



Food & Wildlife for the Future

March 30, 2021

Representative Ken Helm, Chair, and Representatives Mark Owens and Jeff Reardon, Vice-Chairs, and Members of the House Committee on Water

Re: Opposition to HB 3166 (-1 Amendment) Measurement & Reporting

On behalf of Water for Life, Inc., I would like to submit the following comments regarding the proposed amendment to House Bill 3166 (-1 amendment).

Existing Authorities of the Water Resources Department

It is logical to first review the existing prevalence and use of measurement and reporting information before undertaking a substantial expansion or creation of a new program. In essence, the initial question is whether the Department of Water Resources maintains existing authorities to require the measurement and reporting of water use. For reference, attached is an outline of current authorities maintained by the Water Resources Department with respect to the measurement and reporting of water use.

In addition to a thorough review of these existing authorities, it would be prudent to first answer the question of whether current information submitted to the Department is both used and useful; does such information assist with the management of the resource throughout the state?

Budget Issues

A new program, irrespective of scope, will indeed require the financial resources to ensure the underlying viability of the program. In light of current budget considerations, it appears inconsistent to propose a significant new undertaking, when at the same time reductions in associated programs are proposed. According to the Legislative Fiscal Office, a reduction of approximately \$1.6 million is currently contemplated for the Department's Technical Services Program area. Specific reductions identified in the budget review completed by the Legislative Fiscal Office that represent a direct impact to future efforts to enhance data collection and utilization include the following:

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Gauging stations	reduction	(-\$164,694)
Groundwater studies	reduction	(-\$300,928)
Observation wells	reduction	(-\$778,461)
Feasibility study grants	reduction	(-\$382,467)
Identified reductions		(-\$1,626,550)

Thus, it is evident budget-related reductions must be considered before embarking on the creation of a new program. As noted above, reductions contemplated for the Technical Services Program all relate to data collection efforts by the Department.

Continued Considerations

Although opposing the current proposal, Water for Life, Inc. recognizes the efforts of various parties with respect to the measurement and reporting discussions and believes discussions should be continued.

Specific Comments

1. As proposed, the draft set of amendments appears somewhat overly ambitious. Pursuant to provisions contained in Section 2, the Water Resources Commission may designate “from three to five water basins or subbasins as priority water basins”. A designation of five basins would represent over 25 percent of all basins within the state. Such a designation does not appear to represent the establishment of what has been described as a “pilot program”.

Rather than facilitate such a significant undertaking, it may be more prudent to direct the Department to set in priority order certain areas or subbasins in which additional measurement and reporting information may be beneficial with respect to the overall management of the water resources.

2. The identified criteria through which a priority basin may be designated (Sec. 2 (1)) seems to be constructed in a manner to include nearly every basin or subbasin within the state. Again, it may be beneficial to direct the Department to, in priority order, identify specific areas in the state where significant problems currently exist or are contemplated to arise.

3. We strongly believe the terminology referencing “water budgets” should be significantly modified or deleted. On its face, such references will unquestionably raise significant concerns among a variety of water users throughout the state.

4. Provisions contained in Section 7, address the issue of the actual reporting of information. As part of a potential “pilot” program, we believe the reporting of required information should be limited to annual reporting. In light of this concern, language contained in subsection (3) appears problematic and should be substantially modified or deleted.

5. We believe provisions contained in Section 10 should be deleted from the proposal. Issues associated with the measurement and reporting of water use should not be conflated with forfeiture provisions. Although both represent significant issues, we believe these two issues are individual issues and should be considered separately.

6. With respect to potential funding assistance through the Water Measurement Cost Share Program Revolving Fund, we again remain concerned with overall budget constraints. Issues associated with available funding should be initially addressed. Further, as drafted, an inconsistency seems to exist with provisions associated with the use of cost share dollars for the maintenance of a required measuring device.

Thank you for your consideration.

Sincerely,

/s/

Rex Barber
Secretary Treasurer
Water For Life, Inc.

Existing Authorities of Water Resources Department

537.153 Review of application; proposed final order; presumption that use will not impair or be detrimental to public interest; standing; protest; final order; contested case hearing.

(1) Within 60 days after the Water Resources Department proceeds with the application under ORS 537.150 (5), the department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions.

