WATER LEAGUE

Water League engages the public in water stewardship.

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February 5, 2026

To: House Committee on Agriculture, Land Use, Natural Resources, and Water
Representative Ken Helm, Co-Chair
Representative Mark Owens, Co-Chair
Representative Sarah Finger McDonald, Vice-Chair
Representatives Court Boice, Jami Cate, Annessa Hartman, Bobby Levy, Pam Marsh, Susan McLain, Lesly Muñoz, Anna Scharf

RE: Water League opposes HB 4049-3.

Dear Co-Chair Helm, Co-Chair Owens, Vice-Chair Finger McDonald, and Committee Members,

Water League submits our testimony in opposition to HB 4049-3 on the following pages.

Sincerely,

Christopher Hall
Executive Director

Water League Testimony on HB 4049
February 5, 2026

By Christopher Hall

Abstract Summary

HB 4049-3 is a special-interest, conflict-ridden attempt to preempt Oregon Water Resources Department (OWRD) and Water Resources Commission's (WRC) authority in the Harney Basin. The bill undermines the Division 512 corrective-control and contested-case process, and replaces enforceable public-trust regulation with self-governance by the very irrigators who substantially contributed to the crisis. Water League opposes HB 4049 because the bill unreasonably immunizes a class of groundwater users from state oversight, effectively institutionalizing the Tragedy of the Commons in the Harney Basin.

HB 4049 facilitates the continued mining of ancient groundwater that will not recover on human timescales. The legislation prioritizes short-term private profit over the long-term public trust interests held by posterity. Proponents leverage a narrative of manufactured "trust issues" to signal that their regulatory capture efforts have failed at the OWRD and the WRC. HB 4049 represents an unreasonable departure from the existing statute on Voluntary Agreements, ORS 537.745, subverting the state's fiduciary duty to hold water in trust on behalf of the public to whom all the water in the state belongs. HB 4049 disenfranchises the public trust interests of posterity and ecosystems in favor of water users who have already severely degraded the public's water sources. Implementation of the CREP and a voluntary "eminent domain lite" program ought to be prioritized alongside implementation and enforcement of the recently adopted Division 512 rules.

Introduction

Water League opposes HB 4049, and the -1, -2, and -3 amendments. We acknowledge that engaging in the details risks validating the false premise that water users mining groundwater in a region gripped by a Tragedy of the Commons can exercise sufficient self-control to achieve durable and stable groundwater level trends of zero decline. Discussing HB 4049 also risks sanctioning the extraordinary conflict of interest arising from the ironic circumstance, where regulated irrigators, among them an elected official, propose legislation to preempt the state's regulatory authority in one of the most critically impaired basins in the state. HB 4049 is a law carved out specially for a class of water users by that class of water users to immunize

themselves from the regulatory authority of the state. The fact that the existing law on Voluntary Agreements, ORS 537.745, doesn't go far enough in alienating the state to discharge its fiduciary duty to hold water in trust for the greater public, to whom all water belongs, suggests a radical parochialism to maintain the harmful status quo.

Water League supports the imposition of corrective control orders to curtail water use according to the three-year-long Division 512 rulemaking process and the forthcoming contested case process. HB 4049 is a countervailing force that serves to upend OWRD's water use management authority precisely because the agency proposes curtailing water use. As such, HB 4049 obstructs the desperately needed water use reductions to protect posterity and the ecosystems they will rely upon. The bill puts too much water use management into the hands of the water users who have drained the Harney Basin. The sole reason proponents advocate for HB 4049 is to prevent the state from reducing groundwater overpumping. The existing law, ORS 537.745, doesn't go far enough. There is no other calculus.

HB 4049 has been filed to supersede the Oregon Water Resources Department's (OWRD) fourth draft of its "*Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Harney Basin Groundwater Reservoir*," (Proposed Guidance) dated October 20, 2025.[1] OWRD has meticulously revised the Proposed Guidance through four drafts by working with a "small work group that met on July 8, 2024," the Division 512 Rules Advisory Committee (RAC) members, and members of the public.

We incorporate by reference Representative Mark Owen's August 6, 2024, email to OWRD[2] regarding the outcome of that "small work group that met on July 8, 2024," which convened to address OWRD's first draft of the Proposed Guidance. We incorporate by reference OWRD's response to that email[3] on September 27, 2024. We also incorporate by reference Water League's public records request[4] on the entire set of documents held by OWRD related to Voluntary Agreements (VA) as of July 9, 2025, which document the extensive internal deliberations by OWRD staff on how to implement VAs and structure meetings pursuant to HB 2010, Section 43 (2023).[5] All of these referenced documents tell a story of consideration, due diligence, and public service that all Oregonians can be proud of.

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[1] Oregon Water Resources Department, Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Harney Basin Groundwater Reservoir (Salem, OR: OWRD, October 20, 2025), fourth draft.
[2] Representative Mark Owens to Kelly Meinz and others, email, August 6, 2024, regarding "Draft Voluntary Agreement Guidance Document."
[3] Oregon Water Resources Department, memorandum to Harney Basin Voluntary Agreement Group, September 27, 2024, regarding "Response to email from Mark Owens... regarding OWRD's Draft Voluntary Agreement Guidance Document."
[4] Jonathan Moyes (Public Records Coordinator, OWRD), Public Records Request #250142 for Water League, July 9, 2025.
[5] Water Omnibus Bill, House Bill 2010, 82nd Oregon Legislative Assembly, 2023 Regular Session, § 43.

OWRD's Proposed Guidance is a proto set of administrative rules intended to implement and enforce ORS 537.745 *Voluntary agreements among ground water users from same reservoir*.[6] OWRD staff have sought to specify numerous details that the 1955 statute lacks, so the state can secure the public health, safety, and welfare if it were ever to cede its preemptive authority to water users to manage their own water use on behalf of the public. The irrigators' right to use groundwater, which belongs to the public, only subsists until harm occurs, a point at which the right must be curtailed. Obviously, letting the water users decide when their harm has exceeded reasonable limits that impair the public health, safety, and welfare in a region gripped by the Tragedy of the Commons is a tragic folly. OWRD's Proposed Guidance related to the existing VA law, ORS 537.745, is an attempt to address the folly.

