

February 16, 2021

TO: Oregon Water Resources Committee

Re: Letter of Testimony for HB 3092

Dear Chair Helms and Committee Members:

We'd like to submit testimony in support of HB 3092. We are domestic well users in Harney County and live 20 miles east of town in the midst of a proliferation of center irrigation pivots. We moved to our current location in 2008 to retire. In 2009 we had to pay to drop the pump in our domestic well from 60 to 100 feet. In 2015 we had pay to drill a new well 80 feet away, which cost over \$14,000. This well is down 230 feet, and the pump is at 170 feet. The water has unacceptable levels of arsenic, and we now have to use a water filtration system. In 2018 we filed a Groundwater Well Interference Complaint with J. R. Johnson, Harney County Water Master. It was not an easy process. Nothing came of it.

In March 2020 we sent a letter to Director Byler at OWRD to request water restriction on groundwater irrigation in the vicinity of our property. (See attached letter) In May 2020 OWRD replied and basically said we don't have a case. (See attached letter). In June 2020 we again wrote to OWRD (see attached letter) to petition for reconsideration on issued extension of a time order permit G-17966 in the name of Any Root. OWRD never responded.

We are not alone in having to deepen a well or drill a new one. At least six families around us have had to do the same. OWRD has not been effective in reducing the number of irrigation pivots, knowing that discharge is two times greater than recharge. USGS has supplied the supporting documentation on that problem. For the last five years we've attended the Community Based Water Planning meetings and the Groundwater Advisory Committee meetings. We've heard the USGS presentation of their study findings at these meetings.

OWRD is sadly underfunded and understaffed, especially for monitoring and analysis of groundwater, measurement and enforcement. OWRD clearly needs better funding and systems to collect and analyze groundwater data to avoid problems like the one it created in Harney County. Oregon water laws and rules are antiquated and stacked against domestic well users. Although the law requires OWRD to maintain reasonably stable groundwater levels (which it failed to do in the Harney Basin), OWRD claims its rules basically say that domestic wells have

to follow the water to the bottom of the aquifer. At \$15,000 a well that is prohibitively expensive and could conceivably drive people from their homes.

Besides financial help for domestic well users, we'd like to see the problem resolved. We want sustainable water policy and water levels. We want to see enforcement of measuring and reporting of irrigation water consumption which is not being done here. We want effective and sustainable enforcement and regulation of water consumption in the Greater Harney Basin. We'd like it now and not thirty years from now, so we won't have to drill another domestic well.

We urge you to vote yes on HB 3092.

Sincerely,

John (Robert) and Marjorie Thelen

P O Box 307
Burns, OR 97720
March 11, 2020

TO: Tom Byler, Director, OWRD
JR Johnson, Water master
Harmony Burrignt, Justin Iverson, Ivan Gall

RE: Request for Water Restriction

This is to request that Oregon Water Resources Department start to restrict groundwater irrigation in the vicinity of our property at 38935 Palomino Lane in Burns, OR. Two miles to the north of us a serious cone of depressions has been identified by the USGS study. Since we moved to this property almost twelve years ago center pivot irrigation has exploded around us. In 2009 we had to pay to drop the pump in our domestic well from 60 to 100 feet. In 2015 we had pay to drill a new well 80 feet away, which cost us over \$14,000. This well is down 230 feet, and the pump is at 170 feet. The water has unacceptable levels of arsenic, and we now have to use a water filtration system.

We have filed in injured well report with the water master for our area, which was not an easy process. Now we are requesting that the state start restricting water to the irrigators that surround us, particularly the ten pivots over the cone of depression to the north of highway 20, which is 20 miles east of Burns and two miles north of our property. Our original domestic well was drilled in 1974. We do not irrigate on our forty acres.

We've heard that we have to "drill to the bottom of the aquifer" but we question the legality of this. We also question the economic viability and sustainability of unrestricted irrigating. Why should we have to pay over \$14,000 to establish a new well, when irrigators are profiting by draining the aquifer? The law says that OWRD has to allocate in order to stabilize the aquifer. We need to start now before it is too late.

Thank you. We would appreciate a prompt response to this request.

Sincerely,

John and Marjorie Thelen



Oregon

Kate Brown, Governor

Water Resources Department

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725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
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www.Oregon.gov/OWRD

May 20, 2020

John and Marjorie Thelen
PO Box 307
Burns, OR 97720

RE: Request for Water Restriction

Dear Mr. and Mrs. Thelen,

Thank you for taking the time to write to me about your concerns regarding groundwater development in the Harney Basin.

One of the first things that crossed my desk as the Director of the Water Resources Department was a preliminary analysis by our staff regarding declining groundwater levels in the Harney Basin. The analysis of available data noted that permitted annual groundwater use likely exceeded annual groundwater recharge, meaning the basin was likely over-allocated and could not sustain additional uses. In response to this information, we initiated a rulemaking process to limit additional groundwater development in addition to a multi-year groundwater basin study in cooperation with the US Geological Survey to better understand the groundwater system. Consistent with the revised Basin Program Rules adopted in April of 2016, the Department has not approved any applications to use groundwater in the Greater Harney Valley Area of Concern filed after April 15, 2016. The rulemaking process and groundwater basin study are important steps necessary for achieving reasonably stable groundwater levels in the basin. Each of these steps requires a high level of effort and commitment from a small team of Department staff.

