



Food & Wildlife for the Future

March 30, 2023

To: Chair Helm
Members of the House Committee on Agriculture, Land Use, Natural Resources
& Water

From: Richard Kosesan
On behalf of Water for Life, Inc.

Re House Bill 3368

Water for Life, Inc. encourages the committee to reject advancing House Bill 3368.

While extensive effort has been advanced with respect to this measure, we believe it may prove to be more prudent to conduct a review of all existing policies, statutory requirements, and directives of the Water Resources Department.

If one were to conduct a thorough review of the existing policies, statutory requirements, and directives of the Water Resources Department, it may appear the proposed legislation is not needed and would prove duplicative of such existing standards.

We believe a more productive avenue may be to review existing policies and undertake efforts to set such policies in a priority order of significance and evaluate how previous and current efforts of the Department serve to meet such policies. In conjunction with this evaluation, impediments hindering the Department with respect to meeting the intentions of such existing policies may be identified. Subsequently, efforts may be undertaken to modify or eliminate any identified impediments.

For your review and for purposes of example, attached is a preliminary outline of existing policies and directives of the Water Resources Department with respect to the overall management of the state's water resources.

P.O. Box 4233 Salem, Oregon 97302
503-375-6003
wflexec@outlook.com

542.060 Information on availability of water for beneficial uses; duties of Water Resources Commission; gauging stations; publication of information. The Water Resources Commission shall establish gauging stations at suitable points on the various streams of the state to determine the daily and seasonal fluctuations in the flow of the water; shall make surveys and profiles to determine the fall of stream suitable for power development; and shall prepare topographic maps of the territory adjacent to the private streams of the state, so that the availability of water for power, irrigation or other beneficial uses may be determined and made known to the public. All such maps and information shall be made a matter of record in the Water Resources Department and the commission shall publish a summary of all such information in the most practical and economical manner for presentation to the public. The commission shall enter into such agreements and contracts as will insure that the surveys and investigations are carried on in the most economical manner, and that the maps and data are made available to the use of the public as quickly as possible. [Amended by 1985 c.673 §134]

536.220 Policy on water resources generally; integrated state water resources strategy. (1) The Legislative Assembly recognizes and declares that:

(a) The maintenance of the present level of the economic and general welfare of the people of this state and the future growth and development of this state for the increased economic and general welfare of the people thereof are in large part dependent upon a proper utilization and control of the water resources of this state, and such use and control is therefore a matter of greatest concern and highest priority.

(b) A proper utilization and control of the water resources of this state can be achieved only through a coordinated, integrated state water resources policy, through plans and programs for the development of such water resources and through other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources, all carried out by a single state agency.

(c) The economic and general welfare of the people of this state have been seriously impaired and are in danger of further impairment by the exercise of some single-purpose power or influence over the water resources of this state or portions thereof by each of a large number of public authorities, and by an equally large number of legislative declarations by statute of single-purpose policies with regard to such water resources, resulting in friction and duplication of activity among such public authorities, in confusion as to what is primary and what is secondary beneficial use or control of such water resources and in a consequent failure to utilize and control such water resources for multiple purposes for the maximum beneficial use and control possible and necessary.

(2) The Legislative Assembly, therefore, finds that:

(a) It is in the interest of the public welfare that a coordinated, integrated state water resources policy be formulated and means provided for its enforcement, that plans and programs for the development and enlargement of the water resources of this state be devised and promoted and that other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources and the development of additional water supplies be carried out by a single state agency that, in carrying out its functions, shall give proper and adequate consideration to the multiple aspects of the beneficial use and control of

such water resources with an impartiality of interest except that designed to best protect and promote the public welfare generally.

(b) The state water resources policy shall be consistent with the goal set forth in ORS 468B.155.

(3)(a) The Water Resources Department shall develop an integrated state water resources strategy to implement the state water resources policy specified in subsection (2) of this section. The department shall design the strategy to meet Oregon's in-stream and out-of-stream water needs.

(b) The Water Resources Department shall work in close cooperation with the Department of Environmental Quality and the State Department of Fish and Wildlife to develop the integrated state water resources strategy in consultation with other state, local and federal agencies, with other states, with Indian tribes, with stakeholders and with the public.

(c) The Water Resources Department, in close cooperation with the Department of Environmental Quality and the State Department of Fish and Wildlife, shall develop data on an ongoing basis to forecast Oregon's in-stream and out-of-stream water needs, including but not limited to in-stream, underground water, human consumption and water supply needs, for the purpose of developing and updating the integrated state water resources strategy.

