



## HB 4016, -1 amendment

### Testimony of WaterWatch of Oregon Submitted to the House Energy and Environment Committee February 12, 2018

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 HB 4016, -1 amendment:** This testimony is to supplement our testimony in opposition of HB 4016 as written (submitted 2/9/18) and is meant to be read in tandem. All concerns previously noted with regard to the bill as drafted still carry over to the -1's.

**What the -1 amendment does:** The -1 amendment crystalizes the point that in year one of this program proof of use over the past five years is not required. The -1's also clarify that use of water under this program is not admissible as proof of evidence of use in a court adjudication regarding a determined claim.

**The -1 amendment will result in an increase of water use by the Klamath Project irrigation districts at the expense of all other interests:** Just like the original bill, the -1's allows Klamath Project irrigators to transfer water to irrigation within their districts without having to show proof of use over the past five years. What this means on the ground is that a farmer who hasn't been able to use his or her water could move the claim to other lands and start using it again. The practical effect of this is that it will increase demand in an already overstretched basin. Given that every drop of water is spoken for in this basin, more than spoken for, an increase in demand on project lands will mean less water for others, including Tribes, National Wildlife Refuges, endangered fish in the lake and the river and off-project farmers.

**The -1 amendments will virtually guarantee all currently all unused water will be revived in 2018, precisely when the Klamath Basin is facing a drought:** To make matters even more dire, by limiting this loophole to proof of use to year one, the -1 amendments virtually guarantee that anyone who holds a determined claim that they cannot currently use because the lands are not irrigable will rush to use this loophole to "revive" their rights in year one—a probable drought year. While the -1's limit this loophole to year one, once the water is moved even once, it can then prove use for the next five years (so any future requirements to prove use can be met by virtue of use in year one). As the basin heads into drought, this is exactly the wrong direction the state should be going.

**Relation to the adjudication (Section 1(4) of the -1 amendments):** Section 1 (4) that states that use of water under this statute is not admissible as proof of use in the adjudication; this is not relevant to the near term increase in demand that the bill that the -1 amendment allows. The adjudication has been in process for over 30 years. Determined claims were issued in 2013. Many exceptions were filed to these claims, and those are currently working through the courts. Regardless of the adjudication, at the very least what the -1 amendment allows is the use of water that is not currently being used up until the date of the final decree. No one knows the timing of the finalization of the decree, it might be ten years out, fifteen or more. So, while the bill does clarify that use cannot be used as evidence in the adjudication, be clear, this bill allows use of water that would otherwise not be used up until the point of the final decree. It is at that point that rights will be finalized.

This increase in demand in the interim (and maybe beyond, that is an unknown) comes at the direct expense of other interests who depend on water in the basin, including other Klamath basin farmers, Oregon's commercial and recreational fishing industry, Tribes, National Wildlife Refuges and federally-listed species both in the lake (short nosed and lost river suckers) and in the downstream Klamath River (coho salmon). This bill will only serve to worsen the fundamental water supply imbalance in the Klamath basin.

**Conclusion:** For the reasons outlined in our testimony on HB 4016 (2/9) and also the -1 amendment, we ask the Committee to reject this bill. A one off bill designed to help only one group in the Klamath Basin---the Klamath Project Irrigation Districts---at the expense of the other interests in the basin, including non-project farmers, refuges, endangered fish, Tribes and commercial fisherman will only escalate the crisis facing the Klamath basin, especially as we head into drought. This is exactly the wrong direction for the state to be going.

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