



**Testimony of WaterWatch of Oregon
HB 2099 First Public Hearing
House Committee On Agriculture and Natural Resources
March 9, 2017**

Chair Clem, members of the committee, for the record my name is Lisa Brown and I am here testifying on behalf of WaterWatch of Oregon.

WaterWatch opposes HB 2099 as drafted. Development of municipal water supplies can be compatible with maintaining imperiled fish and ensuring water conservation. The bill unnecessarily rolls back existing law that has proven workable for more than a decade.

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.

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The issue: Cities across Oregon hold dormant, undeveloped municipal water permits that were issued many decades ago without modern public interest review—including any review of impacts to fish. When cities seek to finally develop these old permits, we often find imperiled fish species listed under state and federal laws in these rivers. These listed fish could be severely impacted if the municipal water development is not undertaken carefully.

A compromise reached in 2005 (HB 3038) protected the cities' ability to develop these old undeveloped municipal water permits while applying exceedingly reasonable fish and water conservation standards when extensions of time to develop the permits are issued by the Water Resources Department. The existing standards have been in place for more than a decade and cities across Oregon are developing old water permits in accordance with these standards—and it's working. Approximately 60-70 permits have already gone through the process successfully and the results have proven workable.

What HB 2099 does: HB 2099 (originally brought in 2015 as SB 712 and again in 2016 as SB 1584)¹ would roll back the existing fish review and water conservation

¹ There are minor grammatical and technical differences in the bills but they are substantively the same.

requirements for certain municipal water permits and would overturn a 2013 Oregon Court of Appeals' decision pertaining to a water permit held by the City of Cottage Grove. These fish review and water conservation standards have been implemented since 2005 and have proven workable. The bill erodes these existing, workable protections for imperiled salmon and steelhead and requirements that cities implement basic, proven water conservation measures.

Specifically, HB 2099 would exempt water diverted up prior to December 11, 2013 from these workable, sensible standards, whereas existing law (confirmed by the Court of Appeals) applies the standards to water not diverted whenever the water permits last expired.

WaterWatch urges the Committee to vote no on HB 2099 for the following reasons:

HB 2099 would undo years of compromise: HB 2099 seeks to overturn several years of deliberation and compromise. The standards it seeks to rollback were part of a compromise bill in 2005 (HB 3038) agreed to by at least some of the current proponents of HB 2099. The 2005 HB 3038 was negotiated by the League of Oregon Cities, individual cities, the Water Resources Department, WaterWatch and others. The existing law allows development of old undeveloped permits by validating permits where failure to meet construction deadline requirements called them into question, while requiring the permits be developed in a way that maintains the persistence of imperiled fish and also requiring cities—through adoption of Water Management and Conservation Plans—to implement basic, proven water conservation measures.

HB 2099 would undo the compromise negotiated by the cities and others in 2005 by rolling back the fish and water conservation requirements, while keeping in place the legislative validation of the dormant, undeveloped permits. The existing standards have been in place for more than a decade and cities across Oregon are developing old water permits in accordance with these standards—and it's working. Again, approximately 60-70 permits have successfully gone through the process and the results have proven workable.

HB 2099 is also inconsistent with the 2015 compromise (SB 971) arrived at after many, many hours of hard work by WaterWatch of Oregon, Special Districts Association of Oregon and League of Oregon Cities—with skillful facilitation by Senator Roblan's staff—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 in HB 3038. This compromise was subsequently undermined by certain interests resulting in a failure to pass SB 971.

More recently, starting in summer of 2016 a workgroup convened by the Governor's office and including WaterWatch of Oregon, Special Districts Association of Oregon, League of Oregon Cities and the Water Resources Department has been working through the list of potentially affected permits and relevant data regarding potential effects.

Because additional permits have successfully gone through the process since last session, the universe of potentially affected permits continues to decrease. With the additional data generated through the work group, it is clear that more permits are moving through the system successfully and that many are simply not affected. WaterWatch believes that a solution for permits that remain is within reach as the number of permit holders affected continues to shrink and the specifics of these permits becomes more clear.

HB 2099 would overturn a 2013 Oregon Court of Appeals' decision: In 2013, 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. *WaterWatch of Oregon, Inc. v. Water Resources Department*, 259 Or App 717, 316 P3d 330 (2013), *rev dismissed as improvidently allowed* (by order dated February 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. By exempting water diverted prior to 2013, HB 2099 would reward conduct designed to evade the law and authorize a loophole that would benefit the City of Cottage Grove and, potentially, other permit holders that engaged in the same conduct.

Now is not the time to erode water conservation planning requirements: The severe drought of summer 2015—and associated low river flows and fish kills—highlighted the increasingly critical role for water conservation programs. The effect of HB 2099 would be to remove or dilute 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 (approximately 60-70) held by municipal water providers large and small, all across the state, 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. Exempting water diverted up until December 11, 2013 from fish protection and water conservation standards for cities that have not gone through the process yet creates an uneven standard, while rewarding cities such as Cottage Grove which intentionally delayed processing of their extension application.

Upon review, it appears that claims that the 2005 compromise was unworkable were false alarms: An example is the City of Sisters. During the 2015 session before the Senate Committee On Environment and Natural Resources 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 it 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.

Other examples include City of Philomath and City of Bend, which each diverted some water between the time their permit at issue expired and 2005 (0.37 cfs and 2.39 cfs respectively) but no additional water since 2005—thus those cities benefit from the compromise of 2005 (but do not further benefit from HB 2099). Under the compromise date of 2005, those cities (and others that are similarly situated) would have no fish protection conditions applied to any water already diverted.

A final example is the City of Hood River. While the city has provided conflicting data to the Water Resources Department regarding diversions that have occurred under its water permits (which hinders everyone's ability to find a solution that works for the city), but available information indicates that the city would have ample water—and the ability to continue to deliver that water—under the 2005 compromise.

We urge this Committee to carefully review any suggestions that the current standard or the compromise using the 2005 date is unworkable.

Conclusion: We urge the Committee to oppose HB 2099 as drafted. The bill would rollback important, workable protections for iconic, imperiled fish in Oregon waters, reduce water conservation standards at a time when Oregon very much needs those standards and would overturn a well-reasoned decision by the Oregon Court of Appeals upholding these standards. In 2015, many interests worked hard to deliver a compromise bill that was subsequently undermined by certain interests. Further discussions to reach a workable compromise have been occurring in the workgroup convened by the Governor's office. WaterWatch believes a solution can be found that addresses the remaining permits in a way that meets the cities' needs for water while also considering the needs of salmon and steelhead and promoting water conservation. Advancing HB 2099 (which is not consistent with the compromise struck in 2005 or 2015) is an inadequate solution to the issues. Oregon's rivers, imperiled salmon and steelhead and cities deserve better.

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