



WaterWatch of Oregon Protecting Natural Flows In Oregon Rivers

Oregon Water Resources Commission
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Sent via email to: Mindy Lane, Mindy.J.LANE@water.oregon.gov

November 16, 2023

RE: November 17th, 2023, Agenda Item I - Groundwater Allocation Rulemaking Update

Dear Chair Quaempts and members of the Commission:

Thank you for your continued interest and oversight regarding the critical work being done by the agency to develop science-based Groundwater Allocation rules that implement Oregon's 1955 Groundwater Act.

WaterWatch is a member of the Groundwater Allocation RAC, submitted a letter on this topic to the Commission as a member of the Oregon Water Partnership, and testified at the September, 2023 Commission meeting. We are very supportive of the draft rules and appreciative of the OWRD's thoughtful, in-depth work and robust public engagement that has gone into the rule development. This letter will not reiterate information we previously provided, which we incorporate by reference, but is being provided only to address two issues that have been raised by water users.

1. The Draft Groundwater Allocation rules align with statute and the claim by certain water user groups that ORS 537.525(2) says otherwise misreads the statute.

Various water user groups are asserting that the Draft Groundwater Rules exceed the scope of Oregon's 1955 Groundwater Act. This assertion is incorrect. The draft rules would implement and align with statute. The existing rules, in contrast, do not align with statute as demonstrated, for example, by the plummeting groundwater levels in places like the Harney Basin caused by over-issuance of groundwater permits, and the fact that the existing groundwater permitting process fails to protect senior water rights from injury caused by pumping.

Those user groups have expressed concerns that "OWRD has exceeded the intent and scope of its enabling legislation...", claiming incorrectly that the rules conflict with ORS 537.525(2). (July 7, 2023 letter from Oregon Association of Nurseries, Oregon Cattlemen's Association, Oregon Farm Bureau Federation, Oregon Water Resources Congress, and Oregon Dairy Farmers Association to the RAC coordinator).

The groups have misread the statute. ORS 537.525(2) states "Rights to appropriate ground water and priority thereof be acknowledged and protected, except when, under certain conditions, the public welfare, safety and health require otherwise." The provision pertains to existing "rights" that have "priority" dates; these terms make the provision inapplicable to rules regarding *future* allocation of groundwater, because future allocations are not "rights" with "priority" dates.

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ORS 537.525(2) further signals that, while *existing* groundwater rights will be protected, “under certain conditions, the public welfare, safety and health” may “require otherwise.” This foreshadows the Act’s provisions for designation of Critical Groundwater Areas, which can include as “corrective control provisions,” “[a]ny one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety in accordance with the intent, purposes and requirements of ORS 537.505 (Short title) to 537.795 (ORS 537.505 to 537.795 supplementary) and 537.992 (Civil penalties).” (ORS 537.735(3) and (3)(d)).

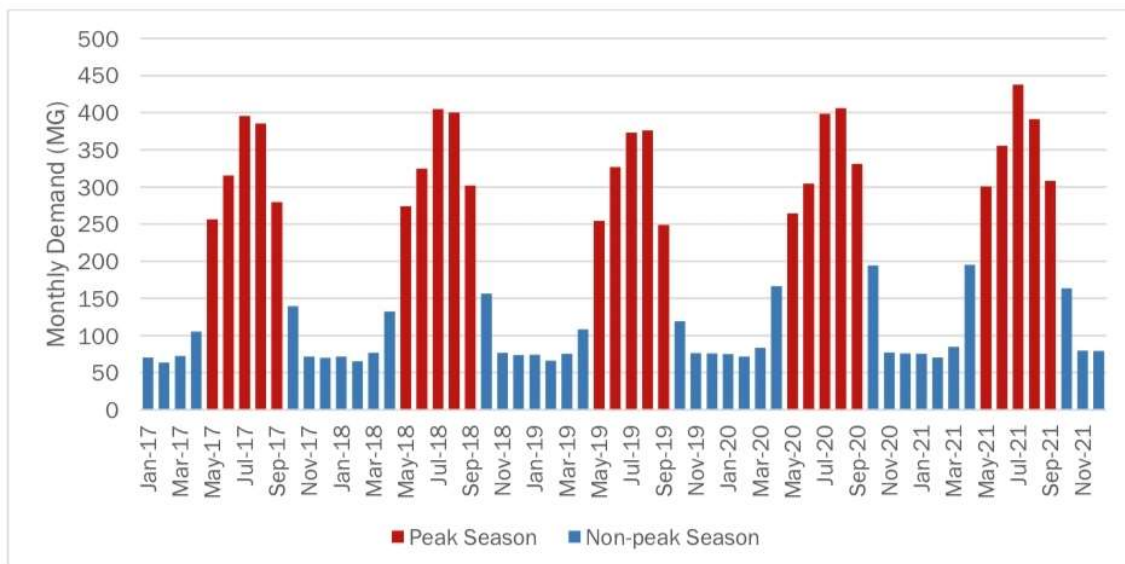
In sum, the claim by various water user groups that the Draft Groundwater Allocation rules exceed Oregon’s Groundwater Act is incorrect and is based on a misreading of the statute. What the draft rules do is finally align agency rule with statute, something that is long overdue.

