



March 30, 2021
House Committee on Water
Representative Ken Helm, Chair

Informational Testimony on House Bill 3166 -1
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Thank you for the opportunity to provide information related to House Bill 3166 -1. HB 3166 -1 pertains to water use measurement and other data collection. The Department is not taking a position on the bill, and this testimony is provided for informational purposes. The Department is still assessing the bill to further understand how it would be implemented; however, this testimony provides some initial information on items that may require further work or clarification.

Background

For reference of the committee, the Water Resources Department has in prior testimony on this bill provided background information on the Department's existing water use measurement and reporting programs and how that data is used. The Department has also provided background information on water data and water budgets in its testimony on House Bill 2018.

House Bill 3166-1

House Bill 3166 -1 directs the Department/Commission to implement water use measurement and reporting requirements in initially in 3-5 priority basins or subbasins and develop water budgets from the data collected.

A "priority basin" is characterized as a priority restoration area, a highly regulated basin, a basin in which diversion and appropriation significantly impact stream flows or water quality, an area that has experienced declines in groundwater levels or negatively impacted groundwater related ecosystems, or an area that contains habitat for threatened or endangered aquatic species. The bill defines "measurement" as the use of a technology or an installed device, to determine the duty of diverted, appropriated, or stored water at a point or diversion of appropriation.

Water right holders meeting Department criteria in a priority basin must report water use on an annual basis, unless otherwise agreed upon. The Department is directed to establish procedures for electronic reporting, requirements for accuracy, installation, and maintenance of measurement technologies and devices, and temporary exemptions and alternative methods for compliance when measurement is technically infeasible. The Water Measurement Cost-Share Program shall prioritize help to supplement the cost of the required measurement devices under this bill.

The Department has noted several items that are unclear in the -1 amendments and that may need to be clarified. Below are high-level items; however, the Department has also noted more technical changes that may be needed as well.

1. It is unclear if HB 3166 -1 directs the Department to require measurement and reporting for all water rights in a priority basin or if the Department is only authorized to select points of diversion/appropriation needed for the water budget. See section 7 versus section 2(2)(b).
2. It is also unclear if the Department can only require measurement and reporting for the purposes of developing a water budget, or if that data can also be required for management purposes. See section 1(2)(d) versus section 2(1)(a). If there is also intent for measurement to support water distribution, monitoring of streamflows, and conflict resolution in the field, a device that identifies the rate would be needed, even if the rate is not reported. Currently the bill seems to require only duty even for measured (not reported use).
3. The amendment allows the Department to consult with relevant stakeholders to determine that more frequent reporting is necessary; however, it is not clear what stakeholders or for what purpose they must be consulted.
4. The Department is also assessing the implementation timelines of the bill, and whether it is anticipated that the Department would have time to collect additional data conceived in the bill.
5. There are a number of provisions in the bill that require Department or Commission action. There is likely a need to further clarify the roles, and also to discuss the mechanisms for implementation of certain provisions (rules, guidance, and orders).
6. It is unclear what is intended in Section 7(6) after the comma.