



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

HB 4049

Testimony of WaterWatch of Oregon

By Lisa Brown

House Committee on Agriculture, Natural Resources, Land Use and Water

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Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and Oregon's rivers and aquifers to sustain fish, wildlife, recreation and other public uses of Oregon's waters. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws on these resources.

WaterWatch has been working in good faith on Harney Basin groundwater issues since 2014, including for more than a decade in the community led Place Based Planning water collaborative, on two rules advisory committees and before this body, the Oregon Water Resources Department and the Oregon Water Resources Commission.

WaterWatch opposes HB 4049

Background: It has been long-recognized that groundwater pumping for irrigation in the Harney Basin has been occurring at unsustainable levels. The state, and others, started taking action to address this over appropriation more than a decade ago. State rules that largely prohibited issuance of new groundwater rights in the Harney Basin were adopted in 2016, statewide groundwater allocation rules were modernized, an in-depth USGS-OWRD groundwater study was completed, a Place Based Planning process was undertaken, and a CREP program was established that will provide financial support for voluntary cancellation of groundwater rights.

The Oregon Water Resources Commission adopted rules in December, 2025 designating the Harney Basin as a Critical Groundwater Area (OAR 690, Division 512). HB 4049 undermines these rules and their standards and timeline to stabilize groundwater levels, which could impact a wide range of interests that depend on groundwater, including groundwater users not participating in a Voluntary Agreement, groundwater dependent ecosystems and domestic well owners.

Concerns with HB 4049

1. **The bill would undermine the Harney Basin Critical Groundwater Area Rules that were adopted by the Water Resources Commission in December (2025) after an exhaustive two-plus year, multi-stakeholder process**

On December 11, 2025, the Oregon Water Resources Commission (Commission) adopted science-based rules designating the Harney Basin as a Critical Groundwater Area (effective date January 12, 2026). A Rules Advisory Committee (RAC) met for 78 hours over more than two years during development of the rules. The RAC included 32 members, including WaterWatch, 29 of which were from the Harney Basin, including many representing irrigation interests such as Representative Owens. This RAC process followed more than a decade of scientific studies and collaborative discussions.

The newly-adopted rules, in accordance with the recent USGS-OWRD groundwater study, recognize that Harney Basin groundwater exists in an interconnected flow system. The rules divide the Harney Basin into sub-areas for targeted application of pumping reductions to stabilize groundwater levels across the basin in 30-years. HB 4049 could result in authorization of Voluntary Agreements that unfairly impact groundwater users in areas of the basin not participating in a Voluntary Agreement (who may be subjected to increased curtailment under the rules if conditions do not improve as projected), groundwater dependent ecosystems and domestic well owners.

HB 4049 is a complicated bill with a lot of moving pieces that lacks sufficient sideboards and could subvert the newly-adopted rules by allowing pumping that exceeds the targets set forth in the rules.

2. HB 4049 is not needed: Existing statute (ORS 537.745) and the newly adopted Harney Basin Critical Groundwater Area rules already allow Voluntary Agreements

WaterWatch supports Voluntary Agreements as a tool to provide irrigators flexibility in meeting the science-based targets that the state has determined are necessary to stabilize groundwater levels. That is already allowed by law and in the recently-adopted Harney Basin Critical Groundwater Area rules. HB 4049 is not needed for this purpose.

ORS 537.745 already allows the Water Resources Commission to approve Voluntary Agreements among groundwater users that can operate in lieu of a Critical Groundwater Area order that curtails groundwater pumping. This existing law provides groundwater irrigators flexibility in how they achieve required pumping reductions. The newly-adopted rules also specifically allow these Voluntary Agreements.

Notably, in the 2023 Omnibus Bill HB 2010, the legislature provided money to the Water Resources Department to advise Harney Basin irrigators and other Harney Basin stakeholders regarding Voluntary Agreements. Arising from this process, the agency drafted guidance in 2025 offering a path forward for communities to develop potential Voluntary Agreements under existing law and the newly-adopted rules. This bill rejects that product of the 2023 legislative funding.

In sum, under existing law and the newly-adopted rules, Harney Basin Voluntary Agreements can proceed at any time without HB 4049.

