



Oregon
Environmental
Council
It's Your Oregon



The Nature
Conservancy



WATERWATCH

Chair Helm and members of the Committee,
House Committee on Water
March 30, 2021

RE: SB 3166-1 Amendments

Trout Unlimited, WaterWatch of Oregon, Wild Salmon Center, The Nature Conservancy, and Oregon Environmental Council (hereinafter Conservation Groups) would like to thank the Water Committee for this opportunity to provide testimony on HB 3166, -1 amendments.

HB 3166 started as a placeholder bill on water use measurement and reporting. As you heard from us in the last public hearing on HB 3166, water use measurement and reporting is the cornerstone of effective water management, efficient water use and accurate long-term water planning. It is a foundational, common-sense tool that is necessary to provide good data on water use throughout the state to help water users better manage their water rights and to help the state carry out its many water management responsibilities, including planning for Oregon's water future. Increasing conflicts over water, burgeoning demand for limited water supplies, water transfers, instream flow protection, federal laws, water right adjudications, smart economical farm management – all of these things necessitate enhancements to Oregon's current framework for water use measurement and reporting.

The -1 amendments have shifted the conversation significantly; they largely pivot the water use measurement and reporting discussion to directives to establish "water budgets". Conservation groups acknowledge that water budgets are useful tools for water management, however, water budgets do not provide the same benefits of water use measurement and reporting, and, as such, do not replace continuing that discussion.

Water budgets are important tools and provide critical information to resource managers in Oregon, and they are used throughout the American West to offer insight into the current and future availability of water. The upcoming collaborative groundwater budget for the Harney Basin developed by the U.S. Geological Survey and the Oregon Water Resources Department is a great example of their importance to communities and utility for water planning. Conservation Groups strongly support the development of water budgets throughout the state—including providing for the groundwater budgets described in HB 2018.

Although they are both useful and important water data tools, water budgets are distinct from water use measurement and reporting. There are at least three big-picture water data needs in Oregon:

- First, we lack sufficient information in many basins to know whether water is fully-allocated, over-allocated, or if a basin has available water. This is especially true for groundwater, where 17 out of the 20 administrative basins lack modern groundwater studies.

- Second, when we have enough information to know that a basin has available water, we need to know how much water is available to allocate, where and when. Oregon Water Resources Department needs to be able to protect the public resource so that beneficial uses can sustainably continue for future generations.
- Finally, when we have enough information to know that a basin is over-allocated, we need to know how, when, and where water is being used, and we need detailed consumptive use data to reduce groundwater and surface water use until the basin reaches sustainability.

Water budgets are critical for proactively avoiding future problems in the first two scenarios. On the other hand, water use measurement and reporting is important for both avoiding future problems as well as reacting to and addressing the third scenario of over-allocation. Water budgets alone don't offer enough information for time-sensitive management, like measurement and reporting does. Water use measurement and reporting enables modern water management strategies and offers the potential for more effective and timely resource management by Oregon Water Resources Department.

As to the specifics of the -1 amendments, as currently drafted we do have a number of questions and concerns. Given that discussions on this are just beginning, we will keep our comments fairly high level, focusing on larger topic areas:

- **Water Budgets and data:** Water budgets are only as good as the data that populates them. It is unclear from the language of HB 3166-1 if the bill is contemplating providing the Oregon Water Resources Department with the funds and resources necessary to develop the data needed to develop robust water budgets. We raise this point because certain bill directives point to development based on "available data" (e.g. Section 2(1)(b)). As this committee heard in testimony on HB 2018, in many areas of the state the Department lacks that data, especially groundwater data. Thus, any directives that would have water budgets developed on existing data will shortchange water management and is not something Conservation Groups can support. If this bill is to move forward, it should provide the funding and latitude to develop the many data sets necessary for useful budgets.
- **Measurement and Reporting of water use data:** The current construct of the -1 amendment calls for measurement of duty only. This is a significant shift from the workgroup discussions over the past months and years; which included discussions of measurement and reporting of both duty and rate. Measurement of rate is especially important when managing surface water resources (rate in this instance means how much water is being diverted from a stream at any given instance). The current construct is also not clear as to whether measurement of duty will be for all water users in a priority area; or only for those that the Commission deems are necessary (see Section 2(2)(b) vs. Section 7(1)(2)).
- **Public accessibility to data:** Section 2 of the -1 amendment appears to direct the Commission to assess "to what extent the public will have access" to water-use data measured and reported pursuant to HB 3166. This language opens the door to treating water-use data for water budgets differently than the water-use data that is already measured and reported to the Department under existing authority and is publicly accessible via the Department's online Water Use Report Query. "All water within the state from all sources of water supply belongs to the public," and data about the use of such water should be open and transparent as a matter of course. If water-use data is specifically intended to support water budgets that inform management and planning, the public interest in being able to assess the data sets underlying those budgets is even greater.

- **Cost Share Funds:** This bill would prioritize funding for measurement under this bill over other water right holders and/or initiatives. Given the measurement provisions of this bill fall short of what could be gained by SWMPAs or other measurement directives that would require both rate and duty, we have concerns with this narrowing.
- **Water Budgets and data needs:** Given the broad base of support for HB 2018, including our support, we have questions as to whether a different bill on water budgets is necessary. While HB 2018 is focused on groundwater budgets, as the Committee heard from OWRD in the hearing on that bill, that is where data is really needed to advance water management short of full USGS studies. If funding is provided for HB 2018, it would grant resources to OWRD and USGS to guide the data gathering, analysis and priorities setting. It grants the scientists wide latitude in how to approach. If the agencies decided they needed water use data, they could use the Serious Water Management Problem Area (SWMPA) process, as was done in the Walla Walla, to develop the budgets to inform the USGS Study. This bill, on the other hand, does not include USGS and directs actions that are not necessarily focused on data gathering, science and/or management discretion. It also short changes measurement and reporting data that can be collected and used.
- **Funding for the Oregon Water Resources Department:** It is unclear whether the -1 amendments would provide the Department the funding and resources needed for development of robust water budgets based on scientifically rigorous data sets. This includes not only the resources needed to support a significant expansion of water-use data, but also additional stream gages, observation wells, and other data types relevant to a basin's unique hydrology. If this bill moves forward, the bill should provide funding to meet these data needs.
- **Concessions without commensurate gains:** As noted in earlier hearings, Conservation Groups offered legislative proposals on measurement and reporting that advanced the pace and scale of measurement and reporting in a manner that took into consideration existing frameworks, past workgroup discussions and user concerns. Included in those proposals were a number of "concessions" in order to move the ball forward. The -1 amendments continue forward with those concessions, but without providing the benefits we were asking for in exchange. The most relevant being the limitations of use of data in forfeiture proceedings (Section 10). Without significant amendments to bolster the measurement and reporting requirements, it is unlikely we would support this provision of the bill.

Summary: Water use measurement and reporting is fundamental to water management. While we appreciate that water budgets also serve a role in water management, we are disappointed that the -1 amendments move away from the focus of the water data work group discussions. If this bill on water budgets moves forward, it will need significant amendments.

The Conservation Groups have appreciated the opportunity to work with a diverse group of stakeholders on this important issue and look forward to further discussions.

Thank you for consideration of our testimony.