



To: House Committee on Agriculture, Land Use, Natural Resources, and Water  
Chair Helm  
Vice-Chair Hartman  
Vice-Chair Owens  
Representative Boice  
Representative Gamba  
Representative Levy  
Representative Marsh  
Representative McLain  
Representative Scharf

From: Caylin Barter, Oregon Water Policy Program

Date: March 30, 2023

**RE: Comments on HB 3368 – Support for Concepts in -2 Amendments**

Chair Helm, Vice-Chairs Hartman and Owens, and Members of the Committee:

Thank you for the opportunity to provide testimony on HB 3368. Wild Salmon Center supports policy approaches that will improve the understanding and stewardship of our state’s public water resources, especially as climate change increases volatility in supply and demand. While we oppose the bill as introduced, we believe the -2 amendments are a major improvement and will provide a better foundation for additional refinement to improve clarity and establish reasonable timelines for completion of required assessments.

Wild Salmon Center is an international nonprofit headquartered in Oregon that has worked with local partners for three decades to protect and restore the strongest remaining runs of Wild Pacific Salmon. We use science to drive policy, lead planning processes, and support implementation, and we know that the health of our water resources is directly linked to the recovery of our iconic wild fish. We appreciate the efforts of the Oregon Water Resources Department (OWRD) and sister agencies to support sustainable use of our waters, but we all are suffering the snowballing impacts of budget shortfalls, coordination challenges, and shifting priorities. This manifests in data gaps, outdated analyses, siloed information, and ever-worsening overallocation of this vital public resource.

**Problems with HB 3368 as introduced: Scope of “The Pause”**

Wild Salmon Center appreciates the intent of the base bill to curb overallocation, though one of the mechanisms proposed to achieve this is especially problematic. House Bill 3368 as introduced would pause all processing of new applications for water rights to give OWRD time to assess water availability in each basin and determine whether the resource can support the issuance of additional rights to use it. If “The Pause” (as the framework became known) was limited to consumptive water uses and had included a corresponding pause on transfers of such rights, this would send a clear message that Oregon is serious about getting its water house in order.

INTERNATIONAL HEADQUARTERS

721 NW Ninth Avenue, Suite 300 • Portland, Oregon 97209 USA • tel: 503.222.1804 • fax: 503.222.1805

[info@wildsalmoncenter.org](mailto:info@wildsalmoncenter.org) • [www.wildsalmoncenter.org](http://www.wildsalmoncenter.org)

Yet the bill as introduced also included a moratorium on new instream water rights—rights that by definition do not contribute to overallocation because they exist to protect the public’s interest in the resource itself. Making matters worse, the bill also failed to pause processing of applications for transfers of existing rights, which are evaluated only in terms of whether the proposed change would injure existing water rights and not in terms of whether the change is in the public interest.<sup>1</sup> This would create a perverse situation where transfers would become the only way to support new water uses, yet on the thousands of miles of streams that have fish and wildlife values but lack instream water rights (and would not be eligible for such protection as long as the moratorium remained in effect), no injury to those rights could occur, and the transfer could proceed.<sup>2</sup>

The -2 amendments to HB 3368 remove “The Pause” in its entirety. This change eliminates the perverse situation described above, but it may have also thrown out the baby with the bathwater. Oregon is far from unique in having overallocated its water resources, and the concept of a moratorium on new consumptive water rights has been pursued in other places in the megadrought-afflicted American West.<sup>3</sup> We would welcome continued conversations in support of crafting a moratorium that exempts instream water rights and acknowledges the root causes of overallocation.

### **The -2 amendments**

We believe the remaining concepts reflected in the -2 amendments—if adequately resourced and reasonably sequenced—can help move Oregon toward more sustainable management of its water resources. These concepts include:

- improvements in data collection, analysis, synthesis, reporting, and accessibility at the basin and state level;
- better integration of hydrologically connected groundwater and surface water into Department decision making;
- a report to recommend enhancements to the state’s implementation of basin programs and rules;
- increased opportunities for public engagement; and
- regular updates to the Water Availability Reporting System (WARS) used by OWRD to determine whether water resources are adequate to support new consumptive water rights.

---

<sup>1</sup> All applications for new water rights are subject to review to determine whether they will impair or be detrimental to the public interest. ORS 537.153. This standard has been applied only since 1995, meaning water rights issued prior to that time were not evaluated for public interest consistency.

<sup>2</sup> This perverse situation could also be addressed by expanding public interest review to transfer applications.

<sup>3</sup> See, e.g., Press Release of Utah Governor Spencer Cox, “GOV COX ISSUES PROCLAMATION CLOSING GREAT SALT LAKE BASIN TO NEW WATER RIGHT APPROPRIATIONS,” Nov. 3, 2022, available at <https://governor.utah.gov/2022/11/03/gov-cox-issues-proclamation-closing-great-salt-lake-basin-to-new-water-right-appropriations/> (pausing all new groundwater and surface water rights in Great Salt Lake Basin, with exceptions for applications that propose nonconsumptive uses, applications that include a mitigation plan to offset depletion, and applications for small amounts of water associated with individual domestic uses).

The -2 amendments, while an improvement over the base bill, would still benefit from further refinement to improve overall clarity and to establish more reasonable timelines for basin assessments.

In particular, we are concerned that the deadlines established for completion of basin assessments (initial assessments by December 31, 2024; full basin assessments by December 31, 2028) cannot be met without massive disruption to existing Department work and massive investments in new staffing, and even then may be inadequate to achieve this herculean task. Instead, we urge revisions to the bill to extend these deadlines and to identify a prioritization framework for sequencing basin assessments. The long-overdue and much-needed basin assessments that HB 3368 will kickstart will have long-ranging impacts, and this work is too important to rush.

Wild Salmon Center stands ready to continue our engagement with the sponsors to enhance clarity and ensure implementability.

Thank you again for the opportunity to submit testimony.

A handwritten signature in black ink, appearing to read 'Caylin Barter', with a stylized flourish at the end.

Caylin Barter  
Senior Program Manager  
[cbarter@wildsalmoncenter.org](mailto:cbarter@wildsalmoncenter.org)