



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1266  
503-986-0900  
FAX 503-986-0904

Before the

Senate Environment and Natural Resources Committee  
Senator Michael Dembrow, Chair

Testimony on Senate Bill 1512  
“Temporary Transfer or Lease of Klamath Determined Claims”

February 5, 2014

Thank you for the opportunity to present testimony on Senate Bill 1512, a bill that would allow the temporary transfer or lease instream of determined water right claims in the Klamath Basin Adjudication

### **Proposal**

Senate Bill 1512 would allow the temporary transfer or instream lease of determined water right claims in the Klamath Basin Adjudication. The temporary transfers or instream leases would be authorized only upon a showing of no injury to other water right holders.

-4 Amendments – The proposed amendment: (1) limits temporary transfers of determined claims to transfers that do not involve moving the point of diversion up the stream; (2) clarifies that the referenced judicial review is the pending review of the final order of determination; (3) adds an emergency clause; and (4) adds a sunset date of 2023 for temporary transfers and leases of determined claims.

### **Background**

Before 1909, Oregon did not have a water right permit system and water rights, today referred to as pre-1909 water rights, were created simply by the beneficial use of water, usually for irrigation or mining. Similarly, federal (including tribal) reserved water rights are not created by applying for a permit, but rather are established when the federal government reserves federal lands for a specific purpose or enters into a treaty.

Claims for pre-1909 state water rights and federal reserved water rights are validated, quantified and determined through a process called a water right adjudication. The first phase of an adjudication is administrative, with the Oregon Water Resources Department (OWRD) reviewing claims, hearing contests to claims, reviewing the administrative law judge’s proposed orders, and ultimately determining claims in a Findings of Fact and Final Order of Determination (FFOD). The second phase involves court review of the FFOD. After hearing exceptions, the Court will issue a water rights decree affirming or modifying the FFOD.

According to Oregon law, the watermaster can regulate in favor of determined claims upon the Director delivering the FFOD to the court, but unlike certificated or decreed rights, determined water right claims are not eligible for temporary transfers or instream leases until a final court decree is issued.

Temporary transfers allow for a change in the place of use of a water right for up to five years, as well as a change in the point of diversion if necessary to carry out the change in the place of use. Similarly, a lease allows for the temporary use of a water right for an instream purpose for a period of up to five years. In both instances, the change cannot result in injury to existing water rights and the department may revoke a lease or temporary transfer if, at any time, the department determines that the use is causing injury to an existing water right.

### **The Klamath Adjudication**

The administrative phase of the Klamath Adjudication began in 1975 and ended when the FFOD was delivered to the Klamath County Circuit Court on March 7, 2013. As a result, the senior determined water right claims can now make calls for regulation of junior water users, if doing so will make water available to the senior right.

The Klamath adjudication is the only current adjudication in which the FFOD is pending a final decree. In complex adjudications, it can take many years after receiving the FFOD for the court to issue a final decree. In the meantime, the basin is currently negotiating a settlement with the four co-equal goals: (i) To support the economic development interests of the Klamath Tribes; (ii) To provide a stable, sustainable basis for the continuation of agriculture in the Upper Klamath basin; (iii) To manage and restore riparian corridors along streams that flow into Upper Klamath Lake in order to achieve Proper Functioning Conditions permanently; and (iv) To resolve controversies regarding certain water right claims and contests in the Oregon Klamath Basin Adjudication.

### **Conclusion**

Senate Bill 1512 would allow the temporary transfer or instream lease of determined water right claims in the Klamath Basin Adjudication. If a settlement is reached, Senate Bill 1512 will be an essential component to ensuring that the provisions of the agreement can be met. Regardless of a settlement, Senate Bill 1512 would provide holders of determined water right claims with some flexibility in how they manage their water. It would also provide them with the opportunity to lease water instream and potentially be paid for doing so.