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March 27, 2025

House Agriculture, Land Use, Natural Resources and Water

RE: Testimony on House Bill 3800 - Oppose

Dear Co-Chair Helm, Co-Chair Owens, Vice Chair McDonald, and Committee Members:

Thank you for the opportunity to submit testimony on behalf of Oregon Cattlemen's Association (OCA). OCA represents ranchers across the state of Oregon and works to promote environmentally and socially sound cattle industry practices by maintaining an active political presence in these related areas. Water is a critical and precious resource for sustaining animal life and producing food and valuable byproducts for the State and the world.

OCA is mindful of the groundwater challenges facing water users in the Harney Basin, as well as the process already underway for the Oregon Water Resources Department ("OWRD") to designate a Critical Ground Water Area in the Basin. Additionally, OCA is sensitive to the fact that HB 3800 is a bill addressing local issues in the Harney Basin. However, OCA has many members who may be negatively impacted by HB 3800, and we are also concerned about the potential for similar bills to be passed by the Legislature in the future that would affect other areas of the State. As such, OCA opposes HB 3800.

Water Rights Takings

HB 3800 would provide OWRD with discretion to modify the rate and duty of certificated groundwater rights, which are real property rights. This means that OWRD may change the terms of those water rights without an opportunity for a hearing (due process), and without just compensation to water right holders. As such, the bill appears to allow unconstitutional takings of real property rights.

OCA would suggest an alternative approach. We understand that there is a CREP program in place, as well as other potential sources of funding, for water users in the Harney Basin who voluntarily relinquish their water rights, or portions thereof. Additionally, a process already exists to allow water right holders to voluntarily cancel or diminish their water rights. As such, water right holders who participate in the CREP or other programs can agree to modify the rate and duty of their water rights. This process, which is already available, will avoid unconstitutional takings of water rights.

Conflict with Critical Ground Water Area Rules

OCA understands that HB 3800 may be a reaction to proposed rules coming out of OWRD's Division 512 rulemaking process. OWRD did not include OCA representation on the rules advisory committee for this rulemaking, so we cannot speak to the direction of that rulemaking process. However, HB 3800 mimics the provisions of a CGWA in several ways, such as cutting off new uses of water and extensions of time, requiring measurement and reporting, and more.

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OCA is concerned about the Legislature essentially creating a CGWA without adhering to the process for establishing a CGWA that is already set forth by law. Under that process, OWRD must hold a contested case hearing before diminishing use of water rights, which gives water users the opportunity argues for different measures. In the Stage Gulch and Butter Creek CGWAs, water is allocated each year based on historic use, but the water rights themselves are not changed, and water right holders retain the right to use water to the full extent of their water rights. Finally, the effectiveness of CGWAs is reviewed on a regular basis. OCA is concerned that HB 3800 will impose some of the same measures that may be required in a CGWA designation, without the opportunity for landowner involvement in that decision-making.

As such, OCA asks that the Committee vote no on HB 3800, or substantially revise this bill to address the above-outlined concerns. Thank you for your consideration of these important issues.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "McElligott", with a stylized, flowing script.

Matt McElligott, President
OREGON CATTLEMEN'S ASSOCIATION