

Deschutes County Citizen's Action Group

Ms. Beth Reiley
Administrator
Senate Committee on Energy and Natural Resources
Oregon State Legislature
900 Court St
Salem, Oregon

February 7, 2016

Re: 1563

Dear Chair Chris Edwards and Committee Members,

Thank you for the opportunity to provide testimony concerning Senate Bill 1563.

The Deschutes County Citizen's Action Group, or CAG, supports this bill. We commend the sponsor, Senator Roblin, for his efforts to address the need of financial assistance to help disadvantaged homeowners repair or upgrade their septic systems.

In 2013, CAG, with the help of Rep. McLane, Rep. Buckley, Sen. Edwards and several other legislators, successfully required that DEQ discover what other states were doing to help disadvantaged homeowners when they had to upgrade or repair their septic systems. When DEQ claimed that Oregon was doing what other states were doing, our own survey and report (attached) demonstrated otherwise.

The evidence shows that 18 states, a sizable minority of the nation, found a way to protect their groundwater without imposing an undue burden on the homeowner when sewers were unavailable. These states used creative ways to alleviate a threat to the environment and a hardship to the homeowner (p. 4).

We hope this bill will provide much needed assistance to disadvantaged homeowners. We encountered horror stories in the La Pine Basin, with people losing their life's savings and some their homes. We only wish that section 3(2) did not mandate that the mortgage holder subjugate the mortgage to the loan from the Onsite Septic System Loan Fund as we fear that will substantially reduce the number of applicants served.

Respectfully submitted,



John Huddle, EdD
President

Report to the House Energy and Environment Committee
by
Deschutes County Citizen's Action Group (CAG)
May 30, 2014

Introduction

Since the early 1980's, state and local government conducted a plethora of groundwater protection, or septic system, studies in the La Pine Basin. The Basin extends from roughly Lava Butte south of Bend to Gilchrist in Klamath County, from Newberry Volcano to the east and to the west side of the Upper Deschutes River, an area of roughly 400 square miles, with approximately 15,000 platted residential lots, most platted before Senate Bill 100. Estimates of the amount of taxpayer money spent on those studies range from a conservative \$20 million, upwards to \$30 million. There is little or nothing to show for these expenditures and no verifiable health risk to the Basin.

Data

Private water wells in the Basin are generally shallow (range = 6 to 1440 feet), with the mode at 40 feet deep and the median at 45 feet. The median depth to water, according to well driller logs, is 27 feet, with the static water depth at 19 feet. According to the real estate well test data, the median NO₃ value was 0.351. The most recent well test data, conducted by DEQ in 2011, was inconclusive². A groundwater assessment conducted by the USGS, intended to be the definitive study for the Basin, is questionable: (a) It appears to exaggerate the nitrate loading per household, compared to existing scientific data and comparable studies by other states. (b) It also appeared to exaggerate the occupancy rate by relying on U.S. mail delivery and information from the La Pine Chamber of Commerce, instead of more reliable data from the 2000 U.S. Census and the electric utility company. (c) The USGS computerized model generated data that the authors attempted to compare to the 2000 DEQ well test and existing real estate well tests. However, the 2000 well test mixed water wells with wells drilled at the end of drain fields, with the highest nitrate level in well number 1227 (25.9 mg/l NO₃), a well drilled at the end of a drain-field³. By the number of data points, compared to data over a longer time span, the real estate well data could not have been cleaned of duplicate entries. When the anomalies are removed from the comparison samples, the computerized model data are no longer comparable, making the USGS report highly suspect⁴. In addition, the USGS has never released the peer-review of the study, despite numerous requests from CAG. While there are wells with elevated NO₃ levels, no study, to date, focused on why those wells were elevated. The result is a hodge-podge of inconclusive data, well-earned public distrust and a lack of definitive answers.

