



# Oregon

Tina Kotek, Governor

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## **Groundwater Allocation Rules Advisory Committee Hybrid Meeting #8 (8:30 am – noon, January 23, 2024) Meeting Summary**

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This is a summary of the Groundwater Allocation Advisory Committee (RAC) Meeting held in person (Salem office, Oregon Water Resources Department) and virtually (Zoom platform), on January 23, 2024, from approximately 8:30 to noon. For more information, see the Meeting Agenda, Meeting Presentation, Draft Rules, and other Meeting Materials, available online at <https://www.oregon.gov/owrd/programs/GWWL/GW/Pages/Groundwater-Rulemaking.aspx>

### **Rules Advisory Committee (RAC) members in attendance**

Adam Sussman, Central Oregon Cities Organization (COCO), GSI Water Solutions  
Bill Jaeger, Applied Economics, Oregon State University (virtual)  
Casey McClellan, Seven Hills Winery (virtual)  
Chris Marks (proxy), Confederated Tribes of the Umatilla Indian Reservation (virtual)  
Greg Kupillas, Pacific Hydro-Geology, Inc., Oregon Groundwater Association (OGWA)  
Gen Hubert, Deschutes River Conservancy  
Jeff Stone, Oregon Association of Nurseries (OAN) (virtual)  
Karen Lewotsky, Oregon Environmental Council (virtual)  
Ken Yates (proxy), Oregon Water Resources Congress (virtual)  
Lisa Brown, WaterWatch (virtual)  
Nick Siler, Atmospheric Science, Oregon State University (virtual)  
Phil Brown, Northwest Groundwater Services (virtual)  
Robyn Cook, GSI Water Solutions  
Sarah Liljefelt, Oregon Cattlemen's Association (virtual)  
Zach Freed, The Nature Conservancy (virtual)  
Susan Lea Smith, Willamette University Law School (virtual)

### **RAC members not in attendance**

Brad Parrish, Klamath Tribes  
Cheyenne Holliday, Verde  
Dave Wildman, Anderson Perry & Associates  
Darrick DeGroot, Klamath County Commission, Association of Oregon Cities  
Kelly Simmelink, Jefferson County Commission  
Laura Masterson, 47<sup>th</sup> Ave Farms  
Lauren Poor, Oregon Farm Bureau

Margaret Durner, Citizen at Large  
Michael Martin, League of Oregon Cities  
Misty Buckley, Homeowner, Klamath County  
Obie Strickler, Grown Rogue  
Scott White, Klamath Irrigation District  
Tammy Wood, Oregon Lakes Association  
Tyler Hufford, Rancher

**Oregon Water Resources Staff in attendance**

Oregon Water Resources Department (OWRD) staff: Annette Liebe, Justin Iverson, Laura Hartt, Ben Scandella, Travis Brown, Kelly Meinz, Jeana Eastman, Jon LaMarche, Emelie McKain, Jeffrey Pierceall, Elissa Karim.

**Others in attendance**

Rex Barber (Big Falls Ranch), Glenn Barret (Water for Life), Mike Buettner (Central Oregon Cities Organization; City of Bend), Anton Chiono (Confederated Tribes of the Umatilla Indian Reservation), Emily Cook (Oregon Public Broadcasting), Jack Dahl (GSI/Portland Water Bureau), Kate Ely (Confederated Tribes of the Umatilla Indian Reservation), Danette Faucera (Oregon Department of Fish and Wildlife), Cole Hendrickson (Oregon Department of Environmental Quality), Richard Kosesan (RDK & Company), Malia Kupillas (Pacific Hydro-Geology, Inc.), Yancy Lind (Bend resident), Owen McMurtey (GSI/COCO), Wesley Noone (Bureau of Land Management), David Pilz (AMP Insights), Jesse Ratcliffe (Oregon Department of Justice), Colleen Roberts (Jackson County Commissioner), Spencer Sawaske (Oregon Department of Fish and Wildlife), John Short (Water Rights Services, LLC), Nolan Smith (Carollo Law Group), Holly Stanitsas (Harney County Watershed Council), Kelly Warren (Confederated Tribes of the Umatilla Indian Reservation), Doug Wise (Portland Water Bureau)

**Welcome, Introductions, & Agenda**

OWRD staff welcomed participants, led a round of introductions, and reviewed the agenda.

