

# NORTHEAST OREGON WATER ASSOCIATION

**Via Electronic Submission to House Committee on Agriculture, Natural Resources Land Use & Water**

Representative Ken Helm, Co-Chair

Representative Mark Owens, Co-Chair

Representative Sarah Finger-McDonald, Vice-Chair

House Committee on Agriculture, Natural Resources, Land Use and Water

State Capital

Salem, OR 97301

RE: Support for HB 4006 ("Color of Water")

Dear Co-Chair Helm, Co-Chair Owens, Vice-Chair Finger-McDonald and Members of the Committee

The Northeast Oregon Water Association (NOWA) would like to thank the House Committee on Agriculture, Natural Resources, Land Use and Water for hearing the difficult but important discussions regarding water and water policy. NOWA understands the time commitment necessary to understand the complexity of water law and the embedded history of water policy that makes it so difficult to move Oregon's water future forward in the 21<sup>st</sup> century.

NOWA is submitting this written testimony in full support of HB 4006, commonly referred to as the "Color of Water" Bill. We offer the following background and Q&A in support of our position.

## **About NOWA**

The Northeast Oregon Water Association (NOWA) is a result based non-profit support organization to the natural resource-based economy of the Mid-Columbia region of Northeast Oregon. We represent solutions not special interests or industries for the benefit of all needs in our region. Our organization includes landowners of over 350,000 acres of the most highly productive, irrigated food producing farmland in the world, as well as the counties, cities, ports, special districts, and private businesses that generate and support our value-added agricultural output that now contributes not only food but over \$2 billion annually to the region and State of Oregon. A sustainable, drought & climate-change resilient, conjunctively managed water



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supply program is critical to sustainability of our region and the quality of life of all our current and future generations.

## **Background**

The Northeast Oregon Water Association (NOWA) formed in 2012 to bring the public and private sector of the Mid-Columbia region (including the Umatilla Basin) together to solve current water challenges and build a drought and climate change resilient water supply system for current and future generations. NOWA has built off the four guiding pillars the “Umatilla Sub-Basin 2050 Water Management Plan,” adopted in 2008. The 2050 Plan identified actions the region should take over the next 50 years to ensure water supplies indefinitely for both consumptive and non-consumptive needs.

The four pillars of the 2008 plan included:

1. Utilize Columbia River Water for replacement of certificated groundwater irrigation rights.
  - a. Note, this included both deficit reduction (meeting all certificated groundwater rights in Critical Groundwater Areas with Columbia River water) and replacement (replacing as much current groundwater pumping as possible to facilitate groundwater stabilization and recovery)
2. Provide Funds for Groundwater Studies to Ensure Water Resource Sustainability.
3. Settlement of CTUIR Water Claims and Maximize benefit of Phase III exchange infrastructure.
4. Develop Policies and Funding Mechanisms to Protect Benefits and Assurances

Adoption of multiple plans, including the 2050 Plan, coupled by the fact that the State of Washington was acting and investing in measurable water supply solutions, lead to the convening of the Columbia River-Umatilla Solutions Task Force (CRUST), by Governor John Kitzhaber. The CRUST led to a “declaration of cooperation” on short and long-term ways for the Mid-Columbia region to access Columbia River water (item #1 above) without impacting fish. This work was completed in 2013, which lead to both a legislative funding package to aid in building three regional water supply projects to serve the Critical Groundwater Areas of the Mid-Columbia region with Columbia River water, as well as 8 “test” mitigation permits, in 2015.

## **Work Competed to Date**

Since 2015, members of NOWA have:

- Secured and vetted, all eight temporary mitigation permits to access new, mitigated, Columbia River water to serve the irreplaceable high-value ag region and Critical Groundwater Areas of the Mid-Columbia region.

- Invested over \$300 million (\$16 million in State funding and the remainder coming from private & local government sources) to build three regional water supply projects
- Formed new improvement districts, expanded districts and partnered with local governments to build, own and operate the regional water supply systems as public entities
- Integrated over 114 individual water rights, including 35 private Columbia River rights and several private water rights into one public monitoring, operations and reporting network
- Formed the Mid-Columbia Water Commission (Mid-C), through Intergovernmental Agreement, to pool and optimize available water for both small and large water use needs (i.e. long-term public governance)
- Coordinated with multiple municipal, Port and County Governments to create an opportunity for shared and optimized regional water supply infrastructure to integrate municipal & irrigation needs together to benefit the entire region with the least amount of water rights necessary (Water Symbiosis)
- Identified and pursued options to both save native groundwater to stabilize aquifers, as well as incorporate aquifer recharge into regional systems
- Identified policy needs (Item 4 above) that will ensure full water and infrastructure optimization to meet as many needs as possible while also striving for groundwater stabilization and recovery (note: this bill is one of the policy needs identified)

