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March 30, 2021

House Committee on Water  
Representative Ken Helm, Chair  
Members of the Committee  
Email: [hwtr.exhibits@oregonlegislature.gov](mailto:hwtr.exhibits@oregonlegislature.gov)

**RE: HB 3166-1 – Water Use Reporting – OPPOSE**

Chair Helm and Committee Members,

Thank you for the opportunity to provide testimony on House Bill 3166-1. The Oregon Cattlemen's Association's ("OCA's") members are ranchers and farmers in the State of Oregon. Our members' water rights are essential for their operations, and they are concerned about HB 3166-1's provisions that potentially change the terms and conditions of their water rights, placing additional costs and burdens on the exercise of their water rights without a clear benefit as a result. As such, the Oregon Cattlemen's Association is opposed to HB 3166-1.

Despite our organization's opposition to the Bill, we want to recognize the vast improvements from previous versions in past sessions. We thank Representatives Helm and Owens for listening to concerns that have been raised and attempting to address those concerns in the -1 amendments. As you know, the Oregon Cattlemen's Association has fully participated in the discussions leading up to the -1 amendments, and has put significant time into meaningfully engaging in the process and providing questions and feedback as requested.

In order to continue participating in this process, the Oregon Cattlemen's Association recommends the following changes to HB 3166-1. Although these changes will not cause OCA to support the Bill, they will continue to work to alleviate, if not remove, the costs and risks associated with implementing a new reporting requirement on our members. Further, given the potential cuts OWRD faces and fee increases, we caution the committee on implementing a new program or authority when OWRD is not currently able to fund programs paying for stream gauges, observational wells, groundwater studies or feasibility grants.

Here is a summary of considerations for the -1 amendments:

1. Section 2 Subsection 1(b) – We are unclear about the term “water budgets” and what the data collected under the Bill will be used for. We understand that a water budget is a component of a larger basin study, and that water budgets are more closely linked with groundwater studies than surface water studies. Thus, we are unclear how this concept will be expanded to surface water, and whether the ultimate goal of these water budgets is to allow the Oregon Water Resources Department to complete comprehensive basin studies. If that is the ultimate goal, we question why that is not stated in the Bill.

~ Voice of the Oregon Cattle Industry Since 1913 ~

2. Section 2 Subsection 2(a) – There are 18 water basins in Oregon, and many more subbasins. If the Oregon Water Resources Department designates 5 water basins, that means that over a quarter of all basins will be designated under this Bill. To maintain the apparent intent of limiting the number of basins designated from the outset in order to determine the benefit to these additional requirements, we propose that the Bill allow designation of no more than 3 water basins, but up to 5 subbasins. We believe this more closely aligns with the workgroup discussions to implement a “pilot” program.
3. Section 2 Subsection 5, Section 3 & Section 6 – Section 6 requires the Water Resources Commission to report to the Legislature about the Commission’s progress in designating priority basins, developing water budgets, and assessing the water data online platform. Section 2 Subsection 5 in conjunction with Section 3 allows the Commission to designate additional priority water basins after making the report to the Legislature. However, the report does not require any kind of qualitative analysis about whether this program is beneficial or whether any information obtained is furthering the stated goals. Section 2 Subsection 5 and Section 3 should be deleted from the bill so that the Legislature has the opportunity to assess the usefulness of the program before the Commission automatically starts expansion. Alternatively, a sunset date should be imposed that allows the Legislature to extend the program only if the Commission’s report justifies extension. Finally, the Section 6 report should be substantially more detailed regarding the outcomes produced from the program, not merely the Commission’s process to designate basins.
4. Section 7 Subsection 2 – The Bill identifies that it would affect “a water right established by a water right permit, water right certificate, limited license, decree, adjudication or groundwater registration.” However, the bill does not identify what the term “adjudication” means in this context, given that “decree” is already included in the Bill. We believe that the intent is to include “surface water claim” rather than “adjudication” to include the surface water equivalent of “ground water registration.” Whether this is true or not, this subsection needs improvement to avoid confusion of the types of water rights affected. Additionally, we question whether it is the intent to exclude exempt uses of water, in which case we understand that the Oregon Water Resources Department will estimate exempt uses in the water budgets created.
5. Section 7 Subsection 3(b)(C) – The Bill provides that annual reporting is required, but states that the Oregon Water Resources Department may impose more frequent reporting if deemed necessary. We are concerned about the unfettered discretion in this section of the Bill, in addition to the overall purpose of the legislation. The purpose section of the Bill states that water use data is needed for efficient water management, effective water distribution, and future water needs planning. More frequent water use data is usually used to resolve immediate water user conflicts. If resolution of such conflicts is not a goal of this Bill, we question why that additional authority and discretion will be given to the Department. We request deletion of Section 7 Subsection 3(b)(C), and believe that if the Department is finding that more frequent data is needed the Section 6 report to the Legislature can outline that need for the Legislature’s consideration at that time.
6. Section 7 Subsection 4 – The Bill requires the Oregon Water Resources Department to establish procedures, requirements, exceptions, and alternative methods for compliance. However, the Bill does not establish the process for the Department to undertake those tasks. We request that the Bill be amended to expressly state that such actions will be undertaken by the Department in rulemaking.

