

OREGON



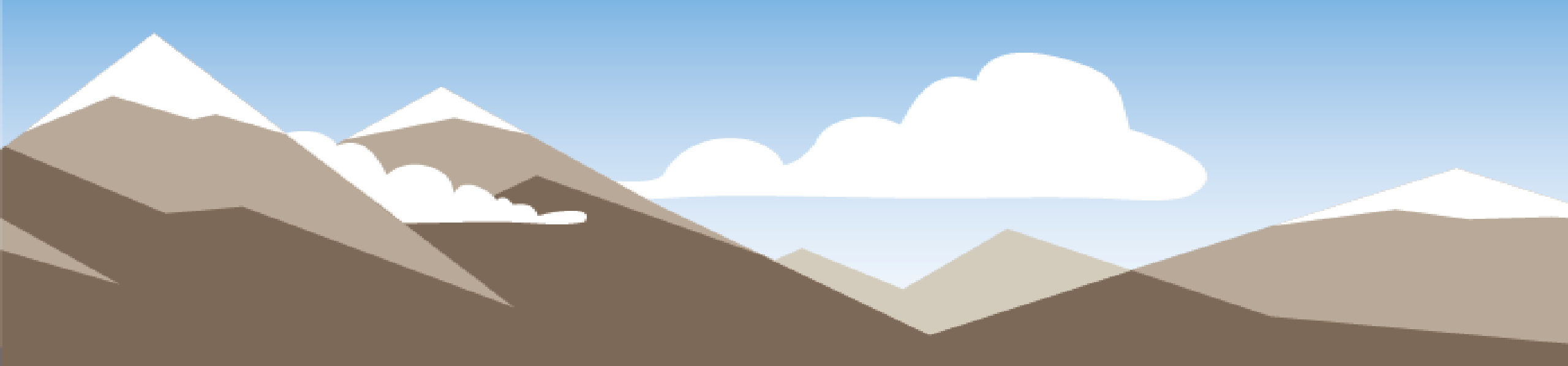
WATER RESOURCES
DEPARTMENT

Division 512 Rulemaking: Groundwater Regulation for the Malheur Lake Administrative Basin

Oregon Water Resources Department

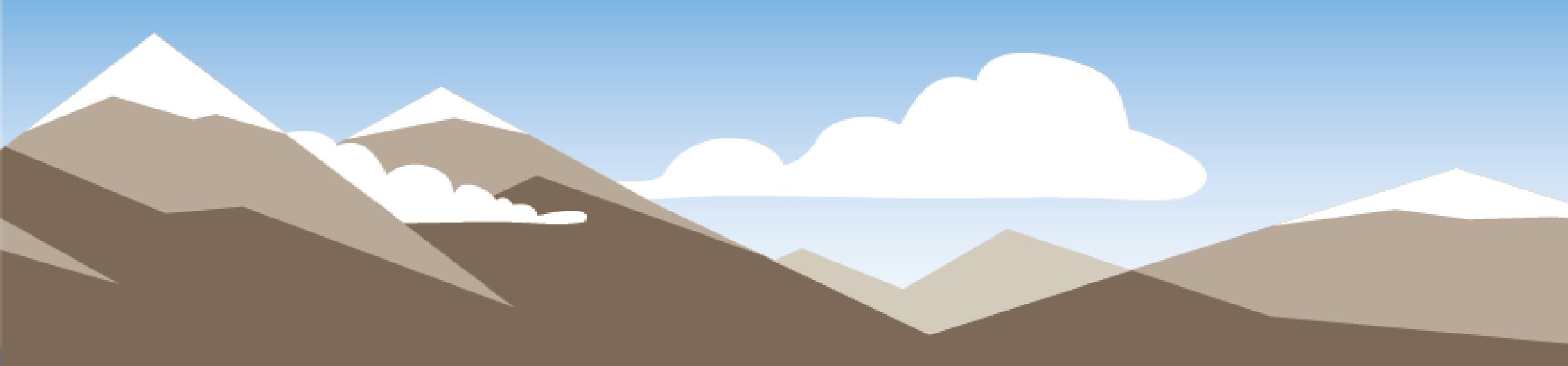
Rules Advisory Committee Meeting

May 30, 2024

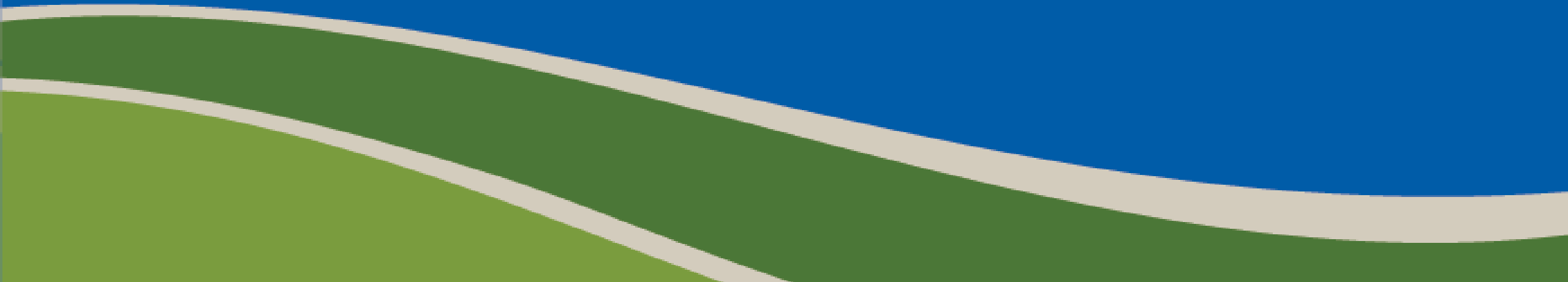


Welcome and Introductions





Agenda Review & Meeting Ground Rules



Meeting Decorum Ground Rules

- You are here to express your viewpoint.
- Treat others respectfully.
- If online, remain muted when not speaking.
- If online, use “raise hand” feature to indicate that you would like to speak.
- If in-person, raise hand to indicate that you would like to speak.
- RAC only participates in RAC meeting and Public only participates in comment period.

