



OREGON
ASSOCIATION OF
NURSERIES

February 6, 2014

To: House Agriculture and Natural Resources Committee Members

RE: HB 4044 & HB 4064

Chair Witt, Vice Chair Esquivel, Vice Chair Frederick, and members of the Committee:



We are writing to voice our strong opposition to HB 4044 and HB 4064. We are a diverse group of stakeholders from Oregon's conservation groups, municipalities and water user groups with a common goal: to advocate for common sense water policies that move Oregon's economy, communities, and environment toward a secure water future.



As stated in Oregon's Integrated Water Resources Strategy (IWRS), Oregon water law recognizes that groundwater interacts directly with surface water and that this connection is a fundamental aspect of the State's water code. Groundwater and surface water are conjunctively managed in Oregon, and HB 4044 and HB 4064 would drastically inhibit the ability of the Oregon Water Resources Department (WRD) to manage groundwater. The IWRS further identifies the importance of groundwater investigations and makes additional groundwater studies a priority. These studies are done on a basin scale with the U.S. Geological Survey. To date groundwater investigations have been completed in three basins. WRD uses these studies to aid in their decision making process as well as assist state and local planning efforts.



We have grave misgivings about HB 4044 and HB 4064. These bills have the potential to subvert long-standing principles that are fundamental in Oregon's water laws to the detriment of all water users, including senior water right holders. Moreover, they would place undue economic hardship on WRD and impede its ability to protect surface and ground water rights throughout the state.



With many of Oregon's water sources fully appropriated, some water users have looked to groundwater to meet their water needs; however, this cannot be at the expense of surface water users that hold senior state-issued water rights. WRD works in conjunction with water users in the state to manage and maintain these rights and when needed, the WRD will shut off diversions by junior water right holders to meet the needs of senior water right holders. HB 4044 and HB 4064 would make this regulatory function extremely difficult by replacing WRD's current analysis of the effect of groundwater use on surface water supply with not only an extremely high evidentiary standard (clear and convincing evidence) but also by requiring the WRD to expend funds from its already constrained budget to pay up to three hydrologists (their own, the water users and a third agreed upon by the other two) to inspect and make a determination on every individual proposed or existing well. The new requirements are more stringent than anything currently in use by the WRD today, and would set an awful precedent for WRD water management efforts.



Additionally, in the event that WRD fails to meet the substantially higher burden of proof required under HB 4044 and HB 4064, WRD would be required to pay not only attorney fees and costs, but also the greater of either double the actual damages proven by the “prevailing party” (as defined in the bills) or \$5,000.00. WRD already struggles with budget concerns and to subject WRD to any amount of damages, let alone double actual damages, for simply attempting to protect senior water users and the public interest is not in the best interest of any water user, even those users these bills are attempting to protect.

HB 4044 and HB 4064 would effectively prohibit WRD from protecting surface water right holders from the effects of groundwater use on surface water supply. These bills would lead to greater costs to issue new surface and groundwater rights, longer processing times for new water rights, and diminished certainty for existing senior water users. Ultimately, HB 4044 and HB 4064 would make some standard water right transfers cost-prohibitive, and would enable junior ground water users to effectively circumvent over 100 years of established water law and management in Oregon.

As Oregon approaches what could be one of the most severe droughts in history, it is critical that WRD is able to regulate water rights in accordance with the long-standing principles of prior appropriation as embodied in Oregon water law.

We urge you to oppose HB 4044 and HB 4064.

Sincerely,

*Oregon Association of Nurseries
Oregon Water Resources Congress
The Freshwater Trust
The Nature Conservancy*

*Oregon Environmental Council
Special Districts Association of Oregon
The League of Oregon Cities*