



Oregon

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Testimony for House Bill 3580
House Committee on Agriculture, Land Use, Natural Resources and Water
Representative Ken Helm, Chair

Submitted by: Bryn Hudson, Legislative Coordinator
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Thank you for the opportunity to provide information related to House Bill 3580 which authorizes the Water Resources Department to approve request for relocation of a determined claim point of diversion to a consolidated point of diversion. This testimony is provided for informational purposes and the Water Resources Department (the Department) is not taking a position at this time.

Background

The presence of anadromous fish in the Klamath Basin has been limited to the area below Iron Gate Dam in California for the past 100 years. Iron Gate Dam along with Copco 1 dam, Copco 2 dam and J.C.Boyle dam will be removed beginning in the Fall of 2023, with completion in 2024. Once the dams are removed hundreds of miles of streams will be reopened for anadromous fish habitat. Coho salmon (which are listed as threatened under the federal Endangered Species Act (ESA), will reenter the Upper Klamath Basin, as will Chinook salmon (which are not currently listed under the ESA). Although state law already requires some water diversions to be screened, screening generally has not been a priority in the Oregon portion of the Klamath basin due to the absence of salmon. This will change with dam removal and the reintroduction of salmon, beginning as soon as late 2024. At that time, and to an increasing degree as more fish return, screening will become a higher priority and reduce the likelihood of water users being in conflict with the federal Endangered Species Act due to stranding of fish on irrigated acres.

There has been a joint effort by federal agencies, Oregon and California agencies, water users, tribes and groups involved in habitat restoration to develop a diversion screening priority list for the Upper Klamath basin. Federal funds likely will be available to pay some of the costs to design and install screens. If funds in the Oregon Department of Fish and Wildlife Fish Screening account are used, water users may be required to provide some cost share. In order to reduce and avoid costs to irrigators and make the likely federal funding stretch as far as possible, there is strong interest in voluntary consolidation of water diversions in areas where there are multiple diversions in a relatively short length of stream or river. Consolidation would occur where it will reduce both capital and maintenance costs.

Legal and Policy Issue

Many if not most of the diversions in the Klamath basin in Oregon are authorized as determined claims in the Klamath Adjudication. Oregon Law does not provide authority to the Water Resources Department to allow changes in points of diversion of a determined claim until a final court decree is issued in the adjudication. Issuance of the final decree is several years off.

While decisions on screen installation will be happening this year and next, without a change in law, the Department does not have authority to sign off on such changes, potentially creating risk for the holders of determined claims that are included in a consolidation.

HB 3580

HB 3580 authorizes the Department to approve a request for relocation of a determined claim point of diversion to a consolidated point of diversion if ODFW determines in writing that the relocation will facilitate the installation and proper operation of a fish screen, and OWRD determines that:

- 1) The authorized source of water of the determined claim involved is not changed;
- 2) No injury to an existing water right or determined claim and no enlargement will result from the relocation of the determined claim point of diversion
- 3) Relocation does not move the point of diversion upstream or downstream beyond the point of diversion of a water right or a determined claim that is not included in a consolidation for purposes of installation of a fish screen.

Additionally, the Department will provide approved relocation requests to the State Circuit Court during the period that judicial review of the order of determination is pending in the Klamath adjudication and will identify the consolidated point of diversion as a point of diversion when the certificate issued following the adjudication.

This bill will allow for the voluntary consolidation of the points of diversion authorized under determined claims in the Klamath Basin and does not make any changes to other diversions authorized under a water right permit or certificate may consolidate their points of diversion by using the existing water right transfer provisions.