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February 7, 2020

To: House Committee on Water  
Representative Ken Helm, Chair  
Email: [hwtr.exhibits@oregonlegislature.gov](mailto:hwtr.exhibits@oregonlegislature.gov)

Re: HB 4077 – Safe Well Water Bill – Oppose

Analytical Laboratory Group is accredited by the Oregon Environmental Laboratory Accreditation Program (ORELAP). We conduct between 2,500 to 3,000 Oregon Well Real Estate transaction test each year. These tests include testing for Nitrate, Arsenic, Coliform and E. coli. This bill would have a significant impact on some of our business practices and increase the cost of testing which I will address later. First, I would like to point out several problems with this bill.

This bill fundamentally changes an effective law that benefits many thousands of Oregon homebuyers. The current law addresses the three possible contaminants of wells that the Oregon Health Authority believe are significant. The current law requires the seller to share the tests results with the buyer, so the buyer can make an informed decision. This bill removes the requirement that the seller of a property share the results of the test with the buyer.

The current law was designed to address drinking water contaminants that can impact human health, not to determine ground water contamination which may include many contaminants that are not tested for. The data available from these laboratory tests are woefully inadequate to be use of administering ORS 463B.150 thru 468B.190. For example, the laboratory test due not report the well identification number, well depth, well flow rate or the GPS location of the well. The laboratory tests do not include testing for chlorinated hydrocarbons, industrial solvents, pesticide runoff and many other groundwater contaminants. The Oregon Department of Environmental Quality does not believe the quality of data required by the current law and this bill is good enough to be used for ground water monitoring. I do not believe there is any corresponding appropriations bill to fund a database or people in the DEQ to receive and process these test results.

The League of Women Voters supports this bill, primarily because it adds language to the statute requiring the use of ORELAP accredited laboratories. This is an unnecessary addition to the statute because Oregon Administrative Rules 333-61-0330 states:

“Only laboratories accredited according to Oregon Environmental Laboratory Accreditation Program (ORELAP) standards, as prescribed by OAR 333-064-0005 through 0065, shall be used to conduct the water tests required by these rules.”

The OAR’s referred to in OAR 333-61—0330 are OAR 333-61-325 thru 335. The Domestic Well Tests (See attachment).

This bill creates confusion as to which state entity, Oregon Health Authority or Department of Environmental Quality has supremacy regarding writing the rules for the implementation of the final statute. Currently, OHA has several administrative rules regarding domestic well testing. This bill appears to remove OHA authority for several of the current rules implementing the current statute.

While this bill still requires the property seller to have the test conducted, it replaces the seller with the testing laboratory in all other aspects of the law including reporting. This change in the law puts water testing laboratories in the middle of a significant financial transaction that they have no part in. There are Oregon court cases that have precluded testing laboratories or water test samplers from filing liens to get paid for work done on properties with domestic wells during transaction closings. Laboratories are not involved in real estate transaction closings.

Test samples come to the laboratory via pump companies, well drillers, real estate agents, special domestic well test companies or real estate inspection companies. The Oregon Administrative Rules do not allow a property seller to sample the well and bring the sample to the laboratory, the OAR require “Only persons who have knowledge of the appropriate procedures for the collection and handling of the water samples for arsenic, nitrate, and total coliform bacteria and who have experience in this area shall collect the samples.”

The laboratories do not know, if a property that they have provided test results for, is actually closing, but the seller does. The laboratories do not know the Water Resources Department well identification number, but the seller does. In nearly 100% of all Oregon Well Real Estate transaction test that we run, we do not know the buyer and in over 90% or the these tests we do not know the seller, however the seller or their agent always knows who the seller and buyer are. Under the laboratory national and state ethics rules we would not be allowed to give test reports to buyers, unless our client (the person who brought in the sample and paid for the testing) released the report to that individual in writing. The seller, not the testing laboratory, needs to be responsible for submitting the test report to the buyer and any state agencies or authorities the law requires.

