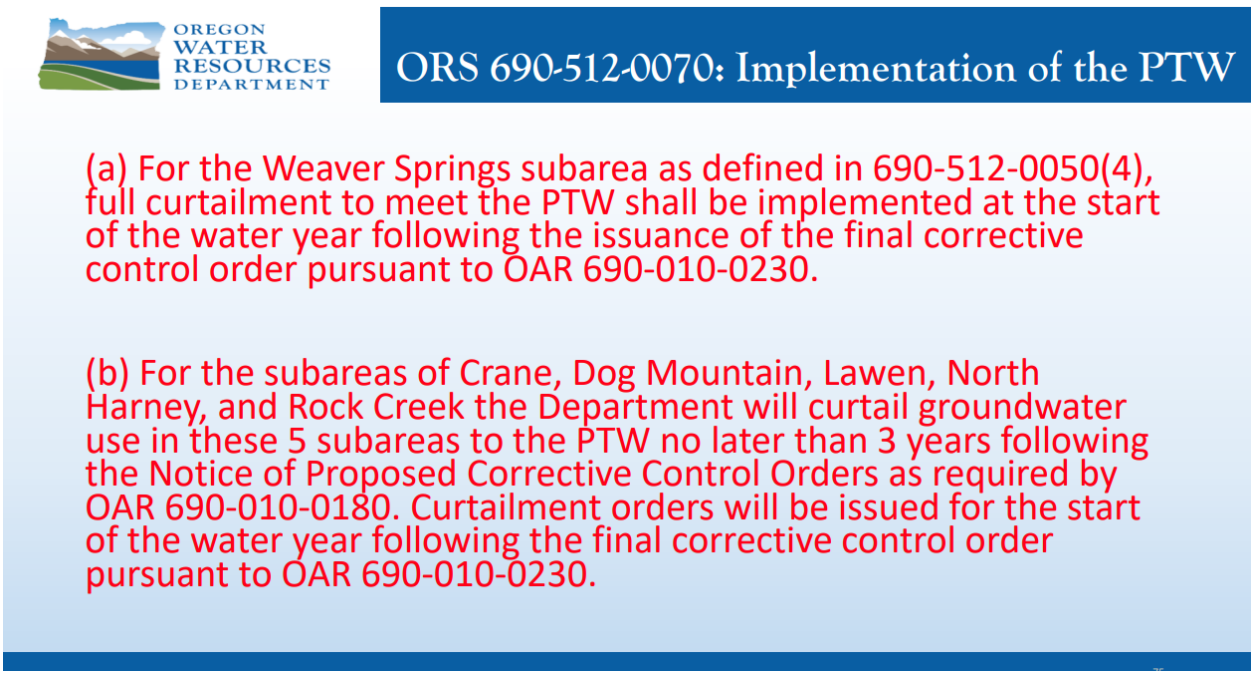
Proposal for Implementation of the PTW

Conclusion

We believe that our proposal for the 6 high priority subareas balances the needs of these several factors:

- Economic Impacts
- Domestic Well User Impacts
- Impacts to Senior Rights Holders
- Impacts to Groundwater Dependent Ecosystems
- Time Necessary for Contested Case (estimated 2 – 3 years)
- Time for Voluntary Agreements





March 6, 2024 RAC Meeting #6 – Meeting Summary

The RAC Meeting Summary shows significant feedback on a wide range of topics, including comments about areas that RAC members believe should not be included in a critical groundwater area.

Process Discussion

In response to RAC member interest in sharing feedback to OWRD about the process to-date, Bryant Kuechle facilitated an open-ended conversation with the goal of identifying RAC member concerns with the process and capturing their questions and feedback so they can be folded into a future RAC meeting discussion/learning session. RAC members provided the following for consideration:

- Why is the entire basin designated a CGWA and not just the subareas that have triggered the thresholds for designation?
- Recap all past work and discuss what occurred at the last meeting, at the beginning of each future meeting
- Critical Groundwater Designations: How do they fit and how are the defined? Why are some areas included when they do not meet CDDWA conditions?
- How does the input of the RAC get incorporated into the rulemaking process?
- How will success be measured after full PTW? What will be the groundwater levels in 5, 10, 15 years?
- How do we engage the RAC to educate the public?
- How has the process gone in Umatilla? Lessons learned? (reduced pumpage has shown reduced decline)
- Explain PTW
- How do we define reasonably stable?
- Can Dog Mountain and Weaver Springs be separated?
- Make searching for information easy and send specific links to past information shared/presented
- Send past information to water rights users in the mail (internet not always reliable in Harney County)
- Clearly define the data that has been used and how it was verified
- Share the quality of the data
- Identify the areas that are negotiable
- Discuss the policy decision of subareas and how this influences PTW
- Why does the subbasin approach as presented assume the worst area's PTW? What would this look like if the areas were averaged and why is this not the right approach?

- What are the projected timeframes of hydrological water levels?
- How were the years selected and how does that differ from the basin approach?
- How does a water level decline in one area impact other areas in the basin?
    - Manage for one area and determine the effect on surrounding areas and the overall decline in the basin
- Look at the well data anomalies to help manage the system
- Timeline is aggressive, community needs flexibility
- Share link to USGS data that is available
- At next RAC have an information session that addresses questions and visually shares the data and calculations
- Identify areas of agreement and opportunities for discussion by separating the science and policy decisions. Where do we agree on policy?
- Add triggers/actions for the subareas that are not high priority so we don't fail to achieve those goals
- Could there be subareas in Weaver Springs? Wells are showing different levels of decline
- Received information about severity of the cuts only in the past few weeks, which has caused panic. The chart needs explanation.
- Education has been going on for years, confusion as to why people are saying this is all new information.
- There are 100s of domestic wells in the basin and they are not subject to regulation. Domestic wells are being impacted. We need to live with the desert.
- Reasonably stable is not a policy decision is a statutory requirement. For the other 9 subareas it will be important to set some sort of trigger for curtailment.
- Lower Blitzen should not be a CGWA.

March 6, 2024 RAC Meeting #6 – Originally Proposed Division 512 Rules

The initial set of Division 512 rules from, set PTW for 9 of the 15 "low priority" subareas at current pumpage levels and included the following language for the areas that would go through a contested case process, suggesting that the 9 areas would not be curtailed by regulation. No curtailment was proposed in the initial rules for the "low priority" subareas in

the original set of rules. Updated CGWA rules that included basin-wide regulation were not provided to the RAC until April 2025, one month before they were "finalized," which marked a significant departure from the original expectations set by the Department at the onset of the process.

> **"690-512-0070 Curtailment of Groundwater Use in the Harney Basin Critical Groundwater Area**
>
> The Department's goal is to reduce groundwater level declines as quickly as possible while minimizing impacts to the groundwater user community. To accomplish this:
>
> (1) During the contested case proceeding on the Notice of Proposed Corrective Control Orders, the Department will recommend to the Commission the following timelines for curtailment of groundwater use.
>
> a. For the Weaver Springs subarea as defined in 690-512-0050(4), full curtailment to meet the Permissible Total Withdrawal shall be implemented at the start of the water year following the issuance of the final corrective control order pursuant to OAR 690-010- 0230.
>
> b. For the subareas of Crane, Dog Mountain, Lawen, North Harney, and Rock Creek the Department shall curtail groundwater use in these 5 subareas to the PTW no later than 3 years following the Notice of Proposed Corrective Control Orders as required by OAR 690-010-0180. Curtailment orders will be issued for the start of the water year following the final corrective control order pursuant to OAR 690-010-0230."

March 6, 2024 RAC Meeting #6 – Sub-basin PTW Memo

The Sub-basin PTW memo from **March 2024** shows PTW set at current pumpage for 9 "low priority areas." The memo states:

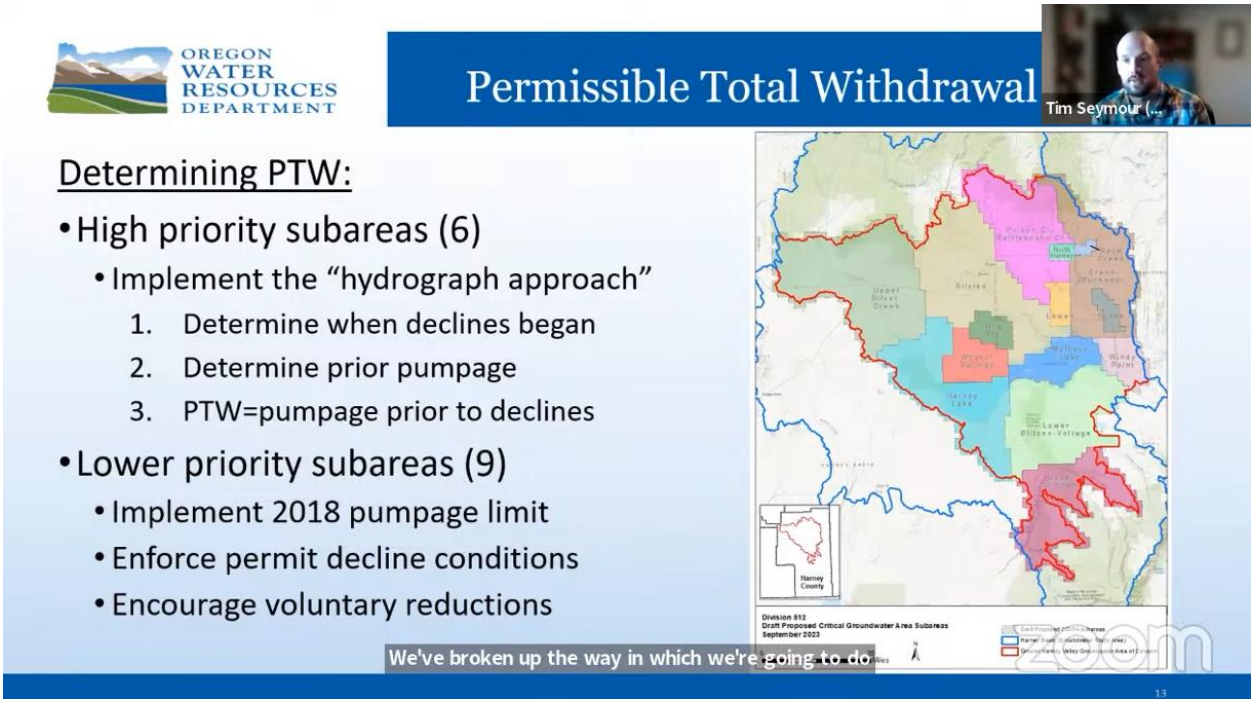
> "**The Department is proposing the 15 subarea approach to target regulatory action in those areas that are experiencing the greatest rate and magnitude of groundwater level decline (high priority subareas), while limiting the impacts of pumpage reductions in those areas where the declines are not as severe (lower priority subareas)**."
>
> "**Target Water Level Trend** The Department's position is that the goal of any groundwater management actions in the basin is to stabilize the groundwater level declines, resulting in a target water level trend of no decline. Any proposed framework for facilitating groundwater management in the basin is required to meet

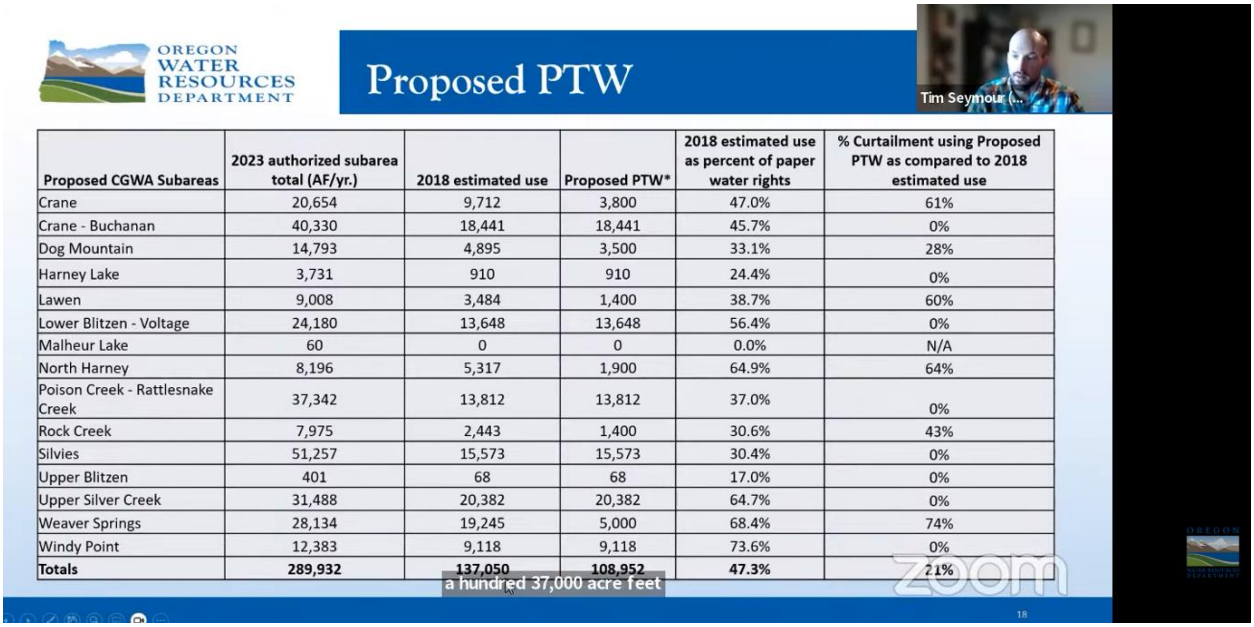
this criterion. The Department's proposed framework of 15 subareas, with targeted curtailment in those areas with the greatest rate and magnitude of decline (high priority subareas) is intended to achieve this goal while limiting the impacts of pumpage reductions in those areas where the declines are not as severe (lower priority subareas)."

