

RAC Influence in Division 512 Rulemaking

OWRD is seeking to update the Division 512 rules for the Malheur Lake Administrative Basin. This document lays out where the RAC has already provided input, or will be asked for input, on the three major proposed changes to the rules: 1) designation of a critical groundwater area (CGWA) and associated corrective control measures, 2) updates to the classified groundwater uses in the basin, and 3) designation of serious water management problem (SWMPA). Information and feedback from the RAC will be considered as OWRD develops rules to present to the Water Resources Commission for adoption.

RAC Input Received - no further input needed

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.

Opportunities Given to the RAC for Input

- RAC consulted during meeting 2 (August 29, 2023).
- General concurrence from the RAC.
- OWRD made the 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.

High Level Justification

- Setting the boundary to include Grant County will protect depletion of the upland recharge that flows to the basin.

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.

Opportunities Given to the RAC for Input

- RAC consulted during RAC meeting 2 (August 29, 2023).
- General concurrence from the RAC.
- 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.

High Level Justification

- The GHVGAC is where a vast majority of groundwater use occurs.
- The Groundwater Report from Harney Place-Based planning recommended requiring installing and reporting of groundwater use in the basin.

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.

Opportunities Given to the RAC for Input

- RAC consulted during RAC meeting 2 (August 29, 2023).
- RAC members asked if only certain areas of the GHVGAC should be designated, and other areas designated later. Other input suggested that the lowlands of the study be designated.
- The input was considered, and OWRD made the decision that the HBCGWA will be defined as the GHVGAC.

Considerations

- Voluntary agreements are not limited to the HBCGWA.
- Conservation Reserve Enhancement Program (CREP) grants are only for the area within the GHVGAC/HBCGWA.

Recommendation to Commission

- SWMPA Boundary defined as the GHVGAC.

High Level Justification

- The GHVGAC is where a vast majority of groundwater use occurs.
- The Groundwater report from Harney Place-Based planning recommended requiring installing and reporting of groundwater use in the basin.

How the HBCGWA Subareas are Delineated

Direction from Rule	Opportunities Given to the RAC for Input	Recommendation to Commission
<ul style="list-style-type: none"> OAR 690-010-0130(3)(c) – A Critical Groundwater Area can be delineated into subareas by either physical or administrative boundaries. 	<ul style="list-style-type: none"> RAC consulted during RAC meeting 3 (October 25, 2023). Some RAC members expressed concerns regarding using groundwater level trends, but no alternatives were proposed. OWRD used the proposed criteria for delineating the subareas. 	<p>Delineate subareas using the criteria below</p> <ul style="list-style-type: none"> Groundwater flow path (hydraulic gradient). Groundwater level trends. Subsurface geology. <p>High Level Justification</p> <ul style="list-style-type: none"> Groundwater in the Harney Basin occurs within a single groundwater reservoir. The groundwater reservoir includes several distinct, yet hydraulically connected areas distinguished by local geology, location in the basin-wide groundwater-flow system, and local rate and magnitude of recharge and discharge. Subareas that do not meet the CGWA designation criteria are being included because groundwater levels are declining in those areas and any increase in pumping in those areas would increase the rate of decline in those areas.

Prioritization of Subareas

Direction from Statute	Opportunities Given to the RAC for Input	Recommendation to Commission
<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • RAC consulted during RAC meeting 4 (November 29, 2023). • A suggestion was made to further divide the subareas into low, medium, and high priority categories. The RAC also expressed concern with the 4,080-foot elevation line, and OWRD decided not to use that as a criterion. • OWRD did not use the 4,080 lines as a criterion for prioritizing subareas based on the input from the RAC. OWRD made the decision to keep the two priority categories. 	<ul style="list-style-type: none"> • Criteria used for designating priority. • Categorize six subareas as high priority due to the sever magnitude and rates of decline. Focus on reduction of groundwater use through regulation and voluntary actions in these 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. <p>High Level Justification</p> <ul style="list-style-type: none"> • 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.

RAC Input Needed

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 Numbers 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. Up to two additional scenarios will be ran with 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 (see item directly above).
- What are options for reducing groundwater use in both the high and low priority sub-areas?

Projected RAC Meeting for Discussion

RAC Meeting Numbers 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 use 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 the RAC

- Should these implementation schedules be written in the rules?
- Where should the timeline for the groundwater use reduction schedule begin for the Crane, Dog Mountain, Lawen, North Harney and Rock creek high priority subareas?
- Should the groundwater use reduction schedule for the five high priority subareas include the years before and during the contested case?
- How many years should the groundwater use reduction schedule for the high priority subareas be?
- What is the cost of a longer glide path?

Projected RAC Meeting for Discussion

RAC Meeting Numbers 8 and 10.

Allocation of the Permissible Total Withdrawal (PTW)

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 the 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 Numbers 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 Decision 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 for applications for limited licenses offset through short-term non-use of a water right".
- Allow uses for small community water systems.

Input Requested from the 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 Numbers 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 from the RAC

- Options for measurement devices.
- When should the measurement devices be required?
- Who should be required to install measuring devices?
- How often should the reporting be required?
- Should there be a roll out for installation of the measurement device?
- What type of reporting should be required?
- 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?

Projected RAC Meeting for Discussion

RAC Meeting Numbers 9 and 11.

RAC Input Not Sought

Calculation of the Permissible Total Withdrawal (PTW)

Direction from Statute

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

Why No 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

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

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.