

HB 4016 A STAFF MEASURE SUMMARY
House Committee On Energy and Environment

Action Date: 02/14/18
Action: Do pass with amendments and be referred to Rules. (Printed A-Eng.)
Vote: 9-0-0-0
Yeas: 9 - Barnhart, Bonham, Findley, Helm, Holvey, Marsh, Power, Reschke, Smith DB
Fiscal: Has minimal fiscal impact
Revenue: No revenue impact
Prepared By: Beth Reiley, LPRO Analyst

WHAT THE MEASURE DOES:

Authorizes a qualifying district in the boundaries of the Klamath Project to temporarily transfer the place of use of a determined claim within its boundaries under specified circumstances. Establishes qualifying district criteria. Authorizes Water Resources Department (WRD) to require the temporary transfer to cease and revert back only if WRD determines that water is being used in manner that violates Act; changes would result in injury to other determined claims or existing water rights; changes would result in enlargement of determined claim; court stays determined claim; or court issues order or judgement on determined claim. Specifies water use under temporary transfer authorized by Act is not admissible as evidence of use in a court adjudication regarding a determined claim. Stipulates water use on land within preceding five years is not criterion for evaluating eligibility for transfer under Act until January 1, 2019. Requires accurate map identifying location of authorized place of use and proposed place of use to be available for review upon request and the qualifying district to provide copy of the map to watermaster the earlier of April 15, 2018 or the start of irrigation and no later than March 1st each year thereafter. Requires map to include authorized and proposed places of use by priority date effective January 1, 2019. Strikes the limiting word “only” from the section that identifies the factors that may cause the WRD to cause water use to cease effective January 1, 2019. Sunsets Act January 2, 2026. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Potential quantity of water that could be transferred
- Adjudication process
- Available tools to manage water

EFFECT OF AMENDMENT:

Replaces measure.

BACKGROUND:

Passage of the Water Code in 1909 established, for the first time in Oregon, a system for acquiring, certifying, and documenting rights to the use of water. Water rights that began before 1909 and federal water rights are determined through a process called an “adjudication.” There are two phases to an adjudication. In the first phase, the Water Resources Department (Department) determines federal and pre-1909 rights and then provisionally recognizes those determined rights; the second phase involves a court review of the agency’s decision. The court then issues a decree that identifies a priority date and other aspects of each water right. After the Department has delivered its determination to the court, a watermaster can regulate in favor of determined claims but these claims may not be transferred or leased until a final court decree is issued.

Water right transfers allow a change in the point of diversion or appropriation, the place of use, or the beneficial use of a water right. The water right holder must obtain approval of a water right transfer from the Water Resources

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Department (Department) before making any of these changes. In reviewing an application for a water right transfer, the Department is responsible for ensuring that other water right holders will not be injured as a result of the proposed change. In 2003, the Legislative Assembly enacted Senate Bill 820 which authorized a pilot project allowing the Talent, Tualatin Valley, and Owyhee Irrigation Districts to make annual place of use changes to water rights within their legal boundaries without applying to the Department for a temporary transfer. In 2015, the Legislature extended the sunset on the pilot project to January 2, 2022. In 2015, the Legislature enacted Senate Bill 206 allowing for the temporary transfer or lease for instream use of a determined water right for up to five years in the Klamath Basin. House Bill 4016 A authorizes an alternative process for determined claims in the Klamath Basin that are: held by qualified districts, within the Klamath Project Boundary, and for irrigation use to transfer the place of use of a water right to other land within the qualifying district. House Bill 4016 A would sunset on January 2, 2026.