2. Claims that the Draft Groundwater Allocation Rules could conflict with Governor Kotek’s effort to establish additional housing are unsupported by available data; cities should be asked for detailed description of their concerns to enable objective evaluation using available water use data.

Claims that the science-based, sustainable groundwater permitting approach developed by the department would conflict with developing additional housing are not supported by data. Because this claim has been voiced largely by cities in central Oregon, we looked at the City of Redmond’s Water Management Conservation Plan (WMCP) that was approved by the department. Due to time constraints, we have not yet evaluated the City of Sisters and City of Bend WMCPs in light of this issue. However, a basic review of the City of Redmond WMCP shows why the concern is unfounded.

Exhibit 2-6 shows total monthly demand, with the peak season of May through September in red and the non-peak season in blue. The average monthly demand was 337 MG during the peak season and 95 MG during the non-peak season. The MMD averaged 404 MG and these peaks occurred in July (2017, 2018, and 2021) and August (2019 and 2020).

Exhibit 2-6. Monthly and Seasonal Demand, 2017 through 2021



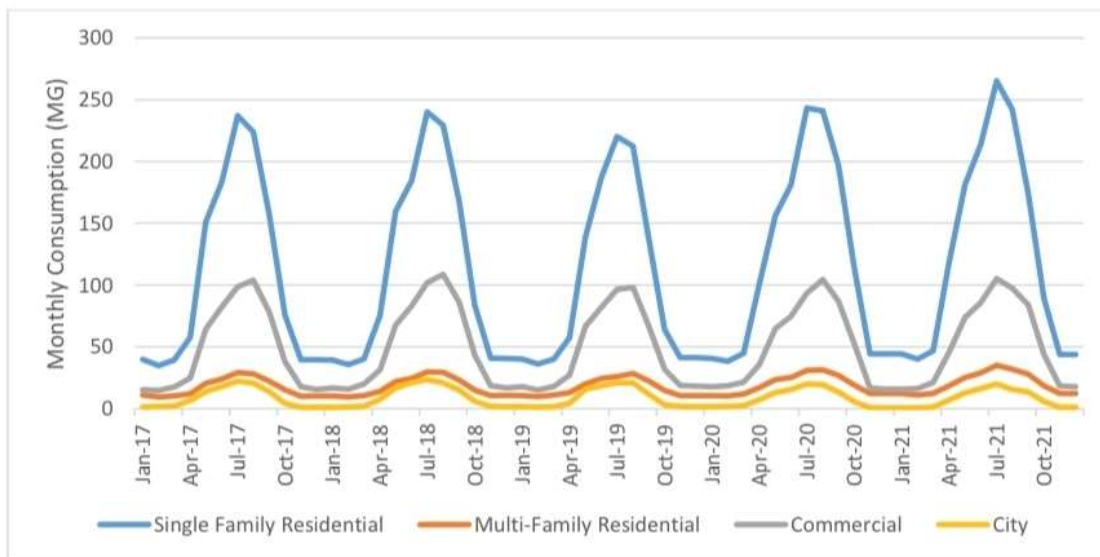
Source: City of Redmond WMCP, Prepared by GSI Water Solutions, Inc., September, 2022 (p. 2-9).