Public Trust

“As of now, I and a hundred or so neighbors in this area are required under force of law to each spend thousands of dollars for installation and maintenance, even though the study shows our area is not now polluting and will not contribute to pollution in the future. Many more may be in the same situation because of the somewhat arbitrary boundaries. We are now saddled with a

1 Groundwater Protection and the La Pine Basin, John Huddle, <http://cagg.us/projects/library/>

2 Bulletin: Nitrate Levels are Fluctuating, Scott Hammers, February 5, 2012

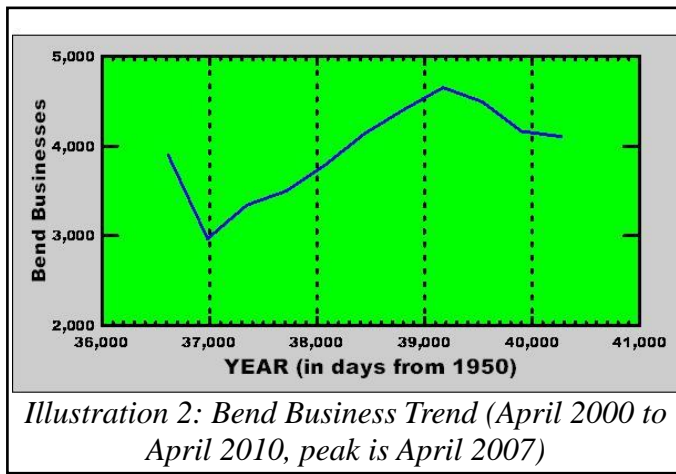
3 See <http://cagg.us/projects/groundwater-protection/> for a full discussion, including copies of relevant documents.

4 Groundwater Protection and the La Pine Basin, John Huddle, <http://cagg.us/projects/library/>

poorly executed law based on a flawed and incomplete study. We have little assurance that the proposed solutions will guarantee future good water. (Bend Bulletin, Floyd Dominick, March 3, 2009)” Mr. Dominick's statement sums up complaints heard, almost unabated, half a decade later. The public just does not trust DEQ or Deschutes County. Common complaints are the arbitrary and obtuse methodology to determine the placement of alternative treatment technology, or ATT systems, in addition to the complexity and the cost of ATT's. Public reaction to the fact that DEQ is an ex-officio member of the Oregon Wastewater Treatment Association board of directors or that a county regulator also sits on the board, is generally one of disbelief and negative.

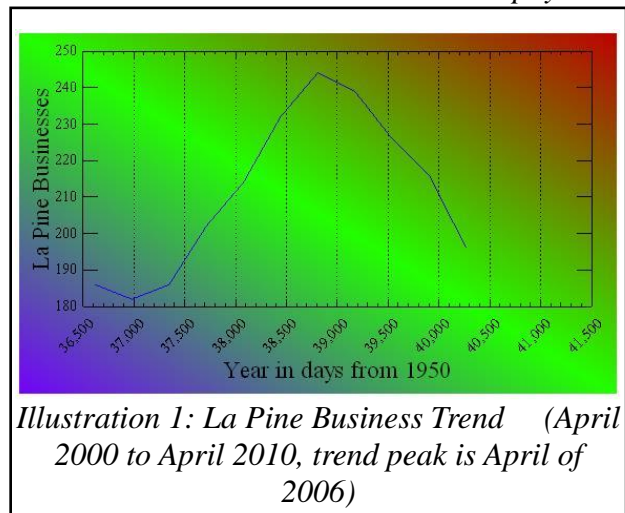
Cost

Initially, the proposal for the Basin was to transition to alternative treatment technology, or ATT, septic systems, because such systems were cheaper than sewerage, that was estimated in 2000 at



\$200 million⁵. ATT systems, however, have not proven a successful solution for several reasons, including the cost. Between 1999 and 2005, the La Pine National Demonstration Project, with a budget of \$7.35 million and a total with matching funds of \$10.45 million⁶, spent an average of \$39,392⁷ on each of 49 innovative septic system installations or upgrades without regard or solicitation for homeowners who lacked the financial ability to purchase such systems on their own. “The primary selection criteria turned out to be the physical

characteristics of the site.”⁸ In comparison, the average estimated cost to upgrade a septic system to an approved innovative system, or alternative treatment system (ATT) in the Basin is about \$18,000. Reportedly, as ATT systems were required by DEQ and Deschutes County, homeowners, who could not afford the required ATT upgrade, walked away because the home was worth less than the existing mortgage, or potential home buyers found the cost of an upgrade economically unworkable and chose not to buy or build. The number of La Pine businesses trended sharply downward in 2006,



5 Bulletin: Capitol Touts La Pine's Land Solutions, James Sinks, September 29, 2000

6 EPA Assistance Agreement, October 1, 1999 and supplemental budget information

7 La Pine National Demonstration Project, Final Financial Report by Task, Oregon Department of Environmental Quality.

8 La Pine National Demonstration Project, Final Report, Barbara Rich, p. 4-2

a year before the Great Recession, while the trend in the rest of Deschutes County began a year later in 2007⁹.