### **Problem Statement**

The eight permits mentioned above authorize diversions from multiple, shared points on the Columbia River. Water is diverted from these shared points under numerous Columbia River water rights. At this time, for example, over 35 public and private Columbia River water rights are diverted at the shared diversion structures utilized. In 2022, at the suggestion of the then-Director of the Department, the Mid-C filed applications for two new permits intended to consolidate and replace the existing Permits. These applications remain pending before the Department. One of the negotiated terms of the Permits was that the Mid-C utilize only existing diversion points to limit impacts to the river associated with construction of new diversion structures. The Department currently requires the Mid-C to separately track each water right diverted at each Columbia River point of diversion. Practically speaking, all the water rights diverted at a given diversion point are commingled/shared, and the river system does not, and cannot, distinguish one water right from another. As a result, the Mid-C must artificially assign a “color of water” to each water right. The Mid-C must then track each color of water through shared water delivery systems and re-diversion points. Ultimately, the Mid-C produces maps that literally “color” the water rights applied to each acre of land irrigated in whole or in part with water made available pursuant to the permits. This accounting and mapping process has no effect on the total rate of diversions from the Columbia River, which are measured in real

time by telemetered flow meters. Rather, the current approach requires behind-the-diversion-point accounting. In addition, these requirements substantially limit the Mid-C's and its partners' abilities to effectively and efficiently move water and the corresponding water rights where they can be most beneficially used to optimize the production value of the water molecules as well as save the most native groundwater.

### **Proposed Legislative Solution**

The Mid-C and NOWA are proposing a legislative solution that would allow changes to irrigation rights in the Mid-Columbia region, including the Mid-C permits, when such changes would have no deleterious effects on the river. This includes changes that neither increase the rate of diversion nor change the season of use of the underlying water right. The legislative proposal would allow the place of use and point of diversion of irrigation rights in the Mid-Columbia region of the Columbia River (river miles 252 through 303) to be freely changed, provided that the changed point of diversion remains between river miles 252 and 303; the rate of diversion does not increase; and, the season of use does not increase. The Mid-C is likewise proposing legislation to allow the Mid-C to participate in the district mapping process described under ORS 541.325 to 541.333, to remap the authorized place of use of the Permits to include all the lands within the Mid-C's jurisdictional boundaries. This approach reflects the reality that the Permits serve multiple regional water supply projects and the fundamental goal for the Permits and the Mid-C to provide a mitigated Columbia River water source for the Mid-Columbia region. This solution optimizes the use of existing water rights in the region for needs of the entire region. This bill has real benefits and requires no more paper water.

### **Commonly Asked Questions and Brief Responses**

#### *What is being proposed?*

NOWA and the Mid-C are proposing legislation that improves how existing Columbia River irrigation water rights and related mitigation efforts in the Mid-Columbia region are managed and tracked. The proposal aligns management and accounting with how many regional water systems already operate, staying within established legal limits while improving accuracy, transparency, and efficiency. It also allows the Mid-C to participate in an existing and proven district water-rights mapping process so water use can be reflected accurately and managed on a regional basis, supporting groundwater protection, administrative efficiency, and long-term water reliability.

#### *What work has led to this proposal?*

This proposal builds on more than a decade of regional planning, investment, and collaboration. In 2008, the Umatilla Sub-Basin 2050 Water Management Plan identified the need to reduce groundwater pumping by responsibly using Columbia River water. In response, local leaders formed NOWA in 2012 to coordinate regional solutions. That work led to the Columbia River-

Umatilla Solutions Task Force (CRUST), convened by Governor Kitzhaber, which produced a declaration of cooperation and a legislative funding package to develop regional water supply projects while protecting fisheries. Since 2015, the region has invested over \$300 million in shared infrastructure, secured mitigation permits from the Oregon Water Resources Department, integrated dozens of water rights into coordinated diversion and delivery systems and formed the Mid-C to manage operations and compliance reporting. This proposed legislation addresses a remaining policy gap so state laws and rules better align with how these regional systems are already functioning today.

*Why is this legislation needed now?*

Over the past decade, the Mid-Columbia region has invested hundreds of millions of dollars in shared water infrastructure to reduce groundwater pumping, protect aquifers, and improve drought resilience. Administrative requirements have not kept pace with how these regional systems operate today. This proposed legislation updates the regulatory framework, so it reflects current infrastructure, improves efficiency, and ensures ongoing investments deliver their full potential.