Water League incorporates by reference our extensive comments on OWRD's Proposed Guidance (VA Comments),[7] dated December 1, 2025, in which we discuss the topic of ceding the state's authority and the risks inherent to that concession. In general, Water League supports OWRD's Proposed Guidance. We make several global recommendations, including writing rules for ORS 537.745 and establishing a formal application process to ensure equity and consistency. We also critique the efforts to undermine OWRD's Proposed Guidance during the past year, attempting to wrest water use management authority from the state to the greatest extent politically possible, but without sufficient safeguards to secure the public health, safety, and welfare. HB 4049 is a much more formal but equally harmful step in that subversive process.

Water League is not opposed to the concept of Voluntary Agreements in principal; however, the existing law, ORS 537.745 is so poorly written that it has always been unworkable except for the possibility of OWRD writing administrative rules to address the serious problem of figuring out how to clarify the dual statements that VAs must *be consistent with the laws* when the WRC approves VAs *to act in lieu of the laws*. As we noted, OWRD's Proposed guidance is a proto set of rules that we generally support becoming administrative rules.

As for HB 4049, however, the bill cedes an unreasonable, if not extraordinary, amount of state authority to manage water use on behalf of the greater public to whom all the water in the state belongs. HB 4049 is precisely what one would expect from irrigators who are hitting rock bottom in a basin that is gripped by the Tragedy of the Commons and are fighting against what they believe is an existential threat to their livelihood. Indeed, the threat is the excessive decline in groundwater levels, but the nature of the tragedy blinds them from accepting this fact, and instead forces them to pivot and name the OWRD and WRC as the existential threat.

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[6] Oregon Revised Statutes. § 537.745. "Voluntary agreements among ground water users from same reservoir." 2023 edition.

[7] Christopher Hall, Water League Comments on OWRD's October 20, 2025, Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Harney Basin Groundwater Reservoir, submitted to Oregon Water Resources Department, December 1, 2025.

The Problem Reconciling "Consistent With" and "In Lieu Of"

ORS 537.745 requires that VAs be consistent with the law; once the WRC can ensure consistency, only then may VAs control in lieu of an order or rule:

> When the commission finds that any such agreement, executed in writing and filed with the commission, is consistent with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992, and in particular ORS 537.525, 537.730 to 537.740 and 537.780, the commission shall approve the agreement. Thereafter the agreement, until terminated as provided in this subsection, shall control in lieu of a formal order or rule of the commission under ORS 537.505 to 537.795 and 537.992.[8]

The HB 4049 -3 Amendment contains the same provisions, but they are not contiguous:

> (8) The commission shall approve a voluntary agreement if the commission finds that the voluntary agreement: (a) Is consistent with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992.
>
> (12) A voluntary agreement shall control in lieu of a formal order of the commission or rule adopted under ORS 537.505 to 537.795 and 537.992 until the agreement is terminated.[9]

The provision, "is consistent with the intent, purposes and requirements of the law," means that VAs must align with both the statutes and associated administrative rules. A Critical Groundwater Area (CGWA) statute, ORS 537.730(2), states that: "The proceeding to designate a critical ground water area shall be conducted according to the provisions under ORS chapter 183 applicable to the adoption of rules by an agency…" The WRC adopted the Division 10 rules in 2023 to ensure such compliance when the state entered the Division 512 rulemaking process, which ORS 537.730(2) requires. This lineage, from the statute to the rules, whereby the rules carry the force of law, is well established. The authority for OWRD to act flows from ORS 537.730(2) through the Division 10 and Division 512 rules. Therefore, consistency with the Division 512 rules is a non-negotiable prerequisite for WRC approval of VAs. If a VA falls short of the Division 512 requirements, then it is not "consistent with the intent, purposes and requirements" of the CGWA statutes.[10]

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[8] ORS 537.745.
[9] Oregon Legislature, House, HB 4049, Relating to Harney Basin water; prescribing an effective date, 83rd Oregon Legislative Assembly, 2026 Regular Session. (See the -3 Amendment as of February 4, 2026.)
[10] We must emphasize that the CGWA statutes, ORS 537.730 to 537.742, require administrative rules, and without them, they are unenforceable.

Now to the other term, "control in lieu of a formal order of the commission or rule adopted under ORS 537.505 to 537.795 and 537.992," which refers to *enforcement mechanisms*, and not to the *underlying statutory standards*. This distinction is central to understanding how "consistent with" and "in lieu of" co-exist and interrelate. The existing and proposed VA laws grant a narrow and temporary regulatory exemption from the rules enforcement; however, this enforcement exemption is granted only if the VA first meets the prerequisite of being "consistent with the intent, purposes and requirements" of the laws, which necessarily includes the rules.

Some VA proponents conflate "in lieu of" and "consistency" by misconstruing the relationship of these terms, most improperly by suggesting that when VAs "control in lieu of a formal order of the commission or rule," VAs are immune to the consistency standard as it relates to "the intent, purposes and requirements" of the laws.

Indeed, VA proponents under both ORS 537.745 and HB 4049 are required to meet reductions scheduled in the Div 512 rules, and they must do so voluntarily, assuming they can. If they can't be consistent, then they must submit to regulatory orders that can and will force them into consistency. VA proponents are also required to be consistent with the Division 512 goal of a groundwater level trend of a zero rate of decline on the same schedule to which all irrigators in the basin adhere.

These two requirements (staying on schedule and achieving the same goal) exemplify why the law requires consistency: there can be no justice or constitutional basis for an entire hydrologically connected basin, much less its constituent water users in the several subareas, to be managed by the state to achieve a goal of a groundwater level trend of zero decline, while VA parties are shielded from having to be consistent with that standard. Since the subareas are hydraulically connected, imagine the plight of marginally senior neighbors excluded from VAs (that run the risk of becoming cliques). While VA parties consisting of juniors pump more water than they would otherwise be permitted, those excluded are effectively forced to subsidize the excess pumping of their junior neighbors to bring the basin into compliance with Division 512 goals. Because VAs shield juniors, there will be senior irrigators who would be regulated off to make up for the so-called "flexibilities" so desperately sought after by VA proponents.

Discussion On the Campaign to Alienate OWRD to Buttress HB 4049

Water League has been deeply involved in the Division 512 rulemaking process for three years as a member of the public. We have had a front row seat viewing the attempts to first deny the science and the extent of the harm related to groundwater declines; second, resent then reject much of the solutions presented by OWRD; and then third, to privatize water use management in

the Harney Basin when the Division 512 rules appeared to be advancing. In 2025 alone, we submitted 164 pages of deeply researched policy critiques in four sets of comments.[11]

Water League attended 27 meetings (all but two); reviewed videos of many of those meetings and transcribed every one for research purposes (for current and future projects); compiled and read well over 1,500 pages of reports, documents, and studies; and provided public comments in nearly all meetings. A central theme that permeates every aspect of the Division 512 rulemaking process is how the Harney Basin is the site of a Tragedy of the Commons, where irrigators are mining water,[12] and, consequently, where OWRD must work under considerable duress – equal to the irrigators' resistance – to solve the problem of excessively declining groundwater levels.