Assistance

Oregon has few procedures in policy to help low-income individual homeowners repair or improve their onsite systems and other options are spotty or limited.

- ◆ Oregon has a limited process to grant variances due to age, bad health or disabilities with a waiver of variance fees for those age 65 and older who have an annual household income of \$15,000 or less. The variance is not restricted to the elderly, but the variance fee is limited to the elderly.¹⁰
- ◆ Deschutes County¹¹ has a Pollution Reduction Credit program, or PRC, to help low-income homeowner's upgrade their standard system to an ATT system. The program provides rebates and low-interest loans to homeowners who qualify. Since 2010, the program has provided 60 rebates and 8 low-interest loans, with \$79,438 remaining in the Fund. There is considerable debate as to the viability of the PRC program, which requires that a developer in the “New Neighborhood” project purchase credits from landowners in the Basin, who agree not to seek a septic permit for their property, or pay a PRC price per permitted lot to the Fund. While the potential to assist homeowners exists, there are problems, such as funding dependent on the real estate market, a loan process that some report as cumbersome, and the annual expense of maintaining ATT systems. In addition, the intent of the program is to help fund ATT upgrades, not repair existing standard systems.
- ◆ The United States Department of Agriculture Rural Development has a Section 504 program that provides loans to make general repairs to improve or modernize an eligible property. The program also has grant funds for repairs and improvements to remove health or safety hazards or make them accessible and useable for household members with disabilities. Grants are limited by income and age. Loans are only available to those with low-income and limited credit ability. The loan and grant funds are subject to availability and often have a waiting list¹².

Survey Findings

CAG surveyed all 50 states and the Canadian provinces about financial assistance to homeowner's with onsite septic systems. Thirteen responded, or about 22 percent, of those who responded, three states had options available for the individual homeowner or the affected community. New Hampshire indicated that they have programs, including permit waivers and subsidies. Massachusetts provides financial assistance to communities for the repair and replacement of septic systems, with 2 percent low-interest loans to individual homeowners, that

9 U.S. Economic Census, Trend Analysis, Mann-Kendall statistic with slope estimator at the .95 confidence interval

10 ORS 454.657 & 454.662

11 Deschutes County: Environmental Soils, Financial Assistance Opportunities for Onsite Wastewater System Repairs and Upgrades, <http://www.deschutes.org/Community-Development/Environmental-Soils/Forms-and-Brochures/Financial-assistance-USDA-NeighborImpact-handout-0.aspx>

12 United States Department of Agriculture: Rural Development, http://www.rurdev.usda.gov/HAD-RR_Loans_Grants.html

are not income-restricted. South Dakota provides funds for sewer connection or other costs, but only to communities that qualify for a sanitary district.

Due to the survey response rate, CAG then reviewed all 50 state policies concerning financial assistance for onsite systems, using the EPA Clean Water State Revolving Fund contact portal¹³. Out of that analysis, 18 states, or 36 percent, have programs in place to assist individual homeowners replace septic tanks, repair drain fields and upgrade the onsite system. Financial assistance ranges from outright grants for low-income homeowners to grants and low interest loans, subsidized and made directly through the lender of the homeowner's choice.

State management of these programs varied. Forty percent utilized a private lender that was backed and secured by the state. An additional

