



Oregon

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WATER RESOURCES DEPARTMENT ANNOUNCES PUBLIC PROCESS TO DEVELOP UPPER KLAMATH BASIN GROUNDWATER RULES

Advisory Committee Meeting and Open House Scheduled

The Oregon Water Resources Department announced today that the Department will begin the process for developing rules regarding the regulation of groundwater users to benefit senior water right holders. Although the Department already has rules that govern the regulation of groundwater and surface water, the Upper Klamath Basin Comprehensive Agreement calls for the development of groundwater rules for the Upper Klamath Basin within the Sprague, Williamson, and Wood river drainages, consistent with the agreement.

"The Department understands that groundwater is important to the livelihoods of many users in the basin and that residents are concerned about the regulation of wells," said Racquel Rancier, a Department spokesperson. "We think it is important for the public to understand the process and understand how they can be involved. Therefore, we are encouraging individuals interested in the rulemaking to sign up to receive email updates and to attend open houses to interact with Department staff."

The rulemaking process involves several steps. First, an initial draft of the rules is developed by staff. After that, a rules advisory committee composed of members of the public provides Department staff with input on the initial draft rules and the costs associated with the rules. The rules advisory committee will include several upper basin water right holders, as well as individuals from the Klamath Water Users Association, U.S. Geological Survey, The Klamath Tribes, Water for Life, WaterWatch, City of Klamath Falls, The Nature Conservancy, and Crater Lake National Park. The meetings held with the rules advisory committee are open to the public to listen; however, the purpose of the meetings is to get feedback from the members of the rules advisory committee. The public will have an opportunity to provide input on the rules at public hearings held later in the winter and spring.

Based on the feedback received from the rules advisory committee, Department staff will revise the initial draft rules and release a draft for public comment. The public will have the opportunity to provide written comments or to provide comments during public hearings. Department staff will review all comments received. Following the public comment period, staff will develop a report and proposed final rules for consideration and adoption by the Oregon Water Resources Commission.

The Department plans to hold several open house meetings this fall to answer questions about groundwater hydrology and groundwater regulation. These open houses will provide members of the public the opportunity to ask questions and interact with Department staff.

Rules Advisory Committee Meeting: The first meeting of the rules advisory committee will occur on October 22 from 1:00 PM to 4:00 PM in the Mt. Mazama Room at the Oregon Institute of Technology in Klamath Falls. During the first meeting, Department staff will provide an overview of groundwater hydrology in the basin, as well as an introduction to the initial draft rules. A copy of the initial draft rules will be distributed to the committee members and the public at that time.

Another rules advisory committee meeting will be scheduled later, after members have had time to review the rules and prepare to discuss them in more depth. Additional meetings of the committee will be held as needed.

Open House: The first open house will be held on October 22 from 6:00 PM to 8:00 PM at the Sunset Room at the Oregon Institute of Technology. Members of the public are encouraged to attend. Staff will be available to answer questions and discuss groundwater in the basin.

Sign up to Stay Informed: The Department would like to invite all persons interested in this rulemaking to sign up to receive email updates to stay informed about meetings, open houses, and opportunities for public comment.

To sign up, please visit: http://listsmart.osl.state.or.us/mailman/listinfo/owrd_klamath_gw_rulemaking.

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690-022-XXXX

Regulation of Groundwater in the Off-Project Area for Senior Surface Water Rights in the Klamath Basin

(1) The following definitions apply to OAR 690-022-XXXX:

(a) “Call Threshold,” “Irrigation Season,” and “Off-Project Area” have the meanings given those terms in section 15 of the Settlement Agreement.

(b) “Gaining Reach” has the meaning given that term in section 15 of the Settlement Agreement, except that the Department may modify the location of a Gaining Reach for the purposes of OAR 690-022-XXXX based on the best available information.

(c) “Scenic Waterway” has the meaning given in ORS 390.805.

(d) “Settlement Agreement” means the Upper Klamath Basin Comprehensive Agreement that took effect April 18, 2014

(2) Oregon Administrative Rule 690-009-0030 allows the development of local rules that govern the control of wells that interfere with surface water. Pursuant to OAR 690-009-0030, groundwater in the Off-Project Area that is in hydraulic connection with surface water shall be regulated as provided in OAR 690-022-XXXX. OAR 690-022-XXXX supersedes OAR 690-009-0050(2) with respect to control of wells in the Off-Project Area as a result of interference with surface water.

(3) OAR 690-022-XXXX implements provisions of the Upper Klamath Basin Comprehensive Agreement within the Department’s existing statutory authority, and concerns the regulation of wells in a limited geographic area within the Klamath Basin. Specifically, these rules are limited to control of wells in the Off-Project Area as a result of interference with surface water. These rules have no effect on:

(a) applications for the use of groundwater;

(b) control of wells as a result of interference with another well;

(c) control of wells in any other part of the Klamath Basin or the state; or

(d) statutes or the Department’s rules governing Scenic Waterways.

(4) The Department shall control the use of wells greater than one mile from a surface water source only through a critical ground water area determination in accordance with ORS 537.730 through 537.740.