During 2025, HB 3800 was sponsored in an attempt to supersede OWRD's Division 512 rulemaking process, and its companion, HB 3801, sought to supersede OWRD's Proposed Guidance on VAs. Neither bill advanced. Then, during the extended public comment period, from June 2 to October 7, 2026, water users cut their lobbying losses with OWRD and shifted their appeals directly to the WRC, which also did not satisfy their political influence goals, when the WRC adopted OWRD's proposed Division 512 rules and denied the September 12, 2025, Petition for Rulemaking, allegedly submitted under ORS 183.390.[13]

In the introduction to Water League's Comments on that Petition for Rulemaking, we noted how the supermajority cohort of irrigator-aligned RAC members obstructed proceedings at every meeting:

> As the rulemaking first emerged and then coalesced in 2023, irrigators began to engage in obstructionism during Rules Advisory Committee (RAC) meetings, marked by: filibustering; misdirecting discussions through extensive bird walking, dragging red herrings across topics, constructing strawman arguments, and raising non sequiturs; deflecting both questions and answers by all means possible; feigning confusion in a coordinated and structured manner; denying peer-reviewed science without the professional qualifications to do so while proclaiming personal anecdotal experience is a

[11] Christopher Hall, Collected Water League Comments on Harney Basin Division 512 Rulemaking and Voluntary Agreement Guidance, submitted to Oregon Water Resources Department, February through December 2025.
[12] Water mining is a formal USGS term. In the Harney Basin, about seven gallons pumped equals one cent in gross income. See: Devin L. Galloway, David R. Jones, and Scott E. Ingebritsen, eds., *Land Subsidence in the United States*, U.S. Geological Survey Circular 1182 (Reston, VA: U.S. Geological Survey, 1999), https://doi.org/10.3133/cir1182 (Aiken explains that "Ground water mining or depletion occurs when withdrawals from an aquifer, a ground water formation, exceed net recharge."); See also: H. E. Thomas, *Water Rights in Areas of Ground-Water Mining*, U.S. Geological Survey Circular 347 (Washington, D.C.: U.S. Geological Survey, 1955). [1, 9] (Thomas' USGS circular from 1955 refers to: "Ground water mining, the progressive depletion of storage in a ground-water reservoir." He continues on page 9, stating: "The water in areas of ground-water mining, however, may have great storage volume but negligible replenishment, and thus may not qualify as a renewable resource.")
[13] Representative Mark Owens, et al., Petition for Rulemaking to Amend Oregon Administrative Rules (OAR) Chapter 690, Division 512. Filed with the Oregon Water Resources Commission pursuant to ORS 183.390. September 11, 2025.

> fungible substitute; and on occasion, staging coordinated dissent tinged with ad hominem attacks against OWRD staff, and when that failed, political theatre contrived to manipulate state officials' emotions.
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> Compounding this obstructionism, RAC members requested a dozen extracurricular Discussion Groups, which we extensively critiqued in our comments on the Division 512 rules as a highly sophisticated countervailing force to the OWRD-run RAC meetings.[14]

Now, following the many stressful meetings, the attempts to legislate around the rulemaking process, and the petition submitted to supplant OWRD's rules, HB 4049 arrives in the rushed 2026 short session as the latest effort by water users to resist decades-late water use curtailments needed to stop the destruction of the Harney Basin groundwater reservoir.

To be effective, this legislative plan apparently requires a public relations effort smearing OWRD and the WRC by alleging "trust issues," about which we would be incredulous, except for the fact that such behavior not only ought to be expected from water users hitting rock bottom in a basin gripped by the Tragedy of the Commons, but more importantly, signals the level of intensity and entrenchment of the tragedy as it plays out in the political theatre staged in community centers, testimony,[15] and the press.

Water League rejects the legitimacy of the side-show playing out in the media that cites the water users' claims of "trust issues,"[16] a narrative in which they have the audacity to invert the circumstances of their own recalcitrant behavior that was on display for nearly three years throughout the Division 512 rulemaking process.

From the recent OPB article:

> Some have come to distrust the very agency in charge of managing the state's water. They're now forging a partnership with the governor's office with the hope they can avoid, or at least delay, costly litigation.

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[14] Christopher Hall, Water League Comments on The Petition to Amend Oregon Administrative Rules (OAR) Chapter 690, Division 512, submitted to the Oregon Water Resources Department, October 6, 2025. [3] Also see: Christopher Hall, Revised Water League Comments on the Chapter 690, Division 512 Malheur Lake Basin Administrative Rules, submitted to the Oregon Water Resources Department, August 12, 2025. (These comments include the critique of Discussion Groups as a counter-vailing force to the RAC meetings on pp. 23-31.)

[15] The false allegations against OWRD and Director Ivan Gall are contemptible for their lack of evidence: see this HB 4049 testimony. The smear campaign lacks integrity not just because the gross misrepresentations have by now become hackneyed unsubstantiated clichés, but also because the authors in both instances claim anonymity on pretenses of retribution, when a reasonable person would acknowledge the shame associated with such baseless fabrications: see this HB 4049 testimony.

[16] Alejandro Figueroa, "Oregon Policymakers Look to Mend Broken Trust with Harney County Irrigators," OPB, January 28, 2026.

> "There's a lot of animosity. And some of it is valid, and some of it's not," said state Rep. Mark Owens — a Republican from Harney County and a farmer. "Right now, if the state wants to work with this community, there needs to be a different face leading this instead of the water resource department, and the other option is the governor's office."
> . . .
>
> "There is some trust that needs to be gained again if we have a desire to work with the [water resources] commission on voluntary actions, because it's not there right now," Owens said. "The governor's office can weigh in with the agencies, specifically the water resource department, and give direction on, 'You have regulatory sideboards now, but slow down.'"[17]

We documented the efforts by irrigators to alienate the OWRD during the fall of 2025 in our December 1, 2025, comments on VAs.[18] Given the nature of the Tragedy of the Commons, one would expect water users to mistake OWRD for the threat to their livelihood instead of recognizing that they are overpumping themselves out of business. That is a central theme of the tragedy. Notably, if OWRD withdrew completely away from managing irrigators, who account for 96% of all water use in the Harney Basin, not only would all the so-called "trust issues" vanish, but so would the groundwater. HB 4049 is an attempt to banish OWRD to the greatest extent possible, given the political realities that frame what is actually possible in 2026 in Oregon.

