



**Testimony of WaterWatch of Oregon
SB 712 First Public Hearing
Senate Committee On Environment and Natural Resources
March 16, 2015**

Chair Edwards, members of the committee, for the record my name is Lisa Brown and I am here testifying on behalf of WaterWatch of Oregon.

WaterWatch opposes SB 712 as drafted. Development of municipal water supplies can be compatible with maintaining imperiled fish and ensuring water conservation. The bill unnecessarily rolls back existing law that has proven workable for a decade.

The issue

Cities across Oregon hold dormant, undeveloped municipal water permits that were issued many decades ago without modern public interest review—including any review of impacts to fish. When cities seek to finally develop these old permits, we often find listed fish species in these rivers that could be severely impacted if the municipal water development is not undertaken carefully.

SB 712 would roll back existing law that applies exceedingly reasonable fish and water conservation standards when extension of time are issued by the Water Resources Department for development of these old permits, and would overturn a recent Oregon Court of Appeals opinion interpreting this law.¹

What the bill does:

Sections 1(1)(a) (for surface water permits) and 4(1)(a) (for groundwater permits) of the bill would redefine “undeveloped portion of the permit” to exempt diversions occurring up until December 11, 2013 from fish review and Water Management and Conservation Plan requirements. Sections 1(3)(b) and 4(3)(b) would further waive Water Management and Conservation Plan requirement for certain permits and certain extensions. **The bill would roll-back existing law that was a compromise agreed to by the cities in 2005.**

¹ *WaterWatch of Oregon, Inc. v. Water Resources Department*, 259 Or App 717, 316 P3d 330 (2013), *rev dismissed*, __ Or __, __ P3d__ (2015).

Current law on development of old undeveloped municipal permits was established by HB 3038 (2005), a compromise bill negotiated by the League of Oregon Cities, individual cities, the Oregon Water Resources Department, WaterWatch and others. The existing law allows development of old undeveloped permits by validating permits where failure to meet construction deadline requirements called them into question, and requires the permits be developed in a way that maintains the persistence of imperiled fish and also requires cities—through adoption of Water Management and Conservation Plans—to implement basic, proven water conservation measures.

The existing standards have been in place for nearly a decade and cities across Oregon are developing old water permits in accordance with these standards—and it’s working. At least 55 permit extensions have been issued under these exceedingly workable standards, totaling nearly 1200 cubic feet per second in undeveloped water permits. These 55 extended permits are held by cities large and small, for example: the Eugene Water and Electric Board (178 cfs undeveloped); Tualatin Valley Water District (now Willamette River Water Coalition) (202 cfs undeveloped); City of Sandy (25 cfs undeveloped); City of Sutherlin (2.77 cfs undeveloped); Heceta Water District (two permits with 3.2 cfs undeveloped); City of Falls City (1 cfs undeveloped). This is not an unworkable law.

SB 712 would undo the compromise negotiated by the cities and others by rolling back the fish and water conservation requirements, while keeping in place the legislative validation of the dormant, undeveloped permits. Sections 1(1)(a) (for surface water permits) and 4(1)(a) (for groundwater permits) of the bill would redefine “undeveloped portion of the permit” to give permit holders until December 11, 2013 to divert water that would not be subject to these public interest standards—even if the permit had lapsed in the 1990’s and despite the fact that the standards were enacted on June 29, 2005. Moving the date to 2013 is unreasonable given that when HB 3038 passed in 2005, with the express support of the League of Oregon Cities, it was clear that new standards would apply.

The bill seeks to overturn a recent Court of Appeals decision interpreting existing law that pertained to a City of Cottage Grove water permit that had expired in 1999. In 2003, the city got a letter from the Water Resources Department stating the city needed to apply for an extension of time if it was still developing the permit. The city applied for an extension in 2007 (two years after the new law passed), but then placed its application on “administrative hold” while it doubled its diversion and then informed the Department it did not need to have a fish persistence review nor do a Water Management and Conservation Plan. Under existing law, as determined by the Court of Appeals, those standards apply to water not diverted when the permit expired, not when the city tells the Department to resume processing its extension application. *Yet, because SB 712 waives these requirements for diversions prior to December 11, 2013, Cottage Grove (and any others similarly situated) would not be required to do a Water Management Conservation Plan or have a fish review.*

Additionally, Sections 1(3)(b) and 4(3)(b) also seek to narrow the class of cities who have to develop Water Management and Conservation Plans as part of an extension. Under

current law, all Cities who seek an extension must develop a Water Conservation and Management Plan before proceeding with additional development. SB 712, as drafted, waives the Water Management and Conservation Plan requirement for certain permits by limiting it to only the first extension issued after June 29, 2005 and only to permits issued prior to November 2, 1998. As the cities themselves testified in 2005 regarding the existing law (along with Oregon Water Resources Department), Water Management and Conservation Plans are effect tools for ensuring the sustainability of municipal water supplies. Waiving the conservation requirement is bad policy. It is bad for cities, bad for the ratepayers who pay for municipal water systems, and bad for rivers. There is no good reason to roll back the requirement that all municipal extensions be conditioned for water conservation.

In sum, the current law on municipal extensions is workable. SB 712 would undermine current protections for fish and weaken requirements for Water Conservation and Management Plans. By moving the goal post for applying the existing moderate fish and water conservation standards to a point that is nearly a decade after the 2005 passage of the compromise bill, SB 712 undoes the workable compromise struck in 2005.

Path forward

WaterWatch has met twice with the League of Oregon Cities and is interested in continuing that dialogue to improve the bill. We have heard concerns that some cities may have invested money based on water permits that are lapsed. Because we have not been provided any specific examples, we are unable to evaluate this. We can say, after reviewing many files of lapsed municipal permits at the Water Resource Department office, that the Department has given cities notice of the extension process since at least 1998, notice regarding many lapsed permits and, in many cases, requested specific information from the cities. If only the cities viewed a letter from the Water Resources Department the same way as one from the Department of Motor Vehicles regarding an expiring driver's license or car registration, perhaps we would likely not find ourselves here today. However, the solution is not to waive the very reasonable fish and water conservation standards for lapsed permits, especially where cities have been put on notice and some (like Cottage Grove) have purposefully delayed the processing of extension applications while increasing diversion rates in an apparent effort to avoid these standards.

WaterWatch is willing to continue to work with the League of Oregon Cities to address their concerns, but cannot support the bill as drafted. If there are specific as opposed to theoretical examples of hardships and problems (and, again, no specific examples have been shared), WaterWatch is interested in exploring these with the League and discussing how these situations might be addressed through bill language.

Conclusion

Existing law provides cities the ability to grow into previously unused water permits while also reasonably accommodating the needs of imperiled fish and assuring implementation of proven water conservation measures. The standards were part of negotiated compromise, supported by the League of Oregon Cities, when passed in 2005 (HB 3038) and have proven

workable for the past decade. Rolling back the existing standards and overturning the Court of Appeals decision interpreting the law is unnecessary.

WaterWatch is willing to work with the League of Oregon Cities to develop workable language but cannot support the bill as drafted because it would waive the fish and water conservation standards, enacted on June 29, 2005, for municipal diversions made prior to December 11, 2013 and limit which extensions are conditioned with Water Management and Conservation Plans.

We urge the Committee to oppose SB 712 as drafted. The bill unnecessarily rolls back existing law that has proven workable for a decade.

Thank you for your consideration.

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