On Figure 2-6, the red bars show the dramatic increase in water use due to outdoor summer water use (e.g. lawn watering and landscape watering). The graph shows that it is *not* household use driving water demand – it is strictly peak summer use driven by outdoor watering. The current water use could support water for far more households by addressing the high peak summer use, for example through better conservation practices including but not limited to landscaping that is more adapted for the amount of water naturally available during the summer months.

It is important to note that currently, the city’s average daily demand is only about 25% of its already permitted water rights, and by 2043 the city projects that average daily demand will still be well under 50% of its permitted water rights. (City of Redmond WMCP, p. 5-5). Further, by 2043, the city projects that the maximum day demand will also be approximately 5 cfs less than its permitted water rights. (*Id.*).

To examine this further, Exhibit 2-11 (also from the City of Redmond WMCP), shows how water use for multi-family residential use (shown in orange) is much more flat year round and does not contain the large outdoor water use peak currently associated with single family homes (shown in blue). There appears ample room for conservation practices to free up water needed for additional multi-family housing, or any housing not entailing extensive outdoor watering.

Exhibit 2-11. Monthly Consumption by Customer Category, 2017 through 2021



Source: City of Redmond Water Management and Conservation Plan, Prepared by GSI Water Solutions, Inc., September, 2022 (p. 2-12).

The City of Redmond WMCP also provided this analysis:

“Average monthly peak season water use in 2021 was 3.5 times higher than non-peak season water use for single-family residential connections (due to outdoor landscape watering associated primarily with large residential lots), down from 4.1 times higher in 3 – WaterWatch Comments – WRC 11-17-2023 Agenda Item I (Groundwater Allocation)

2017. In addition to the City’s water conservation outreach activities, this reduction is likely attributable to a reduction in average lot sizes for single family homes driven by changes in zoning and real estate market dynamics. Average monthly peak season water use for multi-family water service connections is consistently 2.2 times higher than nonpeak season water use. The 2021 multipliers for commercial and City water use were 3.5 and 6.3, respectively.

These ratios suggest that conservation efforts focused on reducing outdoor use by single-family homes and certain commercial customers with large landscape water use, may help to address peak-season demand (see Exhibit 2-10).”

(P. 2-11). This analysis highlights opportunities to provide additional water that could be directed to additional housing through bringing down “outdoor landscape watering associated primarily with large residential lots.”

The City of Redmond WMCP also provides other data that highlight water saving opportunities, including a “Maximum Operational Demand,” which adds a significant peak to the maximum day demand caused by people turning on their outdoor watering during the same hours each day. (P. 5-3 to 5-5). Addressing that peak, for example with scheduling or reducing outdoor use, or in-city water tanks, could instead provide water for housing.

Finally, the population of City of Redmond was 37,342 in 2022, which the city projects will increase to 56,810 by 2043. (City of Redmond WMCP, p. 5-1). The Mayor of Redmond recently stated: “We have enough water rights that we acquired over the last 20 years to meet a population of 75,000 people.” (Redmond Spokesman, *State signals it’s likely to deny Redmond’s application for future groundwater*, October 16, 2023.) This means City of Redmond is many decades away from needing additional water, if ever, providing ample time to apply modern techniques, programs and transactions, such as implementing lawn watering schedules or restrictions and prioritizing xeriscaping – in order to sustainably meet the city’s needs without causing added groundwater declines.

In sum, any statements that central Oregon cities, or any city, must be allowed to acquire additional new groundwater permits need to be objectively evaluated with available data, including data provided in the cities’ WMCPs. Reviewing City of Redmond’s WMCP shows that there is ample opportunity to provide water for a great deal of additional housing, including by addressing the pattern of water use; that it is not household use driving peak water demand; and that the city’s existing water rights provide for a long horizon to develop sustainable strategies.

Thank you for the opportunity to comment and for your continued work on this critically important issue. We look forward to fully examining remaining concerns in the added RAC meetings and to adoption of sustainable groundwater allocation rules following those meetings.

Sincerely,

/S/Lisa A. Brown

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