



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

HB 3580

Testimony of WaterWatch of Oregon

by Kimberley Priestley

House Committee on Agriculture, Land Use, Natural Resources and Water
March 21, 2023

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 and aquifers to sustain fish, wildlife, recreation, and other public uses of Oregon's waters. 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 3580 as drafted

What HB 3580 does: This bill would allow determined claims in the Klamath Basin to move points of diversion to a consolidated point of diversion without adhering to the state's transfer statutes and without allowing for any public process. What this means, among other things, is that there is no review of use over the past five years, no determination by OWRD if the determined claim has been forfeited and no public process (no ability to comment).

We understand the intent behind this bill is to consolidate 20-25 points of diversion on the Klamath River between Link River and Keno Dam to make fish screening easier. As written, the bill is not limited to this fact scenario, thus without amendments we oppose this bill

WaterWatch opposes HB 3580 as drafted for the following reasons:

- **Scope is broader than intent as we understand it:** It is our understanding that the intent behind this bill is to incentivize screening between Link River Dam to Keno. If that is the intent, the bill should be narrowed.
- **HB 3580 allows transfer of determined claims without requiring proof of use:** Under Oregon's transfer laws an applicant must provide evidence that water has been used over the past five years according to the terms and conditions of the owner's water right certificate or that the water right is not subject to forfeiture. ORS 540.520(2)(g). This bill directs changes without that proof. Proof of use is a basic tenant of Western Water Law and is a standard that applies to all other transfers by all other water users in this state—whether instream or out-of-stream. The practical effect of this is that it could allow long unused claims to be revived, which increases water demand in an already overstretched basin.
- **HB 3580 does not allow for any public process:** This bill would direct approval of the change to points of diversion without allowing for the public process that would normally attach to a transfer. What this means is that if a farmer, tribe or member of the public

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believed the change in point of diversion would injure an existing right or determined claim, they are prohibited from challenging the changes in points of diversion directed under this bill before the transfer is executed. This is unfair and inequitable.

- HB 3580 would allow consent to injury of instream rights: Interestingly, while this bill does not contain all the bells and whistles that would apply to regular transfer applications it does include a provision that would allow “consent to injury” of instream water rights. While we appreciate there is a process attached to this provision, we would object to any provision that would allow the state to consent to injury to an instream right given other problems with this bill.

HB 3580 does not actually require fish screening: While the bill contains a provision requiring a written statement by ODFW that the “relocation would facilitate the installation and proper operation of a fish screen” and compliance with ORS 498.306, the bill does not technically require the installation of a fish screen. The regular transfer statutes, on the other hand, would require fish screens as part of a transfer.

- HB 3580 does not require measurement and reporting of water use: Irrigation districts in this state that hold water rights must report water use; this is a cornerstone of ensuring water use accountability within districts. The Klamath Project districts, on the other hand, do not have to report water use because they hold “determined claims” rather than water rights. HB 3580 does not require reporting of water use. If Klamath irrigation districts want to enjoy transfer privileges, then the bill should require measurement and reporting in line with the requirement for all other districts in this state.

Proposed amendments: All that said, if this bill were narrowed to (1) only allow the consolidation of diversions on the Klamath River between Link River and Keno Dam, (2) have a near term sunset that would remove this law from the books as soon as the consolidation and fish screening was achieved, and (3) actually require fish screening as part of this effort our concerns would be less. We are supportive of efforts to install fish screens on Klamath diversions, but this bill is not narrowed to that stated purpose.

Conclusion: Please oppose this HB 3580 as drafted. If the Committee is interested in moving this bill forward, please amend it so it is limited to addressing the very narrow problem the bill is trying to fix.

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