DESCHUTES COUNTY CITIZEN'S ACTION GROUP

HB 4125 A MEASURED RESPONSE

MULTIPLE PROBLEMS

We certainly recognize that contaminated wells can be a problem, but many of the provisions of the bill are already addressed by the Oregon Health Authority and appear redundant. In addition, this bill collapses four problems into one solution. The result is a vague and ambiguous bill that doesn't seem to adequately solve any problem.

I. Education about water wells, their maintenance and care is, in our experience, a frequently neglected aspect of rural living, primarily because of a lack of outreach. We wish to point out, however, that this bill doesn't really appear to focus on education.

- Section 2(2)(c) and (4) are the only parts that address education.
  - The Oregon Health Authority already lists an extensive number of educational partnerships, such as Oregon State University Extension.
  - Collaboration authority under section 2(4)(a) is redundant because OHA already appears to have that authority.
  - These provisions are reactive because they only address wells that are contaminated.

Notifying a local public health agency when all the criteria under OAR 330-061-0324 are not met unnecessarily exposes a community to catastrophic economic impact.

- Education efforts appear punitive (section 2(4)(b) by notifying the local public health authority. Such a notification has the de facto appearance of declaring a public health concern (OAR 330-061-0324).
  - Notifying a local public health agency when all the criteria under OAR 330-061-0324 are not met unnecessarily exposes a community to catastrophic economic impact.
  - It appears that the Oregon Health Consultant already has the authority to contact the local public health agency if the criteria are met and in other situations, if warranted.
- We propose a broader approach:
  - Identify and fund programs to insure that all land owners with private water wells have access to education through outreach efforts of the OSU Extension service and other relevant partners.
    - Make available education materials to real estate agencies and require that all buyers receive a copy of applicable materials when there is a private water well or septic system.
    - Require that each real estate transaction where a private water well exists includes a copy of the well drillers log.
    - Provide education materials, through the OSU Extension service or otherwise, to all rural area Chambers of Commerce and like organizations for distribution.
    - Lastly, when a water well tests above limits for contaminants, require that the real estate agent or the laboratory provide a plainly written warning with a resource list that the owner can access. A direct referral to the local public health agency seems draconian, except when the home provides a state-based service, such as foster care.

II. The analysis and identification of areas with ground water contaminants has problems.

- Section 2(2)(a), (b) and (c) is redundant. According to OAR 330-061-0324, the Oregon Health Authority already appears to have authorization to analyze and identify contaminated areas.
- Section 2(1) is a toothless provision. There is nothing in the statute or OAR 330, division 61 that imposes a penalty for not reporting real estate well test data to the state. Our conversation with real estate agents indicates that reporting is sporadic and dependent on the agent.
  - This means that real estate well test data are not a reliable picture of possible contamination.
  - It is also our experience, after extensive manipulation of existing real estate well test data, that the current well test data are so unreliable as to be virtually unusable. Part of that is a lack of reliable data entry at the state level. We found duplicate entries for the same well, same date and time, often with transposed values.

    There is no provision in the bill to address data collection or to protect data integrity.
  - There is no provision in the bill to address data collection or to protect data integrity, however, OAR 330-061-0335 generally prohibits private well owners, real estate agents and other persons, without a knowledge of appropriate procedures, from data collection and handling.
- Section 4(1)(b) provides for free or low-cost tests of wells. A fact sheet from the Oregon Environmental Council (OHC) suggested that such tests were in the range of $25 to $50, but our sources tell us that testing that meets the criteria under Division 61 of the OAR will be in the range of $150 to $180 dollars or more if other contaminants are suspected.
  - Data collection are a key part of the cost. Procedures must be adhered to religiously or the data are invalidated.
  - It is our experience that just one negative article about contaminated ground water is enough to seriously impede real estate transaction for weeks. Distributing quick and dirty well test kits to people so they can sample their own well water will not give reliable results. Imagine what would happen if the media reported on the findings from such results about a local area?
  - We also anticipate that the state assumes considerable liability if quick and dirty test kits are used.
- The OHC fact sheet claims that this bill will require landlords to provide tenants with a recent well test, yet we can find no such provision in the bill.

