



February 12, 2018

To: Chair Ken Helm, Vice-Chair Karin Power, Vice-Chair E. Werner Reschke, and Members of the House Committee on Energy and Environment

RE: Testimony in Support of HB 4016

Dear Chair Helm, Vice-Chair Power, Vice-Chair Reschke and Members of the Committee:

The Oregon Water Resources Congress (OWRC) is testifying in support of HB 4016 which will provide an essential tool for irrigation districts in the Klamath Basin to temporarily transfer water under their determined claims while the adjudication process continues, allowing them to efficiently deliver water resources to the farmers they serve.

OWRC is a nonprofit association representing irrigation districts, water control districts, improvement districts, drainage districts and other government entities delivering agricultural water supplies. The water stewards we represent operate complex water management systems, including water supply reservoirs, canals, pipelines, and hydropower production, and deliver water to roughly 1/3 of all irrigated land in Oregon. OWRC has been promoting the protection and use of water rights and the wise stewardship of water resources on behalf of agricultural water suppliers for over 100 years.

Background & Need

HB 4016 is an important legislative fix to allow irrigation districts to transfer water within their district boundaries, in accordance with their determined claims, and will provide the necessary flexibility for efficient water delivery until the adjudication process is concluded. Moving water from one place of use to another within district boundaries is one of the most crucial tools for agricultural water suppliers and it is currently unavailable for the districts in the Klamath Basin.

The Klamath Basin is one of the most beautiful and unique places in the state, yet often the most fraught with conflict. As in many places of the state, water resources are scarce and paramount for a variety of often competing demands. But unlike most areas of Oregon, the Klamath Basin does not yet have fully adjudicated water rights, which is the legal process to identify, quantify, and document water rights pre-dating the 1909 Water Code, as well as rights held by the federal government or tribes. The adjudication process started in 1975; reached an important milestone in 2013 when the Water Resources Department issued Final Order of Determination (FOD), and now is in the second phase, court review of the FOD and resolving exceptions. It is unknown when the process will be completed; however, based on prior history it is unlikely to be soon.

There are multiple reasons to move water from one place of use to another and there are many types of transfers allowed under Oregon water law. Three types are permanent: general and instream transfers under ORS 540.520 and district transfers under ORS 540.580. Temporary transfers include individual transfers under ORS 540.523, instream leases under ORS 537.348, district transfers under 540.570, and transfers in the Deschutes Basin under ORS 540.585. There are also two sets of impermanent statutory language that provide additional flexibility, including split season instream leasing (notes under ORS 537.5230) and the district transfer pilot program (notes under ORS 540.523). These provisions are all generally applicable to fully adjudicated water rights.

SB 206 (passed in 2015) created provisions to allow for the temporary transfer and temporary instream lease of determined claims in the Upper Klamath Basin while judicial review of the final order is pending. Unfortunately, those provisions excluded the ability of district temporary transfers under ORS 540.570 and omitted key language that would allow the Oregon Water Resources Department (OWRD) staff to process these transactions in a manner different from non-district transfers under ORS 540.523. It is important to note that up until the passage of SB 206 there was no legal mechanism for a water user or district to move water (temporarily or permanently) from one area to

another and in the decades that the adjudication process crept forward there have been a variety of the changes to lands, including urbanization and development of agricultural land. Water has continued to be delivered and beneficially used but has not been able to be legally moved to another place of use. Having flexibility to move water within district boundaries is an essential tool for irrigated agriculture and if OWRC had been involved in the development of SB 206 in 2015 we would have likely requested the additional clarity to allow irrigation districts to transfer determined claims.

HB 4016 will create a pilot program to allow Klamath Basin districts to temporarily move water under their determined claims to other lands within the district boundary for the period of the irrigation season. The program created by HB 4016 is similar in operation, but distinct in purpose, to a district transfer pilot program that OWRC helped create in 2003. The district pilot program has been used successfully without any injury to other water users and now includes 15 districts¹. The current pilot participants are geographically distributed and if districts in the Klamath Basin had adjudicated water rights they would have likely been included in the original program or in the subsequent expansions. However, because of the unique status of the determined claims, a separate pilot program is needed to provide districts with similar flexibility so that temporary district transfers can occur in an expediated manner. Once the adjudication is finalized, districts and other water users in the Klamath Basin will be able to transfer water temporarily and permanently through other existing statutory provisions.

The passage of HB 4016 will allow for better management of the scarce water resources in the Klamath Project and will also help reduce conflict between districts. There are many pressures facing the districts in the Klamath Basin, including drought and federal flow requirements for fish species listed under the Endangered Species Act (ESA), and this program will help the districts to deliver available water for agriculture efficiently and where it is needed. The amount of water that is allocated and delivered to irrigators in the Klamath Project is determined by federal contract which includes competing water requirements for maintaining lake levels for ESA listed species of suckerfish and downstream flow requirements for listed salmon. Contrary to what opponents of the bill have asserted, there are no provisions in HB 4016 that will alter the operations of Upper Klamath Lake or the amount of water that is allocated to the Klamath Project.

Key Components

- Mirrors existing authorities that irrigation districts outside of the Klamath Basin can utilize
- HB 4016 district transfers are temporary, for the duration of the irrigation season only, which is less duration than a standard temporary transfer
- Only qualifying districts with determined claims are eligible to participate
- There are a variety of safeguards in place to allow the Oregon Water Resources Department to cause the place of water use change to cease and revert to the original lands
- Copies of district maps will be provided to the local Watermaster prior to the start of irrigation, which ensures there is no injury or enlargement as well as provides additional efficiencies to OWRD staff in seasonal water distribution and regulation activities
- Districts are required to measure and report water use in accordance with existing state law
- There are appropriate caveats to ensure that these temporary transfers do not impact the court review and associated legal proceedings related to the adjudication
- There is minimal fiscal impact to the Oregon Water Resources Department² and has less administrative burden than processing of individual temporary transfers
- The amount of water that is allocated by Bureau of Reclamation and delivered to districts in Klamath Project will not change regardless of legislation
- HB 4016 sets forth a sunset date of 2026, which matches the sunset date of the current temporary statutes related to determined claims in the Klamath Basin.

¹ OWRD testimony on SB 267 -1 (2015)

<https://olis.leg.state.or.us/liz/2015R1/Downloads/CommitteeMeetingDocument/51778>

² Fiscal Impact of SB 267 A (2015) <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureAnalysisDocument/27155>

In conclusion, HB 4016 will provide much needed clarity and flexibility for districts in the Klamath Project to temporarily transfer water; preserving irrigated agriculture, and helping reduce conflict in the Basin while the adjudication proceeds. Districts in the Basin should be able to have similar tools as other districts around Oregon and be able to deliver water to the farmers that need it most within their district. **We respectfully request that you pass HB 4016.**

Sincerely,
April Snell
Executive Director