



Testimony in Support of HB 3800 and 3801

House Committee on Agriculture, Land Use, Natural Resources and Water

Co-Chair Ken Helm Co-Chair Mark Owens

Background

For nearly the last decade I have been helping the Harney Basin community with the development of a community-based integrated water resource plan. **This testimony is in no way to be considered as reflecting the collaborative, it is my personal observations and opinions. I have not conferred with the collaborative members or made this perspective available to them.**

It was clear from the beginning that groundwater had been significantly overallocated. The basin classification rulemaking in 2015 culminated in 2016 in the designation of the “Greater Harney Valley Groundwater Area of Concern”. This portion of the Harney basin encompassed the area of nearly all major groundwater irrigation pumping. The classification rule halted nearly all additional permit applications yet allowed pending permit applications to be developed. Other provisions of the rule required a revision of the rule within a year following completion of an ongoing joint USGS/OWRD groundwater study. The study was completed in late 2022 and reports were made available in 2023.

Over the time from 2016 to 2023, the community collaborative developed a groundwater management plan and shared the plan with the Oregon Water Resources Department and presented the findings to the Commission. The plan identifies strategies to address groundwater declines and explored incentives and regulation issues facing the community. While exploring the approaches available, the collaborative helped build information about the status of domestic wells, identified the need for a domestic well fund (approved by the 2021 Oregon Legislature), identified the location and preliminary information about groundwater dependent ecosystems, explored a water market, heard from water managers from Nevada and Idaho on approaches they are using to address similar situations, and explored a USDA cost share program to compensate for the voluntary cancellation of groundwater rights (The Harney Valley Groundwater Conservation Reserve Enhancement Program was approved in 2023). There has been a broad-ranging discussion about the interaction of regulation and incentives in addressing the groundwater conditions in the basin.

It has been difficult to build a common understanding of the groundwater conditions in the basin. The adage that out of sight is out of mind applies to groundwater. It is perceived

differently by irrigators and domestic well users. Everyone is looking down their well with a presumption that their condition is reflective of everyone else's. The hydrogeologist is looking across a large number of wells trying to identify patterns that reflect the relative elevation of groundwater from sample wells that are placed often for other purposes (irrigation, etc.). The monitoring well distribution reflects the best opportunity given land ownership, permission, etc.

Following completion of the USGS groundwater report, the Oregon Water Resources Department initiated a rulemaking process, identified a Rules Advisory Committee (RAC) and held their first meeting in April of 2023. There have been 13 RAC meetings with one scheduled for April 2nd. The Department has worked to propose a Critical Groundwater Area, define subareas, identify total permissible withdrawal, propose a Serious Water Management Problem Area designation, and other measures to address the over appropriation and pumping of groundwater beyond recharge. The Department has used the USGS developed groundwater model to identify the potential effects of different management approaches and discussed the potential tradeoffs and impacts of different management scenarios.

House Bill 3800

The proposed legislation does a number of things. It:

- Renames the Greater Harney Valley Groundwater Area of Concern as the Harney Basin Groundwater Management Area
- It clarifies the **discretionary** authority of the Department to:
 - Modify the rate and duty of a certificated water right.
 - Decline to accept new applications for groundwater rights except under circumstances involving mitigation.
 - Deny requests for extensions while allowing for modifications to reflect current conditions.
 - Deny applications for transfers between subareas.

Each of these proposed provisions have been part of the discussion of groundwater management under a Critical Groundwater Management Area designation.

All the evaluations of total permissible withdrawal is based on estimates of 2018 groundwater pumpage. The proposed bill makes explicit the authority to change permitted rate and duty of existing permits and certificates.

The bill further specifies that the Department shall:

- Develop and implement a program for identifying and curtailing unauthorized use of groundwater.
- Similarly, identify and cancel rights to use groundwater under the forfeiture statutes.
- Adopt an adaptive groundwater management plan.
- Develop a groundwater advisory committee.

Most of these provisions are also strategies identified in the community-based groundwater Plan of 2022 or were of significant discussion during the development of the plan. There has been significant concern expressed in the community that failure to enforce forfeiture and address “abandoned” wells could affect the curtailment of active and permitted groundwater rights.

One of the reasons for specifying the responsibilities of the Department is to assure the community that conditions of legal use of groundwater and unauthorized uses are halted before current legal uses are curtailed. The Department initiated enforcement procedures on non-compliant permittees just this year (2025). The fact that the permit conditions have been in effect for a decade or more without previous scrutiny is the basis for some skepticism in the irrigation and other water user and water interest groups.

