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## **Division 512 Rules Advisory Committee**

### **Meeting 7 (May 31, 2024, 1-5 PM)**

This document is a summary of Division 512 Rules Advisory Committee (RAC) hybrid meeting number seven held at the Harney County Community Center on May 31, 2024, from 1-5 PM. For more information, see the Meeting Agenda, Meeting Presentation, Draft Rules, and other Meeting Materials, available on our [rulemaking website](#).

This summary is intended to capture key questions and discussion items however it is not an official transcript or includes “minutes” of the meeting. [The recording of the meeting is available online](#).

This summary captures key take-aways as identified by the third-party facilitation support and should not be interpreted as the confirmed thoughts and opinions of the OWRD, the RAC, or members of the public.

RAC Members in attendance:

- Barbara Howard
- Ben McCanna
- Brenda Smith
- Karen Moon
- Ken Bentz
- Kristen Shelman
- Lisa Brown
- Lorissa Singhose
- Louie Molt
- Mark Owens
- Roger Sheley
- Fred Otley
- Breanna O’Conner
- John Short
- Zach Freed
- Travis Singhose
- Jeff Mackay

Oregon Water Resources Department (OWRD) staff in attendance were:

- Ivan Gall
- Tim Seymour
- Kelly Meinz
- Laura Hart
- Alexandria Scott
- Jason Spriet

Bryant Kuechle with The Langdon Group contracted with Oregon Consensus at the National Policy Consensus Center at Portland State University to provide third-party, neutral facilitation services. Bobby Cochran with Oregon Consensus.

## **Welcome and Introductions**

Bryant Kuechle introduced himself, shared ground rules, reviewed the agenda and facilitated self-introductions by OWRD staff and RAC members. The following ground rules were shared:

1. RAC members please sit at the horseshoe. All non-RAC-member attendees please sit in the seating area, except during the public comment period.
2. All attendees will show mutual respect for each other, OWRD staff, and RAC members. This includes refraining from using cell phones or talking while the meeting is in session.
3. For those wishing to provide public comment, time is set-aside at the conclusion of the meeting and time will be extended if necessary. This is the public's opportunity to share their input.
4. Generally, commentators have about 2-5 minutes each and are asked to finish in a reasonable amount of time to allow for the maximum number of individuals to express their viewpoints.
5. The public will have the opportunity to provide public comment either virtually or in-person.
6. Commenters must show mutual respect for everyone participating in the meeting. Do not use unprofessional conduct or inappropriate language (yelling, profanity, etc.).

Jason Spriet welcomed people on behalf of OWRD. He recognized the importance of this work, acknowledged, and apologized for the confusion around the concepts of collaboration, consensus, and that this RAC is advisory to OWRD, and committed to working together with the RAC and the public to improve the process from today onward.

### **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?

#### **Offered by Bryant Kuechle and OWRD as starting points:**

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

## II. Confirming the feedback heard from the RAC

Bryant Kuechle shared some of the feedback provided by RAC members since RAC meeting six.

### OWRD and the facilitation team 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

### 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

- Be careful to spell out acronyms, minimize technical jargon, and have an easy place where those are defined

OWRD began committing to act on some of this feedback:

- There will be five additional RAC meetings, including the June 27 meeting (schedule forthcoming)
- OWRD can answer question in writing. Several RAC members asked the questions get discussed with the RAC rather than a pattern of question, written response
- OWRD and the facilitation team will get an updated process approach for the RAC to see ASAP

**III. What is the “Harney Portfolio” of Voluntary and Regulatory Actions?**

Bryant Kuechle and OWRD shared a graphic of the connected, ongoing efforts seeking voluntary actions on groundwater and regulatory actions. The RAC provided feedback on the graphic:

- It would be great to show a feedback loop, review cycle, or some other way to indicate all the approaches will adapt with new information and experience;
- The detail on where the voluntary and regulatory approaches intersect and interact is important. Could that be shown or described more?

Some RAC members also commented on the importance of ensuring ongoing support for these various efforts—especially the efforts to improve water use efficiency.

**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.

**V. Groundwater study**

OWRD asked the RAC: How can we build shared understanding about the groundwater study with the community?

