

Testimony of Jerry Schmidt
SB 5542
Government Relations
Oregon Ground Water Association
Before the Joint Ways and Means Sub Committee on
Natural Resources
April 13, 2017

The men and women who are members of the Oregon Ground Water Association take a very active role in the development and protection of our state's ground water. We would like to make the following points regarding the budget for the Water Resources Department.

1. The Department needs to expand its ability to collect, analyze, and allow public access to ground water data, specifically an expansion of their Observation Well Network.
(See Attachment)

2. Proper well construction is key to the protection of ground water. Our Association was active in the implementation of the well inspection program which is funded entirely by start card fees. This program needs to have shared funding from the General Fund to help support the expenses of the well inspection program.
(See Attachment)
 - Include review of all well logs for compliance
 - Provide training for well inspectors

3. Continue to enhance the coordination with the public, the Water Resources Commission and the legislature to implement the intent behind the management of our state's ground water resources with particular attention to ORS 537.780.
(See Attachment)

Our members support a realistic budget to support the activities of the Water Resources Department and to enable them to execute a comprehensive water management policy with the data necessary to support their findings. To accomplish this goal there needs to be adequate funding from the state's General Fund. Since the water belongs to the state then the management expenses need to be shared by the public.

The History and Development of Start Card Fund

Background

The Department is required by statute to collect and track fees collected prior to beginning the construction of a well. These well start card fees are limited (by statute) to costs associated with the construction and inspection of wells and a limited amount of related administrative expenses. The law (537.762) requires that the State Treasury shall create a fund to deposit monies that are collected from “start cards” identified as the Water Resources Department Operating Fund (537.763) and it shall be used for the expenses connected with the well construction program. The statute also prescribes that the following limits apply to this fund: administrative costs-not more than 5%; technical costs-not more than 20%; and field costs-not less than 75%.

The history of the start card dates back to 1989 when the Legislature established a fee to fund a state wide well inspection program and the original legislation also set limits to prohibit local governments from adopting ordinances to regulate well construction. The legislative record reflects the issue that water management was a state-wide issue. The language was also provided to protect well owners so they would not be subject to multiple levels of regulation and fees from different governmental entities. The fee at that time was set at \$75 dollars and was changed in 2003 to \$125 and then again in 2009 to \$225.

The start card fee has a history of supporting regional well inspectors, a lead well construction specialist, staff hydrogeologists, a data- entry employee, and a portion of the compliance section manager’s salary. Some of the fees also have been used to pay for administrative support including equipment purchase.

Further modification was done to ORS 537.762 in 2009 with the introduction of HB-2232. Specifically this piece of legislation required those persons constructing geotechnical holes to submit a report to the Water Resources Department within 30 days of drilling. This legislation also set in statute a recording fee of \$25 for each report and a \$10 fee for each subsequent hole. The fees were directed to a WRD Geotechnical Fund and required the department to spend the funds on the duties, functions and powers related to the construction of geotechnical holes. These holes are constructed to evaluate subsurface data including the testing of ground water and the soils for the presence of contaminants.

Oregon Water Resources Department State Observation Well Network

History

The current Water Resources Department's State Observation well network began in the late 50's or early 60's. At this point it was a series of wells scattered around Oregon that were being studied by the United States Geological Survey (USGS). Sometime in the 60's the network was taken over by the Oregon Water Resources Department (OWRD) and by 1973 there were over 800 wells in the system. By the late 70's the State Observation Well Network was overhauled and the number was reduced to the neighborhood of 350 active sites.¹ The reasons given for the reduction were; (1) wells on the network were giving duplicate data, (2) some wells did not have good documentation and (3) because of budgetary problems resulting in maintaining the larger database. Most of the wells that were originally put on the system were there because of a perceived problem or because the OWRD had received a request from another agency or from citizens in the area. After the reduction of the program in the late 70's the number appears to remain fairly stable through the 1980's. The 1987-88 Biennial report² of the Water Resources Department showed the program with approximately 350 wells in the network. Wording in the 1987 report (and later reports) indicate in the narrative that the OWRD possibly had further data on a larger number. By the early 90's³ the Department had begun a statewide assessment of groundwater conditions. They said that central to the effort was an overhaul of the statewide observation well network and that the Department intended to screen the existing State Observation Well inventory and then enter new wells into the program where coverage was inadequate. Despite the call for increasing the inventory as of the date of the last Biennial Report⁴ in 1995 the Department still was quoted as maintaining a network of 350 observation wells. Budget documents from that period support that the Department was shifting its focus from using long term hydrographs (compiled through the State Observation Well Network) to a more extensive use of computer modeling.

