

## House Bill 3130

### Background

When working on Governor Kitzhaber's Natural Resources staff, I helped draft the Oregon Plan for Salmon and Watersheds. I was responsible for cooperative and collaborative development of watershed councils around the state. When the Oregon Watershed Enhancement Board was created by the Oregon Legislature in 1999, I became Deputy Director and oversaw the development of the collaborative approach to address Oregon's natural resource issues. The one area that was beyond cooperative efforts was the management of water resources. Water management is driven by the Prior Appropriation Doctrine and Oregon law that implements the priority without waste system.

### Voluntary Agreements

Oregon law at ORS 537.745 creates the opportunity for groundwater users to develop an approach to sharing groundwater that is equitable among the users and meets Oregon groundwater policy and law. This provision in law has been around since the adoption of the groundwater code in 1955. O.R.S. § 537.745 authorizes the Water Resources Commission to "encourage, promote and recognize voluntary agreements among ground water users from the same ground water reservoir." There has never been an effort on the part of the Commission to encourage or promote such agreements. There is no staffing to take such action.

### The Need for Alternative Approaches

A recent analysis by the Oregon Water Resources Department (OWRD) has shown that groundwater concerns are found throughout Oregon (Figure 1). OWRD is currently reviewing their policy relating to groundwater and developing administrative rules for the designation of "Critical Groundwater Areas" as defined at ORS 537.730 and 537.735. As groundwater users become aware of the limitations of the aquifer they are pumping from the development of voluntary agreements provide an alternative to waiting for designation of a critical groundwater area and OWRD developing a regulatory solution. Even in areas designated as "Critical Groundwater Areas" local groundwater users could develop alternative pumping regimes that meet the limitations of the aquifer and other requirements under Oregon water law.

### Voluntary Agreements in the Harney Basin

During the development of the Harney Basin Groundwater Plan that was completed in 2022, the use of voluntary agreements to reduce groundwater irrigation in selected areas of the basin to reduce or eliminate groundwater declines and use groundwater more efficiently and cooperatively than could occur through the blunt instrument of prior appropriation. The Environmental Defense Fund cooperated with a Water law firm to explore Voluntary Agreements using approaches from other places acknowledging they operate under different legal frameworks<sup>1</sup>. The report identifies Scope and Approach Options for Voluntary Agreements for the Harney basin. With no guidance but encouragement from OWRD, the community struggles with what the opportunity and risks of such agreements might be.

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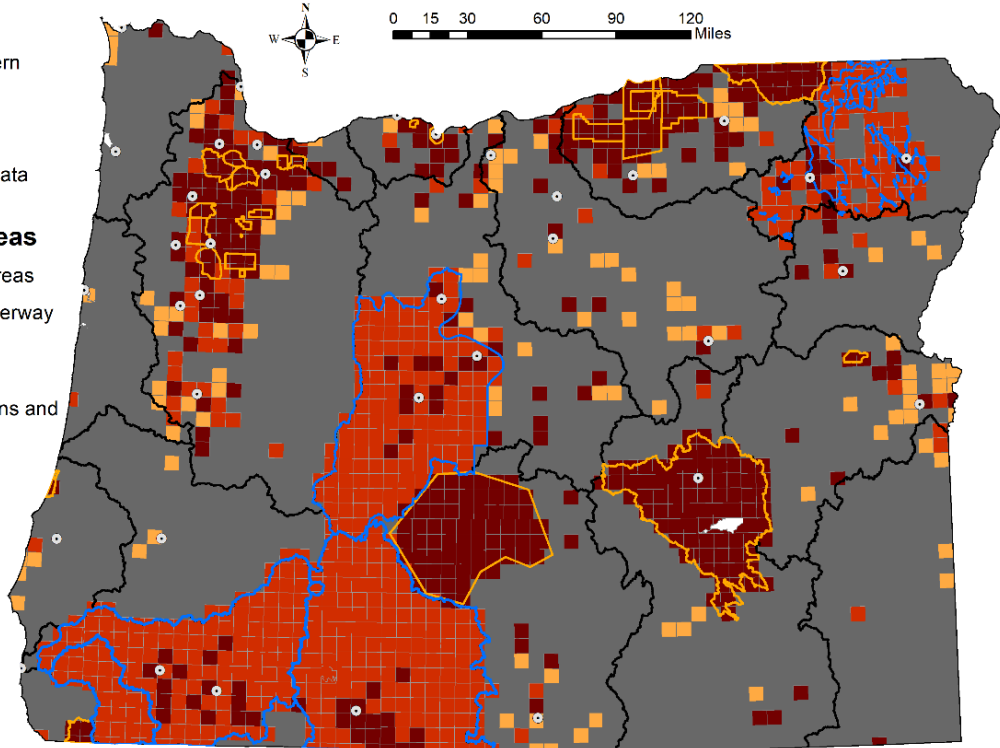
<sup>1</sup> Diffley, Jennifer and Rachel O'Connor. 2022 Voluntary Agreements Analysis: A Review of Oregon's Voluntary Agreements Statute for the Harney Community-Based Water Planning Collaborative. September 2022. 45 p.

### Concern Ratings

- Significant Concern
- Concern
- Yield-Limited
- No Concerning Data Available

### Administrative Areas

- GW Restricted Areas
- State Scenic Waterway Restrictions
- OWRD Basins
- County Seat Towns and Cities



The concern ratings shown on this map reflect the sustainability and restrictions associated with expanded consumptive use of groundwater in a given area. They are not a substitute for a review of a groundwater application to determine availability of water for a specific use. Users of this information should consult the primary report and data to ascertain the usability of the information. This map may not be suitable for legal, engineering, or surveying purposes. OWRD Groundwater Section, 4/20/2021. Projection: Oregon Lambert NAD 83 (EPSG #2992).

Figure 1: Areas of Groundwater Concern: A Preliminary Analysis by OWRD (from OWRD Commission presentation December 3, 2021)

### The Need for OWRD Staffing

Without staff responsible to provide encouragement and promote the opportunity of developing Voluntary Agreements as identified in statute the primary manner of resolving groundwater overuse is through regulation. While regulation is important it is equally important to have alternative approaches to allow local creativity solve problems. My experience in developing cooperative approaches for problem solving throughout the state clearly shows the need for a dedicated position to help people in local communities address their problems with their own creativity.

**Please support HB 3130 to help address Oregon's groundwater concerns.**

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