Karen Moon noted the watershed council is willing to host additional outreach and engagement but needs help from irrigators to get other irrigators involved. Mark Owens offered the option of a tour—Some way of getting people out into the field, with technical people like Justin Iverson (groundwater), or Jordan Beamer (OpenET). Some other areas the RAC identified that would be helpful included seeing how one subarea flowed into another.

The RAC also discussed that it might be hard to further identify the parts of the groundwater study to really key in on until the science from the study is applied to management scenarios. For example, if the information from the study is used to consider implementing X, Y, or Z action, then what are the

implications of those actions? And then it might be easier to see how the data informs actions. During the RAC discussion, it was clear that A) a lot of the information and data needed to support decisions exists, and has been available, while also B) there might not have been the time or the right context for more of the community of irrigators to internalize and fully understand a pretty complex set of science.

One RAC member offered some objectives on the topic of:

- Consider how to bring the level of understanding in the community up
- Make sure the RAC members are comfortable with the study
- Clarify how the data connects to management actions

Another RAC member reminded the group how heavy the subject of groundwater use is. And that the words the RAC uses really matters, and this issue has an impact on people's mental health. The group needs to continually go where irrigators gather (e.g., with Farm Bureau and the Stockgrowers).

## **VI. Public Comment**

Bryant Kuechle requested a show of hands (in-person and online) by members of the public interested in providing public comment in session #1. The following provided verbal comment. [Comments begin at 2:46 on the meeting recording.](#)

- Justin Bowen
- Chris Hall
- Steven Delberspike
- Jess Wynek

## **VII. Rulemaking Milestones**

Bryant Kuechle and OWRD opened a discussion on some of the decision areas the RAC had visited in past meetings, but not had an opportunity to discuss.

### **A. Classification Boundary**

The classification boundary is the geographic area where OWRD may limit new water permit applications. The proposed boundary is the area of the Harney Basin A) within the Malheur Lake Administrative Basin and B) Portions of Grant and Crook counties and Harney County that are recharge areas, but not C) the portions of the Malheur Lake Administrative Basin to the Southwest and South. [See the proposed boundary map here.](#)

#### RAC dialogue

A RAC member asked if the classification boundary would affect permits currently in process or being contested? Tim Seymour from OWRD, said no, the classification boundary would only apply to new permit applications. A RAC member asked if the classification boundary, just the geography, automatically affected uses (e.g., limited licenses or exempt uses)? Tim Seymour from OWRD, clarified that the RAC still needs to provide feedback on the allowable uses within the classification boundary (i.e., that limited licenses could be allowable), and that exempt uses are still exempt and would be allowable. A RAC member asked if Virginia Valley was included? Tim Seymour from OWRD, said no, only areas within the Malheur Lake Administrative Basin could be included within the classification boundary. A RAC member asked if Grant and Crook counties had been engaged? Jason Spriet from OWRD, said yes, there is a Grant County member of the RAC and all Grant County commissioners had been met with. Tim Seymour of OWRD also noted that areas of Silvies or Seneca could develop new water uses if not within the Classification boundary.

#### Area of potential agreement

The RAC was then asked, "how close are RAC members to agreeing with the proposed classification boundary line?" Most of the RAC members present affirmed their support for the proposed classification boundary. This feedback will be confirmed at a future RAC meeting.

## **B. Serious Water Management Problem Area (SWMPA) Boundary**

The SWMPA boundary is the geographic area where OWRD may require groundwater usage monitoring and reporting. Some of the more recent groundwater permits already include those requirements, but not older permits. This requirement is a way to provide more accurate data on water usage in a fair and consistent way to inform water management and regulation. The proposed boundary is defined as the Greater Harney Valley Area of Concern (GHVGAV). [See the proposed boundary map here.](#)

### RAC Dialogue

A RAC member asked OWRD to be open to other ways of tracking water usage beyond flow meters. Several RAC members asked why not make the SWMPA boundary the same as the Classification boundary? Tim Seymour of OWRD said that would include areas that are unlikely to develop new water withdrawals. A RAC member followed up to ask if OWRD had the flexibility within the SWMPA to require measurement in some parts and not others? Tim Seymour of OWRD said that was a possibility. Bryant Kuechle asked OWRD to develop a pro/con slide for keeping A) the SWAMPA as proposed, or B) expanding it to match the proposed Classification boundary.

### Area of potential agreement

More dialogue will occur at a future RAC meeting.

## **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.

## **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

