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FILING CAPTION: Local rules governing control of well use in the Upper Klamath Basin

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RULES:
690-025-0010, 690-025-0020, 690-025-0025, 690-025-0040

REPEAL: 690-025-0010

RULE TITLE: Untitled

NOTICE FILED DATE: 01/29/2019

RULE SUMMARY: These rules were adopted to govern groundwater regulation in the Klamath basin. However, they were only in effect while the Settlement Agreement was in effect. The Settlement Agreement was terminated, therefore, these rules are no longer in effect. This rulemaking repeals these rules that are no longer in effect.

RULE TEXT:
(1) The following definitions apply solely to OAR 690-025-0010:
(a) “Call Threshold” means the instream flow threshold associated with a Primary or Secondary SIF Measurement Location, to which the Klamath Tribes and the United States Bureau of Indian Affairs may call for regulation of junior water rights under the terms of the Settlement Agreement. The terms “Primary SIF Measurement Location” and “Secondary SIF Measurement Location” have the meanings given in Section 15 of the Settlement Agreement.
(b) “Gaining Reach” means a reach of a perennial stream where streamflow is increasing as a result of groundwater discharge to the stream, as shown in the Upper Basin Wells and Gaining Reaches Map (included as Attachment A to these rules), except that the Department may modify the location of a Gaining Reach for the purposes of OAR 690-025-0010 based on the best available information.
(c) “Irrigation Season” means the period from March 1 to October 31 of every year.
(d) “Off-Project Area” means the area by that name shown in the WUP Regions Map (included as Attachment B to these rules).
(e) “Rate” means the amount of water as expressed in cubic feet per second (cfs).
(f) “Scenic Waterways Act” means ORS 390.805 to 380.925.
(g) “Settlement Agreement” means the Upper Klamath Basin Comprehensive Agreement that took effect April 18, 2014.
(2) OAR 690-025-0010 implements Sections 3.11.3 through 3.11.9 of the Settlement Agreement, which address control of well use in the Off-Project Area when such use affects surface water supplies in the Klamath Basin.

(3) OAR 690-025-0010 only governs the Department's control of well use in the Off-Project Area when the Department determines such use has the potential to cause substantial interference with surface water. OAR 690-025-0010 does not govern:
(a) Applications for the use of groundwater;
(b) Control of well use as a result of interference with another well;
(c) Control of well use in any other part of the Klamath Basin or the state;
(d) Control of well use pursuant to the Scenic Waterways Act or the Department's rules implementing the Scenic Waterways Act, or the enforcement of water permit conditions pertaining to the Scenic Waterways Act; or
(e) Use of wells in the Off-Project Area outside the Irrigation Season.
(4) OAR 690-009 also governs the Department's control of well use that affects surface water supplies. 690-009 applies statewide, but 690-009-0030 authorizes the Oregon Water Resources Commission to adopt local rules governing control of well use when such use has the potential to cause substantial interference with surface water. OAR 690-025-0010 is a local rule adopted pursuant to this authority and to existing statutes governing the control of groundwater.
(5) As a local rule, OAR 690-025-0010 both works in conjunction with and supersedes some parts of OAR 690-009. OAR 690-009 provides a two-step process for control of well use that affects surface water supplies. First, the Department must determine that well use has the potential for substantial interference with a surface water source. OAR 690-009-0040 provides the process for making this determination. OAR 690-025-0010 does not modify this step. Second, if the well is greater than 500 feet from a surface water source, the Department must determine that control of the well would provide relief to the surface water supply in an effective and timely manner. OAR 690-025-0010 supersedes this step with respect to the control of well use in the Off-Project Area during the Irrigation Season by providing a detailed process for evaluating whether control of a well in the Off-Project Area will provide relief to the surface water supply in an effective and timely manner. Specifically, 690-025-0010 supersedes 690-009-0050(2). The following sections provide the process for making the effective and timely determination.
(6) 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.
(7) Notwithstanding section (5), the Department shall control the use of a well in the Off-Project Area that is no more than 500 feet from a Gaining Reach in a manner consistent with OAR 690-009.
(8) The Department shall control the use of a well in the Off-Project Area that is greater than 500 feet and less than or equal to one mile from a Gaining Reach if and only if control is allowed by both sections (9) through (12) and by section (13). Sections (9) through (12) describe criteria for control that are based on the distance from a well to the nearest Gaining Reach. Section (13) requires the Department to calculate the relief to the stream from control of the well use. Section (13) also provides a rate of relief to the stream that must be met or exceeded prior to control of the well use.
(9) The Department shall 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, provided that control is allowed pursuant to section (13).
(10) The Department shall control the use of a well that is between one-quarter mile and one mile of a Gaining Reach in favor of senior surface water rights as described in this section, provided that control is allowed pursuant to section (13):
(a) The Department shall control wells between one-quarter mile and one-half mile of a Gaining Reach, provided:
(A) A valid call is made by a senior surface water right holder; and
(B) The rate of the shortfall of water validly called is equal to or greater than 5% of the amount of the senior water right call or the Call Threshold (as applicable); and
(C) The first valid call based on a specific senior water right or Call Threshold (as applicable) is made on or before August 31. If the first valid call based on a specific senior water right or Call Threshold (as applicable) is made after August 31, the Department shall 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. For example, if a senior user makes a valid call on July 15th based on a water right or Call Threshold, as applicable, of 100 cfs, and the Watermaster determines the flow (measured at the appropriate location) is 93 cfs, then the shortfall is 7 cfs. This equates to a 7% shortfall, which under this provision has the result that wells

