

WATER LEAGUE

*The mission of Water League is to engage
the public in the stewardship of water.*

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August 16, 2022

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Greetings:

Board of Directors

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- Water Resource Commissioners Kihara, Lee, Moll, Quaempts, Reeves, Smitherman, and Wolfe,
- Representatives Helm, Marsh, Morgan, and Owens, and Senators Golden and Prozanski,
- OWRD Director Byler, Deputy Director Rancier, and Policy Section Manager Gonzalez,
- Josephine County District Attorney Eastman, County Legal Counsel Hicks, Sheriff Daniel, and County Commissioners DeYoung, Fowler, and Baertschiger,
- Criminal Justice Commissioner Jessica Kampfe,
- Water Policy Advisor to Governor Brown, Courtney Crowell,

We appreciate the state's leadership stewarding the Oregon public's water resources during this trying time of megadrought, declining groundwater levels, water theft, and shifting public opinion on the use of their water. We thank you for working together, envisioning and passing HB 4061, and developing its enforcement mechanism. We write to you about stewardship of the public's water and to offer the following views from a place of compassion for our communities and watersheds. Our intent is to be of service to the public and their elected and appointed officials.

The spirit of HB 4061 strongly suggests that using water from a municipal water right to irrigate illegal cannabis crops is not a beneficial use of the public's water. Throughout southwest Oregon, the public demands action to address such water use; however, the state acts in a way many do not understand. HB 4061 makes unlawful the conveyance of municipal water to unlicensed cannabis crops but not, apparently, the application of that water to those crops. A brief poll

on Illinois Valley Facebook pages (200+ respondents) shows an 88% rate of agreement that using any water right to irrigate illegal cannabis crops should be unlawful. We will conduct more assessments of the public sentiment on this topic.

The disconnect between the public and the concept behind HB 4061 is a problem. Not only do people think HB 4061 makes the use of water from a municipal water right on illegal cannabis crops unlawful, they are incredulous and frustrated when they realize that the law is construed to only address the hauling or conveyance of water. They ask why the state would not protect the sanctity of water rights because the public views such use as abuse.

We do not believe organized crime syndicates have the ear of Director Byler's office nor the ear of our elected state officials, but we do believe that other more lawful actors have long advocated for a facile interpretation of the beneficial use definition to be solely a mechanical exercise: the physical application of water to land and plants. This over-simplified definition omits the full meaning of beneficial use under OAR 690-300-0010(5), which states **[emphasis added]: Reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state.**

Asserting a partial meaning of beneficial use has an unfortunate side effect: it backs the Oregon Water Resources Department (OWRD) into defending the organized crime syndicates who use water rights to irrigate illegal cannabis crops that law enforcement works around the clock to eradicate. We believe this stance reveals dysfunction within the institutional and political system that oversees the public's water resources. It also shows the extent to which the OWRD adheres to anachronistic policies that predate the existing megadrought conditions, the increasing aridification of the west, and the evolving public opinion on the use of their water.

Omitting the full meaning of beneficial use leaves out essential details that make irrigating illegal crops with a water right untenable. The omission has the effect of protecting the irrigation of other crops that may use water inefficiently, waste water, run afoul of the rules and statutes of the state, or that are not in the public's interest. Having to argue on behalf of the industrial-scale illegal cannabis growers is the collateral damage tolerated to maintain out-of-date policies that protect other irrigation uses the public might view as non-beneficial if they were better informed about those uses. We believe the time has come to rein in the use of the public's water by minority interests whose benefit conflicts with that of the greater public. For example, irrigating alfalfa in groundwater overdraft or sensitive areas is a concern

if the product is for export. We are engaging the public in this discussion about the beneficial use of water and would like to engage the Water Resources Commission and our elected and appointed officials as well.