537.170 Contested case hearing on application; final order; appeal.

(6) If, after the contested case hearing or, . . .

If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the director determines that the proposed use would not impair or be detrimental to the public interest, the director shall issue a final order approving the application or otherwise modifying the proposed final order. A final order may set forth any of the provisions or restrictions to be included in the permit concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

537.190 Terms and conditions of approval; municipal water supplies; release of stored water.

(1) The Water Resources Department may approve an application for less water than applied for, or upon terms, limitations and conditions necessary for the protection of the public interest, . . .

537.211 Issuance of permit if application approved; contents of permit; effect; rejection of application; change in permit terms.

(1) . . .

The permit shall specify the details of the authorized use and shall set forth any terms, limitations and conditions as the department considers appropriate including but not limited to any applicable condition required under ORS 537.289.

. . .

537.621 Review of application; proposed final order; presumption; rebuttal; findings and conclusions; flow rate and duty; standing; protest; final order; contested case hearing.

(1) Within 60 days after the Water Resources Department proceeds with the application under ORS 537.620 (5), the department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. . . .

537.625 Final order; appeal; contents of permit.

(1)

A final order may set forth any of the provisions or restrictions to be included in the permit concerning the use, control and management of the water to be appropriated for the project.

537.628 Terms; conditions; time limit for issuing final order after contested case hearing.

(1) The Water Resources Department may approve an application for less ground water than applied for or upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health.

537.629 Conditions or limitations to prevent interference with other users.

(1)

. . . the Water Resources Department may impose conditions or limitations in the permit to prevent the same or reject the same after hearing, or, in the department's discretion, request the Water Resources Commission to initiate a rulemaking proceeding to declare the affected area a critical ground water area under ORS 537.730 to 537.740.

537.720 Violation of terms of law or permit or certificate; action by Water Resources Commission.

. . . the commission may cancel or suspend the permit or certificate of registration or impose conditions on the future use thereof to prevent such violation.

537.730 Designation of critical ground water area; rules; notice.

537.735 Rules designating critical ground water area.

(3) A rule by the commission under subsection (1) of this section may include any one or more of the following corrective control provisions:

. . .

(d) Any one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety in accordance with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992.

540.310 Ditches and canals; headgates; measuring devices; flumes along lines of ditches.

(2) The owner shall construct and maintain, when required by the commission, suitable measuring devices at such points along the ditch as may be necessary to assist the watermaster in determining the amount of water that is to be diverted into the ditch from the stream, or taken from it by the various users.

540.330 Reservoirs; measuring devices; effect of noncompliance.

(1) Any owner or manager of a reservoir, located across or upon the bed of a natural stream, shall construct and maintain, when required by the Water Resources Commission, a measuring device below, and one above, the reservoir on each stream or source of supply discharging into the reservoir, . . .

540.435 Installation of totalizing measuring device; annual water use report; hearing; effect of failure to comply with order.

(1) In addition to any other authority of the Water Resources Commission to order installation of a measuring device, if the commission finds accurate water use information necessary because of serious water management problems created by ground water decline, unresolved user disputes or frequent water shortages, the commission by rule may require a water right owner using any surface or ground water source within the state to install a totalizing measuring device and to submit annually a water use report.

(2) Before the commission implements any requirements under subsection (1) of this section the commission shall:

(a) Cause a hearing to be conducted in the affected area to determine whether a serious management problem exists; and

(b) Allow any affected person an opportunity to present alternative methods or devices that could be used to provide the information necessary to manage the water resource or to alleviate the water management problem.

537.099 Water use report from governmental entity.

(1) Except as provided in subsection (3) of this section, any governmental entity that holds a water right shall submit an annual water use report to the Water Resources Department. The report shall include, but need not be limited to the amount of water used by the governmental entity, the period of use and the categories of beneficial use to which the water is applied.

(2) As used in the section, "governmental entity" includes any state or federal agency, local government as defined in ORS 294.004, irrigation district formed under ORS chapter 545 and a water control district for under ORS chapter 553.

(3) A governmental entity that acquires land because of default in repayment of loans or other debts owed to the state is not required to file an annual water use report under this section.