Since "trust issues" have been alleged, we recommend considering how irrigators have repeatedly blamed OWRD for over-appropriating the basin,[19] when, for over 40 years, staff were subjected to extensive regulatory capture, with prospective water users, their lawyers, and lobbyists pressing for the approval of subprime water right applications. To manage water use within this political environment, staff required the imposition of decline conditions on water rights, whereby irrigators were legally obligated to measure the depths of their wells annually and stop pumping when groundwater levels dropped by an agreed point, usually 25 feet. Notably, irrigators have never complied with these decline conditions. One year ago, water users with decline conditions on their water rights erupted in furor when OWRD sought to require conformance with those decline conditions.[20] The fact that the water they use belongs to the public gets lost in the melee; yet, the usufructuary rights vested in water right holders have

[17] Figueroa, "Oregon Policymakers."
[18] Hall, "Water League Comments on OWRD Proposed Guidance." [8-10]
[19] Owens et al., "Petition for Rulemaking (Div 512)." [pp. 84-89] (See Exhibit B Harney Basin Water Policy and Management Background, "Section III. Groundwater appropriation and use in the Harney Basin." Many other similar allegations were made during recorded meetings.)
[20] Oregon Water Resources Department, "Community Meeting on Groundwater Level Permit Conditions (Burns, OR)," YouTube video, February 10, 2025. (This meeting contains strident criticisms of OWRD seeking to enforce decline conditions that are the responsibility of the water users to comply with, but never did.)

substantial limits that are alienable, especially when those persons agree to rights that have been conditioned on groundwater level decline limits.

Blaming OWRD for a breach of trust is itself an unjustified breach of trust. We hold that the so-called "trust issue" claims are manufactured to allege bad faith among the state agency staff in a strategic attempt to alienate OWRD from discharging its fiduciary duty to manage water for the greater public who extend beyond the small number of irrigators who pump 96% of all groundwater use in the Harney Basin. Asserting "trust issues" cynically suggests trust is a currency earned only when OWRD staff and the WRC agree to the terms of the water users' demands (regulatory capture).

We ask: how are posterity's trust issues being addressed, or, as a silent majority, are their concerns going unheard by elected officials? How are the ecosystems' trust issues being addressed, especially given the rampant destruction over the past 150 years that will persist for generations?

OWRD has worked closely for almost two years with Representative Mark Owens and other water users on the four drafts of the Proposed Guidance; however, as we document in our VA Comments, no amount of time will suffice when the only calculus is private sector control over how the state administers VAs.[21] To be clear, ORS 537.745 and the proposed HB 4049 privatize a portion of the state's water use management duties, but water users also want to wrest control over how the state administers VAs, which is a further meta-privatization.[22] Notably, VAs have only been proposed by water users in a CGWA, where the state has understandably focused its limited water use management resources (staff and funding).

OWRD identified the Harney Basin as one of the most critical areas of the state where excessive declines in groundwater levels have posed serious threats to the public health, safety, and welfare. Water users have pressed hard for the implementation of VAs precisely because OWRD has focused its scarce resources on the critical basin. The water users want to reverse the state's intervention by alienating OWRD from its water use management duties. We are incredulous at the irony that Oregon would find itself in such a preposterous position; yet, ORS 537.745 engineers the lamentable circumstance, and HB 4049 proposes to take it to the extreme for a class of water users who have already severely degraded the public's water sources.

While Water League does not agree with a number of agency decisions over the recent past, we strongly believe OWRD staff experts are the only legitimate professionals who should be

[21] Hall, "Water League Comments on OWRD Proposed Guidance." [5-7]

[22] The present circumstances are extraordinary where an elected official with an impenetrable conflict of interest in maintaining the over-pumping status quo in the present has shepherded two bills in 2025 (HB 3800 and HB 3801), a petition for rulemaking under ORS 183.390 in 2025, and HB 4049 in 2026, all to weaken the rule of law that otherwise upholds the greater public's interest in the long-term preservation of the groundwater sources for posterity.

managing water use, especially in basins deemed critical. If OWRD is guilty of anything, it is for adhering to the scientific facts and sound public policy that could never align with the Harney Basin irrigators' unrelenting interests to maintain the pumping status quo. The water mining from the Harney Basin Groundwater reservoir has resulted in a grossly overdrawn bank that once was full of "water-money." But the account has declined inexorably, precisely because water equals money, and pumping money is good business. The uncontrolled drawdowns describe the quintessential nature of the Tragedy of the Commons: attempting to curtail water withdrawals is the very same act as attempting to curtail access to money. The resistance and fight against the state water management agency is entirely predictable, as if the state were confiscating the irrigators' cash holdings. The obvious predictability of the struggle, however, does not justify restraining the state from serving the greater public's interest in posterity, healthy ecosystems, and preserving the Harney Basin groundwater reservoir from being destroyed.[23]

In this emerging context, HB 4049 is elegantly ironic for two reasons. First, it uses the state legislature (led, no less, by a Harney Basin irrigator) to erode state agency authority and autonomy by privatizing water use management, and second, it preempts state agency action in a critical basin where disinterested and technocratic state water use management is needed the most. That a region so gripped by the Tragedy of the Commons would be the site of privatizing water use management is an irony that risks perpetuating the harmful status quo of over-pumping. Indeed, that is precisely the difference envisioned between HB 4049 and OWRD's Permissible Total Withdrawal (PTW) limits in Section (5) of the adopted Division 512 rules.[24]

Despite the near defamation status of the vitriol directed at OWRD, staff have conducted themselves impeccably. In our view, they have been above reproach despite being targets of intense resentment. More than two dozen lengthy videos of RAC and Discussion Group meetings and countless documents, reports, and meeting presentations demonstrate a very respectful and high level of professionalism. As we referenced in our comments on the Division 512 Rules, Water League was moved to send the following email to OWRD staff on March 27, 2025:

> The 184 page slide deck presentation for the April 2 DIV 512 RAC is an extraordinary accomplishment by OWRD that demonstrates your meticulous work to address all aspects of the CGWA process, from hydrology, modeling, economics, input from the community and broader public, responsiveness to that input, and painstaking clarity in developing and explaining rules language to ensure informed and constructive feedback. Along with diligence and patience to get this process right over two years by finding the

