

WATER LEAGUE

*The mission of Water League is to engage
the public in the stewardship of water.*

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February 7, 2023

To: House Committee On Agriculture, Land Use, Natural Resources, and Water
Representative Ken Helm, Chair
Representatives Annessa Hartman and Mark Owens Vice-Chairs

RE: Water League opposes HB 3130 that funds a staff or independent contractor to help implement of ORS 537.745.

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

Water League opposes HB 3130 because Water League opposes ORS 537.745, the statute that says groundwater users may agree among themselves “in lieu of a formal order or rule of the commission under ORS 537.505 to 537.795...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.”

Groundwater users are not qualified to conduct the activities that are relegated to the professional staff of the Oregon Water Resources Department. Furthermore, the users may very likely have conflicts of interest that disinterested staff would be less likely to share (except for times when the OWRD experiences lobby pressure). Indeed, the chance of such a staff member envisioned in HB 3130, or worse, an independent contractor, becoming heavily pressured or influenced by groundwater users is very high given the current and historic political circumstances in Oregon around water use.

The Oregon legislature passed HB 2192 in 1991 to revise the laws on designating Critical Groundwater Areas (CGWA) and imposing Corrective Control Provisions (both quasi-legislative and quasi-judicial). The intent was to make these processes consistent with the Administrative Procedures Act. The original 1955 statutes on CGWAs were easily gamed in the courts; hence HB 2192. As then OWRD Director Bill Young said:

Under existing statute [1955], critical area declaration faced lengthy delays -- 16 years in the case of the Butter Creek critical Area -- while the procedural questions

were dealt with by the courts. During that time, neither the groundwater resource nor the senior water rights within the critical area were protected. Creation of a critical area under HB 2192 would be expedited, because the process is defined. Attention would be focused much more quickly where it belongs -- on the condition of the groundwater resource and on water use controls.

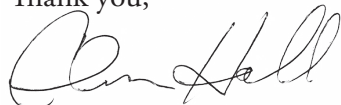
Now, 31 years later, with no credible explanation as to why the wait, rules are finally being written to make it possible to carry out the CGWA statutes (ORS 537.730 to 537.742) envisioned in HB 2192. As a member of the Division 10 Rules Advisory Committee (OAR 690.010) I have a front-row seat to the stressful issues involved in designating a CGWA and imposing Corrective Control Provisions. These include a bracing conflict of interest that local and county governments have wishing to control the CGWA process beyond their legal right to do so because they are deeply concerned about the limitations to community development and ongoing agricultural water use. There are also well-placed concerns about ensuring the entire process (designation/ imposition) is equitable and provides all water users with due process.

To say the least, the process to get the Division 10 rules written after waiting inexplicably for 31 years is fraught with concern; indeed, few statutes and rules in the water code carry such an existential burden as those associated with CGWAs. Water League opposes HB 3130, and by extension, ORS 537.745, because the chances that groundwater users (lay people with a conflict of interest) and one OWRD staff or independent contractor could ever meaningfully supplant the CGWA process with something better is zero.

Water League understands that ORS 537.745 refers to more than CGWAs and that the example of CGWAs herein is the most problematic example of why ORS 537.745 is unworkable; however, the other statutes (ORS 537.505 to 537.795 and 537.992) also require professional oversight, implementation, and enforcement by professionally qualified OWRD staff. The public should not be allowed to skirt any of these statutes by voluntary agreements between themselves, no matter that a single OWRD staff member or independent contractor would attempt to help them, or that the Water Resources Commission would have reviewed such voluntary agreements and deemed them equal to or better than what whole teams of scientists and policy specialists at the OWRD could have come up with in the course of doing their professional daily work.

ORS 537.745 has never successfully been implemented because it is unworkable and needs to be repealed. Adding an OWRD staff member or independent contractor will not change that.

Thank you,



Christopher Hall
Executive Director