between one-quarter mile and one-half mile of a Gaining Reach shall be controlled to satisfy the call. (In this scenario wells less than one-quarter mile from a Gaining Reach would also be controlled, pursuant to sections (7) and (9)).
(b) The Department shall control the use of a well that is greater than one-half mile and up to and including one mile of a Gaining Reach, provided:
(A) A valid call is made by a senior surface water right holder; and
(B) The rate of the shortfall of water validly called is greater than 10% of the amount of the senior water right call or the Call Threshold (as applicable); and
(C) The first valid call based on a specific senior water right or Call Threshold (as applicable) is made on or before July 31. If the first valid call based on a specific senior water right or Call Threshold (as applicable) is made after July 31, the Department shall not control the use of a well that is between one-half mile and one mile of a Gaining Reach during that Irrigation Season. For example, if a senior user makes a valid call on July 15th based on a water right or Call Threshold, as applicable, of 100 cfs, and the Watermaster determines the flow (measured at the appropriate location) is 87 cfs, then the shortfall is 13 cfs. This equates to a 13% shortfall, which under this provision has the result that wells between one-half mile and one mile of a Gaining Reach shall be controlled to satisfy the call. (In this scenario wells less than one-half mile from a Gaining Reach would also be controlled, pursuant to sections (7), (9), and (10)(a)).
(c) Notwithstanding sections (10)(a) and (10)(b), if a valid call is made by a senior surface water right holder, and the Department determines that the rate of the shortfall of water validly called 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 contiguous forty-five day period, then the Department shall control the use of a well that is between one-quarter mile and one mile of a Gaining Reach.
(11) Notwithstanding section (10), 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 for the remainder of the month, unless the Department determines that the rate of the shortfall of water validly called is greater than 10% of the amount of the Call Threshold.
(12) For the purposes of section (10):
(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 mile 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.
(13) If one or more of the criteria for control of a well in sections (9) through (12) are met, then prior to controlling the use of any well in the Off-Project Area that is greater than 500 feet and less than or equal to one mile from a Gaining Reach, the Department shall calculate (using an analytical test) the relief to a stream from control of a given well based on a calculated 30-day pumping cycle followed by a 90-day idle period. The calculation shall be based on the best available information, including historical pumping rates for a well (measured or estimated), and employ analytical or numerical methods. The Department shall control the use of the well if and only 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. Relief to a stream is calculated as the streamflow reduction after the 30-day calculated pumping period of a well minus the remaining streamflow reduction after the 90-day idle period that followed. For example, if calculated use of a well reduces streamflow by 0.40 cfs after 30 days, and the streamflow reduction after the 90-day idle period that followed was 0.15 cfs, then the relief to the stream would be 0.25 cfs (0.40 minus 0.15 cfs) and the well would be subject to control under sections (9) through (12).The Department shall periodically update the stream relief calculations for individual wells based on the best available information.
(14) Notwithstanding the requirements of sections (6) through (13), following a valid call made by a senior surface water right holder:
(a) The Department shall control a well located within one mile of a spring or stream 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 shall control wells located within a one-mile radius of a particular spring if the combined use of these wells would result in depletion of the spring flow rate in an amount that is greater than 20 percent within 30 days of pumping.
(c) The Department shall make the determinations described in subsections (14)(a) and (14)(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 shall notify the water right holder(s) subject to the call and the party or parties making the call, and provide them with an opportunity to submit additional information to the Department.
(15) For the purposes of OAR 690-025-0010, 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, relative to the location of the spring or the nearest 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 690-025-0010 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. The Department shall correct any errors in well location 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 nearest edge of a surface water body to a well to an extent that would change how a well is regulated based on the distance measurement criteria in sections (6) through (14), then for the purposes of sections (6) through (14), the distance prior to the restoration action will continue to apply for that well.
(c) A replacement or additional well under an existing registration, permit, or certificate shall be evaluated for the purposes of sections (6) through (14) based on the distance criterion applicable to the original well; except that for the purpose of the stream relief calculation described in section (13), the replacement or additional well's measured distance, according to the applicable criterion, shall be used.
(d) The Department may determine, based on the best available information, whether a natural change in stream location has caused a material change in the distance of a well to a Gaining Reach or stream. If the Department determines that a material change has occurred, then for the purposes of sections (6) through (14), the new distance shall apply. If the Department determines that there is a material change, the Department shall notify affected persons.
(e) The Department may modify the location of a Gaining Reach for the purposes of OAR 690-025-0010 based on the best available information. The Department shall notify affected persons of a proposed modification and of the Department's decision on the proposed modification.
(16) If the Settlement Agreement terminates, groundwater regulation in the Off-Project Area will be in accordance with OAR 690-009.