**RAC Meeting 7 Summary**

OWRD staff noted that RAC comments following the seventh RAC meeting were distributed to RAC members and posted online. OWRD staff then asked if RAC members had any comments, questions, or concerns regarding the RAC 7 Draft Meeting Summary; the RAC had none.

**Analysis of Oregon wells correlated with precipitation**

Staff reviewed the progress timeline for the Analysis of Oregon wells correlated with precipitation and memo. Staff then reviewed the major comments on the analysis and memo received from the USGS and RAC members and how staff updated the analysis and memo in response to comments.

One RAC member asked if switching to use of the Theil-Sen methodology for finding slope changed the analysis. Staff responded that while it did not change the outcome, because it is a more robust indicator it was fine to retain it.

One RAC member asked if the spatial distribution of clusters changed upon reexamination. Staff replied that their review did not suggest that the density of clusters changed substantially. Staff acknowledged the high level of participation in the January 8 and 9 information sessions and noted constructive feedback was received on the analysis.

One RAC member noted his concerns regarding the need to avoid Type II errors (i.e., false “negatives” or failing to characterize water levels as not reasonably stable when they are, in fact, declining over the long term); however, he acknowledged data was lacking to test for a 90% chance of avoiding a Type II error and didn’t think such a test was feasible. He noted that the analysis does a good job in terms of indicating when water levels have a 90% chance of being not reasonably stable (thereby avoiding Type I errors, or false “positives”). He then noted that having greater certainty of avoiding a Type I error actually decreases certainty of avoiding a Type II error. The RAC member then asked what would happen if staff looked at all the historical data for the Harney Basin and applied the metrics going back to the 1990s, i.e., theoretically, at what point would the metrics trigger a need to cease allocation in the Harney Basin? Staff responded that they had assessed that hypothetical in a November 7, 2023, presentation to the Oregon House Interim Committee on Agriculture, Land Use, Natural Resources, and Water and would be happy to share the slide with the RAC.

### **Susceptibility of Oregon wells to being dried by water level declines**

Staff summarized an analysis of wells’ susceptibility to being dried by various total declines in water levels provided as a memo (*Scandella 2024, Susceptibility of Oregon wells to being dried by water level declines*) to the RAC. Staff noted the analysis was aligned with the proposed definition of “Reasonably Stable Groundwater Levels,” as much as possible, but cautioned that the analysis was not intended to predict the outcome of implementing the proposed rules.

A RAC member asked if the analysis relies on land surface elevation or depth below ground surface. Staff responded that the analysis was done on the basis of depth and explained how that approach eliminates the need to know the elevation where a well was drilled. The analysis estimates the historic decline trend for each township using a combination of data from the OWRD Groundwater Information System and Well Log Information System.

A RAC member asked if this was the first time the memo has been sent out to RAC. The RAC member stated he had attended a county commission meeting in December where a county commissioner shared what appeared to be a draft of this memo. The RAC member also suggested that a GSI colleague had requested the data from OWRD but never got a response, and asked if there was a reason the Department could not share the information. Staff responded that, as was expressed in a response to the RAC member’s colleague, staff effort was focused on providing the highest quality possible product to share with the RAC rather than preliminary data. Staff stated they would share the associated data.

The RAC member further noted the memo acknowledged that water levels could continue declining after the cessation of issuance of new permits. The RAC member suggested that the acknowledgement implied bias in the analysis because of the other factors that may affect groundwater levels. He then stated he would be submitting comments in writing.

A RAC member asked if the analysis considered how many wells are within a certain range of available water. Staff confirmed that an early version of the analysis considered only the water level recorded in each well log compared with its total depth. The full analysis presented in the memo yielded qualitatively similar results but offers a fuller picture by accounting for deepenings and abandonments, as well as water level declines that occurred prior the well being drilled.

A RAC member noted that the results indicate that an additional 1,600 wells dried per foot of decline and asked if it works the other way, i.e., if the allowable groundwater level decline is reduced to 22 feet, would that reduce the number of wells susceptible. Staff confirmed that yes, the relationship between wells and declines increases roughly linearly between 10 feet and 100 feet, as shown in Figures 3 and 4 in the memo.

