Oregon Cattlemen's Association

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The Oregon Cattlemen's Association is submitting this written testimony in support of SB 791 because problems with groundwater administration in Oregon has presented itself over the past 5 or 6 years, necessitating legislative correction. The Oregon Cattlemen's Association purpose is to advance the economic, political and social interests of Oregon ranching and farming industries and to protect our industry communities and private property rights.

Surface water and groundwater in the State of Oregon are conjunctively managed by priority date. This means that new groundwater use applications are scrutinized to ensure junior groundwater uses do not interfere with senior surface water rights. Further, this means that existing groundwater use rights may be regulated off when: 1) a senior surface water call is made; and 2) the junior groundwater use impairs or interferes with the senior surface water right.

When the administrative phase of the Klamath Basin Adjudication was completed in 2013, pre-code water use rights in the basin were entitled to make calls for water for the first time, and annual surface water calls soon followed. Since 2013, the Oregon Water Resources Department has changed how it regulates groundwater use in the basin 4 times: first, under the Department's Division 9 rules; next, under the then newly enacted Division 25 rules related to the Upper Klamath Basin Comprehensive Agreement that has since been terminated; third, under the Division 9 rules again; and currently, the Department is promulgating new Division 25 rules despite substantial opposition from water users.

Moreover, both the Division 9 and Division 25 rules authorize the Department to use models to assist the agency to make decisions about the effects of particular groundwater uses on surface water sources. After all, it is not within the Department's budget to test every well in the State to determine the degree of hydraulic connection to surface water sources. In 2014 through 2017 the Department applied an analytical model (which is a math equation) to estimate stream depletion caused by specific wells, and from the results of the equation, the Department determined whether specific wells should be regulated off. In 2018, the Department completely changed the type of model it was using, now relying on a United States Geological Survey ("USGS") regional groundwater flow model for southern Oregon and Northern California to regulate off all wells in the Upper Klamath Basin by making a general conclusion that groundwater use—in the aggregate—causes stream depletion.

The aggregate approach currently embraced by the Department is very troubling. First, the USGS report relied upon in support of the Department's approach is a regional model that is not specific to particular wells or locations.
The report itself demonstrates that the resulting model is not calibrated to match specific, real-world conditions. And, in many cases, estimated groundwater contributions to stream flow are within the margin of error, meaning there is no scientific certainty that groundwater flows support surface water flows throughout the basin. This is the case, for example, in the Sprague River Valley where the model outputs are not aligned with actual measurements.

Second, the aggregate approach adopted by the Department has never been used to regulate off an entire region of groundwater users in the history of water regulation in Oregon. ORS 537.780(2)(b) expressly states that the Oregon Water Resources Commission may not determine that a groundwater use will impair or interfere with a surface water source unless the decision is based on substantial evidence, and that such evidence relates to a "specific use" of groundwater.

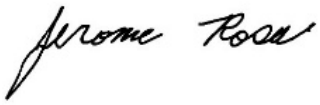
Third, the aggregate approach creates injustice. The approach ignores the science and the specific circumstances of differently situated water users. There are now groundwater uses being regulated off in the Upper Klamath Basin that the Department previously determined would not provide effective and timely relief to the surface water supply in order to benefit senior surface water users.

Senate Bill 791 can right the wrong that is occurring with regard to conjunctive groundwater management in the Klamath Basin, as well as set a standard throughout the State of Oregon, requiring that: 1) groundwater regulation proceeds on a case by case basis, 2) groundwater regulation is supported by science, and 3) groundwater regulation results in an actual (not hypothetical) benefit to senior surface water users. While these challenges related to groundwater management are particularly highlighted in the Klamath Basin, conjunctive groundwater regulation across the State is occurring on an ad hoc basis, without clear standards set at the statutory level

We can all agree that a groundwater use should actually interfere with a surface water use to be regulated off. We can also agree that shutting off a groundwater use should result in an actual benefit to a senior surface water use to be regulated off. Currently, these basic standards are not being met, and the constant changes in groundwater administration have made it impossible for water users to challenge the Department's ever-changing regulatory actions.

Senate Bill 791 sets forth a framework to resolve the current inconsistencies and require scientific support for conjunctive groundwater regulation. Thank you for your time and consideration.

Thank you,



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