(d) The integrated state water resources strategy shall describe the following:

(A) Oregon's in-stream and out-of-stream water needs, including but not limited to ecosystem services, water quality and water supply needs.

(B) Objectives of the strategy.

(C) Actions that are designed to achieve the objectives of the strategy.

(D) Plans related to the challenges presented by climate change.

(E) Provisions to ensure communication and partnership with key stakeholders.

(F) Specific functions and roles to be played by state agencies, including but not limited to the State Department of Agriculture, the State Forestry Department, the Department of Human Services, the Oregon Business Development Department, the Department of Land Conservation and Development, the Oregon Watershed Enhancement Board, the State Parks and Recreation Department, the Department of State Lands and other relevant state agencies.

(G) Public policy options and recommendations.

(H) Relevant strategy factors, including but not limited to population growth and land use change.

(I) Recommendations of the Water Resources Department regarding the continuous monitoring of climate change effects on Oregon's water supply and regarding water user actions that are necessary to address climate change.

(e)(A) The Water Resources Commission shall give the Environmental Quality Commission, the State Department of Agriculture and the State Department of Fish and Wildlife notice of the integrated state water resources strategy prior to adoption of the strategy. The strategy shall take effect upon adoption by the Water Resources Commission.

(B) The Water Resources Commission shall review and update the integrated state water resources strategy every five years. The Water Resources Commission shall give notice to the Environmental Quality Commission, the State Department of Agriculture and the State Department of Fish and Wildlife prior to adopting any revisions of the strategy. Revisions of the strategy shall take effect upon the Water Resources Commission's adoption of the revised strategy by reference in rule.

(4) This section does not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B. [1955 c.707 §1; 1989 c.833 §53; 2009 c.907 §44; 2013 c.1 §76]

536.231 Commission to devise plans and programs for development of water resources. The Water Resources Commission shall devise plans and programs for the development of the water resources of this state in such a manner as to encourage, promote and secure the maximum beneficial use and control thereof. [Formerly 536.430]

536.235 Policy on minimum streamflows. It is the policy of the State of Oregon that establishment of minimum perennial streamflows is a high priority of the Water Resources Commission and the Water Resources Department. [1983 c.796 §2; 1985 c.673 §13]

536.238 Policy on water storage facilities. (1) The Legislative Assembly finds and declares that:

(a) The water resources of the state are critical to the economic and recreational well-being of the people of Oregon.

(b) The future vitality of the state's economy depends on immediate planning to insure future availability of water resources.

(c) Measures to insure adequate water resources to meet the needs of future generations of Oregonians must be pursued.

(d) The potential for a future shortage of water poses serious risks to public health, safety and welfare and therefore is a matter of statewide concern.

(2) Therefore, the Legislative Assembly, in addressing the problem of how to insure adequate water resources for in-stream and out-of-stream uses in the future, declares that it is a high priority of the state to both:

(a) Develop environmentally acceptable and financially feasible multipurpose water storage facilities; and

(b) Enhance watershed storage capacity through natural processes using nonstructural means. [1993 c.386 §1]

536.241 Policy on water supply. (1) The Legislative Assembly finds that the availability of an adequate water supply is essential to the continued health and safety of all Oregonians.

(2) The Legislative Assembly declares that it is the policy of the State of Oregon to ensure a water supply sufficient to meet the needs of existing and future beneficial uses of water, and to adequately manage the state's water resources. Further, in recognition of this policy, the Legislative Assembly declares that the planning and management of the water resources of this state shall be conducted in a consistent and coordinated manner. [1999 c.984 §2]

536.300 Formulation of state water resources program; public hearing in affected river basin. (1) The Water Resources Commission shall proceed as rapidly as possible to study:

Existing water resources of this state; means and methods of conserving and augmenting such water resources; existing and contemplated needs and uses of water for domestic, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses and for pollution abatement, all of which are declared to be beneficial uses, and all other related subjects, including drainage, reclamation, floodplains and reservoir sites.

(2) Based upon said studies and after an opportunity to be heard has been given to all other state agencies which may be concerned, the commission shall progressively formulate an integrated, coordinated program for the use and control of all the water resources of this state and issue statements thereof.

