



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

HB 4006

Testimony of WaterWatch of Oregon

by Kimberley Priestley

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

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Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and 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 strongly opposes HB 4006

Background: In the early 1990's Columbia River salmon and steelhead were listed as threatened under the federal Endangered Species Act. In response, the State of Oregon adopted the Sensitive Stock Rules (OAR 690-077) to better protect listed fish in the Columbia River and its tributaries. The rule was later expanded statewide. For the upper Columbia, including the 51 miles at issue under this bill, the Div 77 rules prohibited new water rights to withdraw live flow from April 1 through October 31.

From 2007 to 2012 eight bills were brought that would have provided carve outs from fish protection rules/laws for Umatilla Basin irrigators (SB 483 (2007), SB 610 (2007), HB 3525 (2007), HB 2406 (2009), SB 1012 (2010), HB 3509(2011), SB 190 (2011), HB 4101 (2012)). All failed.

After the 2012 session, in an attempt to stave off further legislation, Governor Kitzhaber convened the Columbia River-Umatilla Solutions Task Force (CRUST), made up of the GRNO Natural Resources Director, OWRD and ODFW Directors, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), a Umatilla County Commissioner, conservation groups (including WaterWatch), federal agencies and Umatilla Irrigation interests (including NOWA). After 8 months of negotiations a high-level framework was signed to investigate a few select pathways to support irrigation in a way that would not undermine existing law or harm flows. The CRUST was signed in early 2013. Despite this, in 2013 session, Umatilla irrigators brought a bill to purportedly codify the CRUST (SB 846), though in reality is went far beyond that. That bill, also, failed.

As a follow up to CRUST, GNRO, OWRD, ODFW, WaterWatch and NOWA entered into more than two years of intense negotiations over new water right applications. The group reached a negotiated agreement on 8 water rights for 180 cfs; these were heavily negotiated down to the word. Among other things, these rights required bucket for bucket mitigation at or above the point of impact for the 180 cfs to meet Div 33 (Sensitive Stock Rule) directives.

Water Rights were issued, and development began. Then in 2022, the Mid-Columbia Water Commission (MCWC) applied for new water rights to supersede the existing negotiated rights. MCWC's water right applications seek to expand the existing water right footprint from 123,442 to 702,227 acres, add diversion points, and change nearly all the negotiated conditions that were agreed to in the 2017 settlement. Separately, according to a 2024 letter sent to OWRD, MCWC is seeking to move to "volumetric mitigation" which is not allowed under current permit conditions.

HB 4006 Scope and application: This bill applies to all surface water rights for irrigation that divert water from the Columbia River between miles 252 and 303. As we understand it, existing surface water irrigation rights in this 51-mile reach total approximately 2,400 cfs. The scope of MCWC's desired footprint covers 702,227 acres, which amounts to 1097 square miles¹. Long story short, the bill envelops a large amount of water over a huge landscape.

Included in MCWC's desired footprint, are water rights that were the result of years of settlement discussions, including the Columbia River Water Exchange (1990's), the Boeing Settlement (2001) and the 8 MCWC water rights (2017), all of which have terms of use which could be altered by this bill.

The overall effect of HB 4006: As explained in detail below, by exempting irrigators who hold permits or certificates that divert water between river miles 252 and 303 from Oregon's permit amendment and transfers laws, the bill is, in essence, legalizing enlargement of the underlying rights.

Under HB 4006, while water right "rate" and "season of use" must hold steady, "duty" and "acreage" are not so limited. What this means is that HB 4006 allows substantial expansion of irrigated agriculture in a way that could significantly increase "volume" of water pulled from the Columbia River under existing rights, which raises concerns as to the effect on Columbia River steelhead and salmon. The new footprint also greatly expands irrigated agriculture on the Lower Umatilla Basin Ground Water Management area, which risks increased nitrates into groundwater. Also at risk are undeveloped lands inhabited by the Washington ground squirrel, which is listed as "endangered" under the Oregon ESA.

HB 4006 also grants MCWC "district" status, and the flexibility and powers that come with this (including the power to condemn land and water rights). MCWC is not required to adhere to district formation (and related accountability) measures, they simply will become statutorily declared "district". Importantly, this provision of HB 4006 that expands what a "district" is applies statewide. The bill also sets a pathway to MCWD official boundary expansion by opening up a 1989 law that was enacted in concert with state/federal actions to curb illegal water spreading via a "one time" fix that expired in 1994, not an ongoing loophole. And finally, importantly, HB 4006 also greatly hinders the OWRD's ability to manage the public's waters beyond the Columbia River diversion points.

All in all, the proposed changes in HB 4006 are monumental and far from the "light touch" claimed by bill proponents in the January 13, 2026 informational hearing.