As you may already know, preliminary results from the groundwater study confirm that groundwater development exceeds groundwater recharge. Groundwater level declines are more or less severe in some areas depending on the local geology and irrigation development patterns. As new and/or updated information has become available, we have been using it to inform decisions related to existing water rights in the area (e.g., requests for permit extensions and water right transfers). It is important to note that under current water law, those with a legal right to groundwater are still able to develop groundwater consistent with their permit. I am aware that some water development under existing permits has continued in recent years. While it is lawful activity, I can understand how this may be distressing for you and others given concerns about the long-term security of your water supplies as well as your interest in ensuring sustainable use of groundwater resources in the basin.

John and Marjorie Thelen

May 20, 2020

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I appreciate you letting us know that submitting a well interference complaint with the Department was not an easy task. Oregon water law is complex and the Department is committed to making our programs as accessible to Oregonians as possible. Over the past two years we have been working to develop forms, clarify the process, and develop a consistent approach for coordinating and tracking well interference complaints and responses. This was done directly in response to feedback received from concerned domestic well owners in the Harney Basin like yourselves. We are still working to operationalize this internal improvement and welcome your input and feedback on how we can further improve.

A key Department goal is to address the acute groundwater level declines in the Harney Basin. Specific to your situation, and based on communications with staff, it is my understanding that an analysis of available water level data indicated there was not substantial or undue interference with your well as defined by our rules (Oregon Administrative Rule 690-008-0001(8)). Looking ahead to 2021, once the groundwater study is published we will revisit the Basin Program Rules with a rule advisory committee to determine future management actions needed to achieve reasonably stable groundwater levels. The Department is open to exploring ideas on effective ways to manage water in the basin on a more sustainable basis. One potential approach could be to designate a critical groundwater area in the basin. A critical groundwater area can offer a stronger management tool to stabilize groundwater levels, but unfortunately can take a long time to establish.

Lastly, the Department has been a funder, partner, and technical assistance provider in the Harney Community Based Water Planning Collaborative since it began and we recognize that the work of the Collaborative is vital to the future of water management in the basin. The Collaborative is able to explore and pursue more creative alternatives that can complement the Department's actions in the basin. The Collaborative may be able to identify and begin to implement non-regulatory actions to reduce groundwater use while we encourage voluntary agreements between groundwater users and pursue regulatory approaches.

I recognize the efforts to understand and address the groundwater declines in the Harney Basin are not moving as quickly as some folks would like. We are doing the best we can to make progress on this complicated and important issue. In the meantime, I hope you will continue to participate in these critical conversations as we work together to take actions to achieve reasonably stable groundwater levels.

Sincerely,



Thomas M. Byler

Director

C: JR Johnson
Jason Spriet
Justin Iverson
Ivan Gall
Dwight French
Harmony Burright

Date: June 16, 2020

TO: Thomas Byler, Director, OWRD

Cc:

BYLER Thomas M * WRD <Thomas.M.Byler@oregon.gov>,
JOHNSON JR * WRD <JR.Johnson@oregon.gov>,
SPRIET Jason D * WRD <Jason.D.Spriet@oregon.gov>,
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BURRIGHT Harmony S * WRD <Harmony.S.Burright@oregon.gov>

RE: Petition for Reconsideration on the recently issued extension of time order for permit G-17966 in the name of Andy Root. (ORS 536.075, OAR 137-003-0675).

Dear Mr. Byler:

Thank you for your response to our letter requesting restriction of pivot development in the area north and surrounding our property. You basically said we don't have a case. (See attached letters.)

Yet, OWRD has come to a settlement with Root of Rattlesnake Land Co. to develop more pivots in precisely the area where we asked OWRD to restrict. Root's pivots are located in one of the cones of depression or critical water areas identified in the USGS study. Why are you allowing more development there than was authorized under the permit and its development deadline?

On May 22 OWRD issued a press release that was published in the Burns Times Herald on May 27th – "Department Cautions Against Further Groundwater Development in the Harney Basin as Data Indicate Groundwater is Being Depleted." Do you want development or conservation? How can you advise against increasing groundwater use, and then settle with Root to development more pivots in an area that you have at least one letter from a domestic well user to restrict development?

In light of the above, we therefore request that you reconsider the recently issued extension of time order for permit G-17966 in the name of Andy Root. (ORS 536.075, OAR 137-003-0675). Instead of issuing the extension of time, it should have been denied because it authorizes more groundwater pumping in an area that we already know is suffering from an unsustainable amount of pumping as stated above and in our letter of March 11, 2020.

Sincerely,

John and Marjorie Thelen
Burns, Oregon