

Submitter: Donna Torres

On Behalf
Of:

Committee: House Committee On Agriculture, Land Use, Natural Resources, and
Water

Measure: HB2929

Chair Helm, Vice Chairs Owens and Hartman, and Members of the Committee,
Thank you for the opportunity to submit testimony.

Water is a critical and precious resource for sustaining animal life and producing food
and valuable byproducts for the State and the world.

Although I support the goal of stopping illegal water use, I oppose HB 2929 because
the bill will result in unconstitutional takings without due process. The Oregon Water
Resources Department (“OWRD”) currently issues orders “in other than contested
cases” to stop what it perceives as illegal water use. These orders are issued without
any notice or opportunity for hearing by the affected water user, and the agency is
not always correct. Under the current process, water users may ask the State’s circuit
courts for judicial review of OWRD’s orders, and stay OWRD’s orders while the
courts decide the cases. ORS 536.075(5).

HB 2929 proposes to expand ORS 537.781, which currently allows OWRD to obtain
injunctions to prevent illegal well drilling. In such cases, the injunctions seek to
maintain the status quo, rather than seeking to stop ongoing water use. Such an
expansion would reverse the current procedure for stopping illegal water use, and, in
the case of instances where OWRD is incorrect about the water use being illegal,
would take the water user’s property right without due process of law. A stay would
not be available, while litigation would be necessary to overturn the improper
injunction.

Furthermore, OWRD has additional means for addressing water users who do not
abide by the agency’s orders. OWRD already has authority to issue civil and criminal
penalties for noncompliance. The expanded authority proposed in HB 2929 is
unnecessary.

I am unequivocally opposed the illegal use of water, but OWRD already possesses
the power and tools necessary to stop illegal water use. OCA asks that the
committee vote against HB 2929 because it has the potential to violate water users’
constitutional rights.

I respectfully ask that you vote NO on this bill.