- (5) The Department may control the use of a well that is no more than 500 feet from a Gaining Reach in favor of senior surface water rights.
- (6) The Department may control the use of a well that is greater than 500 feet and less than one-quarter mile from a Gaining Reach in favor of senior surface water rights if such control would provide relief to senior surface water rights in an effective and timely manner.
- (7) The Department may control the use of a well that is between one-quarter mile and one mile of a Gaining Reach under any of the following conditions:
- (a) If a valid call is made by a senior surface water right holder, and the Department determines that the difference between the rate of the shortfall of water validly called and the rate of the senior water right or Call Threshold (as applicable) is between 5% and 10% of the amount of the senior water right call or the Call Threshold (as applicable), then the Department may control the use of a well that is between one-quarter mile and one-half mile of a Gaining Reach; provided, that if the first such valid call based on a specific senior water right or Call Threshold (as applicable) is made after August 31, the Department may not control the use of a well that is between one-quarter mile and one-half mile of a Gaining Reach during that Irrigation Season.
 - (b) If a valid call is made by a senior surface water right holder, and the Department determines that the difference between the rate of the shortfall of water validly called and the rate of the senior water right or Call Threshold (as applicable) is greater than 10% of the amount of the senior water right call or the Call Threshold (as applicable), then the Department may control the use of a well that is between one-half mile and one mile of a Gaining Reach; provided, that if the first such valid call based on a specific senior water right or Call Threshold (as applicable) is made after July 31, the Department may not control the use of a well that is between one-half mile and up to one mile of a Gaining Reach during that Irrigation Season.
 - (c) If a valid call is made by a senior surface water right holder, and the Department determines that the difference between the rate of the shortfall of water validly called and the rate of the senior water right or Call Threshold (as applicable) has been greater than 5% of the amount of the senior water right call or the Call Threshold (as applicable) for more than thirty-one days within a forty-five day period, then the Department may control the use of a well that is between one-quarter mile and one mile of a Gaining Reach.
- (8) Notwithstanding section (7), if a valid call is made to a Call Threshold after the 25th day of a month, the Department may not control the use of a well that is between one-quarter mile and one mile of a Gaining Reach, unless the Department determines that the difference between the rate of the shortfall of water validly called and the rate of the Call Threshold is greater than 10% of the amount of the Call Threshold.
- (9) For the purposes of section (7):

- (a) wells located between one-quarter and one-half mile of a Gaining Reach that are continuously cased and continuously sealed to a minimum depth of 500 feet below land surface will be regulated as if they are located between one-half and one mile of a Gaining Reach; and
- (b) wells located greater than one-half mile from a Gaining Reach that are continuously cased and continuously sealed to a minimum depth of 500 feet below land surface will be regulated as if they are located greater than one mile from a Gaining Reach, and will not be subject to regulation in the absence of a critical groundwater determination.

(10) Notwithstanding any other provision of 690-022-XXXX:

- (a) the Department will regulate wells located within one mile of a spring or stream as provided in OAR Chapter 690 Division 009 if use of the well would result in depletion of the flow of a Gaining Reach at a rate greater than 25 percent of the rate of appropriation within 30 days of pumping.
- (b) the Department will regulate wells located within a one-mile radius of a particular spring as provided in OAR Chapter 690 Division 009 if the use of all such wells would result in depletion of the spring flow rate in an amount that is greater than 20 percent within 30 days.
- (c) the Department will make the determinations described in subsections (a) and (b) based on the best available information, which could include employing at least one of the methods set forth in OAR 690-009-0040(4)(d). Prior to making such a determination, the Department will notify the water right holder subject to the call and the party or parties making the call, and provide them with an opportunity to submit evidence to the Department.

(11) For the purposes of OAR 690-022-XXXX, distances from individual wells to springs, streams, or Gaining Reaches, as applicable, will initially be determined based on the location of individual wells as shown in Exhibit F to the Settlement Agreement, and the location of the spring or the edge of the water visible in the National Agricultural Inventory Program (NAIP) imagery for July 15 – August 1, 2012, subject to the provisions regarding such distances in subsections (a) through (e), below. If a well subject to OAR 690-022-XXXX is not shown in Exhibit F to the Settlement Agreement, the Department will determine the location of the well based on the best available information. For the purposes of measuring distances from individual wells to springs, streams, or Gaining Reaches, as applicable, resulting from the changes described in subsections (a) through (e), the Department will use the most current year of NAIP imagery.

- (a) If a replacement or additional well under an existing registration, permit, or certificate is located at a distance greater than one mile from a surface water source, the well may not be regulated without a critical groundwater area determination.

- (b) If a riparian restoration action results in movement of the edge of a surface water body to an extent that would change the exposure of a groundwater point of appropriation to regulation based on the distance measurement criteria in sections (5) through (10), then for the purposes of sections (5) through (10), the distance prior to the restoration action will continue to apply.
- (c) A replacement or additional well under an existing registration, permit, or certificate shall be evaluated for the purposes of sections (5) through (10) based on the distance criterion applicable to the original well; except that for the purpose of determining effective and timely relief, the replacement or additional well's measured distance, according to the applicable criterion, shall be used.
- (d) Any person may submit evidence or a recommendation to the Department concerning whether a natural change in stream location has caused a material change in the distance of a well to a Gaining Reach or stream for purposes of sections (5) through (10). If the Department determines that there is a material change, the Department will notify the persons who submitted the evidence or recommendation, and any other affected persons.
- (e) If the best available information regarding the location of a Gaining Reach changes, any person may recommend to the Department a modification of the location of a Gaining Reach for the purposes of OAR 690-022-XXXX. The Department will notify the person making the recommendation of the Department's decision on the proposed modification.

(12) Prior to controlling the use of any well greater than 500 feet from a Gaining Reach, the Department shall determine whether control of a well will provide relief to the surface water supply in an effective and timely manner. This determination shall be based upon the best available information and employ analytical or numerical methods to calculate the stream depletion due to groundwater withdrawal.

(13) Solely for the purposes of OAR 690-022-XXXX, the standard for determining whether control of a well would provide effective and timely relief shall be the result of a calculated 30-day pumping cycle followed by 90-day idle period. If the relief to the stream at the conclusion of the 90-day idle period is equal to or greater than 0.10 cubic feet per second, control shall be considered effective and timely.

(14) In the event the Settlement Agreement terminates, groundwater regulation will be in accordance with OAR Chapter 690 Division 009.