WaterWatch of Oregon
Protecting Natural Flows In Oregon Rivers

September 9, 2026

Oregon Water Resources Commission
725 Summer Street NE, Ste A
Salem, OR 97301

Re: Agenda Item A, Burnt River Irrigation District (BRID) Measurement Accuracy Waiver Request

Dear Chair Neuman, members of the Oregon Water Resources Commission,

Thank you for this opportunity to comment on Agenda Item A for the September 10-11 Oregon Water Resources Commission meeting.

WaterWatch has several concerns with BRID's measurement accuracy waiver request (herein after waiver request). In addition to substantive issues noted below, of paramount concern are the restricted nature of materials provided to the Commission and public for review, as well as the insufficient time provided to the public to comment on this request.

As noted in the Staff Report, BRID's waiver request is tied to BRID's HB 3111 district remapping petition. The HB 3111 process is very complex. Moreover, waiving district measurement requirements is both highly unusual and exceedingly controversial in today's day and age when all state planning documents urge more measurement and reporting not less. Given the importance of this matter, the Commission and the public should have been provided materials needed to make a comprehensive assessment of the request, including documents related to the interrelated HB 3111 process (applications, maps, draft order), the amount of water at issue, details on non-irrigation rights (mining, manufacturing and industry), the existing measurement devices for the original 30 PODs, how many of the 130 additional PODs are already required to measure, whether any of the 130 PODs are required to measure under the Commission's SIGPOD program, information on instream water rights and how this waiver request intersects with the BRID/ODFW instream water right settlement agreement, and other important information. Moreover, the public should also have been given more than a few days review this request and provide comment[1]. As such, we urge the Commission to request further information and defer its decision until the December Commission meeting.

In addition to these procedural concerns, we have outlined below our initial substantive concerns and/or questions related to both the BRID waiver request and the related HB 3111 process. As the time period for comment does not adequately allow for records requests and/or review of the full record of HB 3111 documents needed to understand the full effects of this waiver request, nor time to research the full extent of the160 water rights at issue under this waiver request, our comments are necessarily high level. Concerns include but are not limited to the following:

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[1][1] The OWRD Staff Report for Agenda Item A went out Friday afternoon (Sept. 4th), right before the three-day Labor Day weekend. Written comments were requested by Tuesday (Sept. 8th), giving members of the public one business day to review and provide written comment that was certain to be delivered to the Commission. Moreover, that one business day, September 8th overlayed legislative days (September 8-10), which many water stakeholders attend.

(1) The BRID waiver request does not meet the OAR 690-085-010 (6) waiver requirements: OAR 690-085-0010 (6) allows an accuracy waiver for Districts if complying with POD measurement requirements would cause economic hardship and the information would not materially aid water management because either (a) regulation is not needed because of an absence of other water rights or (b) the amount in question is de minimis related to supply[2] . BRID's request fails to meet both of these requirements, including the two avenues of showing that regulation is not needed.

a. **The BRID waiver request does not prove economic hardship**: BRID's wavier request claiming economic hardship is a one paragraph narrative that simply declares that it would cause economic hardship as "our patrons are relatively small operators irrigating pastureland for livestock and hay on small margins". This statement offers zero documentation to back this claim and also does not comport with the fact that some of the water rights at issue are for mining, industrial and manufacturing purposes. Moreover, as the list of water rights attached to staff report demonstrates, some of the water rights are for significant acreage (e.g. 51710 is for 6965.9 acres, 51711 is for 8828.5 acres, etc.). Given the vast scope of this request, the Commission should request that BRID provide documentation of economic hardship related to each water right. As is, the Commission does not currently have the information in front of it to make the required determination under OAR 690-085-0010(6)(a) that complying with the rules would cause economic hardship.

b. **The BRID waiver request does consider the effect on instream water rights: Instream** water rights are found throughout the Burnt River system, including some that were recently settled by ODFW and BRID in response to BRID protests. Neither BRID's waiver request nor the OWRD's staff report reveals this fact, nor does BRID explain how measurement and reporting would not in fact materially aid in the management of the system to ensure the instream water rights receive their due water. Accurate measurement and reporting of water use is generally critically important to ensuring instream rights are met. The omission of the fact that instream water rights exist in the system, let alone an explanation of the effect a waiver on the management and protection of instream water rights renders the BRID waiver incomplete. As such, the Commission does not have the information in front of it to make the required determination under OAR 690-085-0010(6)(b) that accurate measurement and reporting will not materially aid in water management because of an absence of other water rights.

c. **The amount of water under the rights covered by BRID waiver request is not de minimis:** The BRID waiver requests encapsulate 160 water rights that cover 37,933 acres. The total amount of water under these rights is not found in the BRID waiver request or the OWRD Staff Report. That said, even absent information on the precise amount of water at issue, given the vast acreage involved, the amount of water at issue could not reasonably be determined to be de minimis. While BRID does not claim this under OAR 690-085-0010(6)(c), we are making this point in case it is raised at the Commission meeting.