Meeting Agenda

Welcome and Introductions

Recent Reflections from OWRD

Process and Engagement

Rulemaking Milestones

Public Comment

Building the Foundation (if time allows)

RAC Roundtable

Shared Goals

Future Meeting Schedule and Process (if time allows)

Public Comment (if time allows)

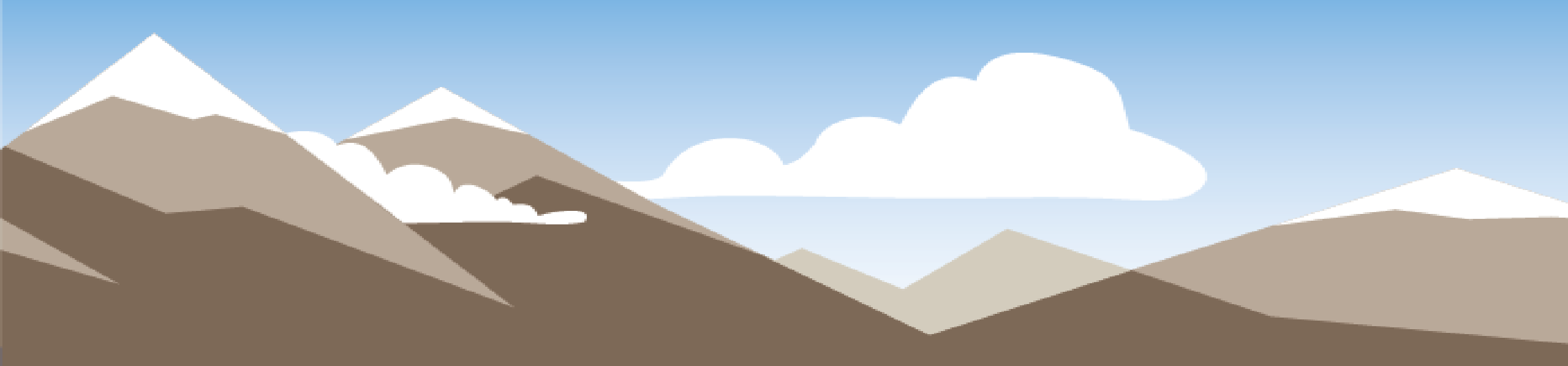
Discussion points for today's meeting

- Changes to the RAC process
- Shared goals with the RAC
- The RAC decision space: What is non-negotiable (written in statute) and what is flexible
- How the RAC can most effectively provide feedback to the process
- Opportunities outside of the RAC decision space
- Rulemaking milestones past and future
- Level of concurrence on Rulemaking Decision Points 1-5
- Process for concurrence on decision points

If there is time:

- Provide update on Division 10 groundwater report
- Provide update on permit decline conditions and water use work

RAC Roundtable: What are we missing that is important for today?



Recent Reflections



Why did we take a pause?

- Comments received during the RAC process
- Took time to reevaluate the Departments project portfolio for groundwater management in the Harney Basin
- Spent more time to reevaluate our approach for stabilizing groundwater levels
- Gather insight from community partners

Answer 5/27/24 questions from 12 RAC members

Meeting Acknowledgement

- We have met with High Desert Partnership several times
- **Topics discussed:**
 - Discuss the RAC process so far
 - How to engage with the broader community
 - RAC subcommittees

Reminder: The Department is willing to meet with any RAC member one on one or in a group.

What We Heard

We heard from some RAC Members:

- Different levels of understanding around the Harney groundwater situation
- Some members of the community may just now be plugging into the process
- Community and Department need a plan for how to bring folks along
- Pace of rulemaking is too quick/Other Harney portfolio items too slow
- Questions from the RAC have not been answered by Department
- Identify statutory requirements, policy decisions and where the RAC has influence: What is non-negotiable (written in statute) and what is flexible (what can be negotiated)
- Request to produce the Division 10 groundwater report for community review
- Identify how and when the USGS model will be used
- Develop methodology for a decision-making process

RAC Roundtable: What did we miss?

