



HB 4137
Testimony of WaterWatch of Oregon
Submitted to the House Committee on Rural Communities, Land Use and Water

February 10, 2016

Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. We work to ensure that enough water is protected in Oregon's rivers to sustain fish, wildlife, recreation and other public uses of Oregon's rivers, lakes and streams. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws on these resources.

WaterWatch urges the Committee to oppose HB 4137

HB 4137 undercuts the state's longstanding effort to manage surface water and groundwater conjunctively. The Oregon Legislature recognized that surface waters and ground waters are integrally connected as early as 1955, when it passed the Groundwater Act.

Where Oregon has failed to sustainably manage groundwater by recognizing the close connection between groundwater and surface water, trouble has followed. In the Umatilla Basin, aquifers dropped as much as 500 feet, causing harm to streams and farmers. In the Klamath Basin, in areas of the Willamette Valley and elsewhere, similar problems have arisen from the unsustainable use of groundwater. In recent years the state has partnered with the USGS to produce extensive studies to help them better manage Oregon's groundwater resource so as to avoid future water crises. HB 4137 will undercut that important work.

HB 4137 turns back the clock of conjunctive water management, ignores the realities of peer reviewed science and hydrology, and could end Oregon's attempt to manage groundwater sustainably. This bill, if enacted, will seriously harm senior surface water and ground users, including farmers, cities and fish and wildlife and will cause even more conflict over water in this state.

Following are some, but not all, of WaterWatch's concerns with this bill.

1. HB 4137 would make it difficult, if not impossible, for the state to protect farmers, cities, industries and instream users that hold senior surface and ground water rights. The bill imposes a new standard of review for the state's review of new groundwater right applications. The new "clear and convincing evidence" standard and its associated definition imposes standards and processes that will make it very hard for the state to deny (or even condition) new groundwater applications that could harm existing surface water right holders including farmers, cities, industries and instream uses.

2. HB 4137 creates an inequitable standard that prefers one class of water user over all others: HB 4137 prohibits the state from denying a new water right application unless it can provide "clear and convincing evidence" that there is interference with superior right (senior surface water or groundwater rights). On the flip side, the bill does not require the state to provide "clear and

convincing evidence” that the use will NOT harm senior water users or public values when they approve a new groundwater right. This is not equitable. Frankly, if the legislature really wanted to enact a law that would help Oregon more sustainably manage its groundwater resources it is the latter standard that should be adopted.

3. HB 4137 defines “clear and convincing evidence” so narrowly that the OWRD would essentially be banned from relying on existing peer reviewed science in their decision-making.

As noted, HB 4137 prohibits the state from conditioning, limiting and/or denying new groundwater applications to protect senior water right holders unless the state can provide “clear and convincing evidence” that interference will occur. HB 4137 then goes a step further by defining what clear and convincing evidence must include, including mandating that the state collect extensive and costly field data and measurements specific to exact well locations. As noted, the state has entered into partnerships with USGS to develop comprehensive basin studies. The resulting studies in the Klamath and Deschutes basins are the result of years of peer reviewed research and robust study, and are an invaluable tool for water management in this state. However, these studies do not evaluate each and every well site in their respective basins. Thus, under the bill’s definition of clear and convincing evidence, the state would essentially be banned from using these important tools in their decision-making.

4. HB 4137 undermines impartial scientific review by the OWRD: HB 4137 forces the OWRD, in groundwater permitting decisions, to use a hydrologist mutually chosen by OWRD and by a hydrologist chosen by the party seeking the permit. This imports improper and costly influence by the permit seeker into OWRD’s analysis, as the bill also forces OWRD to pay for the selection process and to pay the selected hydrologists’ fees. OWRD has a top-notch and well-respected groundwater staff and this is a step backwards for good, and impartial, science. This also shifts substantial and unnecessary costs onto Oregon taxpayers. If the parties seeking to secure water permits want to hire a hydrologist to refute an agency finding or otherwise influence agency decisions, they need to do so with their own money.

5. HB 4137 appears to be trying to limit regulatory power of the state. The WRD has issued thousands of water rights across the state with limitations and/or conditions. These permit holders agreed to conditions making clear they would be regulated under certain circumstances. Users had full notice of this. HB 4137 appears to not only be restricting the ability to deny/condition new groundwater permit applications, but the intent appears to also be attempting to limit regulation of groundwater wells in favor of senior groundwater or surface water rights.

6. HB 4137 undermines the public ownership of Oregon’s waters: Under Oregon law, all water within the state from all sources of water supply belongs to the public. ORS 537.110. Individuals can apply to the state for a water right to “use” this water, but this use is subject to longstanding statutory protections of the public interest and senior water right holders. HB 4137 would grant a nearly unfettered right to use groundwater, regardless of the effect on the public or other water right holders. In essence, it elevates the status of groundwater right applicants above existing water users in Oregon, regardless of public ownership of this precious resource.

Conclusion: The Legislature recognized the importance of sustainable management of Oregon’s groundwater resources as far back as 1955. HB 4137 is inconsistent with nearly 60 years of progress to better manage our state’s water resources. WaterWatch urges the Committee reject HB 4137.

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