Concerns by section include but are not limited to:

Section 1(7)(a) grants irrigators with surface water irrigation permits that divert water from the Columbia River between river miles 252 and 303 an exemption to Oregon's permit amendment laws. This section also divorces permits from the long-established western water tenet of appurtenance, meaning water rights no longer need to be tied to specific lands. The only restrictive standard in Section 1(7)(a) is that there can be no "increase in the rate" or "season of use". Importantly, this section fails to impose "duty" or "acreage" limitations, nor does it require that conditions of use of the underlying rights carry to the new lands. These omissions are in sharp juxtaposition to permit amendment statutes which explicitly require that all other conditions of use, including acreage and duty limitations, apply to the

¹ Accompanying NOWA Map of MCWC desired footprint procured via public records request

new lands. See ORS 537.211(4)(c). **EFFECT:** What this means is that for irrigation permits in this region (including the MCWC's 8 negotiated permits), irrigators can move water under these permit to new lands and/or pull water from different diversion points without having to ensure that their actions do not increase irrigated lands, increase the amount (or volume) of water they use under existing rights, adhere to other permit conditions, injury other water right holders or enlarge the right. This bill, in essence, legalizes "enlargement" of all Columbia River water rights from river mile 252 to 303. With surface water rights for irrigation in the 51-mile stretch of river covered by HB 4006 totaling approximately 2,400 cfs, this could significantly increase the "volume" of water pulled from the Columbia River. Moreover, by providing an end run to the permit amendment statute's requirement that when "all other conditions of the water right continue to apply" (see ORS 537.211(4)(c)), in addition to upending acreage and duty limitations of existing rights, this means that some conditions specifically negotiated in the MCWC water rights would not attach to the new lands. These conditions were agreed to after years of negotiations. In 2022, MCWC submitted applications to supersede their existing rights, in which they not only sought to increase their footprint from nearly six-fold to 702,227 acres, but also to change almost every condition of use that was negotiated in good faith in 2017. This provision of HB 4006 appears to get them much of their desired outcome.

Section 2(2)-(3): Sections 2(2) and (3) together basically prohibit the OWRD from managing water rights beyond the diversion points on the Columbia River. **EFFECT:** Many water rights are tied to the 702,227 acres that MCWD wants under their expanded footprint, including surface, ground and storage rights not tied to the Columbia River. Given HB 4006 does not include duty or acreage restrictions, this provision of the bill which prohibits OWRD from regulating water beyond the diversion points for these lands, makes state management virtually impossible. This undercuts water right conditions meant to protect the public interest, and state management of water rights to ensure water right holders are complying with permit conditions.

Section 3(12): This section exempts irrigators with surface water irrigation water rights (certificated rights) that divert water from the Columbia River between river miles 252 and 303 who want to change their place of use or point of diversion from the transfer laws as long as there is no increase in rate or season of use. This section, also, is silent as to duty, volume or acreage limitations. **EFFECT:** This legalizes the enlargement of the water right footprint and diversion of far more water than allowed if duty restrictions were applied as they are to others. See explanation under 1(7)(a) above for more details.

Section 4(b): This expands the definition of "district" to include any intergovernmental entity organized under ORS Chapter 190 that established for the purpose of distributing irrigation without making them organize under ORS Chapter 545, 547, 552, 553 or 554. This is a statewide change. **EFFECT:** The effect of this is to grant intergovernmental entities across the state the preferences and flexibility granted to districts, without holding them to the same accountability standards that are required as part of district formation. This is a statewide expansion, not limited to the Umatilla Basin. That said, it will directly benefit the Mid-Columbia Water Commission (which is an intergovernmental entity) in the area covered by this bill. Districts can condemn both land and water rights. Given the scope of MCWC's desired footprint (702,227 acres or 1,097 square miles), it is unclear whether all water right holders and landowners are aware of this bill or the effect it could have on their lands and water rights. This section also raises questions as to the nexus with the USBR Umatilla Basin federal project, especially when read with Section 5(5).

Section 5(5): This section allows the Mid Columbia Water Commission to remap their boundaries by opening up a long-expired process meant to align water used outside district boundaries/water rights with actual water rights. **EFFECT:** The Mid-Columbia Water Commission has indicated in water right application materials submitted to the Department, that for their existing 8 water rights alone, they want to expand their boundaries from 123,452 acres to 702,227 acres, a roughly six-fold increase. This will allow them to do so without having to get new water rights. Importantly, if MCWC were to get additional water rights, those rights would have to provide mitigation.

Conclusion: WaterWatch has been working on Umatilla Basin water right issues since the late 1980s. We participated in negotiations related to the Columbia River Water Exchange, worked to stop widespread water spreading in the 1990's, negotiated the 2001 "Boeing" water right settlement agreement, fought back 9 bad Columbia River water bills, participated in the 2012 CRUST convened by Governor Kitzhaber and, most recently, spent over two years negotiating the 8 Mid-Columbia Water Commission water rights and ensuing mitigation requirements.

HB 4006 does not represent the memorialization of the CRUST, or any of the other negotiated water right settlements in the basin. This bill is an end run to important state laws; it legalizes enlargement and undercuts the state's management authority over the public's water. This sets very dangerous precedent for the state.

Please oppose HB 4006.

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