What We Heard

Comments Received from some RAC Members	The Departments Response to the Comments
Rulemaking pace is too quick/ Other Harney Portfolio items too slow	Five additional RACs planned including June Other Harney items- progressing on targets
Questions from the RAC have not been answered by Department	Department is answering the questions in writing in time for each discussion topic
Identify statutory requirements, policy decisions, and where the RAC has influence	Department prepared DRAFT document for discussion outlining items where RAC input could be sought in rulemaking process

What We Heard

Comments Received from some RAC Members	The Departments Response to the Comments
<p>Different levels of understanding around the groundwater situation, community may just now be plugging into the process, community and Department need a plan for how to bring these folks along</p>	<p>Community members can share their knowledge on the groundwater study, further OWRD engagements are possible</p>
<p>Request for Department to produce the Division 10 groundwater report for the community to review</p>	<p>Report in June, status update in this meeting</p>
<p>Identify how and when the USGS model will be used</p>	<p>Work with RAC to define management scenarios to run through the USGS model during our June meeting</p>

What We Heard

Comments Received from some RAC Members

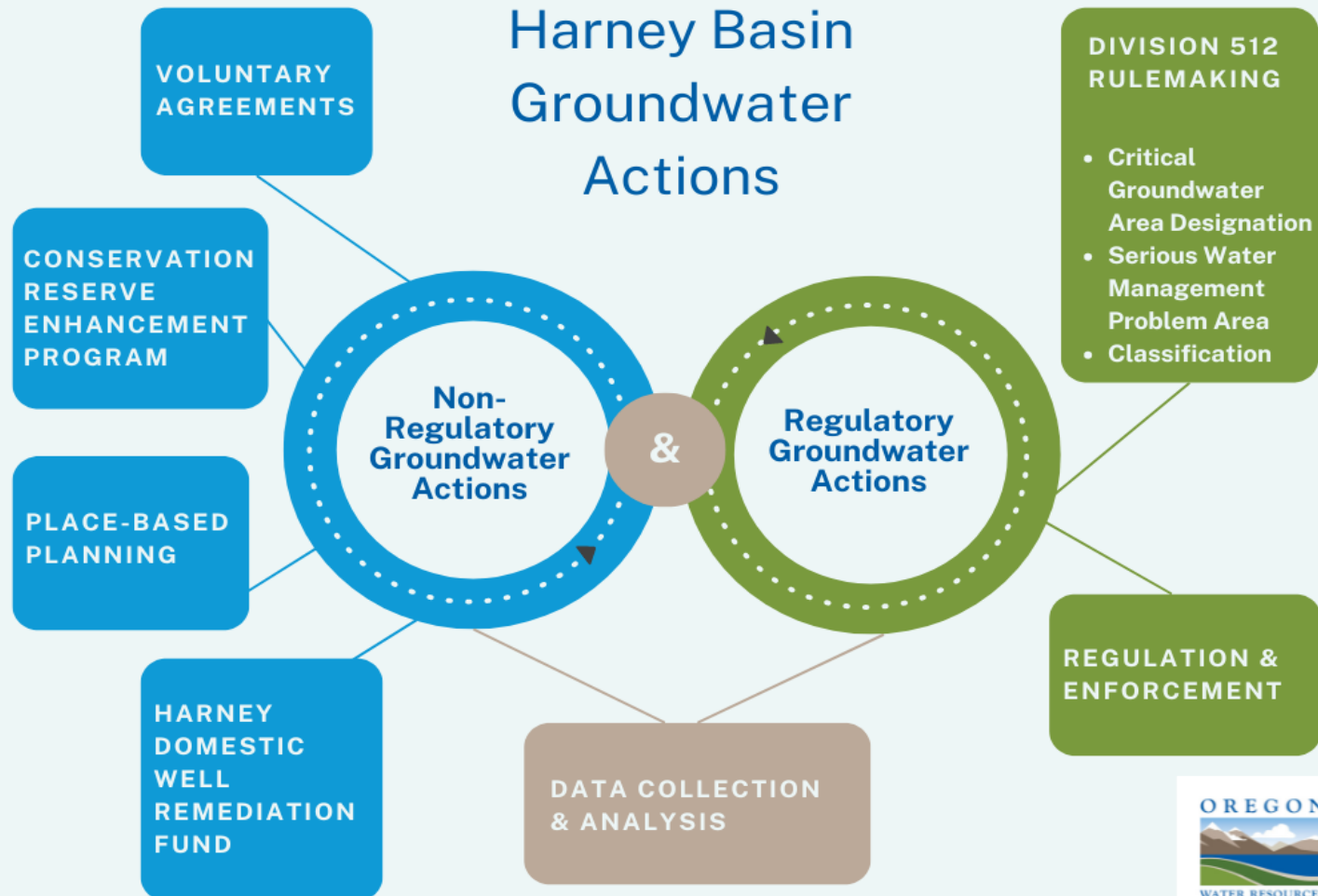
Develop methodology for a decision making-process