A RAC member expressed appreciation for the discussion in the memo concerning the average cost of well deepening (\$26,500). The RAC member then estimated that the cost of 15,000 wells affected would be around \$400 million to Oregonians, and the cost for 55,000 wells going dry would be more like \$1.5 billion.

A RAC member asked whether the near linear relationship between number of wells susceptible to drying and feet of water level decline could be compared to historical information. Staff responded that it was possible, but they would need more time to consider how to do it. The RAC member then noted the explanation in the memo that water level declines will typically continue for years after the cessation of issuance of new groundwater permits because the time to establish a new equilibrium is typically years to decades in Oregon. The RAC member further noted that consequently, while a well may appear to be “reasonably stable” currently, it could look very different over the coming years and decades. The RAC member asked whether the Department would also look at the number of permits that have been issued in an aquifer in the last few years (before issuance of a new permit), stating that could provide some indication of whether the aquifer was still in the process of moving toward a new equilibrium. Staff responded that there are many factors to understanding future water level behavior. Staff explained that with the proposed rules, the Department has tried to protect existing users without adding so much complexity that the process is too difficult to describe in rule and relies too much on the discretion of the Department hydrogeologists.. Staff acknowledged that a hydrogeologist with an advanced numerical model could address the kinds of questions posed by the RAC member, but the sophistication would come at the expense of rules that were more accessible and predictable for future applicants.

A RAC member raised the issue of wells – mostly in basalt aquifers – which have been constructed such that they allow multiple aquifers to commingle, which the RAC member felt had not been given enough acknowledgement. The RAC member stated that it is possible to find commingling wells even in the Willamette Aquifer where, in theory, it’s all one aquifer, but some water-bearing zones are separated enough to behave as separate aquifers; some wells are open to all of those aquifers and exhibit declining water levels that, with time, will stabilize to a new equilibrium. The RAC member thought such commingling needed to be factored into any analysis of declining water levels. The RAC member also stated that it was not clear whether the

25 ft of decline discussed in the memo on wells' susceptibility to being dried was the same as the 25 ft limit proposed for the definition of Reasonably Stable Groundwater Levels. Staff responded that the analysis of wells' susceptibility to being dried by various total declines in water levels was prepared to convey the negative impact of declining water levels on wells throughout Oregon.

Staff shared a slide from another presentation (not included in the presentation emailed to RAC) illustrating how permitting in the Harney basin would have been different if the proposed rules were in place 20 years ago. The slide included a hydrograph from wells HARN 1095 and HARN 1990 with indicators for when groundwater permit issuance would have stopped under the proposed rules (late 2000s) and when permit issuance actually stopped (2013) under the current rules. Staff emphasized that fewer users would ultimately need to be curtailed if the proposed rules had been in place 20 years ago.

### **Revised Proposed Rule Language (Divisions 8, 9, 300, 410)**

Staff reviewed the proposed rule language, noting that no changes were made to the proposed rules for Divisions 9, 300, and 410 since the sixth RAC meeting in September.

One RAC member noted he still had concerns regarding language in OAR 690-009-0030, which he interprets as meaning the proposed rules will apply to both proposed and existing wells. Staff responded that Division 9 rules consist of two components, one focused on allocation (OAR 690-009-0040) and one focused on regulation (OAR 690-009-0050), noting that the intent was to not impact the latter through the rulemaking effort. The RAC member noted that, because some language is retained while other language has been moved, staff may have unintentionally created a new restriction on existing wells. Staff responded they would take another look at the language to ensure that is not the case. Another RAC member responded that adding a parenthetical to clarify intent would be helpful. Another RAC member noted that, because the proposed definitions of the Potential for Substantial Interference (proposed OAR 690-009-0020(4)) and Substantial Interference (proposed OAR 690-008-0001(10)) differ from the current definition, the criteria for evaluating existing wells that rely on these definitions may also be changed. Staff concurred that the proposed definitions differ from the current definitions but reiterated that the intention is to retain the current distance-based limits on regulation of existing wells. Staff committed to taking another look at the language to clarify the Department's intent.

Another RAC member emphasized the importance of the proposed OAR 690-009-0050 rules being very clear regarding the limits on regulation because, with time and staff turnover, the intent of the rules may be lost.

