



**Statement of the Oregon Land And Water Alliance  
In support of the -2 Amendments to House Bill 2929**

My name is Paul Lipscomb, and I live in the Cloverdale area outside of Sisters, Oregon. I am the Vice President of OLAWA, the Oregon Land And Water Alliance. The Oregon Land And Water Alliance is a 501c3 organization, and its purpose is to educate the public to promote and protect the Rule of Law on all local issues relating to land and water use as well as fish and wildlife. I have been authorized to present this testimony in support the -2 amendments to this bill on behalf of OLAWA, and its Board of Directors.

We support the -2 amendments to HB 2929, and we urge this body to adopt them and pass this bill.

We acknowledge that there are some meaningful differences between Oregon's water use laws and Oregon's hunting and fishing laws. However, there are also important and instructive similarities.

Under our Oregon water use laws, the water in our streams, rivers, lakes, and even our groundwater, is owned by the Oregon public; each and every one of us. Under those same water laws, many individuals, public bodies, and commercial entities have been granted the right to use some portion of our public waters for their own purposes. However, those individual water rights must only be exercised in accordance with our public water laws and regulations.

Similarly, Oregon's fish and wildlife animals belong to the public at large. And, pursuant to Oregon's hunting and fishing laws, individuals can be granted the authority to appropriate some of these public resources for their own private use. However, that authority is subject to the rules regulating the manner, timing and amount of these public resources that any individual may "take" and appropriate to their own use.

Human nature being what it is, some individuals violate the laws regulating the time, place, and manner, as well as the amount of public wildlife resources that can legally be taken. That is why we need public officers and courts empowered to enforce those regulations in order to protect our public fish and wildlife resources. And we call those who violate those laws "poachers."

Similarly, our water use regulations detail the amount, manner and timing of the individual appropriation and use of our public waters. And, accordingly, anyone who exercises their water rights must do so in a lawful manner.

But, again, human nature being what it is, some water users violate Oregon's laws regulating the amount, time, place and manner of their use of our public water resources. However, unlike the misuse of public fish and wildlife, the misuse of our public water is not currently policed by public officers and court proceedings.

During this time of drought, we simply cannot afford to continue to allow water "poachers" to misuse and over use our public waters.

The -2 amendments to HB 2929 provide a reasonable manner of at least beginning to adequately protect our public water resources, and to discourage water "poaching." Under this proposal, citations could be issued, but no other adverse actions could be taken without circuit court review and specific individual authorization.

The injunctive relief contemplated by the -2 amendments is civil, not criminal, and such injunctions could be ordered ***only after*** the

alleged water poacher was given notice of the alleged violation and an opportunity to be heard in circuit court by a judge.

(The detailed court protections and procedures accompanying civil injunctions are set forth in the Oregon Rules of Civil Procedure at ORCP 79, a copy of which I have attached to this testimony for your ease of reference.)

Thank you for your consideration of our strong views on these issues.

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# ORCP 79 – TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS

## TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS

### RULE 79

#### **A Availability generally.**

**A(1) Circumstances.** Subject to the requirements of Rule 82 A(1), a temporary restraining order or preliminary injunction may be allowed under this rule:

**A(1)(a)** When it appears that a party is entitled to relief demanded in a pleading, and such relief, or any part thereof, consists of restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the party seeking the relief; or

**A(1)(b)** When it appears that the party against whom a judgment is sought is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of a party seeking judgment concerning the subject matter of the action, and tending to render the judgment ineffectual. This paragraph shall not apply when the provisions of Rule 83 E, F(4) and H(2) are applicable, whether or not provisional relief is ordered under those provisions.

**A(2) Time.** A temporary restraining order or preliminary injunction under this rule may be allowed by the court, or judge thereof, at any time after commencement of the action and before judgment.

#### **B Temporary restraining order.**

**B(1) Notice.** A temporary restraining order may be granted without written or oral notice to the adverse party or to such party's attorney only if:

**B(1)(a)** It clearly appears from specific facts shown by an affidavit, a declaration or a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the adverse party's attorney can be heard in opposition, and

**B(1)(b)** The applicant or applicant's attorney submits an affidavit or a declaration setting forth the efforts, if any, which have been made to notify defendant or defendant's attorney of the application, including attempts to provide notice by telephone, and the reasons supporting the claim that notice should not be required. The affidavit or declaration required in this paragraph shall not be required for orders granted by authority of ORS 107.095 (1)(c), (d), (e), (f) or (g).

**B(2) Contents of order; duration.** Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance, shall be filed forthwith, shall define the injury and state why it is irreparable, and shall state why the order was granted without notice.

**B(2)(a)** Every temporary restraining order shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

B(2)(b) The 10-day limit of paragraph (a) of this subsection does not apply to orders granted by authority of ORS 107.095 (1)(c), (d), (e), (f) or (g).

**B(3) Hearing on preliminary injunction.** In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if such party does not do so, the court shall dissolve the temporary restraining order.

**B(4) Adverse party's motion to dissolve or modify.** On two days' notice (or on shorter notice if the court so orders) to the party who obtained the temporary restraining order without notice, the adverse party may appear and move for dissolution or modification of such restraining order. In that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

**B(5) Temporary restraining orders not extended by implication.** If the adverse party actually appears at the time of the granting of the restraining order, but notice to the adverse party is not in accord with subsection C(1), the restraining order is not thereby converted into a preliminary injunction. If a party moves to dissolve or modify the temporary restraining order as permitted by subsection (4) of this section, and such motion is denied, the temporary restraining order is not thereby converted into a preliminary injunction.

### **C Preliminary injunction.**

**C(1) Notice.** No preliminary injunction shall be issued without notice to the adverse party at least five days before the time specified for the hearing, unless a different period is fixed by order of the court.

**C(2) Consolidation of hearing with trial on merits.** Before or after the commencement of the hearing of an application for preliminary injunction, the parties may stipulate that the trial of the action on the merits shall be advanced and consolidated with the hearing of the application. The parties may also stipulate that any evidence received upon an application for a preliminary injunction, which would be admissible upon the trial on the merits, becomes part of the record on trial and need not be repeated upon the trial.

**D Form and scope of injunction or restraining order.** Every order granting a preliminary injunction and every restraining order shall set forth the reasons for its issuance, shall be specific in terms, shall describe in reasonable detail (and not by reference to the complaint or other document) the act or acts sought to be restrained, and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with any of them who receive actual notice of the order by personal service or otherwise.

### **E Scope of rule.**

**E(1)** This rule does not apply to a temporary restraining order issued by authority of ORS 107.700 to 107.735, 124.005 to 124.040 or 163.760 to 163.777.

**E(2)** This rule does not apply to temporary restraining orders or preliminary injunctions granted pursuant to ORCP 83 except for the application of section D of this rule.

**E(3)** These rules do not modify any statute or rule of this state relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee.

**F Writ abolished.** The writ of ne exeat is abolished.

[CCP 12/13/80; § E amended by 1995 c.666 § 27; § B amended by 2003 c.194 § 16; § A amended by 2005 c.22 § 4a; § E amended by 2007 c.71 § 5; § E amended by 2013 c.687 § 18.]