STATUTORY/OTHER AUTHORITY: ORS 537.505 - 537.795, 540.045

STATUTES/OTHER IMPLEMENTED: ORS 537.505 - 537.795, 540.045

ADOPT: 690-025-0020

RULE TITLE: Definitions

NOTICE FILED DATE: 01/29/2019

RULE SUMMARY: Defines terms used in OAR 690, Division 25, including sections -0025 and -0040

RULE TEXT:

Notwithstanding OAR 690-008-001, the following definitions apply to OAR 690-0025-0020 to OAR 690-0025-0040, unless the context requires otherwise:

(1) “Determined claim” means a claim for surface water as provided in the Amended and Corrected Findings of Fact and Order of Determination issued on February 28, 2014, and subject to regulation pursuant to ORS 539.170.

(2) “Existing rights of record” means authorized groundwater uses, determined claims, groundwater registrations, and surface water rights.

(3) “Groundwater registration” means an unadjudicated claim to use groundwater as provided in ORS 537.605 that is registered with the Oregon Water Resources Department.

(4) “Groundwater reservoir” or “aquifer” means a body of groundwater having boundaries which may be ascertained or reasonably inferred that yields quantities of water to wells or surface water sufficient for appropriation under an existing right of record.

(5) “Groundwater use authorization” means use of water authorized by a permit, certificate or groundwater registration.

(6) “Hydraulically connected” means water can move between or among groundwater reservoirs and surface water.

(7) “Upper Klamath Basin” means the area above and around Upper Klamath Lake that encompasses all water sources that are tributary to Upper Klamath Lake, including groundwater, the Wood River, Williamson River and Sprague River and their tributaries and the Klamath Marsh and its tributaries.

(8) “Surface water right” means certificated and permitted water rights, and determined claims, the source of which is surface water, including springs, streams, and rivers.