"The PTW values for the "West sub-basin" and "South sub-basin" are equal to the sum of PTW values of the grouped lower priority subareas from the Departments current proposed approach. These PTW values represent the 2018 pumpage across the entire "sub-basin", and in effect represent no change to the Departments current proposed PTW values."

March 19, 2024 Groundwater Advisory Committee Meeting – Division 512 Rule Update

OWRD describes its approach to prioritizing initially proposed subareas along with an approach to determining permissible total withdrawal (PTW). For "lower priority" subareas OWRD initially proposed setting PTW at 2018 pumpage levels while encouraging voluntary reductions.





Proposed CGWA Subareas	2023 authorized subarea total (AF/yr.)	2018 estimated use	Proposed PTW*	2018 estimated use as percent of paper water rights	% Curtailment using Proposed PTW as compared to 2018 estimated use
Crane	20,654	9,712	3,800	47.0%	61%
Crane - Buchanan	40,330	18,441	18,441	45.7%	0%
Dog Mountain	14,793	4,895	3,500	33.1%	28%
Harney Lake	3,731	910	910	24.4%	0%
Lawen	9,008	3,484	1,400	38.7%	60%
Lower Blitzen - Voltage	24,180	13,648	13,648	56.4%	0%
Malheur Lake	60	0	0	0.0%	N/A
North Harney	8,196	5,317	1,900	64.9%	64%
Poison Creek - Rattlesnake Creek	37,342	13,812	13,812	37.0%	0%
Rock Creek	7,975	2,443	1,400	30.6%	43%
Silvies	51,257	15,573	15,573	30.4%	0%
Upper Blitzen	401	68	68	17.0%	0%
Upper Silver Creek	31,488	20,382	20,382	64.7%	0%
Weaver Springs	28,134	19,245	5,000	68.4%	74%
Windy Point	12,383	9,118	9,118	73.6%	0%
Totals	**289,932**	**137,050**	**108,952**	**47.3%**	**21%**

May 30, 2024 RAC Meeting #7 – Transcript

This meeting was seen by participants as a "process reset" after significant community concern was voiced at the March meeting and the Department accidentally sent an email questioning whether RAC input would influence policy decisions. Local RAC members requested less presentations from the Department and more conversation, especially where OWRD had previously committed to additional conversation. RAC Members also requested greater transparency about when input would be gathered on high priority topics and how it would be used in decisions.

> **Mark Owens:** I would just follow up on what Lisa said there. A lot of the members that I've talked to, I see [...] here so, one, thank you for changing
>
> 00:15:06 the agenda to have more discussion. I appreciate that. But that's where a lot of us are at. **Being presented to wasn't enough. We need to be presented to and have conversations so we could work through this stuff as a group.** I'll give an example. When we went to the 15 sub areas or somebody likes to call administrative areas, it was said in the RAC meeting we're not going to have discussion or time to have discussion on all of those. That's a mistake. Community members here and community members there can see
>
> 00:15:40 themselves in each one of those and we said we weren't going to have time to discuss that. The other thing I would say is with the opportunities outside the RAC I think is very important... **even up into RAC six there were questions on critical groundwater designation. The department would say well we'll have time to discuss that and we never seem to go back and have time to discuss**

that. So we did ask where's our input space and where decisions can be made for the RAC and then we got a document that

00:16:13 **says these are done. So we've been struggling as a community since that came out. We were told we'd have time to discuss that now we were told we weren't. So just that and making sure we have that space outside the RAC to have those discussions.**

RAC Members emphasize the desire and need for this process to look different than other RAC processes given the consequences to the community, including greater opportunity for local input and a need to distinguish between different areas.

Kristin: The overarching thing here is, you know, what does success look like in this basin and, you know, what Jason talked about earlier, you know, why we're working with the governor's office, why we're working with others is because **this state needs to see us come out of a successful process and the reason why we're asking for this RAC to be**

00:39:09 **different is we've had discussions with other RACs that have taken place throughout the state, other regulatory processes that have taken place. Those aren't successful models to follow and that's why we're asking for this process to have some uniqueness to it. To have better input from the RAC, to have more influence on that decision making process, to have more on the ground knowledge be really taken into account, to have individual parts of the Basin to be really scrutinized to know where we have withdrawal that triggers critical**

00:39:45 **groundwater shortage areas and where we don't.** And that's, you know, what looks like success here is that we still have an economically viable community at the end of the day. **We cannot decimate this Community because we thought we should go back to zero withdrawal.** We thought that we should go to extremes and never look back in 30 years and figure out were we even successful with the first measures that we took. And so it is super critical for us to treat this process in this Basin different because you'll decimate

00:40:18 the economy here, you'll decimate the people here which then impacts the state at large.

RAC Members express concern about how OWRD may use the rules to control voluntary agreements and express a desire for conversations about how the two might interrelate, generally expressing confusion, as well as a need to identify areas of agreement.

Mark Owens: Just keep in mind what Roger and Kristin said in saying what does success look like, how do we measure success. That's just something that we should all figure out. I'll just say success for the majority of the people in this room is not how fast we can fully implement permissible total withdrawal. That's not. That's what we saw in the rules. Kelly, I know we were going to have the discussion but we need to start there. Secondly, what do we agree on? I mean we always seem to be talking

00:52:37 about what we disagree on but I think there's several things that we could agree on and first actions that need to occur. Maybe Louis brought one of them up here shortly per conditions. **So maybe we could work on some positives too as we work on this. How do volunteer agreements work with the rules? Are the rules these sideboards, the limiting factor to volunteer agreements or not? If we say full implementation of PTW in three years or five years is that what we have to do in a voluntary agreement? Because a**

00:53:14 **lot of us in the room have that concern and I know the department said there's no flexibility there but we're also worried about outside groups coming in and telling the commission you can't support a voluntary agreement unless it meets the rules. So that's a real concern and fear here. If we're going to be all into volunteer agreements how they work with them.** On your 'produce the division 10 groundwater report for the community review' also for consultation with the tribes and consultation with the counties. We know

00:53:45 there was an exception granted in division 10 but we need to work through that. The fact, as Zach said, a lot of our questions were put out there. If we're just given a fact sheet to answer those questions we're going to fail. A lot of those questions, the one I'll bring up right now then I'll be quiet, **we've been told in nine of the sub areas: don't worry, if you're irrigating in 2018 you'll be fine.** But 19 times in the first six RACs we asked about how you can regulate and it was said only by prior appropriation

00:54:27 regulation. So if the department has to go back and look at those nine areas and move forward if they're in rule there's no regulatory process in order to make that statement true. The community could try volunteer agreements to make that statement true but I think there's still a lot of confusion there that if you're irrigating in 2018 don't worry.

Tim: So can I ask to clarify really quickly, is what I'm hearing you say that the sub area concept violates prior appropriation and we should look at that more closely?

Mark: I'm not

00:55:07 saying that. **I'm saying when you said in those nine areas that aren't critical that you're not going to go to contested case on it. If you're irrigated in 2018 you're fine. But what I say is if the levels continue to drop, because some of those are dropping to a foot and a half, the Department's going to come back in at some time and say hey no we've dropped too far here. So the 2018 usage is out the window because if you go through the contested case because you won't have to come back for another RAC because you already put PTW**

00:55:37 **in the rules you can just go to a contested case if you so choose and then the only way you have to regulate is through prior appropriation regulation which then brings in the 40% of the paper water rights**.

OWRD recognizes that voluntary approaches are a part of the overall management in the basin.

Kelly: So what we're trying to highlight here is that this rulemaking process is just one effort into taking action in Harney basin groundwater, right. We have and I've said this a couple RAC meetings ago, remember, I highlighted those two buckets. There's the

01:18:25 voluntary and the regulatory and so this is kind of another graphical way to demonstrate this, right, like, on the right side this green circle, right, region 512 that's the regulatory stuff and then we have working for permit decline conditions on the right side but working in tandem for the groundwater is the voluntary side. **So you have your voluntary agreements, Mark you're asking about how the rules and voluntary agreements work together. It's a conversation we'll certainly be having in the future.** And then we have

01:18:56 CREP and we have the place based planning and then as well as the Harney domestic well fund, right. So we're just trying to highlight that this isn't the only, I want to say, item that OWRD is doing in the Basin to help with groundwater and Harney Basin. And supporting all that, right, is the data. So we have the brown box down here where all the data is and, Roger, it's that data the government helps put together.

RAC Members expressed concern about inclusion of areas that do not independently meet any of the criteria for a critical groundwater area designation in a critical groundwater area boundary. OWRD defers that conversation until after the Division 10 groundwater report comes out.

Kelly Meinz: All right. Let's go to the

03:30:08 next slide. So the critical groundwater area boundary. You want to go do your Vanna White thing?

Tim Seymour: It's the areas that are in color right? The 15 sub areas we've talked about in the past.

Bryant Kuenchle: Okay so are we talking about the sub areas or are we just talking about the boundary?

Tim Seymour: Exterior boundary. Greater Harney Value Groundwater Area. So don't look at all those different colors, just the line around them. Just the outside of it

Mark Owens: I think this is the one that needs some work done because you're including two or three areas that do not have any

03:30:52 **water issues at all like Silver Creek, the Blitzen, and then the green one in the South**

Tim Seymour: You have the upper Blitzen and then the lower Blitzen. Both of those

Mark Owens: I think that one needs some fine tuning to maybe make it smaller. Maybe make it around the six sub areas that are the most concerning.

Tim Seymour: What data do you need to help make that decision? Or, you're not making a decision, said that wrong, what information do you need to help provide input?

Lorissa Singhose: Part of the information is on the, you

03:31:42 **had it on here, that one of sub areas that do not meet the critical groundwater designation criteria so I would like to know which areas don't meet because you put it in your thing that there's ones that don't meet your sub area. So I'd like to know which ones that you say don't meet that criteria of the sub area. And then I'd also like for each sub area, for personally, would be what criteria for each sub area actually put it in and is that criteria... how do I say it... is that criteria in the realm that can**

03:32:24 **be interpreted in different ways. Just depending on policy there's some, or not policy, some of the statutes have the word "can" or "can't". There's some interpretation in some of the statutes so I guess I wanted to know what statutes, what definitions, back putting each sub area in the critical.**

Tim Seymour: **So I think the groundwater report, The Division 10 groundwater report that we're working on and will be released in June, is going to help with justification for that and provide some of that information.** So that's

03:33:02 absolutely doable and I would say for the purpose of this conversation that we just need to read and review that and then we can have an informed conversation from there.

Bryant Kuenchle: So clearly I think, go to you next Mark, that we're definitely going to keep talking about this so anything else that you need to know to help you in the next conversation

Mark Owens: So trying to remember back to the conversations that we had in the previous meetings. We determined this because it was inferred that the groundwater groundwater study said

03:33:38 groundwater was connected. **So I go back to if I pump in Blitzen it's never going to affect Silver Creek. If I pump and Blitzen it's never going to affect Buchanan. So I do not think there's a justification to make the whole thing a critical groundwater designation. I do believe there's areas here that haven't even tripped the threshold for what the groundwater allocation will make us do. The 25 foot decline… some of these haven't declined 25 foot so it's tough for me.** And then probably the most important one flushing

03:34:14 out would be the definition of a groundwater reservoir to a critical groundwater designation because in statute it talks about all the people in a groundwater Reservoir would have to enter into a voluntary agreement. Does that mean everybody in the critical groundwater designation would have to enter the volunteer agreement? So I need more thought process on that

Tim Seymour: **So what I'm hearing is we want to talk about the statutory language and the rule language that goes along with it and then we'll take the information**

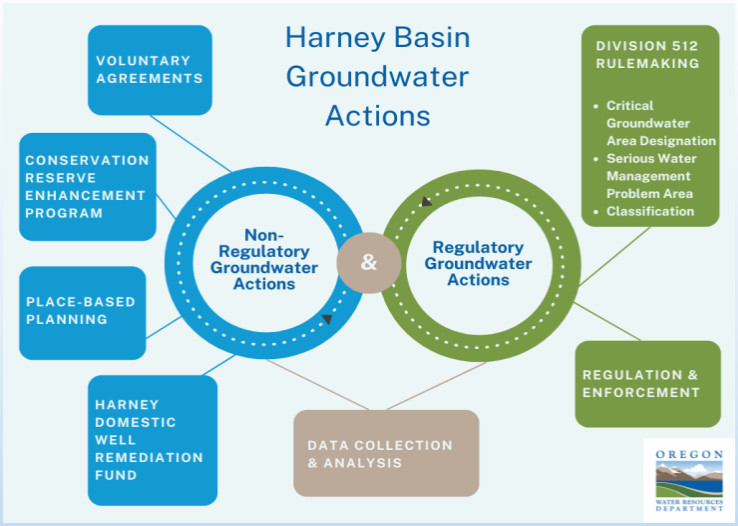
03:34:48 **from the groundwater report that references that and we can have a conversation around all that?**

May 30, 2024 RAC Meeting #7 – PowerPoint

OWRD indicated that the voluntary agreements and actions would be better suited to collaboration and empowerment.

OREGON WATER RESOURCES DEPARTMENT

OWRD Harney Portfolio



- Rulemaking is one item in the OWRD Harney Portfolio
- Regulatory and Non-Regulatory in Harney Portfolio
- Other work may be happening outside OWRD

OREGON WATER RESOURCES DEPARTMENT

Process and Engagement

Regulatory Groundwater Actions

IAP2 Spectrum of Public Participation

IAP2's Spectrum of Public Participation was designed to assist with the selection of the level of participation that defines the public's role in any public participation process. The Spectrum is used internationally, and it is found in public participation plans around the world.

INCREASING IMPACT ON THE DECISION

	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

Non-Regulatory Groundwater Actions

IAP2 Spectrum of Public Participation

IAP2's Spectrum of Public Participation was designed to assist with the selection of the level of participation that defines the public's role in any public participation process. The Spectrum is used internationally, and it is found in public participation plans around the world.