Additionally, recognizing that the proposed curtailment under a Critical Groundwater Management Area designation will have a significant impact on the economy of the community, it is important to have a mechanism to effectively maintain communication with the community as curtailment and management of groundwater goes forward. Preventing rumors and having a legitimate forum to communicate with affected parties will be important to accomplish the desired outcomes of regulation.

The newly proposed Sections 5 starts with the basics from the RAC discussions, acknowledge the subareas presented to the RAC and provide an alternative approach to curtailment that includes consideration of incentives yet provides a backstop if reasonably stable conditions do not occur.

Section 6 is also a newly proposed provision that establishes a seniority weighted limit for revised pumping limits. This approach both honors the prior appropriation doctrine but helps to share the curtailment effects. This is a significant difference from the draft proposed rules that assigns a duty of 2.7 acre-feet/acre for both primary and supplemental groundwater rights [Proposed Rule at 690-512-0060 (2) (a)]. Recognizing a more refined distinction may help some irrigators to remain by deficit irrigating rather than being shut off completely depending on the PTW curtailment schedule and priority date of the right in question.

House Bill 3801

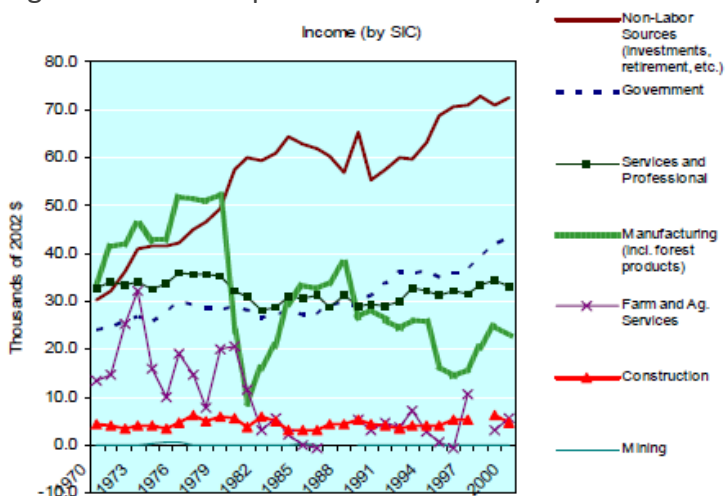
The proposed bill is intended to activate a moribund provision of state law (ORS 537.745). This provision is based on the premise of community members working together to address groundwater declines. To date the remedy to groundwater declines has been viewed as the prevue of the Oregon Water Resources Department and Commission with a duty to address over appropriation by implementation of the three tools available to them; Basin Classification, Serious Water Management Problem Area designation, and Critical Groundwater Management Area designation with curtailment provisions developed through a contested case hearing process.

There are many social and economic reasons why the voluntary agreement provision has not been tried but lack of trust among interests and the history of litigation to solve water resource problems is a strong element. I have spent some two decades working on voluntary and incentive driven conservation initiatives in Oregon. I have seen people in every corner of this state come together to work towards solving problems affecting natural resources they depend on. There is a natural suspicion and reluctance to start such an effort but when people gather and focus on common interests rather than common issues it is surprising what can be accomplished. Oregon's watershed council efforts were seen as a threat in the early years but have become effective forums to accomplish large scale conservation actions across the state.

This is a time to try new ways to accomplish policy objectives. Halting declining groundwater levels is critical but how it is accomplished is also important. Harney County has the experience with sudden disruptions to the local economy. With short notice closure of the Collins Mill in 1980 the County went from one with one of the highest per capita incomes in the manufacturing sector to one of the lowest in a few short years (Figure 2). Recovery has been slow and groundwater dependent agriculture has helped with that recovery.

FIGURE 2. Personal income by major sector in Harney County, Oregon

Source: U.S. Department of Commerce, Bureau of Economic Analysis, Regional Economic Information System, 2004.



With the significant change in administrative rule around permitting for groundwater that were adopted in 2024, there is a new approach to water resource management. The Department is no longer in the mode of permitting without knowing of the availability of the resource. The issue facing the Harney basin and other places in semi-arid Oregon is how do you manage over appropriated water resources. Surface water suffers from the same situation, however since surface water is more easily observed, management approaches are more familiar and recognizable. Groundwater is not directly observable in the manner of surface water and leaves much to the imagination by users and the public.

I would urge the committee to consider the ideas in HB 3800 and 3801 as being proposed in an attempt to balance the regulatory demands with incentive approaches for cooperative reductions.