



Oregon

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Testimony for House Bill 4049

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

Representative Ken Helm, Co-Chair

Representative Mark Owens, Co-Chair

Submitted by: Bryn Hudson, Legislative Coordinator

February 4, 2026

Thank you for the opportunity to provide informational testimony on HB 4049. This testimony is informational only; the Department is not taking a position on this legislation at this time.

Background on Harney Basin

Since the 1990s groundwater development in the Harney Basin has increased significantly, leading to groundwater level declines with some areas seeing declines of over 100 feet. The [Harney Basin Groundwater study](#) identified that the groundwater budget in the basin's lowlands is out of balance by 110,000 acre-feet per year. The study also found that much of the pumped groundwater is ancient – recharged 5,000 years ago or longer – and not replenished on human timescales.

After a decade of study and engagement with the local community, the Water Resources Commission in December adopted rules designating the basin a critical groundwater area (CGWA), restricting further groundwater appropriation within the basin and establishing a limit on the volume of water that will be allowed to be pumped by existing water users. Prior to rule adoption, the Department hosted five information sessions on water issues in the Harney Basin in 2023, convened fifteen Rules Advisory Committee meetings over the course of three years, and in partnership with Oregon Consensus, co-hosted and facilitated fourteen discussion groups with community members. The rules adopted by the Commission reflect these years-long engagement with the community. More information of the overall rulemaking process can be found on the Department's [rulemaking page](#).

The rules include pumping limitations for subareas. The pumping limitations are intended to help stabilize groundwater levels by 2058, providing a generation-long span for groundwater reductions to allow users to analyze, conserve, and adapt. The Department will check progress every six years, and curtailment could be reduced if stabilization trends are ahead of schedule.

The rules do not themselves result in curtailment; before curtailment occurs, the Department must initiate a contested case proceeding and issue a final order. While the rules and associated water right curtailment process are the primary regulatory mechanism for stabilizing groundwater levels, there are a variety of voluntary community-based strategies that the Department encourages local groundwater users to explore. In addition to receiving financial compensation for permanently retiring groundwater rights via enrollment in the Conservation Reserve Enhancement Program, applying for the Harney Domestic Well Remediation Fund, and participating in the Harney place-based water planning group, groundwater users can avert formal curtailment by entering into a voluntary groundwater agreement.

The Commission has authority to approve or reject voluntary agreements. Voluntary agreements approved by the Commission control groundwater use in lieu of a formal order or rule and as such, the participants within an approved voluntary agreement would not be subject to regulatory reductions in

water use within the newly established CGWA. Because the curtailment is not scheduled to start until 2028 at the earliest, delayed implementation of regulation provides time and space for developing voluntary agreements. However, a voluntary and earlier start to reducing groundwater use will result in positive changes to the water level decline trends.

The Department continues to engage with local water users to provide preliminary guidance on voluntary agreements; a guidance document is [available online](#). The Department acknowledges that this guidance, developed at the request of the community, still has room for improvement.

House Bill 4049 Discussion

House Bill 4049, with the -3 amendments set parameters for voluntary agreements between groundwater users in the Greater Harney Valley Groundwater Area of Concern (GHVGAC). The parameters include necessary information for inclusion in a voluntary agreement, reporting metrics to the Departments on water use, additional water use flexibilities, and conditions for dissolving an agreement.

The Department appreciates the feedback already considered and incorporated in forthcoming amendments but has some concerns about the current draft of this legislation. The Department believes that voluntary agreements in the GHVGAC will be a useful tool for groundwater users to gain water use flexibility and self-manage to help meet the water level trend corrections in the newly adopted CGWA rules. In the GHVGAC, the Department proposed a CGWA designation primarily to address declining groundwater levels. Because voluntary agreements, once approved by the Commission, control water use in lieu of the CGWA rules, it is important to ensure that flexible water use through a voluntary agreement does not come at the expense of other water users in the area, or the ecosystems, or continue to exacerbate declines. Implementation of a voluntary agreement among users should not lead to groundwater declines beyond those the Commission found acceptable through the adoption of the CGWA rules.

The proposed legislation is unclear on what management goal(s) is established for voluntary agreements to achieve. As drafted, the bill refers to maintaining “reasonably stable groundwater levels,” as a management goal, but that term is undefined in the context of CGWAs. The legislation also lacks regular check points for the Department to evaluate the progress of voluntary agreements in meeting management goals. Prior draft guidance on voluntary agreements from the Department specified that the management goal of voluntary agreements should align with the management goal for the CGWA as established in rules. The Department believes that clear and shared management goals between the Department and voluntary agreement participants will provide the most positive outcomes for the groundwater resource and predictability for water users. The legislation as currently written does not appear to do this.

The Department would also like to share concerns around potential resource constraints in managing voluntary agreements in the GHVGAC. Voluntary agreements introduce new and unique water use management schemes to an area. Depending on the number and complexity of voluntary agreements approved by the Commission, the Department is concerned about field capacity to implement and manage these agreements, in addition to implementing regulation and curtailment for water users who do not participate in voluntary agreements.

Lastly, the Department encourages the Legislature to exercise caution when considering amendments to ORS 537.505, as the current version of the statute appears to provide the maximum flexibility for groundwater users interested in pursuing voluntary agreements.