Opposition to Oregon SB 1154 – Protecting Property Rights and Constitutional Freedoms

Introduction

Oregon Senate Bill 1154 (SB 1154) proposes sweeping changes to groundwater regulation in the name of environmental protection. However, the bill raises serious legal and ethical concerns. It would grant government agencies broad power to inspect private property and regulate or even eliminate the use of private wells on that property. These provisions threaten to violate fundamental constitutional rights – including the Fourth Amendment's protection against unreasonable searches and the Fifth Amendment's protections against government takings without just compensation – as well as long-standing Oregon laws that safeguard property and water rights. This brief outlines the key problematic provisions of SB 1154 and presents a detailed argument for why lawmakers should oppose the bill as an instance of governmental overreach that would disproportionately harm rural Oregonians while inviting legal challenges.

SB 1154 Overview and Key Provisions of Concern

SB 1154 is intended to address groundwater contamination by creating "ground water management areas" where special rules apply. In practice, the bill would impose new restrictions and requirements on private well owners and rural landowners. Key provisions include:

- **Warrantless Inspections of Private Property:** SB 1154 authorizes state agencies to **enter private property without owner consent to conduct inspections and collect environmental data** (e.g. soil or water samples) in designated groundwater areas olis.oregonlegislature.gov . This extends to inspecting residential septic systems and even previously exempt private wells, at "reasonable times" but without requiring a warrant or clear due process. Such entry **"without permission" is a direct violation of privacy and property rights** and is likely unconstitutional olis.oregonlegislature.gov under the Fourth Amendment and Oregon law.

- **Regulation and Potential Seizure of Private Wells:** The bill gives the state power to **restrict, regulate, or even shut down private wells** in affected areas. For example, counties would be empowered to **prohibit development of any new housing unless it is connected to an approved urban water supply or community well**, effectively **banning new private wells** for homes in these zones. In practice, this could force rural property owners to abandon or alter existing wells and **mandate expensive connection to city water systems**, if available. Longtime well owners could be required to

"abandon, alter, or replace" their wells at their own expense – potentially costing $10,000 to $50,000 or more per well.

- **Burdensome Permitting and Penalties:** SB 1154 would tighten water permitting processes and allow severe penalties for non-compliance. Private well owners who do not meet new requirements could face **fines of $2,000 plus additional daily penalties**. These heavy fines and the costs of compliance (such as installing new equipment, treatments, or connecting to municipal systems) present a significant financial burden on rural families, farmers, and small businesses. Yet the bill offers **no financial assistance or compensation** for these mandates. As a result, the legislation would **devalue rural property and water rights**, making land without access to city water practically unusable for development.

- **Expanded Government Control Over Land Use:** Beyond wells alone, SB 1154 empowers regulators to impose new land-use restrictions in groundwater areas. Counties could enforce **setbacks and land management rules that limit farming or other activities** on private land olis.oregonlegislature.gov . For instance, the bill would even **ban new permits for certain agricultural operations (like large CAFOs) in these zones**, a precedent that alarms farmers about incremental erosion of their right to use farmland olis.oregonlegislature.gov . Combined with the water restrictions, these measures heighten the sense that SB 1154 aims to "seize control" of how private rural lands are used and managed, well beyond what is necessary for groundwater protection.

Fourth Amendment Concerns: Unreasonable Searches of Private Property

SB 1154's allowance of warrantless inspections on private property conflicts with constitutional protections against unreasonable searches. The Fourth Amendment of the U.S. Constitution and Article I, Section 9 of the Oregon Constitution guarantee the right of people to be secure in their persons and property against unreasonable searches and seizures. Generally, government officials **must obtain a warrant or owner consent** before entering private property to conduct inspections, unless an emergency or another narrow exception applies

oregon.gov . The U.S. Supreme Court has long held that even health and safety inspections of homes require a warrant if the occupant does not consent (see *Camara v. Municipal Court*, 387 U.S. 523 (1967)).

SB 1154, however, would empower agencies (such as the Department of Environmental Quality) to **"enter onto … private property at reasonable times to inspect"** private septic systems and wells once an area is declared a groundwater management area. The bill does not require obtaining a warrant or explicit consent for these searches. This kind of open-ended access

directly contravenes the Fourth Amendment. As one Oregon farm owner pointed out in testimony, *"Section 13 lets government agencies come onto private property … without permission…That's a violation of our privacy and property rights"* and would almost certainly be challenged as unconstitutional

olis.oregonlegislature.gov
.

Importantly, **Oregon's own Constitution provides robust privacy protections for landowners**. In Oregon, the courts have rejected the federal "open fields" doctrine that might allow warrantless searches of private land beyond the home's curtilage. The Oregon Supreme Court has affirmed that **even privately owned open lands are protected from warrantless government intrusions** under Article I, Section 9

law.justia.com
. In *State v. Dixson* (1988), for example, the court recognized a landowner's right to post "No Trespassing" signs and expect government agents to stay off the property absent a warrant or emergency. By authorizing routine entries onto farms and rural homesteads, SB 1154 runs afoul of these principles. Lawmakers should be acutely aware that **passing this bill could invite immediate legal challenges on Fourth Amendment grounds**, likely resulting in injunctions or protracted court battles that would delay any environmental remedial actions. Simply put, Oregon cannot protect water quality by **trampling on constitutional privacy rights**.