The Departments Response to the Comments

We will gather feedback today and revisit in June

OWRD Harney Portfolio

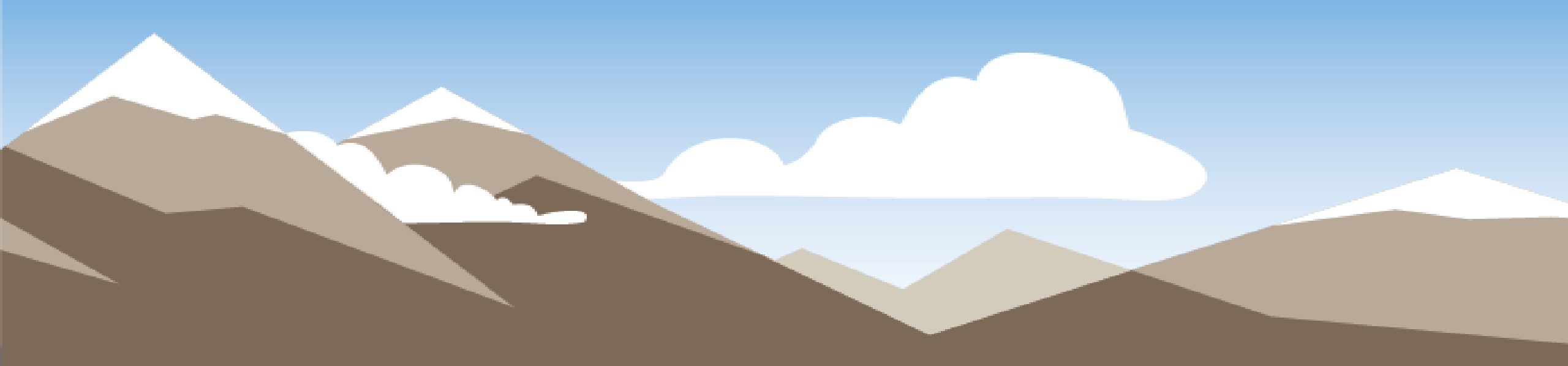
Harney Basin Groundwater Actions



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

Entities looking at how to address groundwater challenges and opportunities in the basin

- Local Organizations
 - High Desert Partnership (HDP)
 - Soil Water Conservancy District (SWCD)
 - Harney County Watershed Council
 - Harney Community Based Water Planning (HCBWP)
 - The Nature Conservancy (TNC)
- OSU Extension - Oregon State University Extensions
- Malheur National Wildlife Refuge
- USDA NRCS – Natural Resources Conservation Service



Process and Engagement




Process and Engagement

IAP2 Spectrum of Public Participation

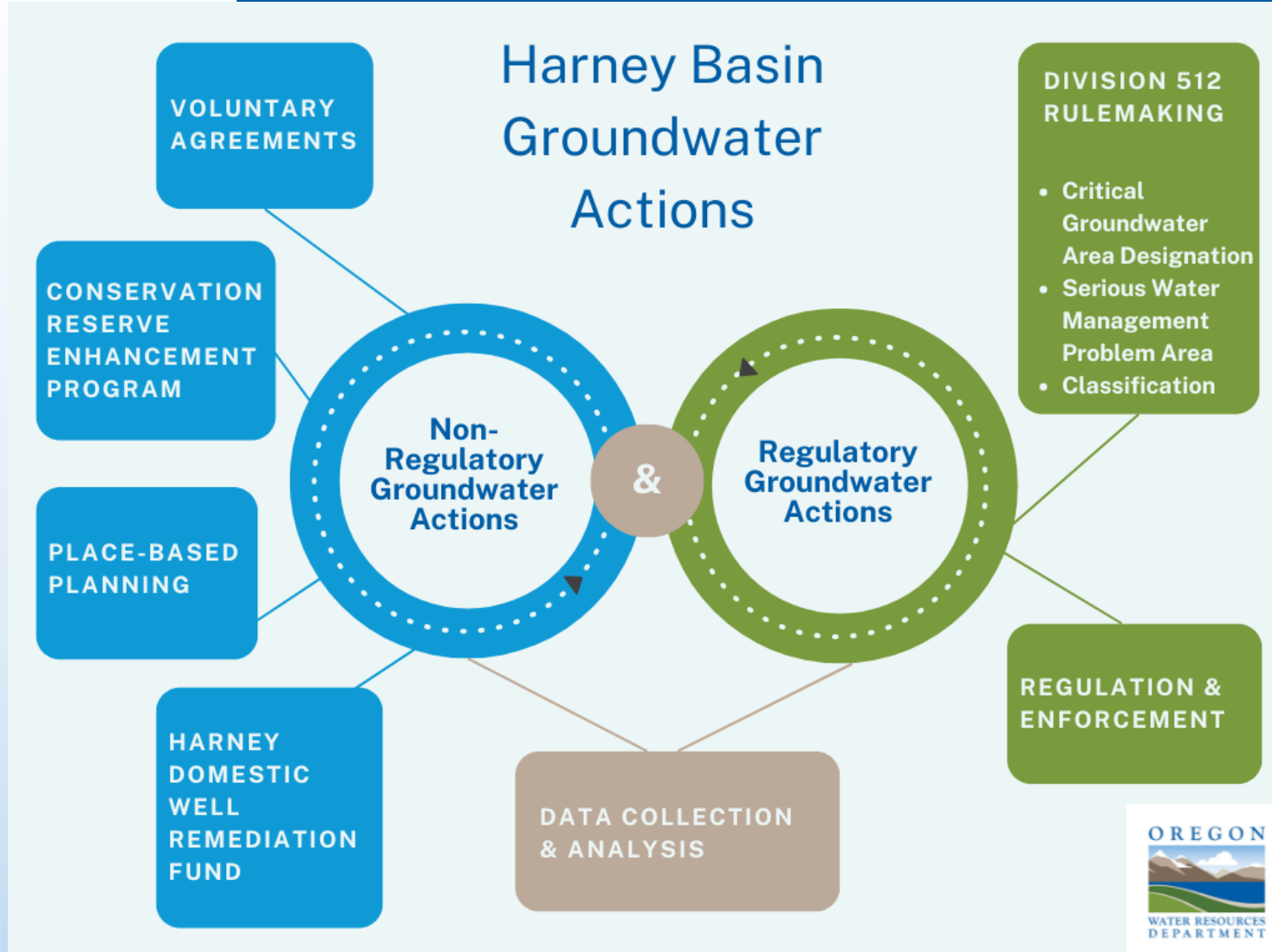


IAP2's Spectrum of Public Participation was designed to assist with the selection of the level of participation that defines the public's role in any public participation process. The Spectrum is used internationally, and it is found in public participation plans around the world.