Staff presented the proposed rule changes to Division 8, noting the definition of Annual High Water Level was edited for clarity and grammar. Staff further noted the rate of decline threshold in OAR 690-008-0001(9)(a)(A) was set at 0.6 feet/year, based on the Analysis of Oregon wells correlated with precipitation memo. The language related to the total decline threshold was modified to allow for assessment of water levels that may have been increased by measurable, anthropogenically-enhanced recharge and to allow the Department to set a different reference level where that is found to be the case.

A RAC member expressed concern about using highest known water level as a reference point because that level might be due to a period of unusually high precipitation and, therefore, not representative. The RAC member asked if there is a way to tease out these types of outliers. Staff responded that the Analysis of Oregon wells correlated with precipitation only incorporated wells with relatively long water level records (greater than 25 years), which are intended to include several climate cycles.

A RAC member stated that the Central Oregon Cities Organization (COCO) is very concerned about wells going dry, particularly in the Upper Deschutes Basin, but that COCO believes that is largely occurring because of Mother Nature. The RAC member expressed COCO's support of irrigation efficiency projects in the Deschutes Basin and appreciated the recognition in the proposed rules' definition of Reasonably Stable Groundwater Levels (OAR 690-008-0001(9)(a)(B)) that human actions can increase groundwater levels. The RAC member suggested that a similar recognition be made in the rate of decline assessment under the proposed rules (OAR 690-008-0001(9)(a)(A)), speculating that canal lining and piping could also affect the rate of decline in groundwater levels.

A RAC member expressed concern regarding the ability to redefine Reasonably Stable Groundwater Levels in a basin program rule (OAR 690-008-0001(9)(d)), specifically the removal of the limitation that any superseding definition in basin program rule could not allow for groundwater levels to be both Reasonably Stable and Declined Excessively/Excessively Declining (OAR 690-008-0001). The RAC member noted that the Analysis of Oregon wells correlated with precipitation showed reasonable consistency of the proposed definition of Reasonably Stable Groundwater Levels across the state. Given that, the RAC member thought it was unclear why the Department would want to have multiple, basin-scale definitions of Reasonably Stable Groundwater Levels. The RAC member asked for an example where the Department would advocate for a given rate of groundwater decline to be both Reasonably Stable and Excessively Declining. Staff responded that the intention was to allow for the incorporation of localized analysis in modifying the proposed definition of Reasonably Stable Groundwater Levels and agreed that there would be an inherent contradiction if basin program rules were to propose a definition such that groundwater levels could be both Reasonably Stable and Excessively Declining. Staff indicated they would reassess the basin program rulemaking language under Reasonably Stable Groundwater Levels and requested that RAC members offer any specific considerations that basin program rules should address. Staff noted that basin program rulemaking has its own statutory authorization separate from the 1955 Groundwater Act and considered the basin planning process the best way to align those separate statutes. The RAC member supported basins having the ability to incorporate their specific data but wanted basin program rulemaking to avoid creating contradictions between the definitions of Reasonably Stable Groundwater Levels and Excessively Declining Water Levels. Another RAC member also expressed concern about removing sideboards for basin program rulemaking and about the efficiency and equity of redefining Reasonably Stable Groundwater Levels basin-by-basin.

A RAC member noted that there are a number of activities in some basins that affect groundwater levels and suggested that the Department should want to give basins the opportunity to develop rules that make sense without pre-judging them. Another RAC member agreed that providing flexibility to basins was good but hoped that such flexibility would not be abused. The

RAC member stated that there should be very good scientific basis for a basin to go outside the statewide metric. Another RAC member agreed. Staff indicated they would consider how a basin program might demonstrate the need to go outside the statewide metric.

### **Statements of Need, Racial Equity Impacts, Fiscal & Economic Impacts**

Staff presented the statutory and rule requirements underlying the Statements of Need, Racial Equity Impacts, and Fiscal and Economic Impacts, which are components of the Notice of Proposed Rulemaking. Staff also outlined the general content contained within each of the three statements.

With respect to the Statement of Need, one RAC member noted that the reference concerning observed groundwater declines was specific to the Harney Basin; he recommended modifying the language to make that point clear. Staff responded that they would make that modification.

With respect to the Statement of Racial Equity Impacts, one RAC member noted that the cost of rebutting Department findings concerning water availability may be cost prohibitive, with potential inequitable impacts on disadvantaged communities. Another RAC member noted the expense of remediating dry wells, which again may be borne disproportionately by minority communities. Staff responded they would incorporate these concerns into the Statement.