Fifth Amendment Concerns: Takings and Property Rights

Beyond search and seizure issues, SB 1154 raises red flags under the **Takings Clause of the Fifth Amendment**, which prohibits the government from taking private property for public use without just compensation

gao.gov
. For rural Oregonians, **the right to use a private well is a core aspect of property ownership** – often the only feasible way to obtain water for a home or farm. Under Oregon law, an exempt household well usage (such as for domestic use under 15,000 gallons/day) **"constitutes a right to appropriate ground water" just as if a water right permit had been granted**
law.justia.com
. In other words, Oregon recognizes small domestic wells as a protected property right in water.

SB 1154's provisions would substantially interfere with, and in some cases outright nullify, this property right in water. If a landowner in a designated area is told they **may no longer drill a well or use their existing well** (except perhaps under onerous new rules), the government is effectively depriving them of a key utility of their property. **Forcing well owners to abandon or cap their wells, or to incur massive costs to connect to a government-approved water system, is tantamount to a regulatory taking of private property**. The owner loses the use of

their well (a valuable asset) and the underlying property's value is diminished because it lacks independent water supply. Yet SB 1154 offers no compensation for this loss; the burden falls entirely on the property owner.

Courts use a multi-factor test (*Penn Central* test) to evaluate regulatory takings, examining the economic impact, interference with investment-backed expectations, and the character of government action. Here, the **economic impact on an individual rural homeowner could be devastating** – imagine being required to spend $20,000 to fill in a well and run pipes to connect to a distant municipal line, or losing the ability to build a home on your acreage because you cannot get a well permit. This destroys the reasonable, investment-backed expectation that someone who bought rural land could rely on a well for water (an expectation explicitly supported by Oregon's exemption laws). The character of the government action in SB 1154 is also problematic: it broadly shifts the cost of improving groundwater onto private individuals (through forced compliance and forfeiture of rights) rather than narrowly targeting the actual polluters or providing public solutions. Such an uncompensated burden is exactly what the Takings Clause is meant to guard against

gao.gov
.
It is worth noting that **similar aggressive water regulations have triggered legal battles in other jurisdictions**. For instance, when Arizona's water agency imposed strict new requirements effectively limiting development rights unless extra water supplies were secured, homebuilders filed suit, calling it an illegal exaction that would drive up housing costs

azcapitoltimes.com
azcapitoltimes.com
. In the Klamath Basin on the Oregon-California border, when irrigation water was cut off for environmental reasons, affected farmers pursued claims that their water rights had been taken without compensation (a prolonged litigation that went to the U.S. Supreme Court)
narf.org
. The lesson is clear: if Oregon enacts SB 1154, it should **expect lawsuits from property owners** arguing that the state is liable for a taking of private wells and development rights. Even if the state were to eventually prevail in court, the legal uncertainty and costs – and the harm to trust between citizens and government – strongly caution against such an approach. Lawmakers should seek less invasive, collaborative measures to address groundwater issues rather than provoking a constitutional clash over property rights.

Impacts on Rural Communities: Practical and Ethical Concerns

While the constitutional issues are paramount, the **practical impact of SB 1154 on Oregon's rural communities** is equally troubling. The bill's one-size-fits-all mandates would hit farmers, ranchers, and rural homeowners hardest, effectively punishing those who live outside urban utility networks. **Over 43 million Americans (including hundreds of thousands in Oregon) rely on private wells for drinking water**

kffhealthnews.org
. These well owners take on the responsibility and cost of maintaining their own water supply, often because public water service is unavailable or because they prefer self-sufficiency. SB 1154 treats these Oregonians not as partners in protecting groundwater, but as subjects of new regulation and enforcement.

Consider the scenario a typical rural Oregon family could face under this bill: Their home uses a well and septic system, as is common in the countryside. Their area is declared a "ground water management area" due to, say, nitrate pollution largely caused by large-scale agriculture in the region. Under SB 1154, **officials could come uninvited onto their land to inspect their well and septic**. Even if the family's own practices are sound, they might be ordered to upgrade or replace their systems. They could be **fined $2,000 (plus accruing daily fines) for any infraction** or if they fail to comply quickly. If they had plans to build a second dwelling for a relative on their property, the county could now **deny permits unless that new house hooks up to a municipal water supply** miles away – an impossible condition, effectively rendering the plan dead and reducing the property's usefulness. All this could happen even though **the family's well usage for domestic purposes is a legally established right**

law.justia.com
, and even though the contamination issue was not caused by them individually but by cumulative regional factors.