If our laboratory was required to provide reports to the seller, buyer and Oregon Department of Environmental Quality in a yet unknown form and format we would have

to increase our cost of testing. We would have to spend additional staff time finding contact information for both the buyer and the seller. We would have to spend staff time on converting our current laboratory report format to whatever format the DEQ may require. The bill requires electronic submission, which is not usable by the buyer and seller, which means two different reports. The prices charged by our lab and others must cover all the all the costs related to testing including the costs of reporting the results.

In summary, this bill changes an existing law that is providing important information to thousands of Oregon home buyers by sellers who have a stake in the transaction, to requiring laboratories to providing private data to a state agency that has not requested the information and does not believe it can use the data for the purpose suggest in this bill at a higher cost. We ask you to not move this bill forward.

A handwritten signature in black ink, appearing to read "Dennis Morgan". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Dennis Morgan  
Vice President  
Analytical Laboratory Group

Attachment 1  
OREGON ADMINISTRATIVE RULES regarding DOMESTIC WELL TESTS

**333-061-0325**

**Domestic Well Tests**

- (1) In any transaction for the sale or exchange of real estate that includes a well that supplies ground water for domestic purposes, the seller of the real estate shall, upon accepting an offer to purchase that real estate, have the well water tested for arsenic, nitrate, and total coliform bacteria. If the well is in a designated area of public health concern, the Authority may require additional testing.
- (2) The seller, or seller's designee, must submit the results of the required tests to the Authority and to the buyer within 90 days of receiving the results of the tests.
- (3) If the seller, or seller's designee, fails to comply with sections (1) and (2) of this rule, this does not invalidate any of the documents needed to complete the sale of the real estate.
- (4) The seller, or seller's designee, is responsible for making sure that the Authority's Water Systems Data Sheet is completed and submitted to the Authority with copies of the arsenic, nitrate, and total coliform bacteria lab slips.
- (5) The Water Resources Department well identification number and a description of the property shall be entered on the water system data sheet for the seller to be considered in compliance with ORS 448.271. The description shall include township, range, section, street address, city, state and zip code.
- (6) The lab tests required by ORS 448.271 cannot be waived even if the buyer agrees not to have the well tested.
- (7) The lab tests for arsenic, nitrate, and coliform bacteria are considered valid for one year if they are associated with the sale of the property.
- (8) If the well is not on the property being sold, but the real property includes an interest to a well on adjacent property, including an easement, that interest would be considered part of the real property. Therefore the tests would be required.
- (9) ORS 448.271 only applies to wells that have been made operational to supply groundwater for domestic purposes. Capped domestic wells on unimproved lots are not required to be tested.

**Statutory/Other Authority:** ORS 448.131

**Statutes/Other Implemented:** ORS 431.110, 431.150, 448.131 & 448.271

**History:**

PH 7-2010, f. & cert. ef. 4-19-10

HD 14-1997, f. & cert. ef. 10-31-97

HD 24-1990, f. & cert. ef. 11-16-90

**333-061-0330**

**Accredited Laboratories**

Only laboratories accredited according to Oregon Environmental Laboratory Accreditation Program (ORELAP) standards, as prescribed by OAR 333-064-0005 through 0065, shall be used to conduct the water tests required by these rules.

**Statutory/Other Authority:** ORS 448.131

**Statutes/Other Implemented:** ORS 431.110, 431.150, 448.131 & 448.271

**History:**

PH 7-2010, f. & cert. ef. 4-19-10

HD 14-1997, f. & cert. ef. 10-31-97

HD 24-1990, f. & cert. ef. 11-16-90

**333-061-0335**

**Sample Collection**

(1) Only persons who have knowledge of the appropriate procedures for the collection and handling of the water samples for arsenic, nitrate, and total coliform bacteria and who have experience in this area shall collect the samples. These persons include Registered Sanitarians, certified water system operators, well drillers, pump installers, and lab technicians. Specific instructions for the collection, preservation, handling and transport of the samples may be obtained from certified laboratories, county health departments or the Authority and must be strictly adhered to.