[23] Gingerich, S.B., Garcia, C.A., and Johnson, H.M., 2022, Groundwater resources of the Harney Basin, Southeastern Oregon (ver. 1.1, June 2025): U.S. Geological Survey Fact Sheet 2022–3052, 6 p. [1] ("Most groundwater pumped from lowland wells is ancient and not being replenished at meaningful human timescales.")
[24] Or. Admin. R. 690-512-0050, Permissible Total Withdrawal for Subareas Within the Harney Basin Critical Groundwater Area (2025).

best broad-based alternatives to the status quo, OWRD has hedged against picking winners and losers or letting that process devolve into such inequity.[25]

For another example, we quote Appendix A of the Intergovernmental Agreement: Harney Voluntary Agreement Facilitation with Portland State University's Oregon Consensus.[26] The contract is the outcome of Representative Owens' 2023 legislative effort to fund facilitation services to advance VAs. Below, OWRD lays out its service objectives:

- Foster constructive dialogue, allowing for varying perspectives to be discussed during the voluntary agreement process. Facilitation will include time management, completion of meeting agenda items, and identifying potential content expertise to help interested stakeholders assess the opportunities and limitations of voluntary agreements.
- Help interested stakeholders, Harney County Court, and OWRD build greater awareness of the assumptions, goals, and concerns they bring to the table and find ways to build mutual understanding around shared interests and values.
- Where possible, facilitate a shared understanding and agreement terms for voluntary agreements.
- Draft voluntary agreements among interested parties that can be submitted to OWRD for review and recommendation to the Water Resources Commission.
- Help increase meaningful engagement with water users and other interested stakeholders, including those who are less inclined to participate or voice their questions or concerns or who may be skeptical of the voluntary agreement approach or intent.
- Conduct scenario specific economic analysis to assist in the development of suitable voluntary agreements.

The bottom line we acknowledge is that irrigators, who effectively pump money out of the ground, are in a region gripped by the Tragedy of the Commons; they are pumping themselves out of business on a decadal timescale that is two orders of magnitude faster than the time it took for the "Ancient Groundwater" to become emplaced; groundwater below 100-feet will not recover on human timescales; many people who are not irrigators are concerned about the unabated harms to posterity and the ecosystem they will inherit; OWRD and the WRC have a fiduciary duty to hold water in trust for the greater public to whom all the water in the state belongs; irrigators have been fighting tooth and nail to resist the necessary water use management that will curtail 35% of all irrigation water use over 30 years through 2058, and they are smearing, if not defaming, the work and reputation of OWRD in order to justify their

[25] Christopher Hall, email message to Kelly Meinz et al., "Re: Update RAC Number 14 PowerPoint," March 27, 2025.
[26] Oregon Water Resources Department and Portland State University's Oregon Consensus, Intergovernmental Agreement: Harney Voluntary Agreement Facilitation, OWRD Contract #WRD 24 019 / PSU Contract #1258916, June 14, 2024.

demands to be left alone, using HB 4049 as their charge, all the while claiming victim status when they are the parties causing the harm that must be stopped.

Sequential Critique of HB 4049

We critique Section 2 of HB 4049-3,[27] not to discuss whether the chintz window dressing is the right choice, but to point out how the accumulation of subsection provisions undermines the very foundation of the rule of law and order that are necessary to hold the critically impaired Harney Basin groundwater reservoir together as it degrades under rampant and uncontrolled extraction.

A critical failure of the existing VA statute, ORS 537.745, is the direct result of there being no administrative rules to assist with implementing the law. OWRD's Proposed Guidance from October 20, 2025, is a proto set of rules that begin to address serious problems with that statute. Notably, HB 4049 has no section or subsection requiring the writing of rules; however, we note that the statute is four times longer than ORS 537.745, and that HB 4049 proponents have sought to preempt agency rulemaking by including as many of their preferred details as possible into the statute itself. We reiterate: not only is HB 4049 an attempt to preempt OWRD authority to manage water use in the Harney Basin, but proponents also wish to preempt the agency's authority to write administrative rules. OWRD would never write rules similar to the lengthy statutory text in HB 4049;[28] to this point, HB 4049 is an attempt to supersede OWRD's Proposed Guidance from October 20, 2025.

We address specific changes between the introduced base bill and the -3 Amendment, including omissions by [*italicizing omissions in brackets*].

We have no comment on any subsections of HB 4049 that we skipped.

Below, numbers in parentheses refer to subsections and paragraphs of Section 2 of HB 4049.

(1)(b) Minor Amendment – The term is vague and ambiguous. Debates will result in protracted arguments and disagreements over what constitutes detriment, given the plastic, malleable understanding of the public welfare, safety, and health. The public welfare, safety, and health phrase runs throughout the water code; however, as used in this subsection, the term will be endlessly debated. This will lead to unnecessary confusion in lawsuits over the interpretation of

[27] HB 4049 (-3 Amendment), as of February 4, 2026.
[28] Oregon Water Resources Department, "Testimony for House Bill 4049," submitted by Bryn Hudson to the House Committee on Agriculture, Land Use, Natural Resources, and Water, February 4, 2026. (Both OWRD's Proposed Guidance, which irrigators reject, and the agency's neutral testimony on HB 4049, indicate that the agency would not countenance most of the provisions in HB 4049.)

the legislative intent as to what is a minor amendment in every case where a question of the definition arises. We also address this concern in subsection 14 below.

ORS 537.745 says: "...or that changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992." This use of the phrase arises in the context of termination, a much bigger situation that is rarer than the occurrence of many so-called minor amendments that would be alleged as minor. Furthermore, the termination process in ORS 537.745 is the result of an "order of the commission if the commission finds, after investigation and a public hearing upon adequate notice…" This order is an order other than contested case, the formality of which, coupled with an investigation and the rarity of termination, makes the "...the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992" determination a reasonable query, quite distinct from a minor amendment.

Minor amendments must be clearly stipulated in rule by OWRD, and the agency should do so in rules for ORS 537.745. Furthermore, minor amendments cannot ever be construed as or substitute for the Adaptive Management check-ins under the Division 512 rules.