INCREASING IMPACT ON THE DECISION

	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

OWRD continued to distinguish between high and low priority areas, including a mix of regulatory and voluntary approaches, with curtailment focused in high priority areas.

Prioritization of Subareas

Direction from Statute

- ORS 536.241 – The State of Oregon to ensure water supply sufficient to meet the needs of existing and future beneficial uses of water, and to adequately manage the state's water resources.
- ORS 537.525 – Determine and maintain reasonably stable groundwater levels.
- ORS 537.525 - Adequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recreational, and other beneficial uses.

RAC Input Previously Sought

- RAC consulted during RAC meeting number 4 (November 29, 2023).
- RAC suggestion to divide the subareas into low, medium, and high priority categories. The RAC also expressed concern with the 4,080-foot elevation line.
- OWRD made policy decision to not to use 4,080-foot elevation as a criterion for prioritizing subareas based on the input from the RAC.
- OWRD made the policy decision to keep the two priority categories.
- **REVISIT – Was this understood?**

Recommendation to Commission:

- Criteria used for designating priority.
- Categorize six subareas as high priority due to the severe magnitude and rates of decline and focus on regulatory action in high priority areas first.
- Categorize nine subareas as lower priority and focus on voluntary reductions of groundwater use in these areas.
- Evaluate for regulatory action during a future review of the CGWA.

Goal for Groundwater Levels in the Harney Basin

Direction from Statute

- ORS 537.525 – Determine and maintain reasonably stable groundwater levels.
- ORS 536.241 – The State of Oregon to ensure water supply sufficient to meet the needs of existing and future beneficial uses of water, and to adequately manage the state's water resources.
- ORS 537.525 - Adequate and safe supplies of groundwater for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recreational, and other beneficial uses.

Policy Decision to be Made:

What should the goal be for groundwater levels in the CGWA?

Options for Consideration

- Manage for groundwater level recovery.
- Stabilize groundwater levels at a target water level trend of no decline as quickly as possible.
- Allowing for managed depletion in the short term (glide path) while reducing use to stabilize groundwater levels.

Input requested from the RAC

- Which of the three options should be the goal?
- What timeline should be established to achieve the chosen goal?

Considerations:

- Stabilizing groundwater levels can be achieved through both a voluntary and regulatory approach.
- Voluntary Agreements are not limited to the HBCGWA.

Projected RAC Meeting for Discussion

RAC Meeting Number 8 and 10

Timing of Implementation of the Permissible Total Withdrawal (PTW)

Direction from Statute

- ORS 537.742(2)(a) – Implementing via an order apportioning the permissible total withdrawal as established by rule.

Policy Decision to be Made

What should the timeframe be for pursuing regulatory action to reduce water use to the PTW amount?

Options for Consideration

- Implement the PTW through a groundwater reduction schedule for five of the high priority subareas:
  - Crane, Dog Mountain, Lawen, North Harney, Rock Creek
  - The current proposal is three years after the Initial Notification of Proposed Corrective Control Orders.
- Implement the full PTW immediately after the finalization of the contested case for Weaver Springs.

Input Requested from RAC

(On next slide)

Projected RAC Meeting for Discussion

(On next slide)

Timing of Implementation of the Permissible Total Withdrawal (PTW)

Input Requested from RAC

- Should implementation schedules be written in the rules or a policy document?
- Where should the timeline for the curtailment schedule begin for the Crane, Dog Mountain, Lawen, North Harney and Rock Creek high priority subareas?
- Should reduction schedule for the five high priority subareas include the years before and during the contested case process?
- How many years should the reduction schedule for the high priority subareas be?
- What is the potential economic impacts of a longer glide path?

Projected RAC Meeting for Discussion

RAC Meeting Number 8 and 10

Allocation of the Permissible Total Withdrawal

Direction from Statute

- ORS 537.525(2) - Beneficial use without waste, within the capacity of available sources, be the basis, measure, and extent of the right to appropriate ground water.
- ORS 537.735(d) - Any one or more provisions making such additional requirements as are necessary to protect the public welfare, health, and safety.

Policy Decision to Be Made

How should the PTW be allocated?

Options for Consideration

- Allocate by actual/beneficial use.
- Allocate by paper water right.

Input Requested from RAC

- Should the PTW be allocated by the paper water right or by the actual/beneficial use?
- If by actual/beneficial use, how is beneficial use determined?

Projected RAC Meeting for Discussion

RAC Meeting Number 8 and 10

OWRD continued to propose the PTW for lower priority areas as 2018 pumpage levels.

Calculation of the Permissible Total Withdrawal (PTW)

Statutory Direction

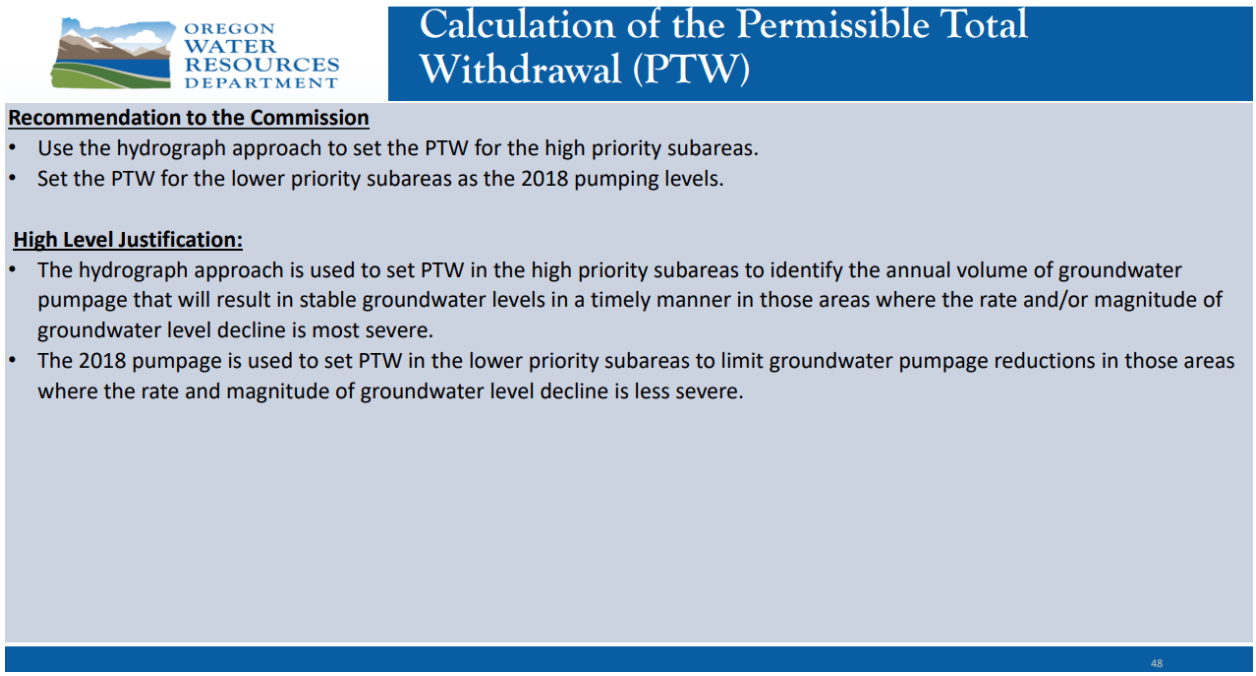
- ORS 537.735(b) – A provision determining the permissible total withdrawal of groundwater in the critical area each, day, month, or year.

Why No Additional Input is Being Sought:

- OWRD will not seek input from the RAC because OWRD is using methods based on the best available science.

Recommendation to the Commission

- Use the hydrograph approach to set the PTW for the high priority subareas.
- Set the PTW for the lower priority subareas as the 2018 pumping levels.



May 30, 2024 RAC Meeting #7 – Meeting Summary

In response to the significant public response to Meeting #6, OWRD committed to greater community engagement. Feedback from the RAC on process improvements and desire for substantive discussions was extensive.

I. Discussion Points for the RAC with OWRD

Bryant Kuechle presented some of the discussion points that have come up as important over the prior six RAC meetings, and the RAC added to that list:

Added by the RAC at Meeting 7:

- How can the rules be adaptive? There is, and will be, new information
- What is the updated timeline from completing the rulemaking?
- What ways are there to help the RAC and others process all the information, so RAC members are all working from the same foundation of information?
- How can we create more opportunities for discussion? Within the full RAC meetings, and between?
- Where are the real problem groundwater areas? Some areas are declining, some areas are not. The Groundwater Trends reports do include current data, and annual data is used to update those reports around summertime.
- The boundaries and implications of sub areas
- What does the discrepancy between electricity usage for pumping and estimated water usage mean?

Added by the RAC at Meeting 7:

- The Operating Principles from Meeting 1 clarified the RAC's role is to provide information, but OWRD would make the final decisions. [More in the depth conversation of RAC engagement happened later in the meeting]
- Have more discussion, both before and after presentations of information from OWRD or others
- Clarify and document what OWRD does with feedback provided by the RAC
- Get more of the information to community (e.g., meeting materials, easy links and ways to find the rulemaking webpage, recognition that not everyone has computers)
- What would a "zero drawdown" approach mean / what would implications be for the basin?
- What does success look like? A RAC member commented that this rulemaking needs to create a new model for how the state does rulemaking on water. That means being precise about the different needs in differ areas, not decimating communities, and not looking to how fast OWRD can move to implementation. Also, how can that success be measured? This rulemaking impacts the state at large
- There needs to be ways for ongoing, constant improvement, and iteration. The rules are already revisited regularly. What else could be done?
- Grow confidence in the numbers being used to inform decisions
- Start thinking about the implementation process now, and ensuring the rulemaking supports implementation
- Think about representation on the RAC (i.e., federal agencies with knowledge, and people implementing voluntary programs like CREP)
- How can the pacing of feedback and decisions be matched with new information? Continue to grow the dataset of information
- What can be done to better implement the rules and permits in place now?
- A quiet response to an ask for feedback, is not the same as agreement. Confirm levels of agreement
- Where are those points of agreement
- What is the relationship between the rules and voluntary agreements
- For the Division 10 report, engage with Tribes and coordinate with the County, and how does the Division 10 report connect to this rulemaking
- What is the basis for the regulatory process (e.g., by permit priority date or at some specific date such as 2018)
- Why is the department still issuing new permits and allowing transfers

It was suggested by OWRD that the voluntary actions were where there could be greater participation in decision-making.

IV. Spectrum of Public Participation

The International Association for Public Participation (IAP2) categorizes a range of engagement from informing, to involving, to empowering the public to share decision-making with government agencies. OWRD recognized some confusion on where in the spectrum RAC engagement rested. OWRD shared that the decision spaces, depending on the decision, might range from "informing" to "consulting" to "involving" the RAC in parts of rulemaking decision. But ultimately, the OWRD Commission needs to act on the regulatory rulemaking overall. There will be portions of the voluntary actions where the RAC and others can collaborate with OWRD or make decisions as the group.

Several RAC members requested, that wherever possible and where decisions are a matter of OWRD policy, the RAC be "involved" in shaping alternatives, and shown how their input influenced the OWRD decision. Another RAC member reminded the group of their hope that this RAC be a model for how community can engage with OWRD to get better outcomes from rulemaking. A RAC member noted that other rulemakings are often in the "consult" column for the rules overall.

OWRD's Jason Spriet said that OWRD will strive to "involve" wherever possible and look for opportunities to "collaborate" where possible.

Bryant Kuechle committed that from this point forward, each decision space will be identified prior to opening discussion, so the RAC and OWRD are both clear on whether feedback on a particular decision is in the "inform", "consult", "involve", or "collaborate" space.

Discussion on the Critical Groundwater Area boundary again highlighted the different conditions in different areas.

C. Boundary of Harney Basin Critical Groundwater Area (HBCGWA) & Criteria for Subareas

The Critical Groundwater Area boundary is the geographic area where OWRD may take further regulatory action to manage water. Currently, the boundary is proposed to be the same as Greater Harney Valley Area of Concern (GHVGAC) divided into 15 subareas. See the proposed boundary map here.

RAC Dialogue

A RAC member noted that the proposed boundary includes areas without major issues (e.g., Silver, Upper Blitzen, and Lower Blitzen). Another asked which subarea do not currently meet the criteria for listing as Critical Groundwater Areas? And another RAC member asked if OWRD could provide the RAC with the criteria, and the data, for each subarea that determined whether a subarea was "in" or "out" of the boundary—including some of the areas currently "out", but adjacent to the subareas currently proposed as "in"? There was also a question about which of those criteria were more or less flexible? A RAC member asked how a voluntary agreement would work within a subarea (e.g., would all water users within a sub-area need to sign up for a voluntary agreement)? A RAC member also requested OWRD provide some information/justification on the hydrologic connectivity between sub areas? A RAC member also emphasized that the impacts of withdrawals on springs is important to remember, and not including some sub-areas may miss the connectivity to important springs. A RAC member asked for a definition of groundwater reservoir.

The RAC could use more clarity on what the implications of a Critical Groundwater Area are (e.g., What actions can OWRD take, and do they have to do that for everyone? What tools become available within those areas? And what are the impacts?).

There are also some questions RAC members identified in March that still need to be discussed (e.g., are there other criteria that could be used to delineate sub-areas?). Tim Seymour of OWRD replied that the RAC had discussed some other criteria (e.g., cones of depression, history Harney Lake bottom).

Finally, the RAC discussed the use of the USGS groundwater model to inform the management scenarios that will be inputted into the model.

Area of potential agreement

More discussion and clarification are needed on this topic. The RAC members present did seem to support that doing model scenario runs could help "test" and "refine" sub-area boundaries but would not be a good way to "determine" sub-area boundaries.

OWRD offered initial goal statements that were modified by the RAC.

