

New Oregon groundwater rules will fundamentally change permitting



ADOBE STOCK

The bottom line is that in most locations, the new requirements will amount to a moratorium on new permits

At the upcoming September 2024 Oregon Water Resources Commission meeting, the commission will consider adoption of a new set of rules that will fundamentally change the way groundwater is allocated in Oregon. Given the nursery industry's dependence on groundwater, these new rules have significant implications for growers.

Since 2016, the Oregon Water Resources Department has been under increasing public pressure for its failure to manage groundwater in a sustainable manner. For nursery and greenhouse growers, the adoption of the new rules means it is

increasingly unlikely that you will be able to acquire new groundwater rights.

Over-appropriation meets reality

Oregon's surface streams have been closed to new irrigation water rights for many years due to over-appropriation. However, in most parts of the state, OWRD has continued to issue new groundwater rights.

In 2022, that changed when the Oregon Water Resources Commission — a 7-member citizen commission — instructed OWRD staff to stop issuing new groundwater rights unless sufficient hydrologic data exists to show the new use would not impair the aquifer or hydrologically connected streams. The commission then directed OWRD staff to reexamine how the state allocates groundwater and to undertake rule revisions to revamp the state's groundwater permitting rules. >>



Steve Shropshire

Steve Shropshire serves as legal counsel to the OAN and is a member of the Jordan Ramis PC Dirt Law® team, representing the nursery industry and other agri-businesses as outside general counsel and on water rights, real estate and land use matters. He can be reached at 503-598-5583 or steve.shropshire@jordanramis.com

The new groundwater allocation rules are the result of that two-year public process.

Under the current rules, OWRD must approve a new groundwater application unless available data shows that the proposed use would not ensure preservation of the public welfare. As a result, the default has been approval of most new groundwater applications. This process has given minimal consideration to the long-term impacts to underground aquifers and hydraulically connected surface waters.

The proposed rules make three major changes to the groundwater allocation system.

- First, the rules provide that OWRD cannot issue a new permit unless available data show that aquifer levels will be maintained in a “reasonably stable” condition.
- Second, the rules require denial of

a new groundwater application if an applicant cannot prove that the groundwater use would *not* interfere with surface water flows.

- Third, the rules provide that if sufficient hydrogeologic data (at least 5 years’ worth) is not available to make these determinations, OWRD must deny the permit application.

A de facto moratorium

There are many technical details associated with the “reasonably stable” determination. However, the bottom line is that in most places around Oregon, the requirements in the new rules will amount to an outright moratorium on new groundwater permitting. In circumstances where insufficient data is available, it will be extremely expensive and time consuming for a grower to hire the experts needed

Water rights transfers

Scan the QR code to read Steve Shropshire’s past column about water rights transfers.



to prove that the new groundwater use will not impair the aquifer.

The new rules could be a benefit to existing nursery operations with senior water rights. By preventing new groundwater appropriations, the rules will limit competition for this scarce resource.

However the rules will pose a significant hurdle for new and existing operations seeking to expand on to new acreage. Those growers will now need to look largely to the water right transfer process to acquire new water rights.

We briefly addressed the water right transfer process in the March 2021 edition of *Digger*. In future articles, we will explore this topic in greater detail.

Other options available to secure irrigation water for new acreage may include the conserved water allocation program, aquifer storage and reuse, and mitigation programs. The availability of these alternative approaches to groundwater acquisition will become increasingly important in the years to come.

OWRD will need to ensure that it has the staff and expertise available to manage the anticipated influx of new demand for these alternatives to new groundwater permits.

For more information on OWRD’s groundwater allocation rulemaking, go to TinyURL.com/OWRDRulemaking. ©

OMRI Makes Organic Easier



Over 10,000 products allowed for organic use.

Look for the OMRI seal on inputs for your organic farm.

The trusted OMRI seal helps your certifier insure



the material is allowed for USDA certified organic use.

Visit our free products search!
OMRI.org/DIGGER24



OMRI Listed – Naturally Trusted