

March 27, 2019

Testimony in Opposition to SB 791

Senate Committee on Environment and Natural Resources

Submitted by: Jena Carter, Oregon Coast and Marine Director, The Nature Conservancy

On behalf of The Nature Conservancy, I want to thank you for the opportunity to provide written testimony regarding our concerns with SB 791 as introduced.

The Nature Conservancy is a science-based and non-partisan conservation organization. Our mission is to protect the lands and waters on which all life depends. The organization has over 70,000 supporters statewide with members in every county in Oregon. Our staff collaboratively works with tribes, government agencies, landowners, businesses, and stakeholders to develop solutions to the challenges facing people and nature.

SB 791 proposes to establish criteria for determining presence or absence of new ground water use impairment or interference with surface water rights having earlier priority dates. While we recognize this bill emerged to address a specific geography, the bill has statewide impacts and dramatically changes water policy for the State of Oregon.

For the following reasons, The Nature Conservancy opposes SB 791.

- This bill undermines water security for senior surface water right holders in favor of potentially over-allocating water to nearby junior groundwater right holders. The bill would negatively affect tribal in-stream rights, state in-stream rights, and all industry stakeholders who rely on surface water in fully-allocated systems.
- Section 1(1)(a) is highly problematic and is not based on best available hydrogeologic science. This subsection requires groundwater withdrawal to have an impact that is "...measurable within one season of use..." for a surface water source to be impaired or interfered. Groundwater extraction creates a "cone of depression" that, when it intersects with a surface water source, causes impairment. The rate of expansion and the magnitude of impact from a cone of depression can take weeks, months, or years to develop, dependent upon hydrogeologic properties of the aquifer and the characteristics of the pumping (e.g., rate, magnitude, location, timing, and others). A very significant proportion of the impacts from groundwater withdrawal on surface water sources in Oregon will take longer than one season to manifest.
- It is not feasible to implement Section 1 from a regulatory perspective. The Oregon Water Resources Department (WRD) has limited funding and capacity to measure the impacts of groundwater withdrawal on surface water sources for each claim of impairment or interference. Further, this section would require the agency to follow a

specific molecule of water from an individual groundwater pumper to an individual surface water appropriator. OWRD would not be able to effectively determine whether impairment or interference is occurring due to the excessive burden of proof that must be established in an unreasonably short time.

- While we appreciate the creative thinking on ways to expand WRD capacity, Section 2 allows any site-specific data submitted by private consultants to supersede WRD or U.S. Geological Survey's science-based evidence that has been produced over decades and subjugates the responsibility of the State to protect public resources.

In closing, The Nature Conservancy opposes SB 791 as introduced and we hope you will not take further action. Thank you for the opportunity to provide comments.

For More Information Contact: **Jena Carter**, jcarter@tnc.org, 503-802-8114