VIII. Shared Goals for the RAC

The RAC discussed what their vision of success might look like coming out of the RAC, and as OWRD

finalizes rules. Bryant Kuechle and OWRD offered some initial goal statements (language offered by RAC in yellow):

- A sustainably managed supply of quality water for people, the economy, and the environment
- Be timely and urgent, but not the whole Basin is in crisis ~~Urgent situation~~
- Limit groundwater decline within identified areas
- The community remains viable and some water use is allowed
- Limit impact to the community and the natural environment. Fiscal impact is important
- Water supplies to meet future needs of the community and the natural environment
- Clear process that leads to rules that can be understood, with shared understanding of the issue and importance of better water management
- Providing options to reduce groundwater use, including ways to ensure rules don't limit the potential of voluntary agreements

Items the meeting ran out of time for

There were a number of items the RAC wanted to discuss, but ran out of time for:

- Voluntary agreements, and the sideboards for those

May 30, 2024 RAC Meeting #7 - Topics for RAC Input

The Topics for RAC Input document was developed to help the RAC understand the various decisions and where they could have influence. The document lumps high priority and low priority areas suggesting different treatment in these areas.

> "Groundwater level declines are not uniform across the basin. The six high priority subareas have been identified where the pumping from many wells has merged to form large cones of depression lowering groundwater levels at high rates and/or large magnitudes in those areas. These six subareas have been designated "high priority" due to the rate and/or magnitude of decline occurring. Groundwater decline rates and magnitude in the "lower priority" subareas are not as severe."
>
> "Stabilizing groundwater levels can be achieved through both a voluntary and regulatory approach."
>
> "What are options for reducing groundwater use in both the high and low priority sub-areas?"

June 27, 2024 RAC Meeting #8 – Transcript

RAC Members continue to highlight that some portions of the basin do not meet the criteria for a critical groundwater area designation. OWRD implies this is still open to discussion, but that it will be discussed later (after making the same commitment at the previous meeting). The critical groundwater area boundary was never discussed further.

> **Lorissa: So the department has suggested to divide us into sub areas for management to regulate us and they want to regulate as different by sub areas and so because Water Resource has**
>
> 01:00:18 **said that they see the differences from area to area and how water responses are different criteria, geology or whatever we want to apply to it. So we're going to be divided and be treated according to water issues, responses, whatever. So why can't we apply that same criteria designation by sub area to see if that sub area meets the critical designation if we're going to be regulated differently? I mean you put the Western with Weaver. We all know Weaver is the worst area as far as**
>
> 01:01:00 **issues and if Weaver, just as an example, gets regulated off well that's now going to affect that whole Region's recharge numbers and all it's what's available or... I mean, I'm just saying that if we're going to divide and we're going to regulate different, we see the differences in those sub areas to do**

that so why aren't we applying the criteria for the designation the same way as we're going to regulate? That would be my comment

Bryant: Tell me if I'm getting this accurate. I'll just say it again. We're going to talk

01:01:36 about modeling later, correct, and we're going to identify what scenarios could be modeled.

Tim: I think what I heard is you would prefer that if we're going to say that the Basin is one unit we should manage it as one unit. If we're going to divide it up then we should leave out the areas that haven't tripped the threshold

Lorissa: Possibly... I mean... If we're different, we're different. If we're not, we're not

Kelly: And I think it's important, Tim, to kind of point out too that I'm

01:02:16 **hearing a lot of comments around Donner and Blitzen and why are they in the critical groundwater area and really when you start talking about these management scenarios we're going to be talking about, just a preview, how much, when and where right. So when we're talking about where we're talking about delineating or dividing up the critical groundwater area, whatever it may be, into certain areas and maybe a management scenario is let's leave out Donner and Blitzen and see if we can meet our goals for**

01:02:45 **stabilizing groundwater levels.** So I think there's just a lot of time to incorporate this feedback in and I just think it's kind of important.

[...]

Mark: I mean what you've done is said you're going to do the Greater Harney Valley area of concern as a critical groundwater designation and you've shown that in this report. So if this report doesn't get changed until after the rules that's

Tim: This is the report for the *proposed* critical ground area. It is not the report of the final critical ground water area and so this is to lay the basis and form the problem statement. Then what we actually do in the rules does not have to line up with this specifically, right, because nowhere in here did I say that the

01:17:32 **critical groundwater area should be the GHVGAC boundary, did I?**

Mark: No, but the 15 subareas is the GHVGAC boundary.

Tim: I put it in the

Mark: Are the 15 sub areas the GHVGAC Tim?

Tim: Yes

Mark: Okay

Tim: And I said from the beginning I'm putting it in our framework because that's what we've been working with. I'm trying to help answer some of those questions that have come in like which sub areas have tripped or met threshold for designation and so that in this presentation I am giving you more than what is in the actual report because we don't talk

01:18:10 **about sub areas in the report. We don't specify what the boundary should be. We identify the groundwater reservoir and which thresholds have been tripped and where and then which corrective control provisions we're proposing to use to solve the problem though what area we do that in is not decided in this report.**

02:32:18 **Tim: And then the map packet has the proposed critical groundwater area boundary in there but we're not going to talk about that today. That's just for you to be able to clearly see what that boundary is** and thanks Fred for your suggestion last time that we put a packet together like this.

02:33:05 **Male: That last slide is the critical groundwater area right?**

Tim: We're not talking about that today.

OWRD indicates that additional conversation about delineation and prioritization of subareas is needed and will continue as model scenarios are developed and run. OWRD again emphasizes that reductions will occur in the 6 high priority subareas.

Kelly: All right. Thanks Bryant. Yeah, so we're going to

02:45:29 kind of go through this highlighted list of topics. We're going to try to get your input as well as gather input on other topics like fiscal impact and voluntary agreements and kind of gauge what information you need as Bryant said and how much conversation is warranted and needs to be done by these outside discussion groups outside of the RAC. So go ahead and next slide please. So when we talk about Model Management scenarios right and I think we briefly talked about this when we were talking about the Milestones,

02:46:03 not decision points thank you Lisa. **We need to really consider what are the goals for the groundwater levels in Harney Basin, how we can delineate this critical groundwater area, how we going to delineate sub areas within that critical groundwater area, and then when it comes to, I'm going to say just for**

lack of other words taking the sub areas through a contested case, how are we prioritizing those sub areas? Which ones are going to go first right? So an example

02:46:35 **of that is in our proposed model, our management scenario. We have the six high priority sub areas. We're targeting those first for groundwater reduction and then the next question would be how long will we take to fully implement that permissible total withdrawal rate and then how are we going to allocate that permissible total withdrawal**? So these are all topics that I think we really need to talk about when we go through the next three RACs and talk about Model Management scenarios.

RAC Members discuss the significance of a critical groundwater area designation as well as the extent and whether corrective controls like PTW are needed everywhere and whether or when corrective controls would be "triggered." There was a request for alternatives along with the relative impacts of alternatives. RAC Members voiced concerns that if a PTW is set for an area an "outside group" could use that number to force the Department to curtail use in low priority areas even though the Department has repeatedly indicated that it does not intend to curtail in those areas. There is continued concern and confusion about how PTWs will be used in different areas and questions about the necessity of PTWs in "low priority" areas. There is also a mutual desire for continued discussion, which does not occur.

Kelly: Okay. Yeah, thinking about these management scenarios and running these in the USGS model. Starting on the, like, the most… We have the goal, in my mind it's the goal, is the umbrella and underneath that next layer, I guess, is the critical groundwater area boundary. So how are we going to define within the model the boundary of the critical groundwater area? **So basically the question, the input**,

03:03:49 **that we think we want to receive from the RAC is what should be the boundary of the Harney Basin Critical Groundwater Area. And the options that we have right now are defining the critical groundwater area as the greater Valley groundwater area of concern, the GHVGAC. Or we've heard this is an option, an input, we've heard from some of the RAC members is defining the critical ground area, I think Mark just mentioned this, around the areas of most severe decline. So those are some options.** There are plenty other options on the table

03:04:20 but going to the next slide right. Three same questions. Can I go to the next slide? **Okay, is there something that we're not considering in terms of the critical groundwater area? Are there other options that we could potentially**

consider outside of just defining the critical groundwater area as the GHVGAC or defining the critical groundwater area as the more severe areas of decline? And then again what information do we need to provide to you so you can provide thoughtful input on the critical groundwater area boundary? So we can go back to the next

03:04:57 slide. The previous slide I mean.

Male: A brief discussion as to what critical groundwater area... How that impacts. Mark, how's that impact an irrigator?

Mark: How does it impact irrigators? So the...

Bryant: Don't try to answer it! These are areas for discussion

Mark: Thanks. My one would be is in RAC one and two we talked about potentially having triggers and it was at one time said by Ivan that yeah triggers are fine but sometime around RAC three or four triggers went out of the conversation and was said we couldn't. So I'm not saying that we would say the whole area

03:05:45 needs to be a critical groundwater designation but if it is I think **one of the biggest concerns for a lot of people in here is that a critical groundwater designation proposed by the department comes with a PTW. In Division 10 it doesn't say "shall" it says "may". We have concerns that this will be the first critical groundwater designation since the new rules and that if a PTW is listed, even if the department says they're not going to go to contested case, that the public or members of the public will**

03:06:20 say 'wait, no, you said what the permission total withdrawal is. Now you're not enforcing. Enforce!'. The department said no, we don't believe that could happen. But that fear is a rational reality for this community. So as we talk about critical groundwater designations, is there an area where part of them can be designed, because we don't want more development from there either, and that's the first thing it does. But then there would be groundwater triggers for contraction. So if Donner and Blitzen dropped 25 more foot or whatever our goal is the

03:06:57 department at that time maybe would come forward with the PTW and say we're potentially going to start a contested case. The department could be watching that for a period of years and two years before that triggered they could actually be making the PTW on what's occurred in the last decade or two decades. Maybe that takes the edge off the critical groundwater designation as a whole. So I

think maybe what we could use is what *could* also be used to prevent a PTW in areas that have not tripped statutory marks

03:07:34 or aren't declining at a faster rate.

Kelly: Hey Mark, let me see if I understand. **So the information that you think would be helpful for thoughtful input, PTW is the concern and I understand that, is how could the community possibly prevent implementation of the PTW in a particular area? Or I'm hearing triggers but**

Mark: **Not prevent implementation of PTW. There are some areas that I think we, some members around this table and the department agree, that we're going to say shouldn't**

03:08:21 **be a critical groundwater area designation. My understanding is the Department would probably say they should. So our concern is, Kelly, the listing of the PTW in a sub area of the critical groundwater designation. You don't have to list a PTW. If you don't list a PTW you very potentially take away what could manifest itself in a lawsuit against the department for implementation**

Kelly: Gotcha. Understood. Thank you Mark.

Tim: **So that to me sounds like part of the conversation should be around what the department may or may not be able to do in relation to the rules and the**

03:08:59 **structuring of PTW as it relates to sub areas within the boundary that we designate. Is that fair?**

Mark: **Fair to a point. So the Division 10 specifically says 'may' list a PTW so we know it doesn't have to be. So if it doesn't have to be, don't list it but I think we could all talk that maybe it's reasonable to have a trigger and we've heard two different things from the Department**. Yes we could after [something], no we couldn't. If we can't, what is…

Tim: **That's the conversation we need to have.**

Mark: And I'm not going to dive into that. You don't have time

03:09:39 **Tim:** But that's helpful. Thank you

Lisa: Can I just add to that? I think, I mean, **my interest would be structuring this in a way to prevent getting into trouble, bad trouble, in areas where we're not in trouble already. So a PTW or some tool like that where you say, like, we need to**

get here eventually. We need to not pass this or however we structure it. I mean I think it's part of the same conversation that you're kind of teeing up but maybe from a little different angle.

03:10:16 **I don't want to get into a situation where, you know, seven years down the road we realize now we've got another problem and now we're five years reopening the rules and then we're five years to... Pretty soon you're, I mean I've been doing this for 20 years, pretty soon you're 20 years down the road and you're in a lot of trouble so I think somehow structuring it so that we can keep areas safe**

Bryant: So trouble meaning the groundwater situation or...

Lisa: Yeah. **Trouble meaning you caused declines that**

03:10:52 **you were trying to avoid causing**

Tim: And triggers would do the same thing wouldn't it?

Lisa: Right. That's what I'm saying. There are probably different ways to structure it and we just, I think, need to have that conversation.

03:11:25 **Kelly:** We have Dominic Corallo online. Sorry Lisa, not to interrupt,

Dominic: Yeah. Thanks. So I would just reiterate, dovetail off what Representative Owens had to say. I mean, I think for a variety of practical and legal reasons I just... I don't think Harney county has a definitive position on whether there should be one really big critical groundwater area designation or separate ones but I would just submit that **I really do think it'd be a mistake for the Department to not**

03:12:01 **present an alternative where there were separate CGWAs designated over the areas of most severe decline. I think for a variety of reasons it's going to be a mistake if the department doesn't present that to the RAC as an alternative and explain what the different practical and legal ramifications would be of that.**

June 27, 2024 RAC Meeting #8 – PowerPoint

No PowerPoint Presentation online

June 27, 2024 RAC Meeting #8 – Meeting Summary

OWRD presented the Division 10 groundwater report, which resulted in a significant number of questions.

Presentation – Division 10 Groundwater Report

Tim Seymour led a CONSULT level presentation of the Division 10 Groundwater Report and discussion of next steps. The presentation sought to answer the following key questions:

- What thresholds have been crossed that authorize the designation of a Critical Groundwater Area (CGWA)?
- Why designate the entire basin a CGWA when not all subareas have crossed a threshold for CGWA designation?