[*(1)(c) Subarea in the Introduced bill but omitted in the -3 Amendment*] – The introduced base bill defined Subarea, which it then referred to in subsection (2) as the boundary area where VA parties may exist. By removing the definition for Subarea in the -3 Amendment and its subsequent use in subsection (2), allows irrigators from across the basin to hot-swap POAs and POUs as unpermitted water right transfers, especially given subsection (15), which exempts Harney Basin water users from complying with the water right transfer laws in ORS 540.520 and 540.523. We discuss this problem further in our critique of subsection (2) below.

(2) – As noted above, the removal of the term Subarea from Subsection 2 in the -3 Amendment has created a basin-wide region where irrigators would be permitted to flout the water right transfer laws and establish a long-sought-after goal of running a privatized water market, sending water to the highest bidder without sufficient regard for the hydrologic consequences. HB 4049 explicitly severs the state's authority to manage water use in VAs; to the extent that far-flung proposals would set up a basin-wide fiefdom and trading market, OWRD and the WRC will be frozen out of controlling the water use in the entire Harney Basin. (See subsection 15 for a detailed discussion on this topic.)

(3)(b) State Exclusion – We quote from our VA Comments submitted to OWRD and the WRC, dated December 1, 2025, on the matter of the state's party status in VAs:

> OWRD/ WRC are parties to all VAs without limitation because they control the terms of the VAs absolutely by 1) approving or rejecting entire VAs, 2) line-item vetoing individual VA provisions and clauses, and by 3) participating in the consent required to admit new parties.
>
> Though private citizens are parties to VAs, VAs are not private contracts; rather, VAs are public instruments the state uses to temporarily share some of its preemptive authority to manage water use. The state requires a binding contract to hold parties accountable to each other and between them and the state to compel their compliance and performance. It is in the very nature of the state giving up some of its power (albeit temporarily) that it must do so without giving up its power altogether to control the voluntary actions by irrigators to manage their water use. When the state approves a VA, it becomes the supreme sovereign party to the VA under which all other parties must operate and remain perpetually subject to the State's plenary authority and fiduciary duty to protect the public health, safety, and welfare. The state reconciles the paradox of holding absolute preemptive authority to enact ORS 537.745, a law that ostensibly gives up some of its preemptive authority to irrigators, by maintaining full control at all times over the VA as a supreme sovereign party to the VA.[29]

Limiting the state's party status in VAs in HB 4049 evinces the water users' deep-seated concerns about accountability. Indeed, it is because water use management is a state function that HB 4049 seeks to exclude the state from becoming a VA party, while it openly welcomes all others to join. Again, we point out that HB 4049 is about preventing the state from exercising its preemptive authority to manage water use in the Harney Basin.

(4)(a)(A) – Water rights with unenforced decline conditions are non-conforming water rights, the use of which perpetrates a misappropriation of water. We are incredulous that HB 4049 proponents would have the audacity to demand that water rights, which were legally obligated to stop pumping from wells when groundwater declines exceeded the conditions on the water rights, would write into statute permission to contravene the water right provisions. We are struck by the irony of irrigators demanding the right to use water from excessively depleted wells in a CGWA, but when considering the fact that the Harney Basin is gripped by the Tragedy of the Commons, the circumstance makes sense – even more so when set in the context of VA fiefdoms.

(4)(b) Water Level Exceedance – If we understand this vague subsection correctly, then it appears that HB 4049 requires preset groundwater levels to be established, the limits of which may not be exceeded by the inclusion of new water rights or wells. Does this mean that 1) each VA will decide for itself what groundwater level decline is acceptable, and from that, 2)

[29] Hall, "Water League Comments on OWRD Proposed Guidance." [32]

determine what the PTW is for each VA, and 3) if a new irrigator wishes to join, their pumping volume cannot increase the duty beyond which "water levels [would not] exceed the limits established by the voluntary agreement?"

Presumably, however, OWRD would set the PTW of a VA through its modeling, which is the case under ORS 5637.745. PTWs are set as a function of the size of the VA; a bigger VA has a bigger PTW. Furthermore, there is no upper end to the size a VA can be; indeed, OWRD only ever envisioned a minimum size. In HB 4049, however, this subsection appears to invert this concept by saying that new irrigators cannot join a VA if the existing VA parties have set a predetermined, arbitrary limit to the water level decline exceedances. If this is the case, then subsection (4)(b) functions as a way to limit the size of VAs, which means preventing others from joining VAs on the pretense that the VA can't accept new water rights or wells that would "cause water levels to exceed the limits established by the voluntary agreement." As we discussed earlier, VAs run the risk of becoming cliques, where marginally senior irrigators are left out to make up the difference not being conserved inside VAs that contain juniors who would otherwise have been regulated off but for being shielded by VAs.

(5)(a) Shifting Baseline – This subsection states that equipment efficiency standards count towards the total reductions VA parties make. Therefore, the total VA reduction may be less if one or more parties have already installed more efficient sprinklers, and those who did, get to count the amount they have cut back as a portion of their contribution to the entire future VA reduction. This shifting baseline will have the effect of minimizing reductions, especially for the micro-VAs and the self-VAs, where an irrigator enters into a VA with themself to avoid the state's regulatory orders and then argues for a baseline that already accounts for a portion of the necessary reductions.

(5)(b) Total Duty of a VA – This subsection assumes that VA parties will set the total duty of their VA, and that, presumably, OWRD will model the VA to determine if that duty is sufficient to conform with the PTW of the subarea or entire basin. Instead, every VA should be allowed to pump the volume of water equal to the total duty of all senior water rights that would not be curtailed by OWRD, consistent with the PTWs in the adopted Division 512 rules. In this scenario, a mix of seniors and juniors would get to share use of the total volume that belongs to the seniors; otherwise, if a VA were permitted to also add even a portion of the water use the juniors have been previously pumping, then VAs explicitly shield juniors from the Doctrine of Prior Appropriation and foist the balance of cuts onto neighboring seniors left out of VAs. As such, VAs would undermine the CGWA statutes and the ability of the state to resolve the critical status of the basin and harm marginal seniors left out of VAs.

(5)(c) Adaptive Management Timelines – Adaptive Management schedules must be the same basin-wide; otherwise, OWRD is faced with comparing apples-to-oranges results. All irrigators

must check in every 6 years, whether or not they are in a VA, and then revise their water use to track with the Division 512 rules goals set forth in the adaptive management regime through 2058.

(5)(d) VA Compliance – The VA parties cannot evaluate compliance with the bill because that is OWRD's job to ensure that VAs are consistent with the law. The VAs are contracts, and while VA parties are obligated to each other in a binding agreement, it is OWRD who must ensure compliance.

