



## SB 1584

### Testimony of WaterWatch of Oregon Submitted to the Senate Committee on Rules

February 25, 2016

Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. We work to ensure that enough water is protected in Oregon's rivers to sustain fish, wildlife, recreation and other public uses of Oregon's rivers, lakes and streams. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources

#### **WaterWatch opposes SB 1584.**

What SB 1584 does: SB 1584 (originally brought in 2015 as SB 712)<sup>1</sup> would overturn a 2014 Oregon Court of Appeals' decision pertaining to a water permit held by the City of Cottage Grove and would roll back existing fish review and water conservation requirements for certain municipal water permits. The bill erodes existing, workable protections for imperiled salmon and steelhead and requirements that cities implement basic, proven water conservation measures.

*Because this bill would erode existing fish protection and water conservation standards, SB 1584 has been designated as a Major Threat by the Oregon Conservation Network.*

Specifically, SB 1584 would require these standards to apply to only the portion of municipal water rights not diverted as of December 11, 2013, whereas existing law (as confirmed by the Oregon Court of Appeals in a case pertaining to a City of Cottage Grove water permit) applies the standards to water not diverted whenever the water permits last expired. Moving the date to 2013 thus creates a loophole that had been exploited by the City of Cottage Grove, which intentionally delayed processing of its water permit extension application while it doubled its diversion and then claimed its permit was exempt from the fish review and water conservation plan standards.

WaterWatch urges the Committee to vote no on SB 1584 for the following reasons:

SB 1584 would undo years of compromise: SB 1584 seeks to overturn several years of deliberation. The standards it seeks to rollback were part of a compromise bill in 2005

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<sup>1</sup> SB 1584 contains a few grammatical and technical changes to SB 712 but is substantively the same. SB 1584 also adds a number of new "Whereas" statements preceding "Be It Enacted by the People of the State of Oregon."

(HB 3038) agreed to by at least some of the current proponents of SB 1584. The bill is also inconsistent with the 2015 compromise package (SB 971 (2015)) arrived at after many, many hours of hard work by WaterWatch of Oregon, Special Districts Association of Oregon and League of Oregon Cities that would have applied the fish persistence and water conservation planning standards to the portion of the permit not diverted as of June 29, 2005 (or the date that the permit expires, if later), which is the date the Oregon legislature enacted these standards.

SB 1584 would overturn a 2014 Oregon Court of Appeals decision: In 2014, the Oregon Court of Appeals issued a decision upholding application of the fish protection and water conservation standards to the portion of a municipal water permit not diverted at the time the permit last expired expires. *WaterWatch of Oregon, Inc. v. Water Resources Department*, 259 Or App 717, 316 P3d 330 (2013), *rev dismissed as improvidently allowed by order*, Feb. 5, 2015. The decision pertained to a water permit held by the City of Cottage Grove, which intentionally delayed processing of its water permit extension application while it doubled its diversion and then claimed its permit was exempt from the fish review and water conservation plan standards. The city petitioned the Oregon Supreme Court of Oregon for review and the court initially took the case. However, after briefing and oral argument, the Oregon Supreme Court dismissed the city's appeal allowing the Oregon Court of Appeals decision to stand.

Now is not the time to erode water conservation planning requirements: The severe drought of summer 2015 highlighted the increasingly critical role for water conservation programs. The effect of SB 1584 would be to remove the existing water management and conservation planning requirement for certain cities, including the City of Cottage Grove. These plans are important tools for cities to assess water supply issues and develop programs to implement basic, proven water conservation measures that help ensure responsible, sustainable use of the state's water resources. In this time of drought and a changing climate, Oregon needs more not less water conservation planning from Oregon's cities.

The fish protection and water conservation standards have proven workable: Numerous permits (over 50) held by municipal water providers, including the Eugene Water and Electric Board, Springfield Utility Board, have been extended under the current law. Permit holders have worked through the process and received permit extensions that include reasonable and workable conditions to protect imperiled fish and undertake water conservation planning.

An example is the City of Sisters. Last session at a hearing before this Committee on the the compromise bill (SB 971 (2015)), testimony was presented suggesting that the compromise bill would be onerous and unworkable for the City of Sisters. However, City of Sisters had already been notified by the Oregon Department of Fish and Wildlife that is was not going to request any fish protection conditions on the pending permit extension (because the permit was for pumping groundwater determined to be not hydraulically connected to surface water), and in fact, the city has since received the permit extension

at issue with no fish protection conditions. We urge the Committee to reject suggestions that the current standard is unworkable.

The legislature should not circumvent good process in a rush to pass SB 1584: SB 1584 unquestionably would make significant and controversial changes to existing water law. Moving this bill at the end of a short session, with today's hearing in the Senate Committee on Rules being the bill's first hearing, does not allow for the type of public process that significant and controversial changes to Oregon water law demand. We urge the Committee to vote no on this controversial bill.

Conclusion: We urge the Committee to oppose SB 1584. The bill would rollback important, workable fish protection and water conservation standards and would overturn a decision by the Oregon Court of Appeals upholding these standards. Because the bill would erode these basic protections, it has been designated as a Major Threat by the Oregon Conservation Network. In 2015, many interests worked hard to deliver a compromise bill to this Committee that was subsequently undermined by certain interests. Advancing SB 1584 (which is not consistent with the compromise struck last session) at this stage of the session without time for adequate discourse or amendments would be poor public process. Oregon's rivers, salmon and steelhead and cities deserve better.

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