The following captures some of the key themes and questions that emerged from that discussion. In most cases, names are not attributed to their respective question or comment:

- OWRD and the USGS are defining the Harney basin as one aquifer; if we are going to say the basin is one unit, then leave it as one unit.
- Concern around measuring the success with regards to timing in the hydrologically connected reservoir.
- Why are Donner und Blitzen included in the Critical Groundwater Area map if they have not met the CGWA designation thresholds? (Slide 15)
- During the spring/summer, most of it but not all groundwater is contributing to the stream. Being overdrawn is a really bad situation for natural conditions. Being overdrawn means we are consuming all of the recharge.
- OWRD presented on what water budget regions are meeting the thresholds to designate a Critical Groundwater Area. The southern region has not tripped the overdrawn criteria. The western region is "about" to be overdrawn. The northern region has met the overdrawn criteria. RAC members asked if the "about" to be overdrawn in the western region can be removed if the unused paper water rights were cancelled? OWRD responded that this analysis is based on the 2018 pumping numbers, and we do not have peer-reviewed data that show more or less pumping has occurred since 2018.
- Are we applying Critical Groundwater Area designation criteria by water budget regions or in subbasins? OWRD has to work within the water budget framework because this is what the USGS study used and that is our best available science.
- "Part there of" in statute gives OWRD some flexibility.
- Besides the six subareas, are there other regions that meet excessively declined criteria (i.e., Crane Buchanan)? Are these criteria being applied to the whole reservoir or by water budget areas? OWRD responded with we divided these into the water budget regions because that is what the study gave us and that is the best available science.
- Question about transfers that have happened after 2018. OWRD response is we have done our best to prevent transfers, but may have not always been successful, protests can help stop this.
- Why include the west and south in the CGWA boundary when transfers to and from those areas are not happening?

- Are there any wells near the Silvies River that are increasing? OWRD responded that there are some wells with water levels that showed increased levels in 2023, but they have not recovered from years of decline.
- OWRD wants to divide the proposed Critical Groundwater Area into different subareas, and they want to regulate the subareas differently. Why can't we apply that same logic for the criteria for the designation?
- How will the CGWA designation affect land value inside and outside of the boundary? What happens if the area is not experiencing declines?
- Is a moratorium on groundwater rights possible without designating a CGWA? A moratorium does not prevent applications, OWRD wants to be sure no new permits will be allowed therefore a CGWA designation is needed.
- Conversations around corrective control measures will be added to future RAC agendas.
- Regulation on permit decline conditions will be addressed and is currently being assessed.

June 27, 2024 RAC Meeting #8 – Topics for RAC Input

The updated Topics for RAC Input document was shared to help structure outstanding discussion topics. The Department was consistent at setting PTW in "low priority" areas at "current pumpage." The Department indicated that it would not take input on how the PTWs were developed for any area (high priority or low priority) despite consistent feedback, questions and concerns raised about current pumpage estimates. The Topics for RAC Input include the following language:

> "Prioritize Subareas by decline rate, magnitude, and/or cone of depression.
>
> Categorize subareas as high or lower priority with criteria above.
>
> Focus on regulatory action in high priority areas."
>
> "Groundwater level declines are not uniform across the basin. The six high priority subareas have been identified where the pumping from many wells has merged to form large cones of depression lowering groundwater levels at high rates and/or large magnitudes in those areas. These six subareas have been designated “high priority” due to the rate and/or magnitude of decline occurring. Groundwater decline rates and magnitude in the “lower priority” subareas are not as severe."
>
> "Manage for groundwater level recovery.
>
> Stabilize groundwater levels at a target water level trend of no decline as quickly as possible.
>
> Allowing for managed depletion in the short term (glide path) while reducing use to stabilize groundwater levels."
>
> "**Stabilizing groundwater levels can be achieved through both a voluntary and regulatory approach**."
>
> "The 2018 pumpage is used to set PTW in the lower priority subareas to limit groundwater pumpage reductions in those areas where the rate and magnitude of groundwater level decline is less severe."

August 13, 2024 RAC Meeting #9 – Transcript

OWRD discusses the various considerations for establishing groundwater level goals in the basin and approaches for different areas depending on current conditions and subareas specific goals.

> **Tim**: So the system as we've talked about many times and as the groundwater study showed and I think as the model presentation showed as well

40:46 is that complexity in the Basin leads to challenges with how we design our management scenarios and how actions have impacts throughout the Basin and so enough said there. **The system's complex. And then three other questions we've asked ourselves as we've gone through this process is should all areas have the same goal? And when I say areas I mean areas within the Basin so I'm not putting that in the construct of sub areas as we've talked about previously I'm simply saying should all areas have**

41:24 **the same goal and we can define those areas as part of that management scenario conversation. Second question we're asking ourselves is do all areas need the same actions on the same timelines? So if we don't have the same goal for all areas perhaps we don't need the same actions and we probably don't need the same timelines either and if we do have the same goal for all areas perhaps we have different actions for those areas and perhaps we have different timelines.** So there's a variety

41:56 of permutations we could go through there but this is a question we're thinking through as we're considering a goal. **And then the last question we're asking ourselves is should our goal be to recover water levels so that a critical designation could be removed. So in the statute for the critical area specifically when you get to implementing curtailment or water use reductions, however you want to say it. The intent of those water use reductions appears to be or need to be**

42:28 **that those would result in solving the problem that led to the designation to begin with. So the question is that necessary for the goal to be to remove the critical designation in the future sometime. So should that be a goal of this rule making process**? So that's a host of considerations there and these have all sat in the background of our minds and as we've talked about what the goal should be here.

OWRD states their position that the goal should be a "minimum target groundwater level trend" of no decline rather than modifying the existing policy definition for reasonably stable.

Tim Seymour: What we want to focus on is something that Ivan has talked about previously with in previous RACs and that's the target water level trend and the reason for a separate term here is really so

01:10:38 that we don't modify 'reasonably stable' and that term in a way that doesn't allow it to consider both declined excessively and excessively declining at

the same time and so we want to propose focusing on a target water level trend which is basically focused only on that rate based threshold and that's what we want to try to solve here and that's what we want that goal to look like. And so carrying on with that this is OWRD's current position and that's we believe we need

01:11:19 to achieve a minimum target water level trend of no decline. Meaning that water levels do not show long-term declines, so they're essentially stable. If you calculate a trend line it's zero. Water levels are going to exist within a dynamically stable range so we're going to see fluctuations up and down based on the water year, based on use. But again the goal is no long-term declines and obviously long-term is not a specific definition therefore we're going to need to define

01:11:55 that and that's going to be up for input.

OWRD indicates that there could be subarea specific goals but that the minimum goal is no decline, implying that the only other acceptable goal is recovery.

Tim Seymour: So I want to make sure we're considering

01:14:28 all of it at the same time as we start to talk about that policy goal and that target water level trend goal. **So when it comes to designing management scenarios we believe that flexibility in the alternatives comes from how the critical groundwater area is divided into areas or sub areas and then the timeline to reach the goal in each sub area and what that goal is.** So if perhaps a sub area had a goal that was recovery what's the timeline to do that? If the goal as we have stated is

01:15:15 no decline or a target water level trend of no decline over the long term what's the timeline to achieve that? And then additional flexibility comes in how we measure success, how we characterize groundwater levels, over what spatial extent we do that. Do we pick representative wells? Do we take all wells? What does that look like? And that's a broader conversation that I really want Darrick to speak to from a science perspective about what is the most scientifically defensible way to characterize ground

01:15:49 water levels across the Basin.

A RAC Member again raises concerns about all areas being included in a critical groundwater area.

Mark: Thanks Bryant and thanks Tim for working us through this. I mean to me it's a little clunky still but I think we're going to need more time so I would first of all state by you know people are being silent or that there are people that aren’t being here

please let us not fall in the cracks of that means acceptance and I don't think we're doing that anymore from what Bryant and everybody is saying that we'll have further discussions. I still get wrapped around the

01:18:16 axle if we can declare critical ground order designation over the whole Basin because two of the three sub areas or hydrological sub areas trip those definitions and the southern doesn't. **So the southern if you took it by itself would match the definition reasonably stable to continue to allocate water with the current proposed ground water rules so I'm still stuck with that and that goes back to our original conversation, Tim, is we're going to have different goals for different administrative areas.** Is it prudent to

01:18:54 have the same classification over every administrative area? To me if Ken was here I think he would say you can't have it both ways. Secondly we look at representative wells up in Butler Creek. I'd be curious to what was a representative well up there as for your last bullet point on this slide and did they use the mean of those representative wells to come to what their term of reasonably stable was. Lastly when Darrick talks about the geology and hydrology is, I mean, I can show you wells

01:19:38 in the Basin, three wells that were all drilled to about 1,000 foot to 500 foot. Pumping started, water levels were quite high. Within two or three years of the Water Resource Department measuring one of those wells water levels are dropped 100 foot and they did not recover but I could go less than 200 yards away and show you a well that was only declining 6 but I do think that goes to more conversation on some of these anomalies or should individuals exceed defined rate and not understanding

01:20:17 what longterm means or how we can phase into this I think really hampers my ability to help solidify a goal.

Tim: Okay so couple questions for you there Mark if I can really quick. With your first point are you saying that we should designate multiple critical areas rather than one critical area with sub areas? Is that the feedback there?

Mark: I just still believe there's parts of the Basin even though it's inferred that the groundwater study says that they were hydraulically connected, that no difference of

01:21:07 **management down in the Blitzen is ever going to change what happens in Weaver Springs or the Silvies Valley. So yes I do think there is a hydrological argument or conversation to be had that all of our Basin should not**

be just designated a critical ground designation. I think you open that door back up by talking about having different goals in different areas and trying to potentially have a conversation of removing that critical groundwater designation.

Tim: All right, thank you. I appreciate that feedback. As to what is a

01:21:45 representative well and how many of them Etc. We will get back to you on that I'm not the expert on that piece in the Butter Creek Stage Gulch area. I think as far as your comments around long-term or what long-term means or how we handle extremes Etc I think more conversation is needed there and we haven't defined specifically for ourselves what we think the right proposal is and so we will likely try to do some of that and then come for feedback in October. Does that hit that point for you there?

Another RAC member shares support for a goal of dynamic stability that allows for subarea specific considerations.

Zach: Okay got it. Thanks. Well a couple of thoughts here. **I like the framing that's being proposed here with the dynamically stable range**, the aggregate average being no long-term declines. The reason I like this framing is that it's kind of separate from the question of how much curtailment to pumping

01:23:50 has to happen to achieve these goals because **in some sub areas it might not be much and in other sub areas it might be more to achieve these goals. So framing success in this way maintains the ability to have different management approaches in different sub areas which I like**. In terms of the long-term declines the one thought that immediately comes to mind I'd like to think more about what long-term means but the thing that comes to mind for me is we

01:24:21 want to make sure that long-term encompasses any normally occurring climate variability. So like El Nino Southern oscillation Cycles being a maximum of like six or seven years. Maybe long term should encompass at least one or oneish Enzo cycle to make sure that declines are separated out from climate influences so it's not just a particularly dry year or particularly wet year that's influencing management decisions. So that's what I'm thinking about right now but overall I like

01:24:59 this idea. I like the approach that you've sketched out here. I do support the no individual well exceeding some defined rate or magnitude of decline piece of the puzzle because I think that's going to help patch together a more holistic large scale approach that if we look at big sub areas then we could have

individual wells or subset of wells fall through the cracks there without having what you have here in place. So I support having

01:25:33 the individual well thresholds as well. But anyway that's just my preliminary thoughts since you asked for them

Tim: Thanks Zach I appreciate the feedback.

OWRD and the RAC talk about the pumpage estimates used in the model and how those compare to more up-to-date pumpage estimates. A RAC member references the "non-priority" areas and the original framework, suggesting that was still a lens through which RAC members filtered information.

Mark: Yeah thanks Tim. **The only other question would be in the nine non**

01:44:38 **priority areas. So the department said they felt they could reach reasonably stable with permit conditions and 2018 pumpage.** You answered the 2018 pumpage. Have you worked through how you're going to model the permit conditions?

Tim: Not yet

Mark: Okay fair enough.

Tim: So right now, if we were to press go right now for the nine lower priority sub areas they would run at 2018 modeled pumpage or essentially what we consider actual use for 2018 in those sub areas and there would be no reduction in use by permit condition.

Mark: So we would

01:45:18 expect no difference than if there's already decline in that area to continue to decline that area because of the same pumpage.

Tim: We would… yes, that is the simplest way to look at it but we do believe there's going to be some impacts from the higher priority sub areas being curtailed, like, cascading across portions of nearby sub areas

Mark: Cascading? I like that term when we're talking about water. I've seen big water cascade events

Tim: I like cascading water when it's above ground, not a big fan in a well.

01:45:54 Just going to throw that out there. Kristen

Kristin: So if you're running it off of the 2018 actuals how does that equate to 2024?

Tim: That is something we are currently working on evaluating and have been for some time. We hit some road blocks with relation to our work with the Desert Research Institute. They have been working with our water use team on a publication. Really it's Statewide but basically looking at calculating pumpage estimates based on ET. So essentially the same sort of

01:46:39 process that was done in the Beamer and Hoskinson report. We're hoping to have that data finalized and published by the end of September and then we'll be able to compare I believe through 2023 water use with the 2018 water use and see if there are changes and what those changes look like. And obviously that's important to understand the fiscal impacts as well as just the impacts of using a 2018 number as opposed to a 2023 number.

Kristin: Yeah there's going to be some variance there and so just

01:47:20 wondering how that was going to be accounted for with this modeling to look at it as we put this out to the public as, you know, we take the first dive at the modeling. Any lack of current data that we're looking at in that would definitely then as we look at other models, you know, to try to have Apples to Apples as you make modeling occurring if we don't have our most current data available within the model versus the 2018, you know, just due to the scenario of that it was still in

01:48:03 the last six years people were still allowed to put in additional water rights and prove them up and so you know I don't know what scale of that is out there on the landscape. That would be something your folks would definitely know and how many of those are paper versus becoming actual. **And so it's just trying to think through that nuance of, especially as you'll get into kind of sub areas and that, how much that would play into it potentially. Yeah just wanting to**

01:48:38 **think over the last six years from 2018 and how to add that in.**

Tim: Yeah so one thing I want to be clear on here is that we are not going to calibrate the model with any of the newer data. So the model was calibrated using, I want to say, it was 1930 to 2018 data and so the model is constructed using that as the baseline.