3. HB 4049 is too complicated and controversial to bring in a short-session

HB 4049 is a complicated, controversial bill. It operates at the intersection of complex groundwater science, water law, over-appropriation, the newly-adopted Harney Basin rules, and a diverse community that includes interests in addition to irrigation, such as Harney Basin domestic well owners whose wells are impacted by irrigation pumping, and many who value springs, wetlands, streams and rivers that rely on groundwater, including on the Malheur National Wildlife Refuge. Under Oregon water law, the state is required to manage groundwater not just for irrigation, but also for these other uses. HB 4049 could further impact these uses.

HB 4049 would also create a separate Voluntary Agreement law for the Harney Basin, while Voluntary Agreements for the rest of the state would continue to be controlled by ORS 537.745, which could confuse statewide management objectives

If there is a desire to rewrite existing Voluntary Agreement law, it should be worked on in an inclusive manner before the next session to avoid poorly understood consequences, passing new law that does not function well within Oregon's water laws, undermining progress, and jeopardizing the very substantial resources that the state and others have invested in the newly-adopted rules.

4. HB 4049 exempts water in a Voluntary Agreement from statewide transfer laws

HB 4049 (§15) exempts water included in a Voluntary Agreement from adhering to state transfer laws, meaning water users could change the place of use, type of use, point of diversion of streamflow or point of appropriation of groundwater without any review to make sure they are not enlarging water rights or injuring other surface or ground water right holders, including other irrigators, domestic wells, or instream water rights. This affects both groundwater rights and surface water rights. There does not appear to be any limit on *where* these water uses could be transferred, raising additional concerns over impacts from these transfers.

5. Additional concerns with HB 4049 (not an exhaustive list)

- a. §5(a) allows irrigators to determine baseline to be used in Voluntary Agreements. This may not recognize existing significant groundwater level declines (e.g. a decline of as much as 135 feet in Weaver Springs).
- b. §5(b)-(d) allow irrigators to determine the amount and timing of pumping reductions and ensuring compliance. The newly-adopted rules set a very generous 30-year timeline for achieving stability, with a schedule for increasing pumping reductions over time until the target is met - this would allow an indeterminate time and schedule to reach stability, if ever.
- c. §8 requires the Water Resources Commission to approve Voluntary Agreements based on new factors [(b)-(d)] not present in the existing Voluntary Agreement law (ORS 537.745), which would weaken the Commission's authority to ensure statutory standards are met. The new factors include mitigation of economic considerations, allowing an extended open-ended timeline for groundwater stabilization, and requiring inclusion of irrigator proposals from §3-5 regarding pumping reductions.
- d. §4(a)(A) allows groundwater rights that should be regulated off by permit conditions pertaining to groundwater level declines to participate in, and apparently pump groundwater under Voluntary Agreements.
- e. §1(d) and 14(a)-(b) allow changes to voluntary agreements absent approval by the agency of Commission. The definition for "minor changes" is imprecise and leaves room for major changes.
- f. Once approved, the Commission cannot terminate a Voluntary Agreement for failing to stabilize groundwater levels (absent "changed conditions"), which is of paramount importance given the Voluntary Agreements contemplated by the bill.

In sum, HB 4049 is not needed for Voluntary Agreements to proceed in the Harney Basin, which is already provided for in law and in the newly-adopted Harney Basin rules. Developing a path to achieving Harney Basin groundwater stability is complicated and challenging, and has been the topic of discussions, modelling and a rulemaking for many years.

HB 4049 could hinder the state's ability to sustainably manage groundwater in the Harney Basin in accordance with Oregon law and the newly-adopted Harney Basin rules. If the legislature wants to amend the existing Voluntary Agreement law, we urge that this be done in a full session with ample time for discussion

and analysis to ensure any amended law does not undermine Oregon's existing water law and does not undo the progress made in the Harney Basin rules, rather than adopt a complicated and controversial carve out applicable to just one basin. Proposed Amendments do not address the many problems with this bill.

We urge the Committee to vote no on HB 4049

Thank you for consideration of our testimony.

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