7. Section 7 Subsection 4(c) & Section 11 Subsection (1)(f) – The Bill states that temporary exceptions to reporting requirements may exist when persons experience technological issues or difficulty with electronic reporting. The Bill should be amended to include exceptions for economic hardship and lack of funding assistance through the cost share feature of the program. It simply is not fair to impose a costly program on water users who do not have the means to comply, especially when financial assistance from the State is not available. Otherwise, this Bill will lead to civil penalties and damages against water users, further compounding the hardship this Bill imposes on water users. Section 11 Subsection (1)(f) should be amended consistently with this change to ensure that civil penalties are not imposed against persons experiencing economic hardship or when cost share funds are not available to allow compliance.
8. Section 7 Subsection 7 – We are unclear why money in the cost share fund may not be used to contribute to the cost of maintenance of a device. If the purpose of the cost share fund is to ensure water users have the means to comply with the measurement and reporting requirements of the Bill, funds should be made available for that compliance, whether in the form of installation or maintenance of a device required by the program.
9. Section 9 – This section revises the Water Measurement Cost Share Program Revolving Fund. We are concerned that this fund will not be adequately financed and, if so, will not provide meaningful assistance to water users who experience economic hardship due to the costly requirements proposed by the Bill. Additionally, we are concerned by the proposal to divert funding away from other necessary water infrastructure, like streamflow gauges and OpenET technology that is essential to the Oregon Water Resources Department for management of water systems throughout the State. Overall, we believe that the funding provided to the cost share program must be significant to provide meaningful support for water users required to install measuring devices and report water use, as well as create left over funds for installation of other necessary water use measurement infrastructure. Otherwise, the Bill proposes a source of funding for only a small piece of what is needed to meet the Bill’s goals.
10. Section 10 – This section states that water use data may not be used as the exclusive basis for forfeiture. Instead of stating what the data cannot be used for, the section should specifically address the ways in which information can be used, to avoid any implicit changes to existing protections for water rights. This change would also clarify the purpose of the Bill and how the data will help reach the goals of the legislation.
11. Section 12 – The Bill requires that the Water Resources Commission not impose a civil penalty for violation under ORS 536.900(1)(f) – water users unable to comply due to breakage or malfunction measurement device – before January 1, 2032 unless the Oregon Water Resources Department notifies the person that they are subject to measurement and reporting requirements. This provision raises several issues. First, the section takes away the protection afforded to water users beginning in 2032 if their water measurement device breaks or malfunctions so long as the Department simply provides notice that they are supposed to comply. Second, this section raises the question of how the requirements of the Bill will be imposed on water users. Will notice not be provided to begin with? We assumed that the Department would be required to send letters to affected water users like it does under ORS 540.310(2), the provision currently allowing the Department to requirement water use measurement when necessary. We also assume that such letters requiring construction of measuring devices and water

use reporting will be final orders in “other than contested cases” under ORS 536.075(1), and will therefore require the Department to include required information from that statute within the body of the letters. If this is all correct, we request that the Bill be amended to include this process for imposing requirements on water users. If this is not correct, we request that the Bill be amended to include the process contemplated by the Bill.

12. Overall – The Bill requires the Oregon Water Resources Department to create an entirely new program without providing additional funding to the Department to carry out the directive. As stated above, we are concerned about the Department’s ability to designate time to this new program without detracting from other programs and core functions carried out by the Department.

The Oregon Cattlemen’s Association opposes HB 3166-1 because it imposes costly and burdensome requirements on water users without a clear corresponding benefit to water users or water resources. We ask that you vote against HB 3166-1. Alternatively, in order to make improvements to the Bill, OCA recommends amending the Bill as outlined above. Thank you for your time and consideration of our comments.

Sincerely,



Tammy Dennee  
Executive Director  
Oregon Cattlemen’s Association



Sarah Liljefelt  
Water Resources Committee Chair  
Oregon Cattlemen’s Association