Concerning the Statement of Fiscal and Economic Impacts, one RAC member suggested including more information concerning the cost of purchasing new water rights through the marketplace. He also noted transfers as an option. Another RAC member asked this RAC member whether he thought transfers would become more or less costly as a result of the proposed rules. The original RAC member responded that costs would depend on the situation. The other RAC member responded that the current transfer process is a difficult one, coupled with the fact that the proposed rules will increase the value of existing water rights. Staff responded that the Statement did include some discussion concerning transfers but agreed to include some discussion concerning the purchase of water rights in the marketplace.

One RAC member had an editorial recommendation concerning striking the wording that the likelihood of approval of a new water right should not depend on the quantity of the requested rate. Staff agreed to make that change.

### **RAC Roundtable Discussion**

One RAC member commented that the addition of the seventh and eight RAC sessions have been productive. He urged the Department and Commission to move forward with a final version of the proposed rules for public comment, noting that long delays may harm the resource. He appreciated the opportunity to serve on the RAC.

One RAC member noted that the organization he represents (COCO) would be providing more comments in writing and in front of the Commission. He also commented that he hoped RAC members did not perceive COCO as not caring about dry wells. He then emphasized COCO's support for efficiency projects like canal lining. He expressed appreciation for the time and effort that staff took to hear COCO's concerns about application of Division 9 rules to the Upper

Deschutes Basin Mitigation Program and understands that the Deschutes is effectively indemnified under the proposed rules. However, he noted that COCO is struggling with the concept of applying a one-size-fits-all approach elsewhere, given the complexity of the Deschutes basin. He commented that he felt staff has heard COCO's concern and has acknowledged that groundwater levels have been impacted by activity other than pumping. He further commented that while COCO would prefer to get the rules "right" in this statewide process, he appreciated the opportunity to have a vigorous, basin-specific rulemaking that may warrant different timescales and magnitudes in Deschutes.

One RAC member expressed appreciation for the educational and enlightening process. He noted that the progress made and fine-tuning over time was impressive. He stated he found the final results to be good ones, because the changes proposed are improvements over the current process. He noted that the proposed rules make the best of a bad situation, because the Department is constrained by how Oregon's groundwater laws are written. The RAC member then shared some insights from his work in France, where he is learning about water management in Europe and Australia. He noted that water management abroad focuses on three elements: a cap on total water use, allocation of that cap among users, and the ability to adjust the cap based on circumstances. He then noted that each element requires data. He commented that in Oregon, resource management problems are created when using prior appropriation for groundwater allocation, when prior appropriation originally was intended for surface water. He further commented that under the current system, the impacts of groundwater level declines are shared among junior and senior users. He stated his believe that larger changes are needed to manage groundwater efficiently and sustainably in Oregon. He then shared an analogy of driving a car while only looking out the back window, using faulty brakes, and having no reverse gear. He stated that the inability to change the nature of groundwater rights once issued makes the problem very challenging, especially when considering the lag time between permit issuance and observable impacts. He then acknowledged that the Commission may be limited in how it evaluated updated information and that knowing what happens in the future in order to manage resources in the present represents a real challenge.

One RAC member thanked the Department for the opportunity to participate on the RAC, noting appreciation for the hard work and thorough presentations from Department and RAC members. She then recognized and stated agreement with goals of sustainable allocation and use, noting costs and difficulty of reversing over-allocation. She then said she will follow up with final comments later.

One RAC member commented that the Department has done what it was asked to do. He also commented that RAC engagement benefitted the process. He stated that his organization (OAN) will submit final written comments. He commented that each region or basin is different and urged the Department to remember this five years from now. He expressed appreciation for preservation of prior appropriation. He commented that transfers may become more of an issue in the future, particularly because the new rules create additional bumps in the road for groundwater rights. He also commented that the new rules may open up additional doors for protests, leading to further delays. He suggested that this is a policy shift that should not be made by an unelected Commission but by the Legislature.