OWRD must demonstrate how the VA will remain consistent with the laws and rules, not the irrigator-parties in the VA. By what technical means would the VA parties demonstrate the viability of their VA to the WRC, and how would their conflict of interest be avoided? While OWRD may offload some of its authority to manage water use by recommending VAs for approval, handing off the process of determining consistency with the law (i.e., Division 512 rules) is quite another level of preemptive state authority to relinquish.

(5)(d)(A) Data Sources – This subsection will establish a double standard for the types of data and measurement protocols that irrigators left out of VAs will be required to adhere to by regulatory order. VA parties will invent or create their own ways to source and report on data that will not be scientifically sound or consistent with OWRD requirements. The lack of parity will sow chaos when trying to compare data apples to data oranges. VA parties will claim use of power bills and OpenET, neither of which is accurate enough to use. While VAs may not be subject to SWMPA rules, they must be consistent with them, which requires 1:1 parity. This subsection assumes that VAs can ignore the requirements OWRD sets forth to oversee water use measurement and reporting basin-wide.

(5)(d)(B) Participation Award – The phrase “credit even if levels don’t rise” provision removes the expectation that stable groundwater levels be demonstrated in fact. OWRD and the USGS have long-since accepted the fact that recovery below 100' will not occur on human timescales; therefore, OWRD has instead set stabilization as the goal – a groundwater level trend of zero decline. Here, HB 4049 cynically trades on the impossibility of recovery, using a euphemism, “not measurably increasing,” to set up the expectation of failure precisely so that VA parties can implement out-of-mitigation alternative activities to water use curtailments.

(8)(a) Consistent With the Laws – See our comments on this topic on pages 4 to 5.

(8)(b) Reasonably Stable – The reference to ORS 537.525(7) “reasonably stable ground water levels,” is moot in a Critical Groundwater Area, where groundwater levels have blown past “reasonable” in significant portions of the Harney Basin and are defined as “excessively declining.” Since the basin is one groundwater reservoir as determined by the USGS and

OWRD, and areas that are not excessively declining are, however, over-drawn or about to be overdrawn, and are hydraulically connected to the excessively declining regions, a goal of zero rate of decline across the basin is not possible without addressing all areas of the basin concertedly.

OWRD cannot manage a hydrologically connected CGWA for reasonably stable standards – that opportunity was lost 30 years ago when the Harney Basin fell out of balance between annual recharge and discharge. Today, the USGS calculates the annual deficit at 110,000 acre feet, which is equivalent to the entire annual consumptive use of Portland. VA proponents have improperly been trying to use the term "reasonably stable" because it is a far less rigorous standard. That it cannot apply to the Harney Basin is of no concern to those who wish to maintain the over-pumping status quo.

(8)(c) Minimize Economic Impacts – This subsection includes a vague and unquantifiable standard: "Is likely to minimize and mitigate economic impacts to the region." What is the quantity of "likely?" Is it a statistical progression or probability? Who sets the standard and the baseline? Is the period of minimizing and mitigating economic impacts assumed to be the present – the next quarter, or fiscal year – or is it posterity, who would like to see OWRD stop all over-pumping at once?

(9) Minimum Participation – The question of minimum participation has been quieted in OWRD's Proposed Guidance; Water League strongly supports a minimum participation rate in VAs. The 30% minimum participation floor, proposed in 2024, acts as a safeguard, ensuring that VAs: 1) meaningfully substitute for a Corrective Control Order in a subarea rather than merely functioning as a personal regulatory shield from the doctrine of prior appropriation, and 2) do not lead to modeling chaos that could harm marginally senior non-VA irrigators. Modeling chaos could erupt when OWRD has to frequently revise who gets regulated off based on shifting seniority patterns outside of VAs, as numerous juniors come and go as they attempt to seek shelter in tiny or even "self-VAs."

Removing the 30% minimum may unreasonably privilege certain irrigators by shifting burdens to their non-VA peers who remain subject to regulatory orders. A 30% minimum participation threshold ensures that only collective, subarea-scale efforts to reduce groundwater use come forward, rather than tiny, insular VAs that grant individuals or a small cohort privileges and immunities that simulate the effects of seniority, the effects of which are almost certainly inconsistent with the intent, purposes, and requirements of the groundwater section of Chapter 537.

(11) Delegation of Authority – The WRC may delegate all of its authority to the OWRD except for adopting administrative rules. We have previously discussed the fact that irrigators want to

alienate the OWRD from the VA process to the greatest extent possible to ply their case before the WRC, whom they believe are more susceptible to regulatory capture because they are policy generalists. OWRD staff are more technocratic and focused on science, engineering, and policy making; as such, they appear to be, perhaps more than in the past, able to resist the arm-twisting for which lobbyists, lawyers, and certain legislators have been renowned.

We acknowledge the value of integrating the WRC to the greatest extent possible in the development and implementation of VAs, especially since VAs are inherently problematic for all the reasons we have articulated in these and other comments. To this point, we support a rulemaking process to streamline and elucidate ORS 537.745 and to involve the WRC throughout.

(12) Shall Control In Lieu Of – See our comments on this topic on pages 4 to 5.

(13)(b) Measuring Static Well Depth – In addition to developing an irrigation plan by March 1 of each year, VA parties must also report the static well measurement of each well in the geographic area of the VA. Well level measurements are necessary to track groundwater level changes and the impacts VAs have on groundwater levels.

(13)(c) Water Use Reporting – [The introduced bill stated "No later than November 15 of each year, report to the department the parties' actual total annual use of ground water under the voluntary agreement."] However, the -3 Amendment changed this language to more ambiguous phrasing: "(c) No later than November 15 of each year, report to the department the parties' use of ground water under the voluntary agreement."