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III. Developing policy through the use of real estate well test data are not an appropriate use of the data. Policy derived from data collection problems, reliability of existing data and the magnitude of ensuring rigor in the data collection process would be unethical. *("The authority shall provide the results of tests received by the authority under subsection (1) of this section and any information derived from the authority's activities under subsection (2)(a) and (b) of this section to the Department of Environmental Quality. The department may use that information in the administration of ORS 468B.150 to 468190. Upon request, the department shall assist the authority in fulfilling the authority's duties under subsection (2)(a) and (b) of this section." (section 2(3)).*

- Section 2(4)(a) of the bill allows collaboration with other state agencies, making this provision in the bill redundant.

In addition, there are other problems with using private water well test data.

- **Water wells are constructed to keep contaminants out.** By the time a pattern of contaminated water wells develops, it is too late. Policy based on water well contamination is a reactive policy.
  - Water wells deteriorate over time and require maintenance and/or replacement as they age.
  - Security of the water well depends on the well driller's skill in sealing the well.
  - Well depths can range from a few feet to thousands – obviously a well that is six feet deep is a greater problem than deep wells. In 2011, we analyzed the well driller's logs for all non-abandoned wells in South Deschutes County (n=7,988), the minimum depth was six feet and the median depth was 45 feet.
  - Permitting isn't always consistent, resulting in some wells inadvertently too close to septic system or other contaminating factors.
  - **It is our experience that most water wells do not show a statistical pattern with a discernable trend line.** We attribute that to the effectiveness of water wells in keeping contaminates out. For instance, analysis of well test data for South Deschutes County through September 26 of 2011 (n=1,723)

468B.160 Ground water management and use policy [DEQ].

(2) All state agencies' rules and programs affecting ground water shall be consistent with the overall intent of the goal set forth in ORS 468B.155.

(3) Statewide programs to identify and characterize ground water quality shall be conducted.

(4) Programs to prevent ground water quality degradation through the use of the best practicable management practices shall be established.

(5) Ground water contamination levels shall be used to trigger specific governmental actions designed to prevent those levels from being exceeded or to restore ground water quality to at least those levels.

(ORS 468B.160(2),(3),(4) & (5))

Water wells are constructed to keep contaminants out. By the time a pattern of contaminated water wells develops, it is too late. Policy based on water well contamination is a reactionary policy. Analysis of well test data for South Deschutes County indicated that the median average was only 0.260 nitrates per ml/L.

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indicated that the median average (middle and most stable value) was only 0.260 nitrates per ml/L.

- The better approach is to partner with the Oregon State University Institute for Water and Watersheds and develop a master plan to test areas with suspected problems for contaminants without waiting for a well test pattern to develop. Targeting areas with shallow wells and by age of the well should provide clues for research. Such research would not rely on private water wells, but would use rigorous data collection according to proven scientific principles. That data would be the appropriate tool for policy development, like management areas. Analysis of real estate well test data could suggest the need for research, but should never be used to drive policy.

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IV. We support the financial provisions, but with considerable misgivings.

- Low income is a nebulous term. We fear that the criteria will end up excluding many who need the help because, it like a rigid provision in the statutes for the Department of Environmental Quality, will be too low.
- Rental owners also seems nebulous. Without a provision in the law requiring well testing of rental property and a definition that addresses the landlord's ability to remedy a problem well without assistance, we see this provision being abused.
- Lastly, we are apprehensive about the cost and, given the reservations about identification and policy aspects of the bill, feel this area needs careful vetting. It's difficult to estimate the cost of testing all wells section 4(1)(b) and the OEC fact sheet appears to suggest.
  - The Oregon Health Authority website on Domestic Well Safety estimates that approximately 23% of all Oregonians rely on domestic wells. If each household were an equal average number of 2.38 persons per household, that would result in 391,240 households served by domestic water.[1]
  - The only logical approach from a cost-based perspective would be to test on an as-need basis. To test even 10% per year would be prohibitively expensive, assuming the testing was free. (Poverty level for individuals was 24.8% and for families was 24.3%, suggesting that the cost of well tests for non-real estate sales could be cost prohibitive for a sizeable portion of the population.[2])

ESTIMATED WELL TESTING COSTS

Testing Percentage	Cost
100%	$58,686,000
10%	$5,868,000
5,000 homes	$750,000

[1] United States Census Bureau, American Fact Finder, 2014 American Community Survey 1-Year Estimates for total population in Oregon with basic housing counts. http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_1YR/DP05/0400000US41 (Total population divided by total households, then 23% of the total population divided by the average household size.)

[2] United States Census Bureau, American Fact Finder, 2014 American Community Survey 1-Year Estimates for poverty levels by individuals or families. http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_1YR/S1701/0400000US41

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