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.

Process and Engagement




Process and Engagement

Regulatory Groundwater Actions

IAP2 Spectrum of Public Participation



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Non-Regulatory Groundwater Actions

IAP2 Spectrum of Public Participation



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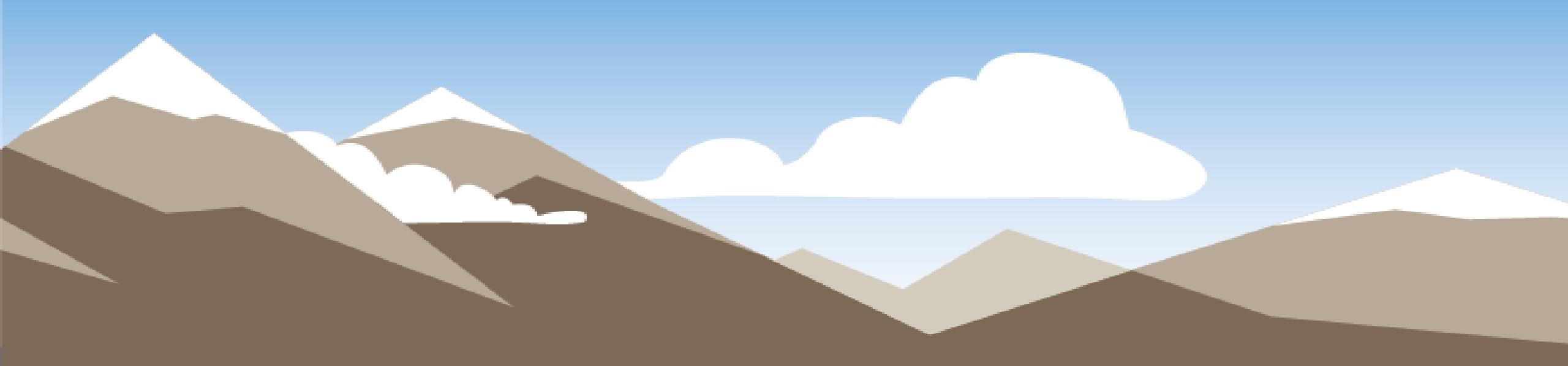
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RAC Roundtable

- How can we build shared understanding about the groundwater study with the community?

Here is what already exists

- 1-Hour recorded presentation on Groundwater Study key Findings by Jerry Grondin (July 2023)
- Recorded informational session on Groundwater Study Key Findings (July 27, 2023)
- 6-Page USGS Key Takeaways Document (Fall 2022)
- 2-Page OWRD Key Takeaways Document (Fall 2022)
- 6-Page Groundwater Study Advisory Committee Key Takeaways Document (Revisited in Fall 2022)



Rulemaking Milestones



What We Heard

- RAC members asked us to define what is statute, what is policy and where the RAC can have input

Why the Roll-Up Was Made

- Response identifies past and future topics where RAC input and influence is needed

Rulemaking Making Milestones

Outline of this conversation:

- Identify the rulemaking milestones
- Define level of engagement for each (Inform/Consult/Involve)
- Discuss questions or concerns for each milestones
- Map out next steps

Classification Boundary

Direction from Statute

- ORS 536.340 – The Department can classify and reclassify the lakes, streams, underground reservoirs, or other sources of water supply in this state as to the highest and best use and quantities of use thereof for the future in aid of an integrated and balanced program for the benefit of the state.

RAC Input Previously Sought

- RAC consulted during Number 2 (August 29, 2023)
- General concurrence from the RAC -- REVISIT – Was this understood and achieved?
- OWRD made the policy decision to set the classification boundary as Harney Basin within the Malheur Lake Basin and within the portions of Grant and Harney Counties

Recommendation to Commission:

- Define the Classification Boundary as Harney Basin within the Malheur Lake Basin and within the portions of Grant and Harney Counties.

Serious Water Management Problem Area (SWMPA) Boundary

Direction from Statute

- ORS 540.435 – Allows the Water Resources Commission to order installation of a measuring device and require annual reporting.

RAC Input Previously Sought

- RAC consulted during RAC Number 2 (August 29, 2023).
- General concurrence from the RAC. **REVISIT – Was this understood and achieved?**
- OWRD made the decision to set the SWMPA Boundary defined as the Greater Harney Valley Groundwater Area of Concern (GHVGAC).

Recommendation to Commission:

SWMPA Boundary defined as the GHVGAC.

Further Considerations:

- Types of measurement devices.
- Regularity of measurements.
- Mechanisms to collect and share information.
- When would measurements begin.

Boundary of Harney Basin Critical Groundwater Area (HBCGWA)

Direction from Statute

- ORS 537.735(a) requires rules designating a Critical Groundwater Area (CGWA) to define the boundaries if the area meets the criteria for designation under ORS 537.730.

Direction from Rule

- OAR 690-010-0130(3)(a) – (b): can be defined by natural boundaries or administratively.

RAC Input Previously Sought

- RAC consulted during RAC Number 2 (August 29, 2023).
- RAC members requested certain areas of the GHVGAC should be designated now, and other areas designated later. Other input suggested that the lowlands of the study be designated.
- Input considered, and OWRD made the policy decision that the HBCGWA will be defined as the GHVGAC.
- **REVISIT – Was this understood and achieved?**

Recommendation to Commission:

Define the HBCGWA as the existing boundary of the Greater Harney Valley Groundwater Area of Concern (GHVGAC).