The **ethical concern** here is that SB 1154's burdens would fall disproportionately on those least able to bear them. Rural households often have lower incomes than urban ones, and farmers operate on thin profit margins. Imposing five-figure costs for new wells or connections, or potentially forcing families to abandon homes that cannot be affordably brought into compliance, is a recipe for economic hardship and community resentment. It also raises questions of **environmental justice**: rather than holding large polluters accountable, the bill could make small landowners pay the price. For example, in Oregon's Lower Umatilla Basin – an area with serious groundwater nitrate pollution – efforts have focused on **voluntary well testing and providing alternative water sources to residents** impacted by pollution, while regulators work on reducing farm runoff. SB 1154 would upend this cooperative model, replacing it with a punitive approach that could **"devastate rural communities…who depend on wells and septic systems"**. When a law provokes the very people it affects to say "our water, our land, and our rights are not for sale", policymakers should take heed.

Real-world examples from other states show the backlash that heavy-handed water regulations can generate. The National Ground Water Association notes that **mandatory "hook-up" laws**

forcing well owners onto public water systems – at personal expense – have been enacted in various forms across the country, and invariably they spark outrage

ngwa.org
. Homeowners see such requirements as government overreach, and in some states, legislatures have rolled back or limited these policies after public outcry. In fact, NGWA "strongly advocate[s] for a homeowner's right to decide how they source their water" and opposes mandatory well disconnections
ngwa.org
. If SB 1154 is passed, Oregon would be leaning into this contentious area, likely facing the same rural opposition and calls for repeal. Lawmakers should ask themselves: **Is it wise to force Oregonians to sacrifice their independent water supply and property rights, when less coercive alternatives exist?** Encouraging voluntary compliance, offering incentives for well upgrades or water-quality improvements, and targeting the root causes of contamination (e.g. agricultural runoff or faulty large septic systems) would likely yield better results without alienating rural communities.

Conclusion: Environmental Protection *Without* Overreach

Protecting Oregon's groundwater is a laudable goal – clean drinking water is essential, and no one disputes the need for responsible stewardship of our aquifers. However, **SB 1154 goes far beyond what is reasonable or fair in pursuing that goal**. By empowering warrantless inspections of private property and imposing draconian restrictions on private wells and land use, the bill prioritizes regulatory authority over constitutional rights. It risks violating the Fourth Amendment by sanctioning unreasonable searches, and it raises serious Fifth Amendment and Oregon property-rights issues by effectively taking private water access without compensation. Moreover, its practical effect would be to **burden and antagonize rural Oregonians**, undermining the very cooperation needed to address groundwater concerns. The likely outcome would be protracted legal battles and community pushback that delay environmental solutions – a lose-lose for Oregon.

Lawmakers have a duty to weigh the **intended environmental benefits of SB 1154 against its legal and social costs**. On close examination, the bill's approach is not only heavy-handed but also unnecessary. Oregon can strengthen groundwater protection through measures that respect property rights – for example, voluntary well monitoring programs, grants or cost-sharing for septic upgrades, enforcement focused on major polluters, and collaborative groundwater management that includes local stakeholders. These alternatives would avoid the constitutional pitfalls and respect the fact that most well owners are **responsible stewards of their water when given knowledge and support**. We do not need to sacrifice our fundamental rights to achieve clean water.

In summary, **SB 1154 should be rejected** as currently written. Its provisions regarding private property inspections, well regulation, and permitting represent an overreach that **violates the Fourth and Fifth Amendments** and contravenes Oregon's own traditions of strong property rights. The bill's punitive framework would sow mistrust and hardship in rural communities, for

uncertain environmental gains. Oregon's goals of groundwater quality can – and must – be pursued in a manner consistent with constitutional safeguards and the principle of fairness to those who live on and work the land. The Legislature is urged to oppose SB 1154 and instead craft solutions that truly balance environmental protection with the rights of Oregonians.

Sources:

- Oregon SB 1154 Draft Text (2025) – provisions on groundwater management areas and inspections.
- Public Testimony of Roxanne Formby opposing SB 1154 (April 2025) – detailing private well owner impacts.
- Public Testimony of Bill Royle (EFU-zoned farm owner) on SB 1154 – Fourth Amendment issues and farming restrictions
  olis.oregonlegislature.gov
  olis.oregonlegislature.gov
  .
- *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967) – warrant requirement for administrative inspections
  supreme.justia.com
  oregon.gov
  .
- Oregon Constitution, Article I, Section 9 – state protection against warrantless searches (see *State v. Dixson/Digby*, 307 Or. 195 (1988))
  law.justia.com
  .
- Oregon Revised Statutes § 537.545 – Exempt well uses as protected water rights
  law.justia.com
  .
- U.S. Constitution, Amendment V – Takings Clause (protection against taking property without just compensation)
  gao.gov
  .
- National Ground Water Association – on mandatory hook-up laws and opposition to forced well disconnection
  ngwa.org
  ngwa.org
  .
- KFF Health News, *Millions of Rural Americans Rely on Private Wells* (Oct. 24, 2023) – statistics on private well users in the U.S.

kffhealthnews.org
.