(9) “Well” or “wells” means a well as defined in ORS 537.515(9) that is located in the Upper Klamath Basin and is used to beneficially withdraw water for authorized groundwater uses including domestic, stock, irrigation, industrial, municipal, and aquifer storage and recovery uses.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.525

STATUTES/OTHER IMPLEMENTED: ORS 539.170, ORS 540.045, ORS 537.525

ADOPT: 690-025-0025

RULE TITLE: Distribution of Water between Existing Rights of Record

NOTICE FILED DATE: 01/29/2019

RULE SUMMARY: Outlines that the Department may manage surface water and groundwater uses to protect senior holders of water rights and determined claims in accordance with the users' water rights and determined claims pursuant to these rules, instead of the existing Division 9 rules.

RULE TEXT:

(1) Whenever there is impairment of, or interference with, existing water rights to appropriate surface water the Oregon Water Resources Department may regulate the distribution of water among the various users of water from any natural surface or groundwater reservoir in accordance with the users' existing rights of record as authorized by ORS 537.525, ORS 539.170 and ORS 540.045.

(2) These rules, OAR 690-0025-0020 to OAR 690-0025-0040, govern the control of wells in the Upper Klamath Basin that produce from a groundwater reservoir that is hydraulically connected to surface water and subject to regulation in the course of distribution of water in accordance with the users' existing rights of record.

(3) These rules operate in lieu of OAR Chapter 690, Division 09, and in conjunction with OAR Chapter 690, Division 250, except that these rules govern distribution of groundwater and surface water in the Upper Klamath Basin in lieu of OAR 690-250-0120(2).

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.525

STATUTES/OTHER IMPLEMENTED: ORS 539.170, ORS 540.045, ORS 537.525

ADOPT: 690-025-0040

RULE TITLE: Regulation of Hydraulically Connected Wells

NOTICE FILED DATE: 01/29/2019

RULE SUMMARY: Specifies Department finding of the hydraulic connection between surface water and groundwater in the Klamath Basin, and that groundwater use results in stream and spring flow depletion, based on the best available information. Indicates that the Department finds regulation of wells within 500 feet of surface water will result in relief to holders of surface water rights, that the Department shall determine the distance between each well and the source of surface water rights, and that the Department may regulate these wells when a valid call is made by a holder of a senior right or determined claim. Specifies effective date of rules, and that they do not set a precedent.

RULE TEXT:

(1) In the Upper Klamath Basin, a joint study of groundwater hydrology by the Department and the U.S. Geological Survey has established that groundwater and surface water are hydraulically connected.

(2) Based on the data and results of the joint groundwater hydrology study, wells that withdraw groundwater in the Upper Klamath Basin reduce groundwater discharge and surface water flow.

(3) The determinations in subsections (1) and (2) are based on the best available information, including but not limited to, water well reports, basin and hydrologic studies, topographic maps, hydrogeologic reports, groundwater and surface water elevation data, groundwater flow models, model simulation results for the Upper Klamath Basin, and any other information that is used in the course of applying generally accepted hydrogeologic methodologies.

(4) The Department has determined that regulating permitted wells that are located a horizontal distance equal to or less than 500 feet from a source of surface water rights will result in relief to surface water rights within the current season of use.

(5) Before regulating an authorized groundwater use pursuant to subsection (4), the Department shall determine the horizontal distance between each well and the source or sources of surface water rights.

(6) The Department may regulate wells that are located a horizontal distance equal to or less than 500 feet from a source of surface water rights whenever a valid call for surface water is made and the Department is regulating in accordance with the users' existing rights of record. Under this rule, the Department will not regulate wells located a horizontal distance greater than 500 feet from a source of surface water.

(7) Groundwater regulation in the Upper Klamath Basin before March 1, 2021, will occur pursuant to OAR 690-0025-0020 to OAR 690-0025-0040. After March 1, 2021, OAR 690-0025-0020 to OAR 690-0025-0040 will no longer be in effect and groundwater regulation in the Upper Klamath Basin will occur under OAR 690-009, unless the Commission adopts new rules prior to March 1, 2021, governing groundwater regulation for senior surface water rights in the Upper Klamath Basin.

(8) Notwithstanding present conformance of these rules with ORS 537.780(2)(a), these rules do not establish a precedent that precludes different or additional determinations of what wells may be regulated so as to provide relief to surface water rights within the current season of use consistent with the authorities of the Water Resources Commission.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.525

STATUTES/OTHER IMPLEMENTED: ORS 539.170, ORS 540.045, ORS 537.525