Further Considerations:

- Voluntary agreements are not limited to the HBCGWA.
- CREP grants are only for the area within the GHVGAC/HBCGWA.

How the HBCGWA Subareas are Delineated

Direction from Rule

- OAR 690-010-0130(3)(c) – A Critical Groundwater Area can be delineated into subareas by either physical or administrative boundaries.

RAC Input Previously Sought

- RAC consulted during RAC meeting number 3 (October 25, 2023).
- Some RAC members expressed some concern regarding using groundwater level trends, but no alternatives were proposed.
- OWRD used the proposed criteria for delineating the subareas.

REVISIT – Was this understood?

Recommendation to Commission:

Delineate subareas using the criteria below:

- Groundwater flow path (hydraulic gradient).
- Groundwater level trends.
- Subsurface geology.

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.

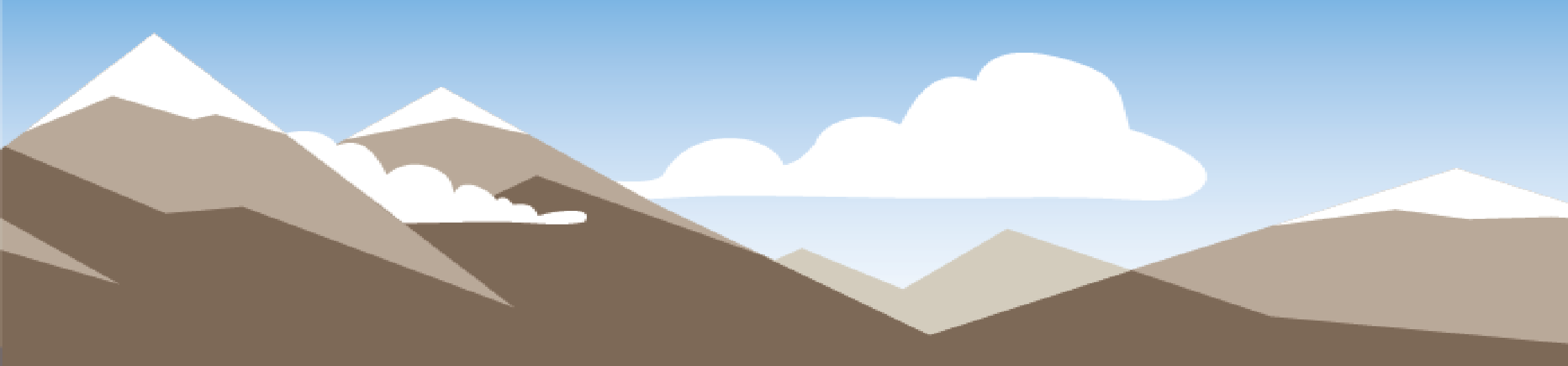
RAC Input Previously Sought

- 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:

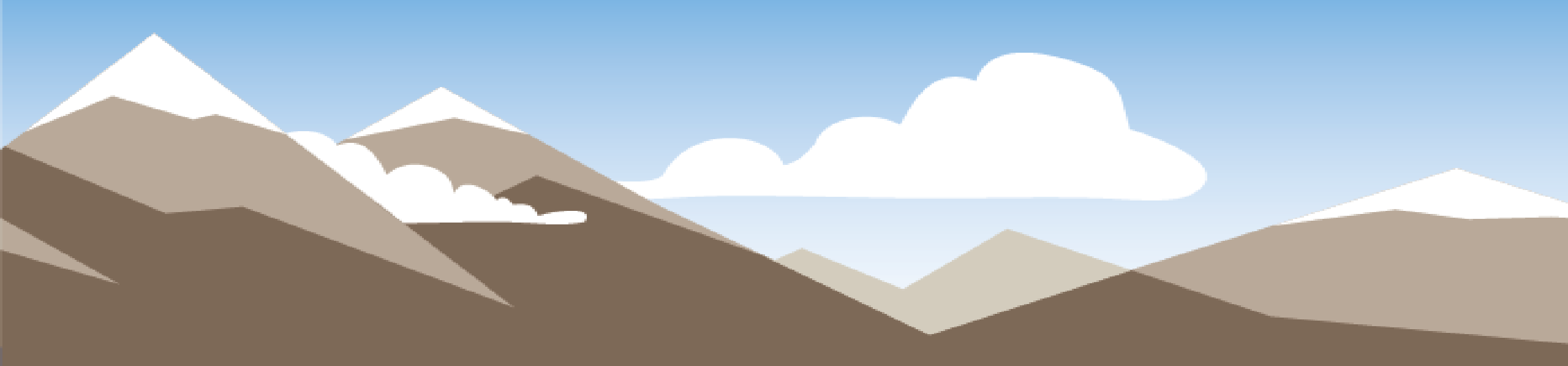
- Criteria used for designating priority.
- Categorize six subareas as high priority due to the severe magnitude and rates of decline and focus on regulatory action in high priority areas first.
- Categorize nine subareas as lower priority and focus on voluntary reductions of groundwater use in these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

Proposed RAC Topics	RAC Number 8	RAC Number 9	RAC Number 10	RAC Number 11	RAC Number 12
Goal for Groundwater Levels in the Harney Basin	X		X		
Modeled Management Scenarios	X		X		
Timing of Implementation of the Permissible Total Withdrawal (PTW)	X		X		
Allocation of the Permissible Total Withdrawal	X		X		
Allowed Uses (Classification)/ Measuring and Reporting (SWMPA)		X			
Voluntary Agreements Guidelines for Harney Basin		X		X	
Fiscal Impact Statement			X	X	X
Draft Rule Language (SWMPA, Classification, CGWA, Voluntary)				X	X