Water League will conduct research in our efforts to partner with the public and their agencies to address all of our concerns; however, we believe the investigation by the OPB is credible and a good start to emphasize our position. In the investigative series: “Race to the bottom: How big business took over Oregon’s first protected aquifer” by Emily Cureton Cross for Oregon Public Broadcasting (OPB) on March 16, 2022, OWRD Director Tom Byler said:

Our state water laws were born out of concepts that were put into place in the 19th century...The whole idea setting up the system of laws around the use of water is for people to use water.

We seek reform in how the OWRD makes its decisions, specifically, to center decisions around a 21st century science-based water use standard that is demonstrably for the public benefit. Neither the public nor their water resources can endure antiquated profligacy, especially during changes in water law precedent sweeping the west, most notably in California and Nevada.

Regarding decision-making, we also seek reform in how the state selects stakeholders to enter discussions on the use of the public’s water. As also reported by Ms. Cureton Cross,

But some staff who have worked under Byler believe special interests wield outsized influence over decisions, and that leaders within the agency disregard scientific evidence to avoid legal challenges from wealthy developers.

...

An analysis of director Byler’s calendar gives some insights into influence at the department. Over the first nine months of 2021, four lobbyists representing agricultural users secured about 50 meetings with Byler, many of them one-on-one. His office scheduled time with lobbyists for agricultural water users about three times more often than with advocates for conservation groups.

To begin our discussion, we request:

1) The Water Resource Commissioners:

a) Ask OWRD staff to stop defending the idea that irrigation is simply a mechanical application of water to land and plants and require the use of the full legal meaning of OAR 690-300-0010(5);

b) Regulate how the state selects or admits stakeholders to enter discussions, particularly regarding the discussions on the use of the public's water, so that the process is more inclusive and equitable. This includes, but is not limited to, modifying the process by which special interests lobby the OWRD Director and other staff and the process by which members of committees are selected;

c) Ask the Attorney General about who may construe the meaning of Chapter 690 rules after they are written and adopted, including what process may or should exist to periodically review whether such constructions are demonstrably for the public benefit relative to minority special interests.

2) The Legislature to clearly define in statutes that:

a) Irrigating illegal crops is not a beneficial use of the public's water;

b) Irrigating Class A & B noxious weeds is not a beneficial use of the public's water (e.g., these crops for commercial sale at nurseries and in poorly maintained areas);

c) Irrigating water-thirsty crops grown for export in Critical Ground Water Areas, Serious Water Management Problem Areas, and the like is not a beneficial use of the public's water.

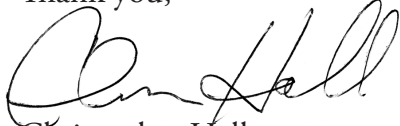
3) Regarding HB 4061:

a) We agree that Division 260 Rules (*Civil Penalty Assessment for Other than Well Constructors*) are needed to establish a well-defined legal process before the next cannabis growing season to address fines and punishments, and we request a seat on the Rules Advisory Committee;

b) We understand the OWRD also envisions revising Division 250 Rules (*Water Distribution*) as well, and we request a seat on the Rules Advisory Committee;

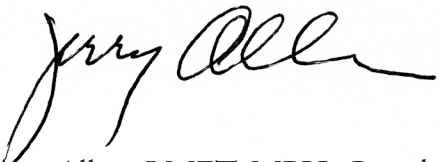
c) HB 4061 has no severability clause, and we would like to suggest the inclusion of such a clause and other revisions to the law for consideration in the 2023 legislative session.

Thank you,



Christopher Hall
Executive Director

Board members:



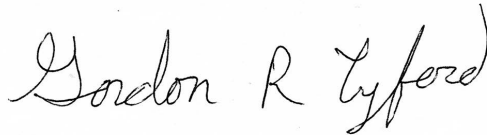
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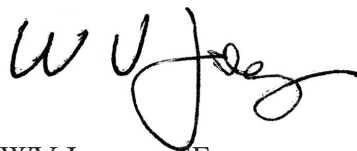
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