



**February 12, 2019**  
**House Committee on Energy and Environment**  
**Representative Ken Helm, Chair**

**Testimony on House Bill 2819**  
**Submitted by Racquel Rancier Senior Policy Coordinator**

Thank you for the opportunity to provide testimony on HB 2819, which pertains to stabilizing basalt aquifers in certain areas of the Umatilla Basin. The Department understands that additional amendments are being requested; therefore, this testimony is intended to provide an overview of the Department's understanding of the proposal under HB 2819. In addition, the Department has provided additional background information for the committee's reference and to provide further context. The Department is not taking a position on the bill or the proposal.

**Background on Groundwater Challenges in the Umatilla Basin**

In the 1970s and early 1990s, the Department designated four critical groundwater areas and one classified area in the Umatilla River Basin in response to significant declining water level trends. In total, more than 600 square miles were designated. These limitations became necessary because demand for water exceeded natural availability and rapid development of groundwater resulted in significant groundwater level declines – up to 500 feet in some locations. As a result of the restrictions, annual groundwater pumping allocations are a fraction of the total volume (duty) permitted under the existing water rights for these areas.

**Stage Gulch and Butter Creek Critical Groundwater Areas:**

Under the critical area laws, the Department determines annual allocations for each water right in the Stage Gulch and Butter Creek Critical areas, based on the Sustainable Annual Yield (SAY), historical use and future use requests from the water right holder, priority dates, and other factors. Although the number of valid groundwater rights remains near the same level that resulted in the original declines, only about 30 percent of the amount of water authorized by water rights is annually allocated for use under the critical area water restrictions. Many water right holders have not received an allocation to use water since the critical area curtailments went into effect. Despite the controls put in place, groundwater level declines have continued in many subareas, albeit at a slower rate.

**Accessing Columbia River Water to Meet Water Needs in Parts of the Umatilla River Basin**

Unlike many other areas in the state where new surface water supplies are not an option because streams are fully appropriated, parts of the Umatilla Basin may be able to access new water rights from the Columbia River. New water right applications that propose to divert water from the upper Columbia River Basin are subject to additional public interest standards outlined in Oregon Administrative Rules 690-033.

The "Division 33 rules" were developed to consider the potential impacts of new water appropriations on sensitive, threatened or endangered fish species. In the mainstem Columbia and Snake Rivers, as well

as tributaries of the Columbia above Bonneville dam, the rules preclude new uses of water from the upper Columbia River from April 15 to September 30 each year – unless the applicant provides mitigation that is consistent with the Oregon Department of Fish and Wildlife Mitigation Goals and Standards.

### **Recent New Water Development in the Umatilla Basin – “NOWA Project”**

There have been a number of efforts over the last decade to identify and invest in solutions to the water challenges faced in the Umatilla River Basin. Most recently, in 2015, the Legislature authorized \$11 million in Lottery Bonds to help finance water projects in the Umatilla Basin. The Department has entered into a grant agreement with the Port of Morrow to implement two infrastructure projects that, among other things, will build pipelines from the Columbia River to deliver water primarily to lands that are currently not irrigated or are under-irrigated due to critical groundwater area limitations. For these projects, the Department is also processing eight new Columbia River surface water rights and their associated mitigation, four of which have been issued to date. In total, the permits will allow nearly 180 cubic feet per second of new appropriations from the mainstem Columbia River.

### **Workgroup Recommendations and HB 2819**

In late 2018, the Department participated as an ex-officio member of a workgroup convened by the Governor to discuss groundwater stabilization options within the Columbia River Basin. The findings and recommendations are not repeated here, but this testimony highlights a few key items.

Recall that in the Butter Creek and Stage Gulch critical areas, only about 30 percent of the water rights have received water since curtailment began in the 1990s. Under the current framework, the Department annually allocates water up to the sustainable annual yield value documented in rule for each subarea. The amount of groundwater allocated to each user is based on a combination of the user’s priority date, the amount of water that water right holders request to use, and water right holders recent historic use.

The issue brought forward by local stakeholders in the workgroup was that under the current regulatory framework, the critical groundwater rules/orders require that if groundwater is not being used by a senior water right holder it must be allocated to the next junior user, consistent with the doctrine of prior appropriation. This is consistent with the property interests of the junior water right holder, but also creates a disincentive for senior users to reduce groundwater use. This is also why the Department believes that future solutions to water scarcity are going to require the active participation and collaboration of water users within a basin to identify unique and innovative solutions to their water challenges. Current laws anticipate that may be the case and allow for the current regulatory allocation framework to be “set aside” if the users in a critical groundwater sub-area develop a voluntary agreement on how to manage the water and receive approval of that agreement from the Director. The voluntary agreements, which are already allowed in statute and rule, are essential as the mechanism to implementing the pilot.

The workgroup recommendations include limiting the pilot to certain subareas. These areas were identified based on the number of water right holders, access to Columbia River water, and the Department’s existing monitoring infrastructure, which is necessary to determine how groundwater levels respond to any efforts under the pilot. Expanding outside of those areas may require additional time and investments in monitoring and staff resources, and it may be more difficult to achieve success in stabilizing the aquifers.

Although the recommendations of the workgroup could be completed without legislation, our understanding from the bill proponents is that they are seeking this legislation to allow: (1) protection from forfeiture of the groundwater that is forgone in lieu of surface water; and (2) funding to pay water users the cost differential between pumping cheaper groundwater from critical areas to pump more expensive surface water from the Columbia River. Our understanding is that both of these provisions would only apply to the groundwater that would have been allocated for use under the critical area rules, and pursuant to a voluntary agreement.

### **Conclusion**

The Department has provided feedback to the bill proponents on technical amendments to the bill and looks forward to continuing to work with water interests in the Umatilla Basin to find and implement solutions to their water challenges.