Break





Public Comment





RAC Roundtable

Discussion points for today's meeting

- Changes to the RAC process
- Shared goals with the RAC
- The decision spaces that the RAC has in the rulemaking process
- How the RAC can most effectively provide feedback to the process
- Opportunities outside of the RAC decision space
- Rulemaking milestones past and future
- Level of concurrence on Rulemaking Decision Points 1-5
- Process for concurrence on decision points

If there is time:

- Provide update on Division 10 groundwater report
- Provide update on permit decline conditions and water use work

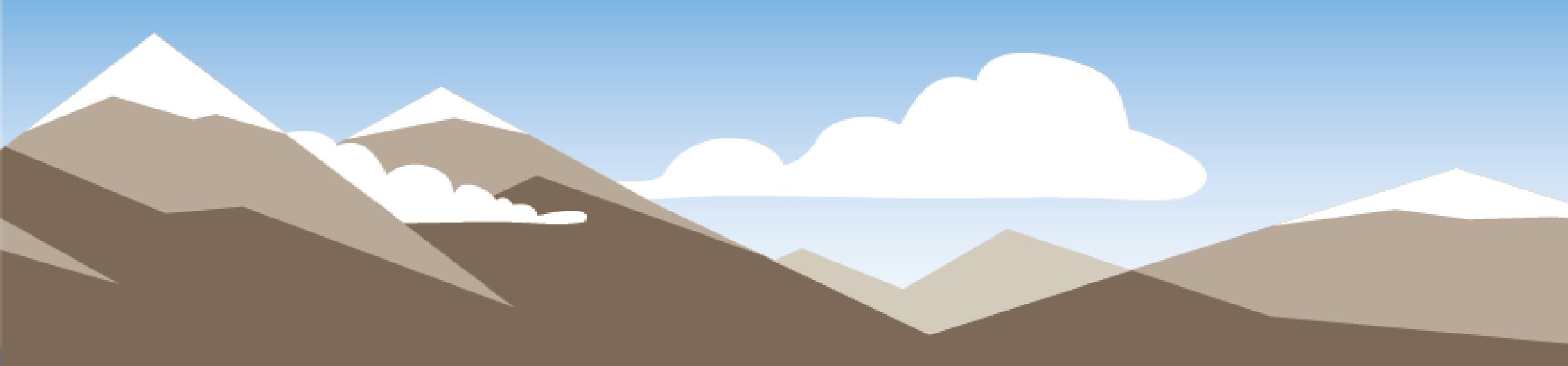
RAC Roundtable: What are we missing that is important for today?

What We Heard

We heard from some RAC Members:

- Different levels of understanding around the Harney groundwater situation
- Some members of the community may just now be plugging into the process
- Community and Department need a plan for how to bring folks along
- Pace of rulemaking is too quick/ Other Harney items too slow
- Questions from the RAC have not been answered by Department
- Identify statutory requirements, policy decisions and where the RAC has influence: What is non-negotiable (written in statute) and what is flexible (what can be negotiated)
- Request to produce the Division 10 groundwater report for community review
- Identify how and when the USGS model will be used
- Develop methodology for a decision-making process

RAC Roundtable: What did we miss?



Discussion: Shared Goals

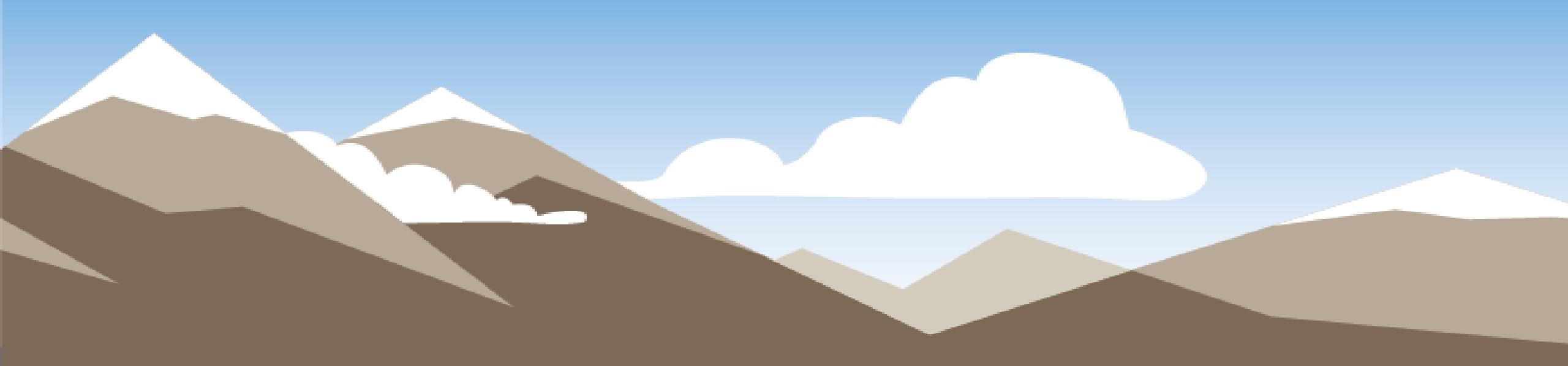


Discussion: Shared Goals

What are your goals for rulemaking portion of the Harney Basin Groundwater Portfolio?

