



Oregon

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Senate Bill 845 – Regulated Water Company Purchase Legislation
Testimony From Nolan Moser, Executive Director



*Senate Committee on Natural Resources and Wildfire
Chair Sollman, Vice Chair Nash, Members of the Committee.*

For the record, my name is Nolan Moser, and I am executive director of the Oregon Public Utility Commission. I am before you today to support your consideration of SB 845, a bill that was requested by our agency, intended to address challenges we have faced and will likely face again with struggling small, regulated water companies.

Before I briefly discuss what this bill does, I will provide background on how we regulate some water companies in the state of Oregon, and will discuss the reasons for our requested legislation. What I want to spend my time before you today on is describing the problem we are needing legislative help to solve, in the interests of regulated water customers across the state.

Water is provided to most Oregonians in two ways, with two different forms of regulation. First, municipal or government water providers serve Oregon communities. The majority of Oregonians are served by such water providers. Our bill does not impact municipal water providers. The rates, terms and conditions of service from such providers are ultimately determined by officials appointed by or accountable to local elected representatives. In this way, customers ensure effective oversight of this service and supply.

A smaller, but still significant portion of Oregonians are served by for-profit or non-governmental associations. Rates, terms and conditions of service for these companies are regulated by our agency. The Commission has authority to approve tariffs, rates, and other service terms and must exercise that authority to ensure that customers of these companies have safe, reliable and reasonably priced service.

The Commission provides this regulation through investigations, rate proceedings, and, ultimately, orders. The Commission can, after notice and opportunity to be heard, order that specific rates be set for specific services. If a Company chooses not to comply with a Commission order, the Commission may impose fines.

We have recently encountered an important gap in our authority that has prevented us, despite the best efforts of Commission Staff and the customers of the water company in question, from ensuring that customers at one company have safe and reliable services.

An owner and operator of a water company in the Bend area had a history of mismanagement, resulting in customers losing water service. This owner also refused, despite Commission orders and fines, to file a rate filings and tariffs as directed by the Commission. The Commission attempted to address this situation another way, by appointing a “regent” to run the water company, under Commission regulations, while the owner retains ownership. But this too failed because no company agreed to run this water provider as long as the current owner is involved.

In the meantime, service became inadequate, parts of the system were failing, and customers went hours or even days without water. Our staff collaborated with the Oregon Health Authority and county officials to try to resolve the mismanagement through any means, including encouraging the sale of the company. Our Staff knew that ultimately, the long-term solution in this case is for this company to be sold to a competent water provider who can manage the infrastructure. But, under current legal authority Commission cannot compel an owner of a company to sell.

This case was so extreme that our Staff authorized and paid for – out of agency funds – emergency repairs to the system to keep it operational for customers while a longer-term solution was developed. After some time and effort, and after coordination with local health and tax authorities, the owner was persuaded to sell, and the system is now owned by a professional and competent operator that can make the investments necessary to ensure safe and healthy water supply for customers in this area. Through this process, it was clear there are significant gaps in the regulatory system. For example, though the water company owed substantial back taxes, the county was reluctant to take legal action to compel a sale – given the legal expense with such an approach. Similarly, health authorities have some power in this area, but no funding, and no history of forcing changes in ownership, and hence are reluctant to take action.

In other states, regulators of water providers do have the authority, if all other avenues of ensuring safe and adequate service fail, to compel a sale. The states of Illinois, Virginia, and Pennsylvania all in one form or another have legislation in place that allow their respective utility commissions to take action to force sale of a water company consistently failing to serve customers. We determined, that in order to address the type of problems we have recently experienced with companies that do not respond to rate-regulation orders to improve service, that this additional power is necessary to ensure that the customers of such providers receive safe, adequate, and reasonably priced service.

Accordingly, through SB 845 we propose to create additional authority for the Commission to order the transfer, sale, or regency of a struggling water company after notice, opportunity for the presentation of evidence, and following specific findings from the Commission. Proposed

legislation would also clarify the circumstances under which the Commission could appoint a regent to manage a struggling water company, which is already authority the Commission exercises in rules. Legislation also provides for Commission review of acquisition costs and pricing, review of the capacity of the purchasing utility to make necessary repairs, etc., and provides for the use of eminent domain, as a last resort, if an agreement to sell the subject utility is not reached.

In closing, I note that we are in discussions with water company stakeholders about this legislation, and will likely – in conjunction with them, be pursuing changes to our bill. For that reason, in this initial conversation, I had not planned on going through all the details of our proposal with you, because they are likely going to change. That said, I'm happy to answer questions, and thank you for the opportunity to speak to you today.

Nolan Moser



Executive Director
Oregon Public Utility Commission