



WaterWatch of Oregon Protecting Natural Flows In Oregon Rivers

HB 4069

Testimony of WaterWatch of Oregon By Kimberley Priestley Submitted to the House Water Committee February 6, 2020

Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. We work to ensure that enough water is protected in Oregon's rivers to sustain fish, wildlife, recreation and other public uses of Oregon's rivers, lakes and streams. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

WaterWatch supports HB 4069

What HB 4069 does: This bill would allow the Oregon Water Resources Department (OWRD) to require reporting of water use information for water users who are already required to measure water use. HB 4069 does not mandate any action by the state; it simply gives the OWRD an additional tool to better manage Oregon's surface and ground waters.

Why Reporting Authority is important: Water use measurement and reporting is the cornerstone of effective water management and efficient water use. It is a basic, common-sense tool that is necessary to provide good data on water use throughout the state, help water users stay within their legal limits, promote efficient water use and help the OWRD carry out its water management responsibilities. Increasing conflicts over water, burgeoning demand for limited water supplies, water transfers, instream flow protection, water right adjudications, irrigation modernization, climate change, increasing incidents of drought and climate change – all necessitate water use measurement and reporting.

All governmental entities, including municipalities and irrigation districts (ORS 537.099(1)), and most new water permits issued since 1993 are required to measure and report water use. As to pre-1993 rights, the OWRD does have broad authority to require measurement of these rights, and is doing so in many places of the state, but it currently lacks comparable authority to require reporting of the measured data.

HB 4069 would expand the state's toolbox to allow the OWRD to require those that are currently measuring to report the information to the state. This will allow for greater efficiencies with OWRD's limited field staff.

Why water use measurement data is important: In order for the state to fulfill its water management responsibilities and water planning functions, it is essential that water use not only be measured, but that the information be provided to the state. Water use data is used for a variety of the Water Resources Department's existing program areas, including but not limited to:

- Understanding water availability: Water use data is used to refining OWRD's water availability model, which is used to evaluate whether new permits can be issued
- Protecting existing water right holders from injury in water right transactions: Historical water use data is used to support injury determinations for proposed water right transfers, permit amendments and voluntary leases
- Protecting water rights on the ground: Field staff use water use data to distribute and regulate water use for the protection of senior rights (both out-of-stream and instream water rights)

- Managing groundwater: Water use data is critical to the states' work of monitoring the status of groundwater and ensuring sustainable water use.
- Certification of water rights: Water use data provides information for use as final proof evidence
- Promote irrigation efficiency projects: water use information is important to improve water use efficiency and support projects to conserve water under the Conserved Water Act

The importance of water use data has been highlighted in a number of state documents including but not limited to the 1997 Oregon Plan, the 2000 Water Resources Commission Water Management Strategy, the 2016 Secretary of State Audit of the Oregon Water Resources Department, the 2016 Oregon Water Resources Monitoring Strategy, the 2012 and 2017 Integrated Water Resources Strategy, and the 2019-2025 OWRD Strategic Plan. These state planning documents and directives recognize that water use data is critical to sound water management, protecting existing water right holders, facilitating planning for future water supplies and preventing time consuming and costly conflicts in the future. Both the Integrated Water Resources Strategy and the State's Monitoring Strategy specifically call out the need for better reporting authority.

That said, while the importance of water use data is recognized as the cornerstone of good water management, only 23% of water users are reporting their water use currently. In short, the state needs more tools in its toolbox to gather measurement data where it is needed to protect Oregon's water resources, water users and ecosystems. HB 4069 will provide such a tool.

Proposed Amendments on OLIS:

-1 Amendments: The -1 amendments simply ensure that any rules developed under this bill would be limited to reporting authority outside of existing permitting authority, serious water management problem area authority (ORS 540.435) and water use reporting requirements for governmental entities (ORS 537.099). WaterWatch supports the -1 amendments.

-3 Amendments: The -3 amendments seek to limit the state's use of reported information in forfeiture and cancellation proceedings. WaterWatch strongly opposes the -3 amendments.

Water is a public resource. The need not only for better data, but also for more robust water management, is recognized in virtually all state public planning documents that pertain to water---whether the Integrated Water Resources Strategy, the OWRD's Strategic Plan or the evolving Governor's water vision. To entertain an amendment that would limit the state's use of water use data is not only bad public policy but undermines the state's efforts to better manage our state's limited water resources.

As to the attempt to insulate users from forfeiture proceedings based on water use reporting data as contemplated in the -3 amendments, it is important to note that Oregon's forfeiture statutes are some of the most lenient in the West. Contrary what many assert, Oregon is not a strict "use it or lose it" state, in other words, we are not a partial forfeiture state. Under Oregon law, as long as a water right holder has a facility capable of handling the entire rate and duty and the user is otherwise ready, willing and able to make use of their right, if a water right holder uses less water than their paper right allows they will not be subject to forfeiture. ORS 540.610. In short, forfeiture is not a huge risk on the landscape. That said, in instances where a water user is not in fact ready, willing and able to use their water the state should be able to use reporting data to move forward on forfeiture and cancellation proceedings. Attempts to stymie use of water use information to uphold one of the most basic tenants of Western Water law moves Oregon away from responsible water management, not towards it.

Please support HB 4069 —a common sense water management tool.

Thank you for this opportunity to comment.

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