



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

HB 3368

Testimony of WaterWatch of Oregon

by Kimberley Priestley

House Committee on Agriculture, Land Use, Natural Resources and Water
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Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. We work to ensure that enough water is protected in Oregon's rivers and aquifers to sustain fish, wildlife, recreation, and other public uses of Oregon's waters. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

WaterWatch opposes HB 3368 as drafted. The -2 amendments are an improvement, but we still have concerns as currently drafted.

While WaterWatch is very supportive of a number of concepts raised in relation to this bill, including but not limited to supporting and funding increased data collection/analysis needed for sound water management, advancing public accessibility to data, improving tools to better conjunctively manage surface and groundwater, modernizing groundwater allocation policies and updating Oregon's transfer laws, we had significant concerns with the base bill as drafted.

Two areas of concern of special note are:

- **Instream water rights:** Our greatest concern with the underling bill was its undermining of the Instream Water Rights Act and many other provisions of state law and policy that call for the restoration and protection of streamflows. The bill not only called for a pause in the processing of instream water rights (Section 6) but also would have prohibited the state from applying for new instream water rights into the future as of 2024 (Sections 1(13)-(15)).
- **Disparate treatment of instream and out-of-stream rights:** While the bill purported to pause the processing of all water right applications until basin assessments were completed statewide, in actuality while processing of instream rights would have been fully paused, a fairly large subset of consumptive use applications could have gone forward including alternate reservoirs, secondary rights for storage, limited licenses, aquifer recharge and aquifer storage and recovery (Section 6). Transfer applications for new development also could have proceeded forward. This is just one of many areas of the base bill that favored out-of-stream over instream rights. Overall, many sections of the bill contravened the Integrated Water Resources Strategy direction to the state to understand and meet both instream and out of stream needs.

With regards to the -2 amendments, while the most troubling parts of the base bill have been stripped out, we still have concerns including but not limited to:

- **The -2 amendments' mandate for a new water allocation and accounting tool appears to suffer from sequencing problems:** The bill requires the development of a new water allocation and accounting tool that includes both surface and groundwater. The state already has a surface water availability model, while it needs updating it is questionable whether a wholly new tool is needed. As to groundwater, in 2021, the state invested heavily in groundwater budgets and groundwater studies. This work will take a number of years to complete. The state cannot provide groundwater information across the state to inform any new accounting tool until that work is complete.
- **The -2 amendments set unrealistic timelines:** Among other things, the bill requires initial Basin Assessments for all of Oregon's 19 river basins by December 2024, including assessments of data sets that the OWRD does not yet have. This 18 month timeline is not realistic, sets the state up for failure, and risks the generation of rushed data sets that will not provide sound information needed for sustainable water management and planning decisions.
- **The -2 amendments do not provide parity for instream and out-of-stream needs:** The Integrated Water Resources Strategy calls upon the state to both understand and meet instream and out-of-stream needs. The -2 amendments could be strengthened to give equal weight and effect to instream needs. For example, while the basin assessments must provide analysis of opportunities for new storage projects, the -2 amendments do not call for an assessment of instream flow restoration and protection opportunities. Similarly, the bill does not clearly state that OWRD's vulnerability assessments must include instream needs. Additionally, while the bill does call for an assessment of water shortfalls during droughts, it does not call for an assessment of shortfalls across all water year types. Given that instream water rights are typically the most junior water rights on a stream combined with the fact that most streams across Oregon are over-appropriated means that instream water rights suffer shortfalls in most years. It would be useful to generate and include that information for planning and management purposes.

HB 3368 raises important principles related to water data, water allocation and water management that we agree need more attention. While WaterWatch opposes the base bill and believes the -2's need more work, we do want to put on the record that we believe a number of the principles raised in the base bill are worthy of legislative support. This can be achieved through the 2023-25 budget, future policy bills and legislative support of ongoing OWRD initiatives.

Principles we support include:

- **Developing reliable groundwater data:** The need for better groundwater data in Oregon to support sustainable groundwater management is directed by the Integrated Water Resources Strategy and has long been supported by the wide swath of water stakeholders. In 2019 and 2021 the Oregon legislature provided much needed investments in this work. We would urge the legislature to continue forward the good work directed by the 2021 legislature both through the passage of HB 2018, but also the funding of POP 110. The GRB reduction packages (090-093) would cut money for

groundwater studies, streamflow gages and approximately 16 vacancy positions at OWRD. We would urge the legislature to add back this funding so the state can continue forward with the important work that the transformative budget of 2021-23 started.

- **Modernizing groundwater allocation rules:** The OWRD is currently modernizing its groundwater allocation policy to better align with statutory directives to manage the groundwater resource within the capacity of the resource. Legislative support of this work would help Oregon move towards a sustainable water future.
- **Updating the OWRD's water availability model, POP 111:** The state already has a model to determine whether water is available for new surface water. This model is on the OWRD's website and is available for public use. That said, the model is in need of updating. Funding for this is found in OWRD POP 111, which is in the GRB. Inclusion of POP 111 in the final legislative budget would help move the state forward in ensuring ongoing reliability of this model.
- **Increasing public accessibility to data by investing in much needed information technology (IT), POP 104 and 120:** HB 3368 calls for a number of measures that are intricately tied to IT needs. While some might see it as mundane, investment in IT is critical to ensuring accessibility, accountability and other benefits related to agency data. POPS 104 and 120 would allow the OWRD to invest and update their IT, however neither of these made it into the GRB. Inclusion of these POPS would ensure reliable data sets and public accessibility into the future.
- **Conjunctive groundwater and surface water management:** We support the bill's intent of bolstering the state's existing conjunctive management tools. Continued funding of groundwater investigations will help advance this goal. A critical policy need is clarification of the Department's ability to regulate groundwater in favor of senior surface water right. We urge legislative attention to this in coming sessions.
- **Modernization of Oregon's transfer statutes:** Oregon transfer statutes are some of the most archaic on the books and are in dire need of reworking. Of note, transfers of old water rights to fuel new development are allowed without any environmental review. Modernization of the transfer statutes to include environmental reviews should be a top priority for the state.

Conclusion: WaterWatch urges opposition to the base bill. If the committee moves forward with amendments, we would urge not only that the timelines and other concerns be addressed through additional amendments beyond the -2s, but that the legislature also ensure that this work will not interfere or stall agency work that resulted from the 2021-2023 legislative investments. After literally decades of stakeholder lobbying for more funds for the OWRD's data collection and analysis and water management work, the 2021 legislative body delivered a transformative budget to the agency. We urge the 2023 legislative body allow the OWRD time and resources to continue the good work forward, and invest in gaps identified in agency POPS that were developed in consultation with a broad array of stakeholders.

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