(3) The commission may adopt or amend a basin program only after holding at least one public hearing in the affected river basin. After the commission itself conducts one public hearing in the affected river basin, the commission may delegate to the Water Resources Director the authority to conduct additional public hearings in the affected river basin. [1955 c.707 §10(1), (2); 1965 c.355 §2; 1985 c.673 §14]

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536.310 Purposes and policies to be considered in formulating state water resources program. In formulating the water resources program under ORS 536.300 (2), the Water Resources Commission shall take into consideration the purposes and declarations enumerated in ORS 536.220 and also the following additional declarations of policy:

(1) Existing rights, established duties of water, and relative priorities concerning the use of the waters of this state and the laws governing the same are to be protected and preserved subject to the principle that all of the waters within this state belong to the public for use by the people for beneficial purposes without waste;

(2) It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the state as a whole;

(3) That adequate and safe supplies be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses;

(4) Multiple-purpose impoundment structures are to be preferred over single-purpose structures; upstream impoundments are to be preferred over downstream impoundments. The fishery resource of this state is an important economic and recreational asset. In the planning and construction of impoundment structures and milldams and other artificial obstructions, due regard shall be given to means and methods for its protection;

(5) Competitive exploitation of water resources of this state for single-purpose uses is to be discouraged when other feasible uses are in the general public interest;

(6) In considering the benefits to be derived from drainage, consideration shall also be given to possible harmful effects upon ground water supplies and protection of wildlife;

(7) The maintenance of minimum perennial streamflows sufficient to support aquatic life, to minimize pollution and to maintain recreation values shall be fostered and encouraged if existing rights and priorities under existing laws will permit;

(8) Watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged;

(9) Due regard shall be given in the planning and development of water recreation facilities to safeguard against pollution;

(10) It is of paramount importance in all cooperative programs that the principle of the sovereignty of this state over all the waters within the state be protected and preserved, and such cooperation by the commission shall be designed so as to reinforce and strengthen state control;

(11) Local development of watershed conservation, when consistent with sound engineering and economic principles, is to be promoted and encouraged;

(12) When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses and for livestock consumption, over any other use, and thereafter other beneficial purposes in such order as may be in the public interest consistent with the principles of chapter 707, Oregon Laws 1955, under the existing circumstances; and

(13) Notwithstanding any other provision of this section, when available supplies of water are insufficient in the South Umpqua River to provide for both the needs of human consumption pursuant to a municipal water right and the maintenance of previously established minimum streamflows, preference shall be given to the municipal needs if the municipality adopts and enforces an ordinance restricting use of the water so obtained to direct human consumption uses. [1955 c.707 §10(3); 1979 c.170 §1; 1987 c.546 §1]

536.480 Making available information concerning water resources. The Water Resources Commission, insofar as practicable, shall make available, free or at cost, to the public and to any state agency or public corporation of this or any other state, any interstate agency or any agency of the federal government, information concerning the water resources of this state or the functions of the commission as provided by law, including information relating to the state water resources policy, to any plan or program devised by the commission for the development of the water resources of this state, to the results of any investigation, survey or study conducted by the commission and to the results of any hearing held by the commission. [1955 c.707 §23]

537.150 Filing of application; determination of completeness; initial review; preliminary determination; notice; public comments; fees. (1) Within 15 days after receiving an application, the Water Resources Department shall determine whether the application contains the information listed under ORS 537.140 (1) and is complete and not defective, including the payment of all fees required under ORS 537.140 (5). If the department determines that the application is incomplete or defective or that not all fees have been paid, the department shall return the fees paid and the application.

(2) Upon determining that an application contains the information listed under ORS 537.140 (1) and is complete and not defective, the department shall indorse on the application the date upon which the application was received at the department, which shall be the priority date for any water right issued in response to the application. All applications that comply with the provisions of law shall be recorded in a suitable book kept for that purpose.

(3) If an application is complete and not defective, the department shall determine whether the proposed use is prohibited by ORS chapter 538. If the proposed use is prohibited by ORS chapter 538, the department shall reject the application and return all fees to the applicant with an explanation of the statutory prohibition.

(4) If the proposed use is not prohibited by ORS chapter 538, the department shall undertake an initial review of the application and make a preliminary determination of:

(a) Whether the proposed use is restricted or limited by statute or rule;

(b) The extent to which water is available from the proposed source during the times and in the amounts requested; and

(c) Any other issue the department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(5) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in subsection (1) of this section, the department shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the date of mailing within which to notify the department to stop processing the application or to proceed with the application. If the applicant notifies the department to stop processing the application, the department shall return the application and all fees paid in excess of \$310. If the department receives no timely response from the applicant, the department shall proceed with the application.

(6) Within seven days after proceeding with the application under subsection (5) of this section, the department shall give public notice of the application in the weekly notice published by the department. The notice shall include a request for comments on the application and information pertaining to how an interested person may obtain future notices about the application and a copy of the proposed final order.

