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April 3, 2025

RE: Testimony on House Bill 3544-3

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

Thank you for the opportunity to submit testimony on behalf of Oregon Cattlemen's Association (OCA). OCA represents 11,000 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 supports the idea of improving the efficiency of contested case proceedings for water right applications. However, because Representative Helm explained at the April 2, 2025 hearing that there will be continuing discussions regarding the bill, and because we understand that further changes to the bill will be forthcoming, OCA is neutral on the bill at this time. Below, we have outlined our primary concerns with the bill and the -3 Amendments that should be removed or revised in the next round of amendments:

- Section 2(4): The Oregon Water Resources Department ("OWRD") and the Administrative Law Judge ("ALJ") should not set the default hearing schedule without other parties' involvement. Instead, there should be a standard process for a pre-hearing conference by which the ALJ and all parties to the contested case set the schedule. The parties should be encouraged to stipulate a proposed hearing schedule prior to the initial pre-hearing conference.
- Section 2(4): The biggest problem creating the contested hearing backlog is not how long the hearings themselves take to adjudicate. Rather, the problem is how long it takes OWRD to refer protests to contested case hearings. ORS 537.153(8) and ORS 537.621(9) require OWRD to schedule contested cases within 60 days, but OWRD does not comply with these statutory time periods, and this is the primary problem that creates the hearing backlog. The proposal for 180 days to complete the contested case hearing is extremely deferential to OWRD because OWRD can take however long it wants to process the application and refer a protest to contested case, during which time the agency can prepare its case to support its decision. Conversely, it is not reasonable for the proposed water user to start preparing for a contested case hearing until they know the outcome of OWRD's decision. Thus, the 180-days deadline is only a detriment to the proposed water user, who is oftentimes then required to bring an expert on board to challenge OWRD's findings. If there is a deadline, it should be one year, with the ability to extend for good cause, as is the case for circuit court trials.
- Section 2(5)(a): All parties to a contested case, and not just OWRD, should have the ability to request a particular schedule. This provision is unnecessarily deferential to OWRD, and prejudicial to other parties.
- Section 2(7): ALJs must assess the credibility of live witnesses in contested case hearings. Furthermore, documents must be presented to witnesses for testimony, as well as submitted to the Office of Administrative Hearings as evidence. Requiring remote hearings as a default venue is not a good policy. A default remote hearing policy will be prejudicial to conducting contested case hearings, especially if parties requesting live hearings are denied based on such remote hearings policy. Instead, the parties to a contested case should be allowed to request a remote hearing if all parties agree.

- Section 2(8): All parties to a contested case, and not just OWRD, should have the ability to request assignment of a settlement ALJ. Again, this provision is unnecessarily deferential to OWRD, and prejudicial to other parties.
- Section 2(9): ORS 183.482 allows judicial review of agency final orders for legal error, abuse of discretion, and lack of substantial evidence. This provision attempts to cut off two of the three bases for judicial review, by limiting exceptions to interpretation of a statute or regulation. If abuse of discretion and substantial evidence issues are not permitted to be raised in exceptions, then those issues are not adequately preserved for appeal (judicial review). As such, this bill would limit the bases of error a party may raise for judicial review, substantially impeding parties' due process rights.
- Section 3(2)(b)(B): This provision should state the standard for requesting party status, rather than simply saying that the request must meet all requirements established in rule by the Commission. The existing statutes and case law relate to the "adversely affected" standard, and this proposed provision opens the door to completely upend the relevant standard and body of law created around this standard.
- Section 3(3)(b)(B): The standard in this provision conflicts with that in Section 1(c)(F), which only requires a citation of law "if known." Now in this section, the bill states that the protest "must" specify the provisions of law. This will have a chilling effect on parties who cannot afford legal representation and are trying to represent themselves. This section should be deleted.
- Section 3(4): A proposed final order does not automatically become a final order if no protest is filed. OWRD still needs to follow its procedures to issue a final order. As such, this provision is at odds with the process by which OWRD issues orders.

Thank you for your consideration of these important issues while the committee continues conversations regarding House Bill 3544-3 and further amendments to the bill. OCA looks forward to continuing to engage on these concepts.

Respectfully Submitted,



Matt McElligott, President
OREGON CATTLEMEN'S ASSOCIATION