

WATER LEAGUE

*Water League engages the public
in water stewardship.*

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To: House Committee on Agriculture, Land Use, Natural Resources, and Water

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In Memoriam
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Representative Mark Owens, Co-Chair
Representative Sarah Finger McDonald, Vice-Chair
Representatives Court Boice, Annessa Hartman, Bobby Levy, Pam Marsh,
Susan McLain, Anna Scharf

RE: Water League supports HB 3343-4 because it simplifies the Water Measurement Cost Share Program Revolving Fund and allows the Oregon Water Resources Department (OWRD) to require water use measurement and reporting when water right permits and certificates undergo changes.

Dear Co-Chairs Helm and Owens, Vice-Chair Finger McDonald, and committee members,

Water League supports HB 3343-4 because we agree that measuring and reporting water uses that require water right permits and certificates is a good state policy that serves the public interest in the present and the future. Water rights authorize the vast majority of all water use in Oregon compared to exempt uses, which account for a tiny fraction. This bill has no impact on Oregonians' 225,000 exempt use domestic wells, which is as it should be.

When Oregon established the 1909 Water Code, it declared that all surface water belongs to the public, meaning that water is a public resource. Quoting from that code: §6675. *Water Belongs to Public*. "All water within the State from all sources of water supply belong to the public." [L. 1909, c. 221, p. 370, § 1.] When Oregon established the 1955 Groundwater Act, it declared in HB 26 Section 2: "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.”

We emphasize this legal fact to clarify the difference between 1) *possessory ownership*, which is the type of ownership one has in real property, consumer items, and in some cases mineral rights under their land, and 2) *usufructuary rights*, which is the right to use a publicly owned resource but not actually possess it. The term *usufruct* means the right to enjoy fruit from the tree but not ownership of the tree.

In Oregon and many other western states, everyone has a right to use water within reason. Every Oregonian and others who visit the state have access to water: about 1.5% of Oregonians hold water rights, which allow them to use huge amounts of water, while everyone else uses small amounts of water either from their domestic wells that are exempt from needing a water right or from municipal public water supplies that do have water rights. The state of Oregon has a fiduciary duty to hold water in trust for the public, and it does so through governance and state agency management of water use by enacting and implementing statutes and administrative rules, and by establishing case law in the courts.

Not only can Oregon require water use measurement and reporting to ensure the protection and preservation of water sources in the state, but the state also has a legal and moral duty to do so to ensure future generations have access to freshwater forever. Water League supports elected officials’ efforts to hold water in trust by presenting HB 3343-4 for consideration before the legislature.

HB 3343-4 allows OWRD to require water use measuring and reporting when water right holders make changes to their permits and certificates. Rolling out water metering only for the largest water users when they make changes to their water rights is a well-paced process that is feasible and timely.

We note that OWRD is under no obligation to require water use measuring and reporting; rather, HB 3343-4 allows OWRD to require measuring and reporting, ostensibly, when such data are necessary for agency staff to carry out their duties managing water use and holding water in trust for the public of the present and future.

We also support simplifying the Water Measurement Cost Share Program Revolving Fund, which remains substantially the same as the existing statute but allows for more details to be

written in rules. As we have noted in other testimony, we recommend that legislators remove all ambiguity on the matter of rulemaking and that HB 3343-4 require that rules be written in Section 6 of this bill to state: “The Water Resources Commission **shall** adopt rules as necessary to implement this section.” We see no reason to equivocate on this matter.

The Water Measurement Cost Share Program Revolving Fund will help pay for expensive meter purchases and installations in the most critical regions, such as the Harney Basin, where a Critical Groundwater Area (CGWA) designation is underway. In CGWAs, water use measuring and reporting is important for water users and OWRD staff to manage water use when water use curtailments, Permissible Total Withdrawals, Total Voluntary Reductions, and other activities must be understood and documented. We encourage rehabilitating well data, such as establishing ID tags and geo-locations whenever OWRD requires the installation of measurement equipment.

In general, we do not support unfunded mandates and believe that assisting in the purchase and installation of metering equipment is equitable state policy when water right holders have had no expectation of such a requirement when they first acquired a water right. That said, and since funds will surely be limited, we support reserving funds for assisting water right holders in Groundwater Administrative Areas (e.g., CGWAs and Serious Water Management Problem Areas) and in stressed Water Availability Basins, such as Streamflow Restoration Priority Areas. Since HB 3343-4 clearly articulates that OWRD may require water use measuring and reporting when water right permits and certificates undergo changes, we believe that is sufficient notice and awareness to deprioritize using the limited Water Measurement Cost Share Program Revolving Funds to underwrite those changes: the expectation is clear that changes in water right permits and certificates may trigger water use measurement and reporting.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Hall", with a stylized, cursive script.

Christopher Hall
Executive Director