¹ Deposition of Fred Lissner 10/30/97, Head of the Ground Water Section WRD, Jackson Co Circuit Court case No. 95-5149-E-2

² Biennial Report Water Resources Dept. January 87 to December 88, Figure 9, page 40.

³ Biennial Report Water Resources Dept. January 89 to December 90, page 15.

⁴ Biennial Report Water Resources Dept. January 93 to December 95, page 40.

In the 2007-09 Governor's recommended budget the Department identified the bench mark for maintaining the State Observation Well Network at 350 wells. The budget document goes on to state that "as wells are dropped from the well network, they should be replaced with other monitoring locations..."

Current Activities

When looking at the Department's current website (under the ground water section) a down load could be made of all the existing water level data to find over 3,000 listed observations wells. Within this inventory are the current observation wells in the active State Well Net program which the Water Resources Department has identified in the Key Performance Measure #5 as 378. While this number is listed as the active wells in the program not all of these wells are current and some lack data entry for a variety of reasons. The wells in the State Well net program are monitored by Oregon Water Resource Department personnel and their staff has indicated that they also take water level measurements on additional wells that are not in the State Observation Well Network.

The Department also indicated about 1/3 of the wells listed on their web page have a condition on the water right that require water level measurement (usually by persons other than OWRD staff) and that the information is required to be submitted to the Department but not all that data has been entered into the system for access by the public.

537.780 Powers of Water Resources Commission; rules; limitations on authority.

- (1) In the administration of ORS 537.505 to 537.795 and 537.992, the Water Resources Commission may:
- (a) Require that all flowing wells be capped or equipped with valves so that the flow of ground water may be completely stopped when the ground water is not actually being applied to a beneficial use.
 - (b) Enforce:
 - (A) General standards for the construction and maintenance of wells and their casings, fittings, valves, pumps and back-siphoning prevention devices; and
 - (B) Special standards for the construction and maintenance of particular wells and their casings, fittings, valves and pumps.
 - (c)(A) Adopt by rule and enforce when necessary to protect the ground water resource, standards for the construction, maintenance, abandonment or use of any hole through which ground water may be contaminated; or
 - (B) Enter into an agreement with, or advise, other state agencies that are responsible for holes other than wells through which ground water may be contaminated in order to protect the ground water resource from contamination.
 - (d) Enforce uniform standards for the scientific measurement of water levels and of ground water flowing or withdrawn from wells.
 - (e) Enter upon any lands for the purpose of inspecting wells, including wells exempt under ORS 537.545, casings, fittings, valves, pipes, pumps, measuring devices and back-siphoning prevention devices.
 - (f) Prosecute actions and suits to enjoin violations of ORS 537.505 to 537.795 and 537.992, and appear and become a party to any action, suit or proceeding in any court or before any administrative body when it appears to the satisfaction of the commission that the determination of the action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525.
 - (g) Call upon and receive advice and assistance from the Environmental Quality Commission or any other public agency or any person, and enter into cooperative agreements with a public agency or person.
 - (h) Adopt and enforce rules necessary to carry out the provisions of ORS 537.505 to 537.795 and 537.992 including but not limited to rules governing:
 - (A) The form and content of registration statements, certificates of registration, applications for permits, permits, certificates of completion, ground water right certificates, notices, proofs, maps, drawings, logs and licenses;
 - (B) Procedure in hearings held by the commission; and
 - (C) The circumstances under which the helpers of persons operating well drilling machinery may be exempt from the requirement of direct supervision by a licensed water well constructor.
 - (i) In accordance with applicable law regarding search and seizure, apply to any court of competent jurisdiction for a warrant to seize any well drilling machine used in violation of ORS 537.747 or 537.753.
- (2) Notwithstanding any provision of subsection (1) of this section, in administering the provisions of ORS 537.505 to 537.795 and 537.992, the commission may not:
- (a) Adopt any rule restricting ground water use in an area unless the rule is based on substantial evidence in the record of the Water Resources Department to justify the imposition of restrictions.
 - (b) Make any determination that a ground water use will impair, substantially interfere or unduly interfere with a surface water source unless the determination is based on substantial evidence. Such evidence may include reports or studies prepared with relation to the specific use or may be based on the application of generally accepted hydrogeological principles to the specific use.
- (3) At least once every three years, the commission shall review any rule adopted under subsection (2) of this section that restricts ground water use in an area. The review process shall include public notice and an opportunity to comment on the rule. [1955 c.708 §32; 1981 c.416 §7; 1985 c.673 §73; 1989 c.833 §60; 1995 c.549 §2]