

This non-partisan report was prepared by volunteer members of the League of Women Voters of Lane County.

### **Measure 20-373**

#### **Lane County Watersheds Bill of Rights**

**Official Title:** Establishes rights for watersheds and clean water; County, private enforcement

**Question:** Should Lane County establish rights concerning watersheds and water, beyond existing water regulations, enforced by private lawsuits and the County?

**Initiative:** This initiative, which calls for a new county ordinance, was placed on the ballot with more than 14,000 signatures gathered in a petition drive. The chief petitioner is Michelle Holman, a Lane County resident and founding member of Community Rights Lane County; Eron King and Kunu Bearchum are also petitioners.

**Financial Impact:** The financial impact of this measure has not been determined.

#### **Probable Result Of A “Yes” Vote**

If this measure passes, Lane County would recognize the natural rights of watersheds and the rights of county residents to affordable clean water, beyond the current protections of state and federal laws. The County would be responsible for enforcing these rights, and county residents would be able to sue business and government entities for alleged violations of the measure.

#### **Probable Result Of A “No” Vote**

If this measure fails, enforcement of clean water laws would continue to rest largely with state and federal environmental protection agencies.

#### **Background**

The term “watershed” refers to an area of land and water that drains rain, snowmelt, and groundwater into rivers and creeks that feed a single outlet, such as a lake, reservoir, aquifer, or bay. Lane County residents rely on the watersheds of five rivers for their water supplies: the McKenzie, Middle Fork Willamette, Coast Fork Willamette, Long Tom, and Siuslaw.

Environmental threats to watersheds include contaminants from a single source, such as aerial herbicide spraying, or from nonpoint source pollutants; examples of the latter include motor oil leaked on parking lots, pesticides, fertilizers, detergents, and sediments. Stormwater runoff carrying nonpoint source pollutants is among the greatest threats to watersheds and to the humans, flora, and fauna that rely on those water supplies. Water overuse, diversion for industrial production, wildfires, and climate change are other factors that may negatively affect water quality and availability.

This measure is not the first citizen initiative to address local watershed protections. The Freedom from Aerial Herbicides Alliance submitted a petition in 2017 to amend the County Charter to outlaw the use of aerial herbicide spraying. However, a circuit court decision blocked the amendment from being placed on the ballot, ruling that the proposal, as worded, did not meet state requirements. In that case, legal counsel for Lane County also argued that state law preempts local regulation of pesticides. Measure 20-373 states that its proposed protections cannot be preempted by state, federal, or international law.

The design of Measure 20-373 reflects the “rights of nature” movement, which holds that other species and ecosystems such as watersheds are entitled to legal protection and the ability to seek redress within the judicial system against harm. This developing environmental protection strategy has been adopted in other nations and in some U.S. communities; for example, the city

of Pittsburgh, Penn., adopted a rights of nature ordinance in 2010, and the Yurok Tribe in northern California granted “legal personhood” within tribal law to the Klamath River. Some American municipalities that have adopted similar measures have faced legal challenges.

### **Proposal**

The measure specifies that watersheds have “the right to exist, flourish, regenerate, and evolve” and that Lane County residents have the right to affordable clean water. The Lane County Watersheds Bill of Rights, which is the basis of this measure, would require the county government “to adopt protective and effective measures to prevent and/or remedy actual and potential violations of the rights declared within this ordinance, even when there is not scientific certainty or full evidence of the risk.”

Those rights would be enforced by Lane County staff and elected officials and through lawsuits filed by individuals or organizations on behalf of watersheds. A business, corporation, or government found at fault in such a lawsuit would be liable for the cost to restore the watershed to its preexisting state, with an additional penalty of 1% of restoration costs per day for the duration of the violation.

### **Supporters Say**

- A county ordinance would enhance legal protections and provide local enforcement for watersheds and access to clean, safe water.
- Recognizing the natural rights of watersheds emphasizes the need to ensure the sufficient flow of clean water to support these ecosystems and the people and other species who rely on them.
- Although this measure would give county residents a direct means to pursue claims of violations through county courts, historical evidence of similar measures in other jurisdictions does not indicate the likelihood of widespread or abusive litigation.

### **Opponents Say**

- The broad and vague wording of this measure would allow anyone to sue local businesses and governments, with no requirement of evidence that a watershed has been harmed.
- The potential for frivolous lawsuits could be costly for business owners, farmers, home builders, utilities, and government agencies—even if those cases are ultimately dismissed—and hamper community development.
- The costs to Lane County to enforce this ordinance and to local governments named in lawsuits could result in higher local taxes and utility rates.

You are probably aware that there is a PAC supporting this measure registered with SoS:

[https://secure.sos.state.or.us/orestar/sooDetail.do?sooRsn=103806&OWASP\\_CSRFTOKEN=UAR1-NL64-02KD-A4KK-G4J8-BP5E-GHVA-0E50](https://secure.sos.state.or.us/orestar/sooDetail.do?sooRsn=103806&OWASP_CSRFTOKEN=UAR1-NL64-02KD-A4KK-G4J8-BP5E-GHVA-0E50) , and two opposing it:  
[https://secure.sos.state.or.us/orestar/sooDetail.do?sooRsn=105112&OWASP\\_CSRFTOKEN=UAR1-NL64-02KD-A4KK-G4J8-BP5E-GHVA-0E50](https://secure.sos.state.or.us/orestar/sooDetail.do?sooRsn=105112&OWASP_CSRFTOKEN=UAR1-NL64-02KD-A4KK-G4J8-BP5E-GHVA-0E50)  
[https://secure.sos.state.or.us/orestar/sooDetail.do?sooRsn=105497&OWASP\\_CSRFTOKEN=KOSD-BHLS-F2L8-30OK-Q631-D8IR-6YW4-MJOL](https://secure.sos.state.or.us/orestar/sooDetail.do?sooRsn=105497&OWASP_CSRFTOKEN=KOSD-BHLS-F2L8-30OK-Q631-D8IR-6YW4-MJOL)