One RAC member noted appreciation for the unprecedented rigor and depth of the rulemaking process, including the technical and policy work. She emphasized the importance of looking to the Harney Basin as an example because it shows the logical conclusion of applying the current rules under current conditions. The RAC member acknowledged that some stakeholders may be concerned about new “bumps in the road” for future applicants under the proposed rules, the RAC member felt that some of these “bumps” would have helped avoid the issues in the Harney Basin, particularly the current, huge groundwater cones of depression, which are very hard to address.. She commented that the proposed rules are going in the right direction to avoid creating the same problems seen in Harney. She noted that the current rules also function as a one-size-fits-all approach adopted by the Commission, and yet applicants did not complain about the approach when the approach was leading to issuance of a lot of new groundwater rights. She further noted initial concerns WaterWatch had over the delays during the RAC process but acknowledged that the added conversations have been constructive. She also commented that any further delay may cause more problems and urged the Department to stick to the proposed rulemaking schedule.

One RAC member noted appreciation for the invitation to serve on the RAC as well as the hard work of the staff. He noted that his comments largely reiterate those submitted in his January 5, 2024, letter to staff. He stated that he found the current Division 9 rules to be an extremely blunt instrument. They allowed his company to get new groundwater rights for their clients, but he’s glad to see we’re trying to do something better. He noted he was impressed by staff efforts to develop new tools to establish whether ground water levels are stable, finding the approach to be well-honed and science based. However, he noted he still has concerns about many new water rights applications where there may be a finding that water levels are stable but are hydraulically connected to unavailable surface water, leading to denial. The RAC member commented that the updated definition of PSI is also an extremely blunt instrument but does not arise to the same level of scientific scrutiny as RSWL. He noted that the Barlow and Leake (2012, Streamflow depletion by wells—Understanding and managing the effects of groundwater pumping on streamflow (U.S. Geological Survey Circular 1376) reference outlines a legitimate theory but is inappropriate when applying to the complex hydrogeology in Oregon. The RAC member suggested that a large, stable aquifer (e.g., Willamette) is not really changing and will continue to discharge water to the streams as it always has. He suggested that groundwater declines are evidence of impacts to streams, and therefore, if groundwater levels are stable and a stream is over-appropriated, the Department should be focusing on the cause of surface water appropriation. He continued by stating that if groundwater levels have not declined, then other factors must be contributing to over-appropriation of the stream, e.g., issuance of too many surface water rights. The RAC member recommends elimination of the Substantial Interference component of the groundwater availability evaluation and not considering over-appropriation of a stream unless there is clear evidence that the streamflows are declining historically. He stated there may be other factors to examine, and he recommended spending more time with a group of experts in groundwater hydrology and water rights, devoting the same level of attention to the issue of analyzing Substantial Interference as the Department has in analyzing reasonably stable groundwater levels. The RAC member urged staff to pause the rulemaking process to allow the Department time to consider other impacts to the streams aside from groundwater use.

One RAC member noted his appreciation of staff efforts during the rulemaking process, which

he found to be the most rigorous of rulemakings in his experience. He stated that the Department's reliance on data analysis demonstrates that the rules are broadly applicable and appropriate statewide scale. He advocated for reinstating sideboards on the exemption of basin programs rules from the proposed definition of Reasonably Stable Groundwater Levels. He also commented that he sees the proposed rules as achieving the Department's stated objectives of being more protective, based in law and science. He thanked staff for being included on the RAC.

A proxy for a RAC member expressed appreciation for a rigorous process, one that allowed him to catch up after joining the process in progress. . He noted the proposed rules are responsive to existing authority and input from the RAC. He also noted that the process has set the bar for future rulemaking efforts. He urged the Department to proceed according to schedule, acknowledging that refinements are possible, but more delay will lead to more impacts.

A RAC member recognized the effort involved in the rulemaking and expressed appreciation for being involved in the process. She stated that she looked forward to being involved in the next steps. She suggested that staff develop a tool to help evaluate groundwater interaction with surface water.

