

Date: February 7, 2023

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

From: Michelle Smith, Research Associate, University of Oregon Law School, Environmental and Natural Resources Law Center

Re: Informational testimony on HB 3130

Chair Helm, Vice-Chairs Hartman and Owens, and Committee Members,

I am a Research Associate at the University of Oregon School of Law's Environmental and Natural Resources Law Center. The ENR Center has a distinctive research arm that conducts legal and policy research to provide decision-makers the legal and policy analysis to find real solutions to some of our most pressing environmental challenges. My research focuses on water policy and law.

The following is informational testimony on the potential use of voluntary agreements, as codified at Oregon Revised Statute Chapter 537 Section 745, to address groundwater declines and takes no position on House Bill 3130.

Groundwater is the water that exists in the spaces between sand and gravel or fracture spaces in rocks. Oregon uses over 2.5 million acre-feet of groundwater per year, which serves as a primary source of water for domestic, industrial, and agricultural uses for over half the state's population. In addition, communities that are not directly dependent on groundwater, often rely on groundwater as a secondary or backup source. Because available surface water has been allocated in summer months, groundwater also now accounts for most new water rights applications.

However, groundwater is not unlimited, where withdrawals of water exceed the aquifer's yield, groundwater levels decline. The Water Resources Department identified 34% of the state as having some or significant concern for groundwater declines, which includes areas that have demonstrated declines in aquifer levels and areas where there are constraints on groundwater availability. The actual percentage may be higher because the state lacks data to understand the condition of aquifers in 64% of the state. Groundwater declines result in a host of social, economic, and environmental impacts.

The factors impacting groundwater decline can vary by the hydrology, geology, and types and amounts of use. These same factors plus social, economic, and unique environmental concerns of an area can influence the most effective management options for addressing groundwater declines.

The state has recognized and declared that the right to the reasonable control of all water from any source belongs to the public. Since 1955 with the passage of Oregon's Groundwater Act, the state regulates the appropriation and use of groundwater statewide to ensure groundwater is protected, reasonably stable groundwater levels are maintained, and overdraft is prevented. The Water Resources Department manages groundwater through numerous administrative rules that direct the allocation process, set allowable groundwater use, and prescribe groundwater management at both the state and individual basin level.

Where groundwater use is not sustainable, the state has limited authority to take corrective action. Its primary tools are proactive and allow the Water Resources Department, through administrative designations, to limit new groundwater uses.

To correct existing overuse, the state generally has one regulatory option—designation of a Critical Groundwater Area, which allows the state to close an area to new appropriations and limit the amount of groundwater withdrawn per year. The state currently has seven Critical Groundwater Areas.

Importantly, Oregon’s Groundwater Act incorporates a second tool, voluntary agreements, to correct groundwater declines. This tool, included in Oregon’s original Groundwater Act in 1955, provides authority for local groundwater users in a defined groundwater area to adopt a formal voluntary agreement to address groundwater declines through a locally developed set of management actions.

Pursuant to statute, voluntary agreements must be among users in the same groundwater source, they must be consistent with Oregon’s groundwater laws and policies, which include requirements that groundwater be managed to protect sustainable groundwater levels, and they must be approved by the Water Resources Commission

Once approved, a voluntary agreement can operate in lieu of Water Resources Department regulation to address groundwater declines. Importantly, these agreements would not supplant all Water Resources Department authority and could be used in conjunction with other regulatory frameworks that are not implicated by the voluntary agreement.

While some communities have explored the use of a voluntary agreement, no agreement has been developed or formally adopted. In addition, the Water Resources Commission has not adopted rules or a formal policy for voluntary agreements.

While voluntary agreements to address groundwater declines are untested in Oregon, localized approaches to water management are recognized as a potentially important tool for water management because they can help align management to address localized conditions and challenges. Oregon has recognized the importance of local and basin-scale approaches, including in its Integrated Water Resources Strategy and its investment in place-based planning.

Already codified in law, the Groundwater Act’s voluntary agreements provision provides an existing avenue through which local groundwater users can develop an approach that is reflective of and responsive to local conditions (both hydrological and socio-economic). Voluntary agreements also may allow for a broader range of management options that are not available to the Water Resources Department as part of its regulatory authority.

While locally led approaches to addressing groundwater declines can have positive water management outcomes, state oversight to ensure voluntary agreements protect the public’s interest in water, meet the state’s goals of sustainable management, and are equitable for all

water users in the basin is anticipated to be an important component of integrating voluntary agreements as one tool to address declining groundwater levels.

Thank you for the opportunity to provide information related to House Bill 3130.

Sincerely,

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