



Oregon

Tina Kotek, Governor

Water Resources Department

725 Summer Street NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

Testimony for House Bill 4006

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

Representative Ken Helm, Co-Chair

Representative Mark Owens, Co-Chair

Submitted by: Bryn Hudson, Legislative Coordinator

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Thank you for the opportunity to provide informational testimony on HB 4006. This testimony is informational only; the Department is not taking a position on this legislation at this time.

Background

Under Oregon law, all water belongs to the public. With some exceptions, cities, irrigators, businesses, and other water users must obtain a permit or license from the Department to use water from any source - whether it is underground, or from lakes or streams. The use of water under a water right is restricted to the terms and conditions described in the water right (permit or certificate), which includes where water can be diverted from, the specific land on which the water can be used and what purpose the water can be used for. While a water right is still in the permit phase, the holder may not apply to change the type of use, but can apply to change the place of use or point of diversion. However, once a permit is certificated, a water right holder may apply to the Department to change a point of diversion, type of use, place of use, or any combination of these. The issuance of water rights and requirements to obtain approval for changes to those rights ensures that new uses or changes to existing uses don't injure other water right holders or expand their use. This system of water rights also results in a system for distribution of water in times of shortage, with OWRD watermaster's distributing water according to the water rights of record.

House Bill 4006 Discussion

Based on the Department's initial review, House Bill 4006 appears to exempt water rights and permits that divert water from the Columbia River for irrigation between river miles 252-303 from the requirement to apply for and obtain approval to change the point of diversion or place of use (permit amendments) or the type of use (transfer), including exempting these changes for an analysis for injury and enlargement, so long as there is no increase in the rate or season of use. The bill also exempts rights held by the Mid-Columbia Water Commission (MCWC) within the same designated Columbia River miles from management and distribution by the watermaster, unless requested by the entity, beyond the point of division on the river. It also allows the remapping of certificated water rights and water right permits and specifies that the number of acres may include all acres within the boundary of the district, regardless of whether they are irrigated or part of the district charges and assessments.

The Department acknowledges the importance of creative water solutions to meet the needs of communities, as long as those solutions, when implemented, provide adequate checks and balances. The Department has some general concerns about how the proposed concepts in the bill would be implemented on the ground and the potential impacts to existing water users.

Lack of program sideboards and potential to increase water use: The bill appears to allow the MCWC to expand the current irrigated footprint (to what extent is not clear based on the current text) and

grants them an exemption from the statutory processes for water right transfers that are designed to protect against enlargement of a water right and injury to other water users. This exemption from review and documentation of water right changes restricts the ability of the Department to perform its statutory duties to manage water according to the water rights of record, for beneficial uses without waste. The Department understands that the goal is to increase flexibility but the bill, as proposed, reduces transparency and limits the accountability that needs to accompany flexibility in water management.

Current programs implemented by the Department that grant flexibility to certain districts, such as the standard district temporary transfer process, the irrigation district pilot project temporary transfers program, the Deschutes water bank, and Walla Walla Irrigation District pilot program.

These programs have sideboards in place, such as the requirement to dry up lands and submit a map to the watermaster in advance, required instream protection for portions of transferred water, or caps on the maximum rates and duties allowed to be transferred, to protect against injury and enlargement. These programs may require detailed mapping, water use reporting, and authority for the Department to review as needed and intervene if injury to other water users or enlargement is identified. Without a notification or application process to the agency, and no opportunity to assess the proposed changes, there is no assessment for injury to existing water rights or enlargement, which could have negative impacts on other water users.

Implementation hurdles: Parts of the bill are unclear as written, making it difficult to understand how the bill is to be implemented and resulting impacts of implementation. The bill does not restrict water use within a specific boundary or on specific lands, nor does it restrict the new exemptions to transfer requirements to only those water rights held by MCWC. Further, it appears that water could be applied to lands that currently do not have a water right, lands that receive water sources other than the Columbia River, or lands that have volume (duty) limitations, other existing water right conditions, or different seasons of use. There are over 25 points of diversion within this section of the river, each of which has dozens of water rights associated with it. The ability of any water right holder within this section to move their point of diversion to any other point of diversion at any time would result in the Department only being able to track general information about the total diversion rates, and the Department would not be able to track total volume or even establish a maximum diversion rate. This would significantly limit the ability of the Department to do timely and effective regulation, which could result in injury to water right holders. Recourse for those injured water right holders is also unclear. It is also unclear if this bill changes negotiated permit conditions of existing MCWC permits. As a result, the Department is concerned about our ability to implement and manage the interface of this bill with other water rights in the area, some of which were negotiated over years and contain complex conditions, and to ensure proper water distribution occurs.

The Department is open to further conversations with bill proponents on how proposed solutions can promote water use flexibility while providing appropriate sideboards and monitoring that protect the resource, existing users, and is implementable by the Department.