So we don't need to add in the last six years of data in order to have a model that is representative of the hydrogeology of the Basin. When I say we're going to look at water use and how it's changed, where pumping has moved or is now occurring as

opposed to what it was in 2018 is important and we'll definitely want to look at that. But the model is not going to be modified using that. What would be modified is our inputs into the model

01:49:53 saying in 2019 pumpage would be this and 2020 pumpage would be that. 2021 pumpage would be whatever. All based on those water use estimates so I want to make sure we're clear on that. The model is not going to be updated in any way.

Kristin: Okay and what if the scenario would be that there's actually less pumpage in 2024 than 2018? What if that's what's actually occurring now versus then?

Tim: Well then my question would be do we want to reduce... that's a management scenario question. Do you want

01:50:33 the PTW or the allowable pumpage for a sub area to be the 2024 number or do you want it to be the 2018 number? And that's a question we'll need to answer as we talk about what the management scenario is and then model that and see what happens.

OWRD indicates that it is getting information to assist with voluntary agreements, including a list of water rights holders. OWRD also produced an updated "water level trends analysis" with the latest water year, which changed results for several subareas and indicates the importance of selecting "representative" wells.

Tim: Cool, so upcoming documents. We have the water level trends analysis update that we had promised done. We didn't want to send it out ahead of this meeting because we didn't want to feel like you all had homework. We had promised no homework for this meeting and so we'll be sending that out in the coming weeks. We are working on a Harney basin groundwater model summary. We're trying to get it down to a couple of pages, trying to get to really the high points

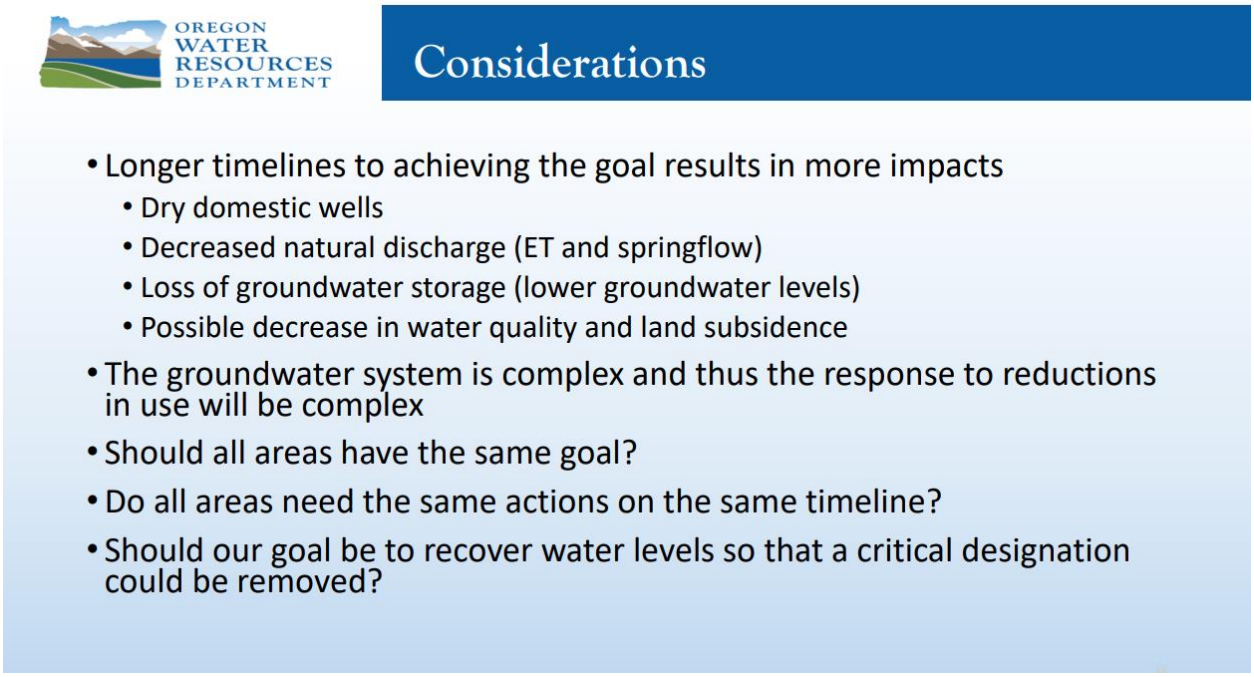
01:52:13 and focus in on how the model works, how it can be used in this process. So that's where we're headed with that document. We're working on guidelines for management scenario development and I don't know if we're calling it guidelines or sidebars. I don't remember what the terminology is but the intent is to provide some structure and framework for management scenario development. Trying to make sure that discussion group conversations can be productive

01:52:44 and focused on getting people thinking about the information that's needed to put into a management system scenario so that we can model it. And then **the last piece is we're working on that list of water rights and water right**

holders so actual information about who owns what water right so that we can get that out to the RAC and just to the community in general as I know there is interest around voluntary agreements and having that information is important to

01:53:18 **being able to move forward with voluntary agreements.** Those are the documents working on right now and we'll be getting out as soon as we can.

August 13, 2024 RAC Meeting #9 – PowerPoint Presentation

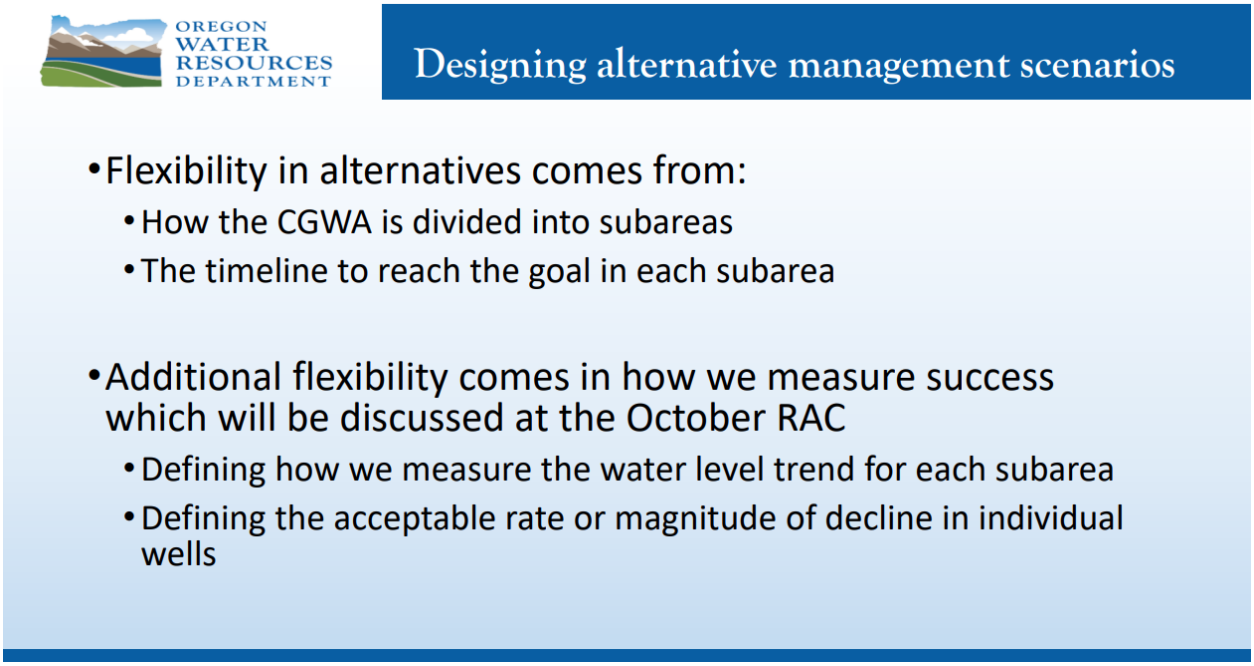


Statutory Policy: Reasonably Stable

- ORS 537.525(7) - *"Reasonably stable ground water levels be determined and maintained."*
- A critical area can be designated in Harney because portions of the groundwater reservoir are overdrawn, declined excessively and are excessively declining
- How can an area be "reasonably stable" when it is both declined excessively and excessively declining
- We don't think we should define reasonably stable in this CGWA. We prefer to focus on Target Water Level Trend

Stabilizing Water Levels

- OWRD's current position is that all areas need to achieve a minimum target water level trend of no decline, meaning:
  - Water levels do not show long-term declines
  - Water levels should exist in a dynamically stable range
  - Some wells will show declines, some will be stable, some will show recovery
  - No individual well should exceed some defined rate or magnitude of decline (how do we handle extremes?)



August 13, 2024 RAC Meeting #9 – Meeting Summary

The meeting summary describes the Department's goal for groundwater levels and the rationale for using the term "target water level trend" rather than "reasonably stable."

Presentation – Goals for Groundwater Levels

Tim Seymour from OWRD led a presentation on the Goals for Groundwater Levels: considerations; goals in other Critical Groundwater Areas (CGWA); statutory policy: reasonably stable and why the Department Is choosing not to define reasonably stable; stabilizing water levels by achieving a target water level trend of zero decline; and designing alternative management scenarios. The following captures some of the key comments and questions that emerged from that discussion. Names are not attributed to their respective question or comment:

Comments on the Goals for Groundwater Levels

- When the rate and magnitude of decline have been tripped, how can a CGWA be determined as reasonably stable? Instead, focus on a target water level so that "reasonably stable" is not modified in a way that doesn't allow for flexibility.
- OWRD is proposing focusing on a decline rate-based threshold.

October 29, 2024 RAC Meeting #10 – Transcript

RAC Members discussed considerations regarding reductions in pumping for both regulatory and voluntary approaches.

> **Zach Freed:** Yeah thanks. Sorry to interrupt. I think that I tend to think on decadal scales. I like a 10-year timeline that gives time for a transition from pumping that's not necessarily an immediate next year approach but I think we have to be

considerate of two timelines here. One is a timeline for reduction to pumping which is what we

00:54:06 can directly control. **The other is a timeline for reaching reasonably stable water levels which is dependent upon both reductions in pumping and aquifer characteristics and so I know Darrick you posed the question as what's an acceptable timeline for achieving reasonably stable or stable water level but wanted to call out that that varies by where you are in the aquifer, right**.

Bryant Kuenchle: Got that. So capture that distinction. So I got Roger's comment, you know, a timeline should be

00:54:43 however long it took to occur should be what we should look at as an appropriate target. Zach, just the distinction between reaching pumping reductions and stabilizing water levels. You said 10 years I guess I just wanted to confirm where that fits into that.

Zach Freed: Yeah, thanks. Appreciate the clarification**. I like thinking about a timeline for achieving pumping reductions within 10 years and that might not translate to reaching reasonably stable water levels in 10 years in some parts of the Basin.**

Mark Owens: So I mean I agree with Zach on

00:55:23 that **we need time frames to figure out when we start to reduce water usage. I mean if we're going to take a volunteer agreement approach water usage could probably start in the next couple years. If we take a strong handed regulatory approach, that contested case, we all know it's a minimum of five years. Maybe longer. So having water reductions in the next five years to 10 years would be a good goal. Hopefully we have a sideboard that's wide enough on a voluntary agreement that we could start**

00:55:48 **the next year or two**. What does success look like in getting to zero rated decline in time? Very tough question Darrick. As from earlier conversations we had today what is the impact, not just to ourselves, what is the impact to the social, economic, and ecological? We don't know. But I mean I've been saying for long as I've known most of you, agree with Roger. It's taken a generation to get here. We probably need a generation to get out of here. Because this going to be tough socially for the domestic well owners,

00:56:24 socially for the farmers. Tough for the community. If you try to do this on a more accelerated time place than this I'll go back to my statement. When they

stopped logging in our community we had one of the highest average household incomes. We're now one of the poorest average household incomes. Groundwater extraction at an unsustainable rate in some areas has propped up this economy. When we take that away, where do we go? This community needs a generational flight path to get out of this. We want to work with you but we got to have the

00:57:00 flexibility to get there.

The OWRD and RAC discusses how the scenarios selected by the RAC could be used to represent or model potential voluntary agreements or reductions.

Tim Seymour: We believe we followed the law in implementing our scenario the way we did it, yes. If we were to try to apply reductions equally across all wells in a sub area I do not know that we have the authority to do that. **I don't know that we can say hey all water right holders you're going to take a 30% reduction and allocate the water that way. But in the model we can see what that would do right. So if you wanted this could be a voluntary agreement sort of scenario, right, so if**

03:10:31 **you get all the water users together in that area and they say we're all willing to take a 30% reduction because we're all going to buy MESA systems and we're going to change portions of our crop type and we're going to get this reduction we could model out what that might look like**. But so that's an option. Yep

Mark Owens: If we're going to go down there let's go a little further so if you base it off 2018 usage legally you have the ability to limit the senior water right to that

03:11:03 usage.

Tim Seymour: So and Jason, jump in here if you have a better answer than I do but we believe that we would look at historic usage, right, so beneficial use over a period of time and if beneficial use can't be proven within that time then we would not allocate water to that water right. I don't know how to make it any more specific than that.

Jason Spriet: I think that's right. I think also within the critical area rules we have more flexibility in how we allocate because I believe it says in there, in the critical statute

03:11:47 that we can adjust allocation based on whether or not it's beneficial to the public or not a detriment.... What's the language?

Tim Seymour: Health, welfare, and safety. But for the model scenario, remember, this is trying to get to some answers about what's going to happen in the Basin as we change things. **We need to know how much so tell us how much you want to pump and where. And then we get to when so determine the time frame for the implementation of**

03:12:29 **pumping reductions**. So that timeline needs to be defined and needs to include a year in which the reductions begin and the year in which they're fully implemented and then we have said we will, if those are different years, we will take a linear approach to reductions. So if you say we want to reduce by 50% over 5 years we will reduce the pumping in that area by essentially 10% from the total per year for 5 years to get to a 50% total reduction. So that's a linear amount of reduction. If you delineate more than

03:13:12 one management area or more than one sub area then we need a timeline for each sub area and that could just be like we want to do this across all the areas or it could be in area one we want to do a timeline that is 10 years in area two we want to do a timeline that's five years in area three we want to do a timeline that doesn't start for 20 years and then is immediate. So you got all those options. Pick whichever one you want. But we have to understand when to start reductions and when

03:13:45 reductions need to be fully implemented. So there you've got the where, the how much, and the when and that's really what we're trying to drive out there. And so on this slide we're showing the model runs that OWRD is going to run and we haven't run them yet.

