



**Testimony of
Donovan Sippel, President
Michael Klobes, Government Affairs Committee Chair
OREGON GROUND WATER ASSOCIATION
Before the House Committee on Natural Resources
In Support of HB 2331-2
April 4, 2019**

Dear Chair Witt and Committee Members:

Thank you for the opportunity to provide testimony in support of HB 2331-2. This bill, as amended, would clarify that the Water Resource Commission's powers to enforce well construction standards against a well constructor are limited to a three-year period following the submission of the well log, provided the well log contains no material misrepresentation. The bill would also convene a task force consisting of Water Resources Department staff, licensed well constructors, and other knowledgeable stakeholders to proactively address Oregon's well construction program challenges and opportunities.

The Oregon Ground Water Association is a nonprofit membership organization composed of water well constructors, well pump and water treatment contractors; hydrogeologists and engineers; manufacturers and suppliers of equipment; and other various trades engaged with the groundwater resource. The mission of the Association is to promote sustainable groundwater development and management for maximum beneficial use without waste or contamination. Organized in 1949, the Association has sought to encourage responsible stewardship of the groundwater resource with its leadership in industry education and legislation.

The Association has been integral in the development of past legislation and Department protocols including:

- Creating the water well construction start card fund and well inspection program (ORS 537.762)
- Ensuring consistent groundwater resource management by keeping authority and jurisdiction at the state level (ORS 537.769)
- Developing continuing education requirements for water well constructors
- Digitizing historical well logs and the creation of an accessible and searchable online well log database

How did we get here?

Over the years, the Association has expressed growing concern regarding the absence of a proactive and thorough technical review process for well logs submitted to the Department. With some exceptions, the Department's current process includes only grammatical and form completeness review. Consequently, non-compliant wells are routinely overlooked, creating a serious challenge for the Department and endangering the groundwater resource.

Presently, the Department assumes authority to hold a well constructor indefinitely liable for any construction deficiencies, so long as the constructor remains licensed. The Department does not acknowledge any statutes of limitation that may exist and has historically initiated enforcement action on well constructors decades after a well is completed. In addition to the contractor, the Department also asserts that well owners are responsible for wells on their property regardless of whether the well was inspected. Often, ownership has changed hands multiple times and the current owner may unwittingly inherit a potential liability.

The Department recognizes the need for improvement in the well construction program, including those outlined in the 2016 Secretary of State Audit, the 2017 Integrated Water Resource Strategy, and the Department's 2019-2024 Strategic Plan. However, the Department reports that without further investment in the program and policy changes, they are unable to ensure that wells are constructed properly. At their current funding level and fee structure, the Department has a goal of field inspecting no less than 25% of newly constructed wells¹.

A user currently pays fees totaling \$525, some of the highest fees in the western states, to have an exempt-use well constructed. The breakdown of these fees is as follows:

- \$225: Start Card Fees
 - Monies are directed to the Water Resource Department Operating Fund (ORS 537.763) for the management of the well construction inspection and enforcement programs.
- \$300: Exempt Use Well Fee
 - Monies are directed to the Water Resources Department Water Right Operating Fund (ORS 536.009) for the purposes of evaluating and conducting ground water supplies, carrying out ground water monitoring, processing ground water data and the administration and enforcement of the exempt use well recording program.

Only 43% of the user fees collected are specified for the well construction program. The remaining 57% are directed to other program areas. Users expect that their \$525 payment to the Department will result in some level of an inspection of their newly constructed well in a timely manner, which could be easily and economically accomplished with a technical review of their filed well log.

Why HB 2331-2?

It is the Association's position that the Department's lack of program capacity should not result in an indefinite and undue liability on the well constructor or well owner.

The Association does not believe a field inspection goal of 25% on newly constructed wells is adequate to protect the groundwater resource, or that such a goal conforms with statutes directed to the Department under ORS 536, 537, or 468 in protecting the welfare of the public with the prevention of contamination or misuse of the groundwater resource. The Association's ultimate hope is that in addition to field inspections, this legislation would encourage the Department to conduct a timely review of all well logs for compliance and promote timely submission of well logs by constructors, thereby protecting the groundwater resource and the public.

The Association believes that the Department's failure to acknowledge a statute of limitations on well construction has resulted in a low priority for well log technical review. Therefore, this bill clarifies a three-year time limit on well construction enforcement, from the date of well log submission. This will safeguard the liability of the well constructor, result in timely corrections of any deficiencies, and ultimately protect the well owners and groundwater.

Originally, the Association sought to establish time limitations on enforcement actions by the Department on wells in the past, present, and in the future with this bill. After discussion with the Department and identifying potential unintended consequences, amendments were made to the original bill. The amended bill now focuses on only newly constructed wells and establishes a task force to ensure ongoing communication between industry and the Department over the issues omitted from the original bill.

HB 2331-2 Details

HB 2331 was introduced on behalf of the Association to protect the groundwater resource by encouraging the Department to conduct a timely technical review of each well log at the time it is submitted. This bill effectively clarifies the Department's enforcement period in hopes of encouraging this reprioritization. The Association believes this effort will work to proactively protect the groundwater resource, the public's interest in well construction, the owner of the well being constructed, and the well constructor.

The components of the bill include:

- A clarified well construction specific three-year timeline for the Department to enforce against newly constructed wells.
- Well constructors who misrepresent information contained on the well log, do not receive the prescribed limitation on enforcement for the well constructed, if that misrepresentation is related to the needed enforcement.
- Establishment of a task force on Oregon Well Construction Enforcement Activities for the Department to meet with stakeholders to study and make recommendations relative to construction, operation and maintenance of wells, and related issues.

The Association has not included a mandate for the Department to technically review well logs submitted as the Association believes such a mandate already is implied in statute and is concerned about any additional fiscal requirement attached to this bill. The Association has already testified in support of the Department's requested groundwater program budget for this legislative session, and believes the user fees and appropriations, together with a reprioritization of issues will provide ample funding for any potential fiscal implications of the Department's necessary operational changes in response to this bill.

Finally, for the record, HB 2331-2 does not acknowledge the existence nor absence of any other statute of limitation that may apply to well construction. The legislative intent of this bill is to clarify a well construction specific statute of limitation, but is not intended to override any statute of limitation that may already apply.

The Association is very encouraged with the current and continued collaboration with the Department over these well construction matters, and would like to point out the Department has recently proposed a temporary position to start reviewing well logs submitted for technical content. The Association sees this gesture as an improvement in groundwater resource management and protection of the public interest and would like to thank the Department for this implementation. Groundwater is a vital resource to the state of Oregon, and the Association will continue to do its part to ensure its sustainable use and protection remains a priority.

We appreciate your attention to our testimony and urge your support of HB 2331-2.

Sincerely,



Donovan Sippel
OGWA President



Michael Klobes
OGWA Government Affairs Committee Chair

¹ Water Resources Department, 2019-2021, *Agency Request Budget*, p.210, <https://www.oregon.gov/OWRD/WRDReports/2019-21%20WRDRequestBudgetWeb.pdf> (2018)