



Oregon

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House Committee on Agriculture, Land Use, and Water

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Representative Helm, Chair

Informational Testimony on HB 4061 Forthcoming Amendment

Submitted by:

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Thank you for the opportunity to provide testimony on the forthcoming amendment to HB 4061 (a marked-up version of the HB 4061 -1 amendment was submitted for the committee's discussion). This bill primarily focuses on providing additional tools to curb unauthorized uses of water related to cannabis (marijuana and hemp). This testimony provides information on the Department's understanding of the forthcoming amendment. The Department is not taking a position on the bill or amendments at this time.

The amendments under discussion provide some additional tools for addressing the water challenges posed by cannabis cultivation. Violations in the forthcoming amendment that focus on activities at unregistered sites are generally tools that will be better suited for use by law enforcement. It is important to set appropriate expectations about the role of the Water Resources Department in regard to unlicensed sites, which may pose a safety risk for our staff and are better addressed by law enforcement.

The Department appreciates the Legislature's investments during the 2021 2nd Special Session to address Department resource challenges and also the attention to the policy challenges the Department faces. These amendments do not attempt to address all the enforcement challenges and barriers the Department faces that were previously discussed in a presentation on February 2, 2022. It is important to have realistic expectations about the effectiveness of these tools, as even with these tools, enforcement actions will still take time.

Forthcoming Amendment

Hauled Water - Water Hauling Records Retention

Water providers operate water fill stations for the public or provide bulk water for water hauling through other arrangements. These stations are in most cases a legal source of water for cannabis sites; however, verifying that water is hauled from these sites can be difficult.

The forthcoming amendment requires any water supplier that sells water to the public at a fill station to retain water sale records for up to 12 months from the date of sale, and present those records immediately upon request to either the Department or law enforcement. Records will include 1) the name and contact information of person the water was sold to; 2) the quantity of water sold; 3) the license plate number of the vehicle used to haul water; and 4) the purchase date. These requirements would not apply when water is sold to a state and local government purchaser, a contractor licensed by the

Oregon Construction Contractors Board, or for water used for firefighting purposes. Additionally, the amendment proposes that any supplier providing these records to either the Department or law enforcement or participating in any judicial proceedings will have immunity from any civil or criminal liability that may be the result of the records being released. *Note: The Department does not interpret this to mean that a water supplier that is not themselves in compliance with Oregon Water Law would be immune from being in compliance.*

In addition, the forthcoming amendment will also require the person purchasing the water from the fill station for irrigation or nursery uses to maintain records for 12 months from the date of purchase and present those records to law enforcement or the Department upon request. This means that a person that is purchasing and hauling the water from a fill station would need to keep records – this could be a water hauling business that is purchasing the water, or it could be the person employed by an operation growing crops that purchases and hauls the water, or it could be the person that owns the operation growing crops if that person purchases and hauls the water themselves. Records will include (1) the name and contact information of the person the water was delivered to; (2) the purpose of the use of the water, including the plant type ; (3) the quantity of water delivered; (4) the location to which the water was delivered; and (5) the date that the water was delivered. The forthcoming amendments provide civil penalties for failure to comply with these requirements.

Prior to these requirements going into effect, OWRD, the Department of Agriculture (ODA), and the Oregon Liquor and Cannabis Commission (OLCC) will publicize the law change to attempt to notify relevant permit holders.

Water Statements

The water statement provisions contained in the -1 amendment are removed in the forthcoming amendments.

Notice of Violation Timelines

As previously noted during our presentation, the current five-day turnaround time for issuing a notice of violation (NOV) poses challenges for the Department for managing existing workloads. Since the Department only has five days to issue a notice of violation after the violation was observed, staff must shift priorities, often abandoning other workloads to ensure a NOV is issued within the required timeframe. The timeframes are particularly problematic if more than one notice of violation needs to be prepared. The forthcoming amendment extends the time period from five days to ten business days for the Department to issue a notice of violation after observing a violation.

Criminal and Civil Penalties

The forthcoming amendment proposes to increase criminal penalties for use of water without a water right at any cannabis site that is not licensed with OLCC, ODA, or Oregon Health Authority (OHA) and exceeds the amount of personal plants allowed under law, to a Class A misdemeanor with a maximum fine of \$25,000.

The amendment will establish a new violation for hauling water or arranging to haul water to any cannabis site not licensed with OLCC, ODA, or OHA and exceeds the amount of personal plants allowed under law is a Class A misdemeanor. If the person hauling water or arranging hauled water is the owner of the water hauling business or the responsible party for the cannabis grow operation, the maximum fine for the Class A misdemeanor is \$25,000. It is important to understand that the forthcoming amendment only provides criminal penalties, not civil penalties, for hauling water to an unregistered site. Prosecution using criminal penalties will generally require law enforcement and district attorneys to participate in addressing unregistered sites. Importantly, these provisions mean that even if an unregistered site hauls water from a legal source of water, the act of hauling would now be considered a violation of the proposed law via criminal penalties.

The forthcoming amendment will also prohibit any person from willfully or negligently providing false information to either the Department or law enforcement regarding the hauling of water to a cannabis site. Violations could result in civil penalties consistent with the Department's other existing civil penalty authorities, or a Class A misdemeanor criminal penalty. The Department interprets this to mean both verbal and written information and that this penalty could be applied to anyone that provides false information about whether water has been hauled for use at a grow site – this means that it could include the individual that owns or operates a grow site or an individual that hauls water.

The forthcoming amendment will also provide civil penalties consistent with the Department's other existing civil penalty authorities for persons purchasing water from a hauling site that are in violation of the requirement to maintain and provide records of water purchases as described above.