October 29, 2024 RAC Meeting #10 – PowerPoint

OWRD notes continued interest in designating different critical areas. Development of modeled scenarios and baseline for measuring pumping reductions are further discussed.

August and September Recap

Main Topics Covered Last RAC:

1. Goals of Harney Groundwater Levels

Summary of Comments

1. Statute is defined as reasonably stable, not "stabilizing groundwater levels," and this should be the basis by which goals are set.
2. Different factors in meeting the goal need to be considered outside of the rate of decline. The capacity of the resources and human consumption needs, and upland management are important
3. Don't look at historical levels when defining the rate or magnitude of an individual well. Have a conversation around the appropriate starting point.
4. Look at potentially designating different multiple critical areas.

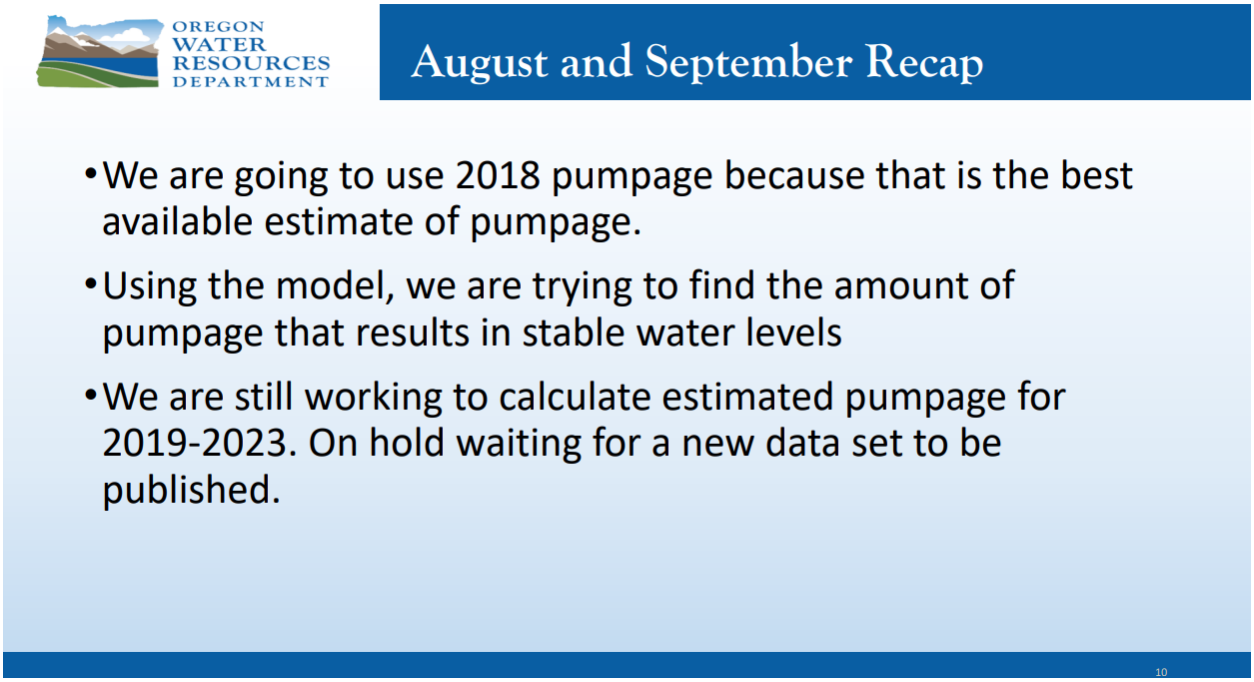
August and September Recap

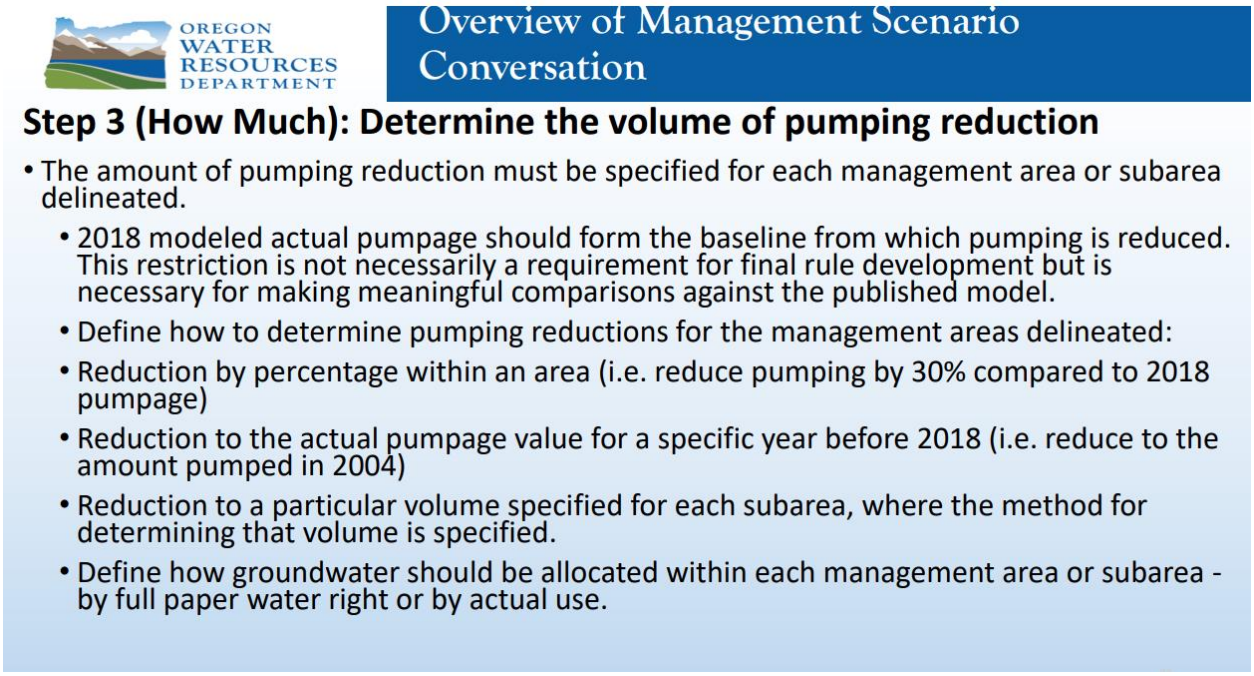
Main topics of the Discussion Groups

1. Management Scenarios
2. Fiscal Impact

Key Questions

1. From what annual pumpage will reductions occur?
2. How will the Department allocate water?
3. How will unused water rights be canceled?





October 2024 RAC Meeting #10 – No Meeting Summary

No meeting summary available. In the meeting OWRD and the RAC discussed at length the model scenarios and how they might inform both the voluntary agreements as well as the regulatory approach with consideration given to the amount of reductions and timing of reductions as well as how those reductions would be allocated across different users.

November 12, 2024 RAC Meeting #11 – Transcript

OWRD and the RAC discuss the second draft of the Voluntary Agreement guidance, raising questions about participation levels, flexibility, and whether the agreements should be tied to PTW.

Jason: I wanted to go over it quickly again, answer any questions folks had since we sent out some draft guidance for RAC input, let's see when was that? Beginning of October? So I want to answer any initial questions from folks, that's why we're doing this now. Go ahead to the next slide. So under voluntary agreement statute the commission approves or rejects proposed voluntary agreements under the statute ORS 537.745

07:09:48 and so we developed some general guidance to ensure that voluntary, or at least the way the department sees voluntary agreements applying with the intent purposes and requirements of the groundwater Act of 1955. So there's the link to the info session we had, the initial info session we had on August 17, 2023. We talked about that in an online informational session.

Kelly: That recording is available on our division 5 web page under the information session tab

Jason: All right next. So what we did was we put

07:10:32 together a quick focus group. I was the one that chose the folks in that focus group based on interests and need. So at that point we had an initial meeting. I believe it was in July, yeah July 8th, and talked about what we thought was important to have in the draft guidance. So after that meeting we went ahead and developed the first draft of the guidance to just kind of help advise folks in the Harney Basin that were interested in a potential voluntary

07:11:17 agreement. We then sent that draft guidance out to the focus group, they sent feedback to us, we went over the feedback and made a few changes to the draft guidance and then actually met in person to talk about those changes and the Department's position on October 1st and went over that feedback from the first draft. And then after the October meeting that draft was revised again based on feedback we got from that meeting and that is the copy of the guidance that went out to the

07:11:58 RAC shortly after October 1st. Next slide. So that was shared via email to the entire RAC on the 25th and November 4th.

Kelly: Yeah it was part of the RAC packet.

Jason: Oh it's part of the RAC packet? Ok, and then we have asked folks to provide feedback on that guidance document, the rest of the RAC to provide feedback on that document ,and we'll discuss that input and answer further questions at the December 18th RAC meeting. So now I'm happy to answer any

07:12:52 initial questions about that or about the guidance if I can. I don't know if Laura is still on, she did a lot of work on the guidance. She may also help answer some questions. Any folks have questions? Happy to hear those.

Male: Does the department view the voluntary agreements as a positive step towards solving the issue at hand?

Jason: I certainly think they can be. You know I think that they are a way for local land owners to get together and came up with a plan on how to reduce overall groundwater use among the participants

07:13:38 so I would say yes, short answer, the department does see this as an opportunity

Mark: The biggest changes I saw from draft two to draft three is on page two, minimum participation. In the first paragraph why is it 30%? Why not 20, 25, 40%? It seemed like an arbitrary number where during our discussion in draft one and draft two we talked about the users could come in whether they're two or 30 and it would be based on a prorated share of the total permissible withdrawal that they had and not an arbitrary number. It looks like

07:14:38 we've drifted to an arbitrary number for a minimum and we've phrased this as an equity issue. You have one user that say has 31% of total permissible withdrawal so they can go to the department and they can get a volunteer agreement. I have five Farmers that don't have 25% because they're smaller, they can't. So it's an equity issue and it doesn't clearly state that there will be more than one volunteer agreement be allowed in a sub area. So if they keep that it doesn't work for me. Thirdly you should allow

07:15:07 volunteer agreements to start even if it's at a very minimal level as long as they're hidden that pro rated share of PTW then allow others to join in through the volunteer agreement process. Getting the snowball rolling might be more important than having a critical mass when the snowball starts. I do have question on the second paragraph of that one too unless you

Jason: Let me write down a couple of things here

Tim: Can I ask a follow up question Mark? So in evaluating a voluntary agreement there's going to be a

07:15:49 workload to doing that and then it has to go before the commission, right, like there's a lot of process there and so what we were thinking about is what's the minimum amount of benefit that the voluntary agreement needs to provide to be worth, for lack of a better way of saying it, to be worth that level of process? I definitely hear your equity concern there and I think that's valid so I am still processing it

Mark: To me is we shouldn't be weighing in on that, the resources that it

07:16:28 takes for the Department to process one, that's what it boils down to.

Jason: But I guess also the the amount of benefit that it can provide

Mark: For those of us who are involved it could be a lot of benefit. We can talk about this later. But it's an arbitrary number we pulled out and we're sticking with it. I mean I'm not sure if we're sticking with it but it's an arbitrary number we pulled out. And then it also changes by sub area because if you want to talk about actually per feet or do you want to talk about percent?

Tim: Yeah and I think Lisa's got her hand up

07:17:15 online. Lisa go ahead

Lisa: Yeah actually I have a lot of questions about this so I don't want to take up everybody's time but on that point I had a little different point of view which is when you read the statute it says there can be a voluntary agreement among groundwater users from the same groundwater Reservoir and I actually think that the term 'among' means among all of the users so I'm interested in learning why the department thinks there's authority to instead have it just be a subset

07:17:59 of the users when the term is 'among'. But aside from the legal authority to do that, I mean, I think now that we've looked at those scenarios I would be very concerned about how it would operate in fact on the ground if you just had you know some well is participating and some wells not. I mean it seems like that throws the scenario results off because as we've seen the spatial distribution and kind of where the curtailment happens matter so yeah I have a lot of questions about that use

07:18:39 of the 30%. Similarly when it talks about doing the cutbacks in a, it uses the term reasonable time, that sounds like it's different than what we're talking

about in the scenarios so there again, you know, it would mean that the scenario results are not necessarily what we're going to get with a voluntary agreement and that's a big concern. I think the timeline should be equivalent. Also notice that it talks about the commission's termination of

07:19:16 an approved voluntary agreement is an order other than a contested case but it doesn't actually talk about what form of the final order the approval would be in so I think that needs to be added. Anyway I have a number of other questions but one kind of overarching one is has the department given thought to whether this needs to be a rule or not? I remember Martha Pagel with Schwabe when she was still with us she raised the issue with the Department a lot about

07:19:51 like what the department was doing with guidance that actually should have been in a rule and so I'm just kind of curious whether you guys have given that any thought with regards to this particular guidance?

Jason: Yeah, to your last point Lisa the department is planning to pursue rule making on voluntary agreements in the future

Lisa: Okay and then what about the 30%? I mean what about the statutory language gets you to 30% or to any subset of the users?

Jason: Yeah I'd have to do a little more

07:20:34 research to look into your comment about the statement 'among' users of the ground water reservoir. So far we haven't interpreted that to mean everyone but I'd have to do some more digging on that point.