Here is what we believe are shared goals:

- Urgent situation
- Limit groundwater decline
- Limit impact to the community and the natural environment
- Water supplies to meet future needs of the community and the natural environment
- Clear process that leads to rules that can be understood
- Providing options to reduce groundwater use



Conclusion



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

Modeled Management Scenarios

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 ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recreational.

Policy Decision to be Made

What management scenarios would the RAC like OWRD to run through the USGS Model for RAC discussion?

NOTE: OWRD will run one management scenario without input from the RAC for comparison. Up to two or three? additional scenarios will be run with direct input from the RAC.

Input Requested from the RAC

- Other management scenarios that meet the groundwater level goal determined by the Department with RAC input.
- What are the full menu of options for reducing groundwater use in both the high and low priority sub-areas?

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

Allowed Uses of Water (Classification)

Direction from Statute

- ORS 536.340 – The Department can classify and reclassify the lakes, streams, underground reservoirs, or other sources of water supply in this state as to the highest and best use and quantities of use thereof for the future in aid of an integrated and balanced program for the benefit of the state.

Policy Decisions to Be Made

- What new uses of groundwater should be allowed other than exempt uses?

Options for Consideration

- Classify the area for exempt uses only.
- Allow the application of limited licenses through short-term non-use of a water right.
- Allow uses for small community water systems.
 -

Input Requested from RAC

- What other beneficial uses of water should be allowed?
- Exclusion for non-consumptive uses – geothermal with re-injection?
- Limited Licenses for short-term projects like construction?

Projected RAC Meeting for Discussion

RAC Meeting Number 9 and 11

Implementation of a SWMPA

Direction from Statute

- ORS 540.435 – Allows the Water Resources Commission to order installation of a measuring device and require annual reporting.

Policy Decisions to Be Made:

- What type of measurement devices should be allowed?
- When will measurement devices need to be installed?
- How often should reporting be required?

Input Requested RAC

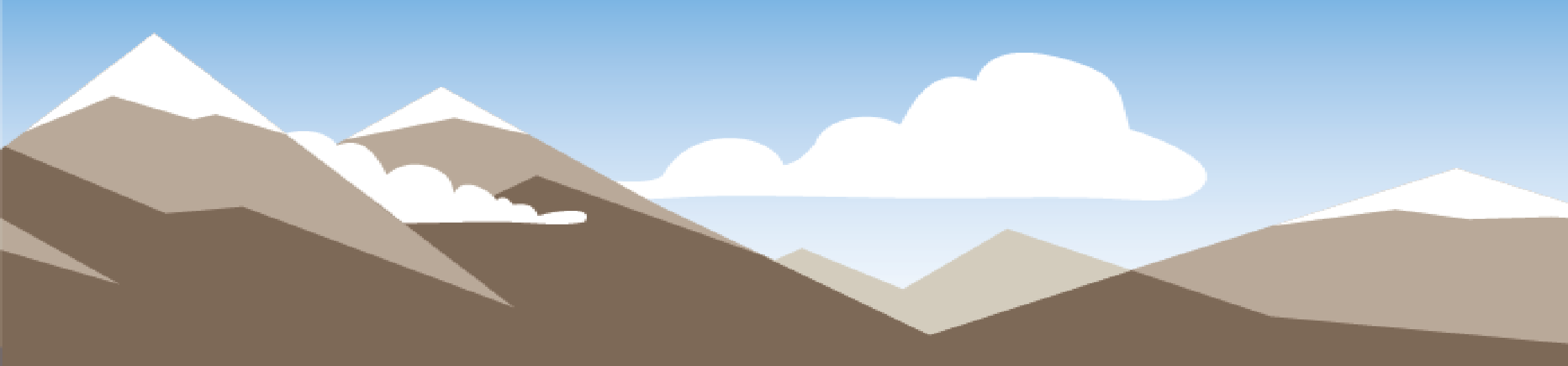
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Input Requested RAC

- Options for measurement devices
- When should the measurement devices be required?
- Who should be required to install measuring devices?
- What should be the roll out for installation of the measurement device?
- How often should reporting be required?
- What type of reporting should be required?
- What type of mechanisms would be helpful to collect and share data?
- Should some of the subareas be tracked by ET instead of measuring devices?
- Should only a portion of the subareas be required to install and report?
- Does every well need a flow measurement device, or should it be per field?

Estimated RAC Meeting for Discussion

RAC Meeting Number 9 and 11



IAP2 Spectrum: Inform Level



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.

Calculation of the Permissible Total Withdrawal (PTW)

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.

High Level Justification:

- The hydrograph approach is used to set PTW in the high priority subareas to identify the annual volume of groundwater pumpage that will result in stable groundwater levels in a timely manner in those areas where the rate and/or magnitude of groundwater level decline is most severe.
- 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.

Proposed RAC Topics	RAC Number 8	RAC Number 9	RAC Number 10	RAC Number 11	RAC Number 12
Goal for Groundwater Levels in the Harney Basin	X		X		
Modeled Management Scenarios	X		X		
Timing of Implementation of the Permissible Total Withdrawal (PTW)	X		X		
Allocation of the Permissible Total Withdrawal	X		X		
Allowed Uses (Classification)/ Measuring and Reporting (SWMPA)		X			
Voluntary Agreements Guidelines for Harney Basin		X		X	
Fiscal Impact Statement			X	X	X
Draft Rule Language (SWMPA, Classification, CGWA, Voluntary)				X	X