

# WATER LEAGUE

*Water League engages the public  
in water stewardship.*

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To: House Committee on Agriculture, Land Use, Natural Resources, and Water

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Representative Mark Owens, Co-Chair  
Representative Sarah Finger McDonald, Vice-Chair  
Representatives Court Boice, Annessa Hartman, Bobby Levy, Pam Marsh,  
Susan McLain, Anna Scharf

RE: Water League supports major portions of HB 3342-1, which streamlines water right transactions; however, we strongly oppose the regressive sections related to limiting public noticing requirements.

Dear Co-Chairs Helm and Owens, Vice-Chair Finger McDonald, and committee members,

Our testimony below compiles sections of HB 3342-1 thematically in six topical areas as numbered:

1) Water League supports implementing electronic document filing and electronic payments related to water right transaction processing in Sections 1 and 2 *Electronic Forms Of Documents*, and Sections 8 and 9 in *Passing On Credit Card Fees*. We also support the *Phased Fee Payment* in Section 29.

2) Water League opposes all proposals to limit public notice of water right transactions in HB 3342-1, *Publication In A Weekly Public Notice*, specifically revisions in Sections 3(2), 4(2), 5(7), 5(8), 6, and 7(2); striking the existing sections 5(5) and 5(6); and the addition of the new section 5(6)(c)(B) and 5(7). The following critique applies to these ten sections, subsections, and paragraphs:

The proposed revisions, strikeouts, and additions noted above are insufficient for the local community to become aware of water right applications and permits. This maneuver is a thinly veiled attempt to prevent members of the public from lodging protests. While we agree that spurious protests must be reduced, and to that degree, we support the concept of HB 3342-1 Amendment, withholding notice from the public is the wrong way to go about it because restricting public noticing undermines public trust and the public's interest in the water rights application and permitting processes.

We ask: Who reads the weekly public notice of the OWRD? The number of people reading OWRD's notice compared to the 80 newspapers published statewide is likely infinitesimal. How is the public supposed to know of or be aware of these applications if they aren't subscribers to the very highly specialized OWRD "Weekly Public Notice" or if they can't find it on OWRD's website? Those who have signed up or can find it are likely special interests and those regularly tracking state agency activities related to water use. We challenge state officials to compare *the type of readership and circulation numbers* between obscure agency emails such as OWRD's "Weekly Public Notice" and local newspapers that local communities support and trust. We call on officials to demonstrate how restricting public notices in newspapers is in the public interest and doesn't curtail public access and awareness of water right transactions.

According to the most recent Oregon Bluebook, there are more than 80 newspapers across the state; each is listed by location, making OWRD press releases to those papers quick and easy. Claims by officials that "OWRD staff spend more time trying to find a local newspaper to publish in and then spend time coordinating the notice" are unjustified and not credible.

Here is the link to the 80 newspapers in the Oregon Bluebook:

<https://sos.oregon.gov/blue-book/Pages/cultural/media-newspapers.aspx>

Water League strongly opposes shrinking the public notice requirement under the pretense that newspapers are insufficient public notice outlets. If the state prioritizes real public notice, it must actively distribute notifications and press releases in newspapers and widely across social media, local television, and radio channels. There is no excuse for incompetence in public relations or suggesting OWRD is incompetent. OWRD could have a weekly *Water Today* column syndicated in papers across the state and posted online in numerous social media outlets and the OWRD website. The column could highlight where to find

current public notices and include informational and educational components. Fortunately, OWRD has Community Engagement staff whose work legislators could support instead of minimizing public notice. In a future letter, Water League will outline a legislative concept to establish a *Water Ambassadors* program that engages the public in the work of the several state agencies that manage water and the work of legislators and the Governor's office that govern water policy.

HB 3342-1 shrinks the public noticing requirement; it does not maintain or expand public outreach. We don't wonder what newspaper editorial staff would think of this proposal; we fully expect that all media outlets would allege a wrongful retraction of the legal duty to maintain a robust public notice system.

Limiting the public notice to the OWRD "Weekly Public Notice" is a direct attempt to prevent the public from knowing about water right transfers. It may be the worst way to solve the problem of spurious contests that hold up the processing of water right applications and permits because it will worsen public mistrust in the already fraught water right transaction process.

If the protests facing water right transactions are overwhelming, then preventing the information related to protests could exacerbate the problem of discontent. We strongly recommend not limiting public notice under the pretense that "As newspapers close, OWRD staff spend more time trying to find a local newspaper to publish in and then spend time coordinating the notice."

3) We support Sections 10 and 11 that correct a decades-long delay under the title, *Withdrawal Of Waters From Appropriation Via Rule*. We are pleased to see this update after 56 years. Did the lack of an update prevent the implementation of the withdrawal of waters for 56 years?

In 1955, Oregon passed the law establishing ORS 536.410 Withdrawal of unappropriated waters from appropriation by commission order. Then, in 1969, Oregon passed SB 300, which separated the definition of the term *order* from the definition of the term *rule*. Fifty-six years have passed, which effectively prohibited the implementation of new withdrawals of water use types from basins. How is this prolonged delay an example of good governance?

The idea that a simple fix, such as the one proposed in Sections 10 and 11, would be avoided

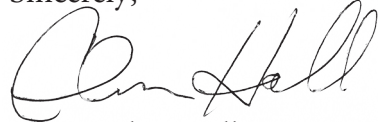
for 56 years is incomprehensible. The amount of work required for the fix is minimal, yet the impact of preventing the implementation of the withdrawal statutes is immense and may have caused decades of damage to the public's water sources. We salute Oregon's officials who have the temerity to make this simple yet important fix.

4) We support the streamlined actions proposed in Sections 12 through 24 in *Returning Applications That Cannot Be Approved*, which returns applications with almost no chance of advancing past the initial review stage OWRD conducts when processing water right applications and permits. We also support the *Public Interest Review* under Sections 32 and 33, which are consistent with the precepts of Sections 12 through 24.

5) We support the *Limits on Extensions* in Sections 25, 26, and 27 as reasonable revisions extending the time to develop water rights from 5 to 7 years and preventing quasi-speculation by those drawing out development by decades. We acknowledge the need for quasi-municipal water rights to be afforded the same standards as municipal water rights, and we support making that change.

6) We have no comments on the *Conforming Amendments* in Sections 34 through 46 except to say that those sections conforming with the revisions in Sections 3(2), 4(2), 5(7), 5(8), 6, and 7(2); the striking out of the existing sections 5(5) and 5(6); and the addition of the new section 5(6)(c)(B) and 5(7) worsen the problems we articulated in #2 above related to *Publication In A Weekly Public Notice*.

Sincerely,



Christopher Hall  
Executive Director