*What problem is this legislation trying to solve, often referred to as the “Color of Water” issue?*

Water from the Columbia River is diverted at common, shared points under dozens of separate water rights, where the water under the various rights is physically commingled. While total river diversions are accurately measured in real time, current rules require artificial, behind-the-diversion accounting that treats each water right as if it were physically separate. This accounting system is commonly called the “color of water” issue and creates unnecessary complexity, administrative burden, and limits flexibility. Water can and should be accounted for and managed more holistically, with more of a regional, system-wide approach.

*What does “Color of Water” mean?*

“Color of Water” refers to the requirement to assign and track a separate accounting identity to each individual water right after water has already been diverted from the river even though the water molecules assigned to each right cannot be physically distinguished. The proposal does not change how much water is diverted or the purpose for which water is diverted; rather, it modernizes how existing water rights are tracked and managed after diversion, with the same level of protection for the resource.

*Does this proposal increase water use or create new water rights?*

No. The proposal does not authorize new water rights, increase diversion rates, extend seasons of use, or add new diversion points. All existing limits remain in place, and total withdrawals from the Columbia River continue to be measured and regulated.

*Does this reduce state oversight of the diversion of water from the river or the role of the Oregon Water Resources Department?*

No. The Oregon Water Resources Department will continue to oversee water rights, diversions, compliance, and enforcement. In addition, managing water through districts and intergovernmental entities adds another layer of accountability at the local level. Water use is measured in real time, regularly reported, and subject to Department review. Moreover, the Mid-C as a public entity has both a fiduciary responsibility to their patrons and the state, creating strong incentives for transparency, accuracy, and compliance.

*Will this weaken protections for the Columbia River?*

No. River protections, flow limits, and environmental safeguards remain fully in place, and in fact, puts the Mid-C in a better position to manage mitigation projects to ensure water right terms and conditions are met. The proposal applies only to existing, permitted water rights and focuses on improving how those rights are managed, not expanding them.

*Will this pollute aquifers or increase nutrient contamination?*

No. Nutrient application and groundwater protection are already regulated, and additional nutrient tracking and reporting requirements are being implemented by the Oregon Department of Agriculture. Growers use nutrients efficiently because it is both economically and environmentally responsible. The proposal supports groundwater protection by reducing reliance on native groundwater and encouraging more precise water use.

*Does this proposal result in “water spreading?”*

No. Water spreading refers to the illegal practice of using water on more acres of land than is authorized by the water right. For the water rights managed by the Mid-C, the water rights already include terms and conditions describing where and how water can be used. The proposal does not modify existing water rights by changing these terms and conditions, and it does not increase the amount of water diverted, extend the season of use, or authorize new uses. Rather, water will continue to only be delivered and used within existing boundaries. The change is about improving water management and water right accounting after diversion.

*Why is the proposal focused on the Columbia River and the Mid-Columbia region?*

The proposal applies only to existing mainstem Columbia River water rights within a defined river reach in the Mid-Columbia region. At this time, more than 35 public and private Columbia River water rights are diverted at common, shared locations in this reach, with the water conveyed using shared infrastructure. The proposed legislation does not affect other basins, ongoing water-rights settlements, or tribal negotiations. Its purpose is to better manage existing infrastructure and water supplies in this specific region while reducing pressure on native groundwater.

*Does participation require landowners or water users to give up control of their water rights?*

No. Participation is voluntary. Water-right holders retain their underlying rights and are not required to participate if they choose not to. The proposal simply provides an option for more effective cooperative and regional management.

*How will water use be monitored and reported under this framework?*

Water diversions from the Columbia River will continue to be measured in real time using existing metered and telemetered systems and remain fully regulated by the Oregon Water Resources Department. In addition, regional management through the Mid-C adds a second layer of oversight, including consolidated reporting, auditing, and mapping of water use across shared infrastructure. This results in more accurate reporting, clearer accountability, and stronger compliance than tracking individual water rights separately after diversion and with after-the-fact accounting calculations.

*How does this benefit communities and the region?*

The proposal improves transparency, reduces unnecessary administrative costs, supports groundwater stabilization, and ensures water is used where it provides the greatest benefit. It strengthens long-term water reliability for communities, agriculture, and the environment while staying within existing legal and environmental limits.

*Does this affect tribal negotiations or other river systems?*

No. The proposal is limited to existing mainstem Columbia River water rights in a defined river reach and does not interfere with ongoing negotiations, settlements, or management efforts in other basins.

NOWA worked extremely hard over this past year to craft language for HB 4006 that was consistent with past actions by the state to form or modify districts. We believe HB 4006 is a win/win for the state as it will both ensure structure and forward progress on sustainability in the region while also reducing mundane and unnecessary agency staffing burdens on non-critical/non-essential transactions that bog down agency staff at no benefit to the resource. We thank the Committee for hearing HB 4006 and urge full support and passage.

Sincerely,



J.R. Cook  
Founder/Director