(14)(a) and (b) Minor Amendments – Minor Amendments must be well defined without ambiguity; otherwise, arguments and lawsuits will ensue, bogging down the job of reducing water use. VA proponents have articulated what they consider to be minor, which, given their self-interest to be left alone in a bracing form of parochialism, is not justified by any reasonable standards for the rule of law and order. Minor amendments have been a moving target over the past year and a half. We quote from our February 13, 2025, Comments on VAs on how the concept was understood then:

> A desire for a flexible contract that can increase or decrease the number of parties to a VA, change the geographic boundaries of the VA, move the goalposts for compliance with VA provisions under the pretense of adaptive management, and change other terms of the VA in a ministerial way without having to go back before the WRC and seek approval for the revised contract. As Chad Karges noted during the Harney Basin VA Subgroup Meeting, they would like: "Resolution at the lowest level possible," and Rep. Mark Owens suggested, tongue-in-cheek: "Complete discretion by the groundwater

users."[30]

On one hand, VA proponents don't want OWRD authorized to approve or terminate VAs under Section 11 because OWRD will apply its disinterested technocratic approach to such decision-making, but on the other hand, VA proponents want "resolution at the lowest level possible" for all other factors, many of which are not minor amendments. The policy disarray surrounding the VA proponents' general desire to be left alone, their insistence on alienating OWRD from decision-making, and then their intent on resolving significant amendments at the lowest possible level is a recipe for water use anarchy, which could look like a composite of the Tragedy of the Commons set in a modern derivative of the Wild West.

(15) Exemption from Water Right Transfer Laws – The following discussion is excerpted from our February 13, 2025, comments on VAs.[31]

> [VA proponents have] a desire to transfer the seniority of water right certificates from one Point of Appropriation (POA) to other junior POAs, and to move irrigation water from one Place of Use (POU) to other POUs – all within the geographic boundaries set by the terms and conditions of VAs within the same reservoir. ORS 537.745 can control in lieu of WRC orders related to the groundwater sections of Chapter 537, but not over the rest of the chapter or other chapters; therefore, ORS 540.520 and 540.523, which govern water use transfers, block the presumption by VA proponents that they can move their water right certificates around among various POAs and POUs under ORS 537.745.
>
> No one else in Oregon, including irrigators left out of VAs, can evade the water right transfer laws. The proposal for flexibility to avoid ORS 540.520 and 540.523 is factually and legally impossible. Arguments by VA proponents that water needs to be used on more productive soils is a widespread problem across eastern Oregon and is resolved through the water rights transfer process. The idea that irrigators who have caused some of the worst damage to groundwater reservoirs and soil salinization would be rewarded with not having to comply with the water right transfer laws would create widespread resentment across the state.
>
> The simple remedy is for every party to a VA to apply for water right transfers as needed. The idea of hot-swapping seniority, POAs, and POUs on very short time scales runs counter to the most essential principle that propelled the establishment of Oregon's water code in 1909 and the subsequent expansion of it by the 1955 Groundwater Act: taming the water use chaos through staid and controlled regulation to create more certainty and predictability, both spatially and temporally. An important consideration is that water right transfers shall not cause injury to others. The OWRD maintains security by conducting hydrologic studies that demonstrate over long periods of time, and at specific

[30] Oregon Consensus and OWRD, Harney Groundwater: Voluntary Agreement SubGroup, October 1, 2024 [at 2:04:50]
[31] Christopher Hall, "Water League_Comments on the Proposed Guidance for Voluntary Agreements," submitted to Oregon Water Resources Department, February 13, 2025. [14-15]

locations, proposed water uses will not harm others. Proponents' use of VAs to move around seniority, POAs, and POUs annually is anathema to the rule of law and order necessary to reasonably protect the present and future public health, safety, and welfare, and the groundwater dependent ecosystems. As such, the proposal is inconsistent with the CGWA principles, which we argue is the precise intent of VAs: to avoid the WRC's regulatory actions to the extent possible.

In a CGWA, the logic of moving senior water diversions around to various POUs is not unlike trying to develop land around the rims of steep eroding canyons. If proponents of VAs define subareas of VAs under OAR 690-010-0130(3) to benefit some irrigators party to a VA, and it has the effect of harming others,[32] there is a high chance that any water right transfer in the geographic area of the VA will cause an injury. Moving water diversions among POAs and POUs without going through the water right transfer process compounds the potential for injury.

The related concepts about comparing VAs to rotating ditch agreements and irrigation districts are unjustified and therefore fail to work around the water right transfer statutes. VAs would comprise two or more water rights, each associated with POAs and appurtenant POUs; whereas, ditch rotation agreements usually distribute water to various landowners whose properties are overlaid by one POU associated with a water right certificate. The parts of a VA cannot become subsumed into or become a whole; legally, they must remain as parts distinguished by their distinct water rights and associated POAs and POUs. We acknowledge that OWRD proposes Total Voluntary Reductions (TVR) that represent the collective sum of water use conservation required by each VA, subtracted from the full duty of all the water rights that parties bring to VAs. However, this summation does not subsume the various parts into a whole, single water right. The analogy to a rotating ditch agreement erroneously conflates numerous discrete components with a VA that cannot legally merge those components.

Conclusion

Enacting HB 4049 and its amendments would be an abdication of the state's fiduciary duty to safeguard Oregon's groundwater resources, held in public trust, against the inexorable forces of the Tragedy of the Commons in the Harney Basin. This legislation is not a refinement of water policy but a structural subversion of it, a special-interest carve-out that asks the Legislature to do what the agency process has not: exempt a small class of groundwater users from state administration in one of Oregon's most critically impaired basins.

By alienating the State from its sovereignty and substituting voluntary benchmarks for statutory imperatives, the bill prohibits regulatory authorities precisely where rigorous oversight is most needed. The irony of such alienation is unbearable. HB 4049 does not offer flexibility inasmuch

[32] Darrick E. Boschmann, Response to RAC request: "sub-basin" PTW for the Harney Basin CGWA, 02/26/2024. [6-8]

as it offers immunity by granting private special interests authority to establish fiefdoms, which, among other acts, bypass the standard water right transfer processes designed to prevent injury and maintain hydrologic order. HB 4049 is the manifestation of an extraordinary conflict of interest vested in regulated irrigators, among them an elected official using their influence to advance their interest to preempt the state's authority to regulate them.

Water League supports the Division 512 rules despite our documented concerns that OWRD unreasonably conceded to demands that groundwater levels be stabilized far lower than originally proposed by the agency. We support corrective control orders following a contested-case hearing and the inevitable appeals court challenges – all to protect posterity and the ecosystems that depend on a healthy and functioning groundwater reservoir. HB 4049 is a countervailing force designed to obstruct that judicial process, likely because the probability of an appeals court challenge succeeding in favor of the water users' interest, following a contested case hearing, may be a concern for risk-averse irrigators.

We urge the Legislature to reject HB 4049 in its entirety to preserve the integrity of the state's duty to hold water in trust for the public to whom all the water in the state belongs. We also request that our elected officials uphold the careful, considerate, and diligent work of OWRD and the WRC in advancing equitable and sustainable water stewardship for the benefit of present and future Oregonians.