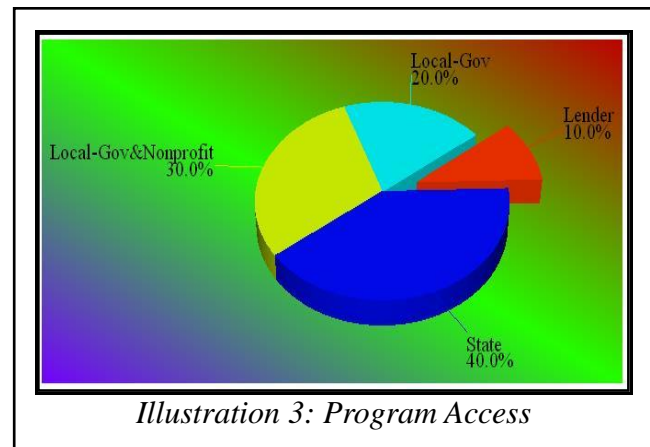


Illustration 3: Program Access

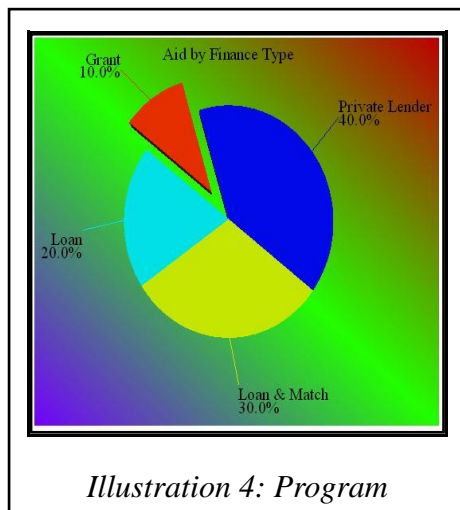


Illustration 4: Program

30 percent of these

states required a match from the homeowner or another entity, ranging from 25 to 75 percent, such as California, which required a 75 percent match. Twenty percent did not require a match. Two states, Maine and Utah indicated grants were a possibility, with Utah offering both grants and loans.

Access to the programs also varied. Forty percent of the states had a direct program to the homeowner, while ten percent used lenders as the program gatekeeper. Thirty percent of the states required a local government entity to act as gatekeeper and to manage the program, while 20

percent used a combination of local government or a nonprofit entity.

Homeowner's were able to use these loans or grants for a range of issues, from repairs to installation of new systems. Interest rates ranged from 1 to 3.75 percent, with a range of repayment plans of up to 30 years. Most utilized the EPA 319 program that is designed to address nonpoint source pollution, revolving Clean Water funds or state funding sources, such as general obligation bonds. A few programs included onsite systems with other sewage treatment programs, but most desegregated individual homeowner's as a separate category of need.

The evidence shows that 18 states, a sizable minority of the nation, found a way to protect their groundwater without imposing an undue burden on the homeowner when sewers were

13 United States Environmental Protection Agency: Clean Water State Revolving Fund Regional and State Contacts, http://water.epa.gov/grants_funding/cwsrf/contacts.cfm

unavailable. These states used creative ways to alleviate a threat to the environment and a hardship to the homeowner.

Recommendations

1 Restore credibility:

- 1.1 DEQ and county regulators should not hold close-bosom relationships with the industry they are to regulate. Such a relationship gives the public the impression of collusion and favoritism.
- 1.2 The La Pine Basin needs a scientifically, independently designed, monitoring well system, preferably designed and monitored by a research institution, such as Oregon State University or Pennsylvania State University. Throw out the USGS model and start over.
 - 1.2.1 Recommend implementation of solutions based on the data – suggestions, like sewer districts, etc., must be based on rigorous scientific findings.
- 1.3 Decision making must rely on rigorous scientific data that is shared with the public in understandable language.

2 Provide flexible solutions that are not perfection-bound:

- 2.1 Grandfathering of existing septic systems with a robust repair program to replace steel tanks and extend leach lines, etc.
- 2.2 Development of a range of acceptable septic systems, including low-cost ATT systems, using technology already developed around the world, when possible.
 - 2.2.1 Align acceptable BOD rates with reality and the developed world, not just the lowest possible nitrate-reduction rate possible.
- 2.3 Incentives to upgrade to systems with an affordable cost-benefit ratio
- 2.4 Cluster system or sewer if needed (and the data clearly supports) or desired with technical and financial assistance at both the state and local level.
- 2.5 Follow New Jersey model, grandfather existing and require sewer for new subdivisions (if ever allowed).

3 Utilize a multiplicity of financial assistance:

- 3.1 Modernize and upgrade existing statutes, where needed, to allow flexibility in the use of funds, provide direction to DEQ and allow expanded exceptions for the economically disadvantaged.
- 3.2 Use EPA Cleanwater funds, such as the section 322 and 319 (nonpoint) programs, to assist individual homeowners.
 - 3.2.1 Use flexible fund management solutions, such as
 - 3.2.1.1 Grants to the low-income
 - 3.2.1.2 Loans and grants administered by private lenders, such as the Iowa model where private lenders, who have deposits by the State, make guaranteed low-interest loans rather than using a nonprofit or local government entity.

3.2.1.3 Clearly publicize the financial assistance options to all.

- 4 Contract with OSU or other education source to provide technical assistance to homeowners with private wells and onsite systems. Most agricultural colleges have such an extension service, but Oregon's appears severely underutilized, perhaps due to funding? DEQ and the county need to step out of the education business, but ensure that it is being done.