(7) Within 30 days after the public notice under subsection (6) of this section, any person interested in the application shall submit written comments to the department. Any person who asks to receive a copy of the department's proposed final order shall submit to the department the fee required under ORS 536.050 (1). [Amended by 1985 c.673 §28; 1993 c.557 §2; 1995 c.416 §9; 2007 c.267 §2; 2009 c.819 §§6,13; 2013 c.644 §§3,4; 2017 c.571 §§3,4; 2021 c.515 §2]

537.460 Legislative findings; policy. (1) The Legislative Assembly finds and declares that conservation and efficient utilization of water benefits all water users, provides water to satisfy current and future needs through reduction of consumptive waste, improves water quality by reducing contaminated return flow, prevents erosion and allows increased in-stream flow.

(2) It is therefore declared to be the policy of the State of Oregon to:

(a) Aggressively promote conservation;

(b) Encourage the highest and best use of water by allowing the sale or lease of the right to the use of conserved water; and

(c) Encourage local cooperation and coordination in development of conservation projects to provide incentives for increased efficiency and to improve streamflows.

(3) As used in this section, "efficient utilization" means use without waste, upgrading of irrigation equipment to comply with modern practices within a reasonable time period or other methods used to meet both current and future water needs at the least cost. [1987 c.264 §2; 1993 c.641 §2; 2003 c.93 §1; 2005 c.22 §379]

537.525 Policy. The Legislative Assembly recognizes, declares and finds that the right to reasonable control of all water within this state from all sources of water supply belongs to the public, and that in order to insure the preservation of the public welfare, safety and health it is necessary that:

(1) Provision be made for the final determination of relative rights to appropriate ground water everywhere within this state and of other matters with regard thereto through a system of registration, permits and adjudication.

(2) Rights to appropriate ground water and priority thereof be acknowledged and protected, except when, under certain conditions, the public welfare, safety and health require otherwise.

(3) Beneficial use without waste, within the capacity of available sources, be the basis, measure and extent of the right to appropriate ground water.

(4) All claims to rights to appropriate ground water be made a matter of public record.

(5) Adequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recreational and other beneficial uses.

(6) The location, extent, capacity, quality and other characteristics of particular sources of ground water be determined.

(7) Reasonably stable ground water levels be determined and maintained.

(8) Depletion of ground water supplies below economic levels, impairment of natural quality of ground water by pollution and wasteful practices in connection with ground water be prevented or controlled within practicable limits.

(9) Whenever wasteful use of ground water, impairment of or interference with existing rights to appropriate surface water, declining ground water levels, alteration of ground water temperatures that may adversely affect priorities or impair the long-term stability of the thermal properties of the ground water, interference among wells, thermal interference among wells, overdrawing of ground water supplies or pollution of ground water exists or impends, controlled use of the ground water concerned be authorized and imposed under voluntary joint action by the Water Resources Commission and the ground water users concerned whenever possible, but by the commission under the police power of the state except as specified in ORS 537.796, when such voluntary joint action is not taken or is ineffective.

(10) Location, construction, depth, capacity, yield and other characteristics of and matters in connection with wells be controlled in accordance with the purposes set forth in this section.

(11) All activities in the state that affect the quality or quantity of ground water shall be consistent with the goal set forth in ORS 468B.155. [1955 c.708 §2; 1985 c.673 §46; 1989 c.201 §2; 1989 c.833 §56]

537.665 Investigation of ground water reservoirs; defining characteristics and assigning names and numbers. (1) Upon its own motion, or upon the request of another state agency or local government, the Water Resources Commission, within the limitations of available resources, shall proceed as rapidly as possible to identify and define tentatively the location, extent, depth and other characteristics of each ground water reservoir in this state, and shall assign to each a distinctive name or number or both as a means of identification. The commission may make any investigation and gather all data and information essential to a proper understanding of the characteristics of each ground water reservoir and the relative rights to appropriate ground water from each ground water reservoir.

(2) In identifying the characteristics of each ground water reservoir under subsection (1) of this section, the commission shall coordinate its activities with activities of the Department of Environmental Quality under ORS 468B.185 in order that the final characterization may include an assessment of both ground water quality and ground water quantity.

(3) Before the commission makes a final determination of boundaries and depth of any ground water reservoir, the Water Resources Director shall proceed to make a final determination of the rights to appropriate the ground water of the ground water reservoir under ORS 537.670 to 537.695.

(4) The commission shall forward copies of all information acquired from an assessment conducted under this section to the central repository of information about Oregon's ground water resource established pursuant to ORS 468B.167. [1955 c.708 §14; 1985 c.673 §60; 1989 c.833 §58]