Laura: Yeah I guess I would say just on the 'among' because it doesn't say 'among all' and so in my mind 'among' that does imply more than one, probably more than two. I can't speak to the 30% but I don't think the language… I mean you could interpret it as all or you could just interpret it as more than one, perhaps

07:21:18 more than two.

Lisa: Okay, all right, well been taking up enough time but I will try and track down these answers elsewhere.

Bryant: You mentioned a number of other things you had. Do you want to email those? Is that your plan?

Lisa: No, I'll probably call somebody honestly. I mean there have been like two big meetings on this, right, so I mean we're not really going to cover all the ground in 20

minutes here amongst all of us so I don't know what the proper forum is to try and get these answered at this

07:21:59 point but...

Jason: Yeah you're welcome to call me Lisa or email me at any time and we can talk about it.

Mark: My second point on the minimum participation level, we spent some time today talking about adaptive management. We spent some time today talking about how we could be flexible with the controls. One of the opportunities for volunteer agreements to me is to get that but when you phrase it as the volunteer agreement has to meet permissible total withdrawal you take that flexibility out. The volunteer agreement should be allowed to meet the total that the

07:22:41 commission agrees on with the parties involved and of course that'll probably come with some guidance so you need to start at a certain level with the voluntary agreements to meet that total but tying it directly to PTW with total voluntary reduction takes all the adaptive management out of it.

Jason: You're saying rather than that language meeting the permissible total withdrawal it should be more language about the commission's goal for

Mark: Commission goal for that group. I'm going to submit a volunteer agreement to the commission and say my goal is to reduce the

07:23:20 rate of decline by 50% in 5 years. If they think that's a reasonable goal I would show them what water levels I would be doing to do that and if I didn't get there I'd also show them what I would be doing to increase that or vice versa. When I look at this it's more of a parallel regulatory process that has very determined PTWs that are phrased different, reasonable time frames that would be probably the same that were in rules. There's not much flexibility here for water users even

07:23:55 when you talk about limiting to the land that have water right on them. I mean if we were able to get economic benefit by putting 6 in of water on twice the acreage but we reduce our water to meet PTW my simple mind says that's a good thing. Especially if it's coming from the same point of appropriation because it's not causing injury because we're actually reducing that water from that point of appropriation but we're achieving greatest economic benefits from it. The way this is written we can do

07:24:23 that. I think you've taken a lot of creativity out of trying to figure out how to get the best economic benefit without causing injury because you're looking at it way too regulatory.

Kelly: Lisa do you want to go ahead?

Lisa: Yeah I mean the flip side of that is you're opening it up to potentially people advocating for something more than PTW right if that was the path that you chose to go down here. But I did have one question about the language that suggests that the commission could

07:25:23 determine that a higher rate than what was specified in a water right certificate could be of more efficient use and so I was kind of curious if... because that seems to suggest that a voluntary agreement can override the requirements of a water right certificate and I don't see that. So I'm just curious about where that is coming from.

Jason: That originally was put in there because the, I believe it's the NRCS, was helping land owners put in

07:26:11 pivots in basins like Harney and Lake and the water rights for those basins typically have a 180th rate which is generally not enough to run a pivot or at least not on alfalfa fields. It takes about 160th in order to do that and so this was thought of as a potential way to possibly increase the rate without, well actually probably lowering the overall duty on the water right or that the water right allows, in order to be able to get some cost share from NRCS and to actually put in a pivot

07:26:57 and be within that limit

Lisa: Yeah I mean I understand that but you still do have a water right that was issued

Jason: And, you know, I think we would have to prove if we were to be able to approve a voluntary agreement that included an increase in rate I think that it would have to show that it was somehow more efficient to do that.

Lisa: But what language are you.... Where is that coming from? I mean is there language? Is there a statute or something that says you can change the terms of a water right if it's more

07:27:48 because I'm just not familiar with it if there is one.

Jason: It's in 537.735 that a higher rate would result in more efficient water use the director can determine [couldn't hear] ORS 537.535 3D that a higher rate would result in more efficient water use.

Lisa: 537.735. Okay thank you that's helpful

Bryant: Okay any other comments? So and I guess kind of to recap a little bit, the Department's receiving input on this for a little bit of time now so it

07:28:44 doesn't all have to be aired here. Anybody else anything else to share before we move off?

Lorissa: Yeah a question. I guess under the water rights it says that water rights that can be a part of this they can be a beneficial use within five years. What is that beneficial use? Is that just having a certificate or what do you... or just say yeah using it? Because there is some circumstances that [couldn't hear] been turned in for 20 something years and we still don't have a certificate so is it just a certificate

07:29:29 or is it

Jason: Well the beneficial use within five years prior to the time of the agreement you have to show that you actually used water within those five years prior to the agreement

Lorissa: So you don't really have to have the certificate

[too quiet to hear]

Bryant: Okay, ready to move on?

Mark: Bryant can we talk about the next steps because it says we need input on the third draft by December 4th so are you expecting now because that's before our next RAC to write this up in an email to you? Is that the expectation?

07:30:15 **Jason:** Yeah

Mark: The stuff that we talked about here will that show up in comments or do we need to write all that out?

Jason: We'll have them in the meeting comments for this meeting so I don't think we need to write them out.

Mark: Will all the comments that you get be shared with the RAC?

Jason: Yeah I think we can do that

Kelly: Yes they will be shared with the RAC

Bryant: When we come to this December 18th meeting and discuss the input we will be probably sharing this is everything we heard, responses

Mark: Last thing but this is still a working document. No matter what comes

07:30:55 out December 18 it's still subject to change?

Jason: Yes

November 12, 2024 RAC Meeting #11 – PowerPoint

The RAC discussion about criteria to evaluate management scenarios including consideration of voluntary agreements.

OWRD presented draft guidance on voluntary guidance and invited feedback. OWRD committed to bringing back feedback and revisions to December meeting. Voluntary agreement guidance not discussed further in the RAC process.

Voluntary Agreements

Goals of Conversation

- Answer any questions around the draft guidance document

Level of Participation

- Inform

Purpose

- Commission approval/rejection of Voluntary Agreements authorized by ORS 537.745
- General guidance needed to ensure VAs comply with intent, purposes, and requirements of Ground Water Act of 1955
- More info
  - August 17, 2023, Info Session available on Div. 512 Rulemaking website

Process to Date

- Harney Basin Groundwater User Focus Group
- Guidance drafted by Department
  - Inform future statewide rules; advise current Harney Basin groundwater users
- Iterations
  - 2 meetings with Focus Group to date – July 8th prior to draft guidance, and October 1st to go over feedback from first draft
  - Draft document revised in response to Focus Group input

Next Steps

Division 512 RAC

- Third draft VA guidance shared via email October 25 and November 4, 2024
- Please provide input on third draft VA guidance document by December 4 (email jason.d.spriet@water.oregon.gov)
- Staff to discuss input and answer questions during December 18 RAC meeting

Any Questions/Comments at this time?

November 12, 2024 RAC Meeting #11 – Meeting Summary

OWRD discussed the voluntary agreement guidance and sought RAC feedback.

Voluntary Agreements (VA)

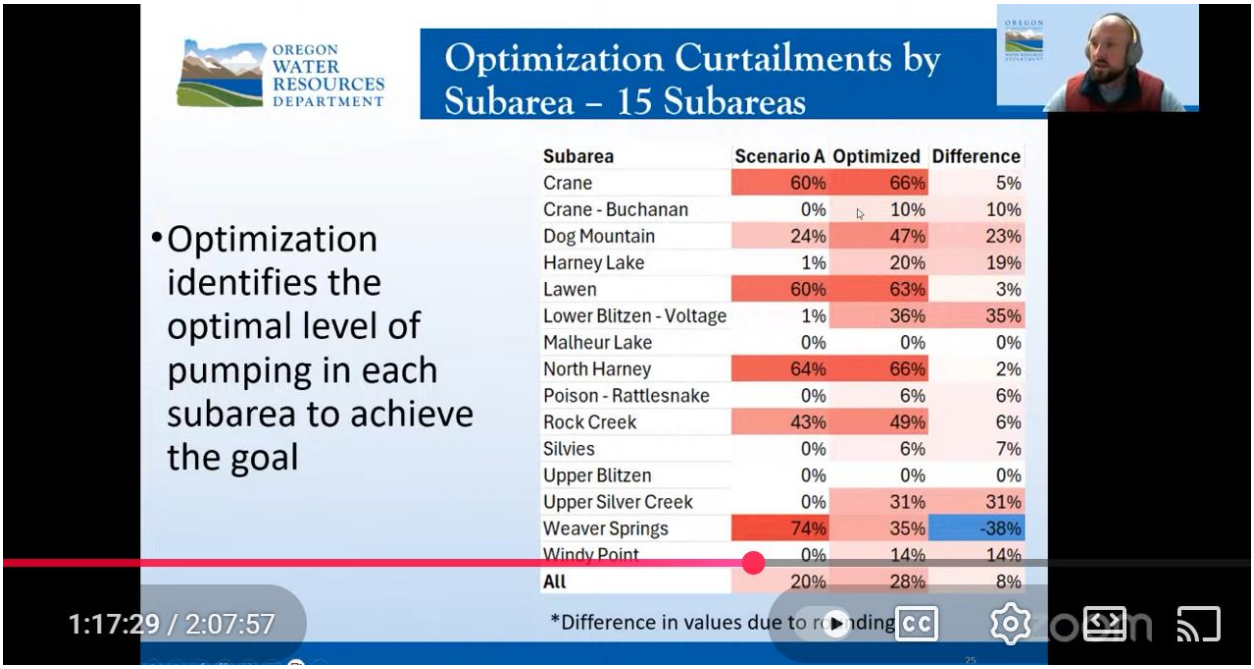
Jason Spriet from OWRD provided an update and reminder to the RAC about giving feedback to the Draft Voluntary Agreement Guidance Document. The following captures some of the key comments and questions from that discussion. Names are not attributed to their respective question or comment:

- OWRD emailed the third draft guidance iteration on October 25, 2025, and is requesting feedback **by January 8, 2025**. The Department will discuss input and answer questions during the December 18th RAC meeting (Postponed until January 22, 2025.
- One RAC member suggested that ORS 537.545 requires voluntary agreements to include all groundwater users within a groundwater reservoir. **OWRD Response:** The statute says, "among groundwater users," which implies more than one but not necessarily all.
- One RAC member noted that the timeline for reaching voluntary agreement goals must be "reasonable" but that the timeline may not match timelines for the chosen management scenarios. The RAC member then asked if the Department has thought about developing rules, noting concerns about creating a situation where more water is used under an approved voluntary agreement than would be allowed under the PTW established by the Division 512 rulemaking. **OWRD Response:** The Department will initiate a statewide rulemaking for voluntary agreements in the future.
- One RAC member asked if the requirement for 30% participation by groundwater users was a random number. The RAC members also asked what happens if a small group of groundwater users does not represent 30% of the total PTW, i.e., in that case, should the Department allow groundwater users to enter into a Voluntary Agreement? **OWRD Response:** The 30% was to ensure the feasibility of the agreement in reaching the goal. Moreover, the agreement should not point to meeting the PTW, it should be meeting the goals for the basin set by the Water Resources Commission.

The nature of the conversation changed significantly following the November RAC meeting as the Department used the model to "optimize" levels of curtailment from modeled pumpage for all subareas to achieve a goal of zero feet of decline. The model was used to determine the "optimal" amount of reductions with the RAC advising on certain input or parameters. The conversations focused on the model, inputs, assumptions, and results. Following introduction of the model, the original framework of high and low priority areas was not revisited, nor the focus of curtailment only in high priority areas. The Topics for RAC Input was not revisited following Meeting #8. The change in the fundamental framework was not clearly communicated to the RAC prior to the next draft of the rules being presented in April 2025.

December 10, 2024 GWAC Meeting – Division 512 Update

OWRD states to the Groundwater Advisory Committee that the optimized model indicates that they "need" to curtail or make drastic "cuts" in areas where they previously stated they would not focus curtailment. This same information was not transmitted to the RAC.



01:18:36 **Tim Seymour**: This initial proposal was targeting curtailments in a few subareas, so primarily Crane, Dog Mountain, Lawen, Harney, Rock Creek, and Weaver Springs. And when optimizing, the software distributed those pumping reductions more equally across subareas. There are still some areas, Upper Blitzen and Malheur Lake that receive no curtailment, but all other subareas do receive a curtailment. **In this case, where we thought we were going to have to curtail the Weaver Springs subarea by 74%, we're actually able to curtail Weaver Springs by 35% and still achieve the goal and that's a 38 percent positive change for water users in that subarea. On the flip side we had proposed no curtailment in the Lower Blitzen-Voltage and Silver Creek areas and we're actually seeing with optimization we're needing to propose a 31 to 36 percent cut in those areas, which is a substantial difference.** But remember Scenario A didn't achieve the goal and optimization did and that is the key point here. **The optimization allows us to distribute pumpage effectively to achieve the goal across the basin and what we can see is that the total curtailment, remember 20% wasn't enough, 28% percent curtailment will achieve the goal.**

December 18, 2024 RAC Meeting #12 - Meeting Postponed

Meeting postponed.

January 22, 2025 RAC Meeting #12 – Meeting Summary

Meeting focused on reviewing the proposed management scenario and model results, a proposed adaptive management framework, and SWMPA language. No discussion of previous framework.

March 5, 2025 RAC Meeting #13 – Meeting Summary

Meeting focused on SWMPA language and classification boundary. No discussion of previous framework.

April 16, 2025 RAC Meeting #14 – No Meeting Summary

Meeting focused on classification, an updated management scenario and results, fiscal impacts of the proposed management scenario, the initial draft of the critical groundwater area rules, and the draft racial equity impact statement and statement of need. Previous framework has been replaced by basin-wide regulatory reductions informed by the "optimized" model results.

May 14-15, 2025 RAC Meeting #15 – No Meeting Summary

Meeting focused on the draft critical groundwater area rule languages, fiscal impact, statement of need/racial equity statement review.