(2) The samples must be drawn from the source prior to any form of water treatment. Samples may be collected after treatment injection points where water treatment has been bypassed or temporarily disabled.

(3) In the event that the well has been shock chlorinated, no follow up samples shall be taken until five days have elapsed.

**Statutory/Other Authority:** ORS 448.131

**Statutes/Other Implemented:** ORS 431.110, 431.150, 448.131 & 448.271

**History:**

PH 3-2013, f. & cert. ef. 1-25-13

PH 7-2010, f. & cert. ef. 4-19-10

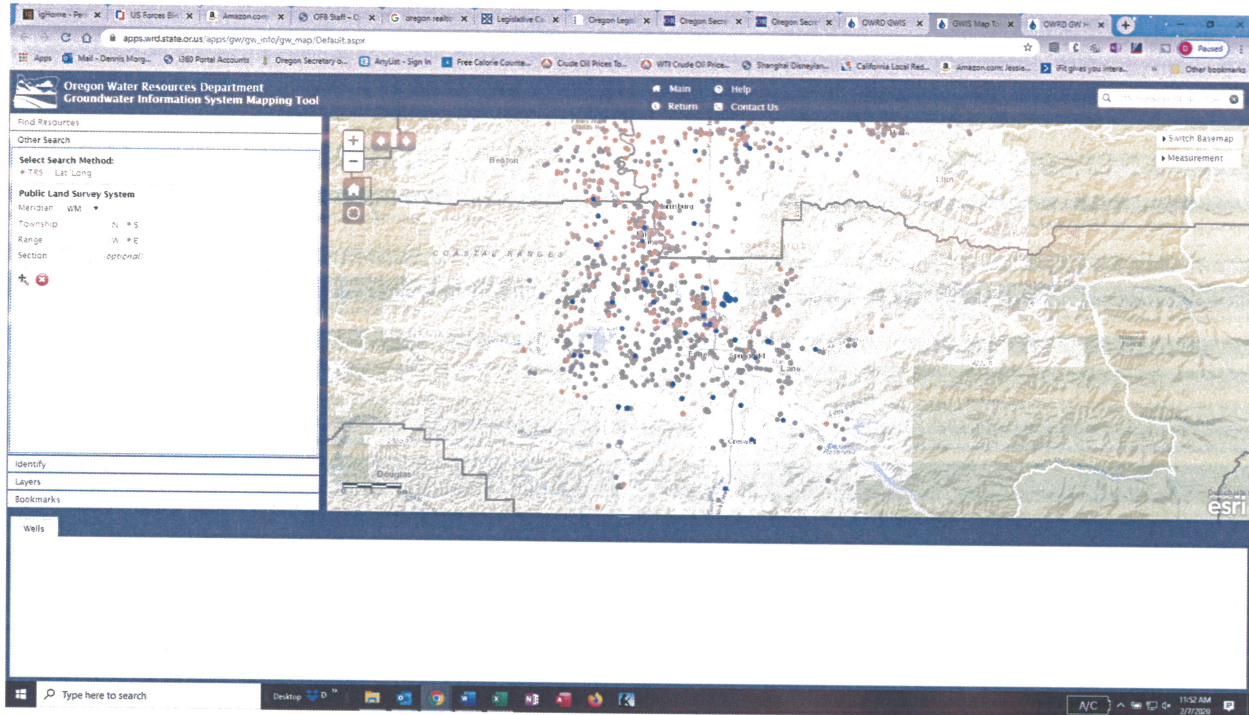
HD 14-1997, f. & cert. ef. 10-31-97

HD 24-1990, f. & cert. ef. 11-16-90

## Attachment 2

### Display of Oregon Water Resource Department Mapping Tool

[https://apps.wrd.state.or.us/apps/gw/gw\\_info/gw\\_map/Default.aspx](https://apps.wrd.state.or.us/apps/gw/gw_info/gw_map/Default.aspx)



The Oregon Water Resource Department might be a better place for Domestic Well data to be received processed and housed.