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[2] OAR 690-085-010(**6**)The Commission may waive compliance with section (3) of this rule and/or any of the requirements of OAR 690-085-0015 (Methods for Measuring and Computing Water Use). The qualify for a waiver, the governmental entity shall show that:**(a)**Complying with the rule(s) would cause an economic hardship on the governmental entity; **and**
(b) The information to be collected would not materially aid water management because:(**A)**The regulation for or of the use is unlikely due to the absence of other water rights; **or (B)** Use of water is unlikely to materially affect water availability from the source since the quantity of water allowed by the right in relation to the quantity of water available from the source is deminimis; **or (C)**Another similar situation exists

(2) The HB 3111 process: As part of the state's work to curb rampant illegal water spreading in the Umatilla Basin and elsewhere in the late 1980's, the Oregon legislature passed a law which allowed districts that were delivering water outside their district boundaries a limited "one time" window to get their houses in order so to speak. Specifically, in 1989 the Legislature passed HB 3111 which gave irrigation districts the opportunity to remap their districts and file petitions/maps with the department to show where water is actually being applied as of the date of the law's adoption. The original deadline for completed petitions and completed maps was July 1, 1992. The legislature extended the deadline two times, as some districts asserted they needed more time to complete petitions and accompanying maps (see House Committee on Legislative Rules, June 1991 hearing record). The final deadline for submittal of completed petitions and associated maps granted by the legislature was July 1, 1994.[3] Importantly, the lands under the petition were limited to no more acres of land than the least of the following: (a) The number of acres assessed by the district as of July 1, 1989; (b) The number of acres assessed by the district as of July 1, 1993; or (c) If a district notifies the department under ORS 541.327 (Failure or refusal of district to act) (4), the number of acres assessed by the district as of December 31, 2003. See ORS 537.329(3).

It has been thirty-two years since the HB 3111 deadline for petition submittal has passed. And while we understand that BRID submitted a petition on June 30, 1993, it is unclear whether it was fully complete and/or if the required completed maps were submitted. There is no explanation in the Staff Report as to the reason for this long delay. Moreover, the brief description in the September 10, 2026, Staff Report raises concerns that the HB 3111 process may not have adhered to statutory requirements. Specifically, the Staff Report notes:

> Since the early to mid-1990's under the House Bill 3111 program, the BRID has invested in the development of a petition to adjust the legal descriptions of places of use for water right records within district boundaries to match the current places of use associated with the PODs (emphasis added).

This description seems to indicate that BRID did not submit a complete petition by 1994 and instead has been developing the petition for the past 30 plus years, and also that they might have included lands to which water was applied long after the early 1990 deadlines limited by statute. That said, it is impossible to assess with certainty without having access to the BRID HB 3111 record.

The decision on the BRID waiver request before the Commission is integrally connected to the HB 3111 process. As such, the Commission and the public should be offered the full record for review, including the original applications/maps and the details of the water rights (e.g. amount of water, type of use, etc.). An updated Staff Report should be offered that thoroughly explains the history, process and delay. Absent this information, a Commission decision on the BRID waiver is premature.

(3) Water use reporting is one of the basic requirements of being a district: Irrigation Districts are required by statute to report water use. While, in our view, these statutes are not nearly rigorous enough to provide the full spectrum of water use data needed to responsibly manage district water use, they at least provide the OWRD with basic water use information. This is one of the few requirements districts must adhere to in order to enjoy the many flexibilities allowed to irrigation districts under the law. Through the HB 3111 process, BRID is seeking to expand the lands that enjoy the statutory flexibilities that Oregon law bestows on districts, yet through the waiver process BRID is seeking to exempt themselves from one of the few requirements districts must meet, not only for the new lands but also the

[3] ORS 541.329

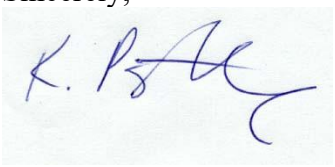
historical lands that were already supposed to be measuring and reporting. We do not believe it is good public policy to exempt the new (or old) district diversions from this basic requirement. In fact, we would urge the Commission to look at future policy changes that would allow the state to better manage district diversions in real time, for example requiring telemetric measurement and reporting.

(4) Measurement and reporting of water use is the cornerstone of effective water management and efficient water use. Accurate measurement and reporting is a basic, common-sense tool that is necessary to provide good data on water use, to help water users stay within their legal limits and use water more efficiently, and to help the state carry out its water management responsibilities. The importance of accurate water use data has been highlighted in a multitude of state documents including but not limited to the Oregon Plan, the 2000 Water Resources Commission Water Measurement Strategy, the Integrated Water Resources Strategy and the Secretary of State Audit of the Oregon Water Resources Department. These documents recognize that water measurement provides a solid foundation for the state to make sound decisions to protect existing water right holders, facilitates planning for future water supplies and may prevent time consuming and costly conflicts in the future. As such, we have significant concerns with the waiver request before the Commission. It goes against the very notion of "what gets measured gets managed".

Conclusion: As outlined in these comments, we do not believe the Commission has adequate information to make the decision being asked of it. It is our view that the Commission and the public should be offered additional information and time to better assess the request. Absent that, we would urge the Commission to reject BIRD's waiver request as the Commission does not have the information needed to make the findings required for an approval a waiver under OAR 690-085-0010(6)(a)-(c).

Thank you for consideration of our comments.

Sincerely,



Kimberley Priestley
Sr. Policy Analyst

cc: Ivan Gall, OWRD Director
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Jason Spriet, OWRD

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