One RAC member noted her appreciation of staff responsiveness to RAC comments, noting that contributions are reflected in the proposed rules in a manner that allows basin flexibility while accommodating data pertaining to the effects of aquifer recharge and storage. She further noted there have been concrete changes made to the proposed rules that are important to people. She stated she was supportive of the charge that the Department was given, i.e., to protect senior water rights holders and assure the sustainability of Oregon's groundwater. She stated that the proposed rules achieve those goals to the maximum extent possible at this point. She recognized that the proposed rules were not perfect and could include other factors, but delays and pauses to try to perfect the rules further are unnecessary. She stated the rules are good as they are, and they achieve the social goals of the Commission. She commented that the stability of groundwater levels indicates there is no validity to the suggestion that further pumping will not hurt existing surface water rights and was surprised anyone believed otherwise. She also noted that under the new rules, the state will still experience years of groundwater declines before these rules will stop issuance of new groundwater rights. She noted that where real declines occur and go undetected, the result is the continued harm to surface water rights holders. She stated that on that basis, a pause is not justified. She shared her observation that stakeholders impacted by the rulemaking fall into two categories: (1) people who turn to groundwater because they do not have senior surface water rights, often to the detriment of senior water rights holders; and (2) people who make money based on issuance of new groundwater rights who favor continuing the existing process, which she states is contrary to the public interest. She noted challenges with respect to the transfer process and lack of support among junior agricultural users for senior instream water rights. She concluded by stating that it is contrary to the interest of our children and grandchildren to have groundwater level declines and not take action.

On RAC member stated he has been impressed with the Department's efforts to account for long-term, natural climate variability in the new rules.

A proxy for a RAC member noted that the Water Resources Congress would be sharing their comments during the upcoming Water Resources Commission meeting.

One RAC member responded to another RAC member's comment regarding people who make money assisting with groundwater rights. The RAC member stated that his participation is due to how the proposed rules may affect his business. He further stated that the proposed rules are unlikely to impact his business, because he will most likely assist with more transfer applications. He noted that he represents OGWA and is advocating for his clients, who produce the food and fiber Oregon relies upon.

### **Public Comment**

Colleen Roberts (Jackson County Commissioner) noted her January 18, 2024, letter to OWRD concerning the rulemaking. She also noted that she felt there was more information that hydrologists could provide to support the rulemaking effort and suggested more time was needed to develop the rules. She noted the importance of water to her county and the basin differences that may not have been fully addressed through the rulemaking effort. She suggested that proceeding with the rulemaking without examining basin impacts was putting the cart before the horse and reiterated earlier comments suggesting there was not an urgent need to proceed with the rulemaking without awaiting additional input.

Glenn Barret (Water for Life) commented that discussion was lacking concerning interstate cooperation with respect to rule adoption. He noted the rules would not impact California in the Klamath Basin; however, California's groundwater pumping does affect groundwater users and issuance of rights in the Klamath Basin. He suggested that OWRD reach out to California to discuss how their use interferes with Oregon use under the proposed rules. He then noted appreciation for OWRD reconsidering the proposed language in 690-009-0040 to ensure that new rules only apply to new wells and not existing ones. He also suggested that if the Commission changes the method used to control existing water rights compared with original controls, the Commission may be in violation of ORS 536.320 which limits Commission ability to change regulations on existing water rights. He then questioned whether OWRD is missing an opportunity to address concerns with exempt wells, e.g., a 160-acre development of irrigated ranchettes which could not be controlled other than through a Critical Groundwater Area designation. He suggested these exempt uses will affect future water rights. He also expressed support for a RAC member's suggestion that OWRD form a professional committee to focus on the technical aspects of the rulemaking. He suggested that relying on existing publications, rather than specific work conducted by the Department is a missed opportunity to use more relevant information. With respect to the Statement of Need, he suggested OWRD summarize the existing tools for managing groundwater and why those tools are not sufficient for addressing groundwater resource concerns.

Mike Buettner (City of Bend/COCO) thanked the RAC members and OWRD staff for responsiveness throughout the process. He noted that members of COCO are still concerned about the proposed rulemaking but acknowledged that staff have heard concerns and provided scientific rationale. He further noted that he would have appreciated receiving the foundational science earlier in the process.

### **Schedule/Wrap- Up and Next Steps**

Staff reviewed the timeline, including expected notice of proposed rulemaking issued on March 1<sup>st</sup>, a 90-day public comment period, and dates and locations for public hearings. After incorporating public input, OWRD anticipated bringing the final proposed rules to the Commission for consideration at the mid-September meeting.

One RAC member asked if members of the Water Resources Commission would be at the public hearings. Staff responded that Commissioners may elect to join, but there will not be a quorum.

The RAC was asked to provide any feedback on RAC 8 meeting materials by January 31, 2024.