



**February 9, 2018**  
**House Committee on Energy and Environment**  
**Representative Ken Helm, Chair**

**Testimony on House Bill 4016**  
**Submitted by Racquel Rancier, Senior Policy Coordinator**

The testimony below provides background information on the Klamath Adjudication and temporary transfers, as well as our understanding of the intent of this legislation in the context of the Klamath Adjudication. The Department has no position on House Bill 4016 or the proposed amendments.

**Background**

*Klamath Adjudication*

In 1909, the Legislature adopted the Oregon Water Code, which established a system for the distribution of water use based upon the doctrine of prior appropriation. The Oregon Water Resources Department (OWRD) is responsible for carrying out this management system on behalf of water right holders.

In many parts of Oregon, landowners began using water well before the 1909 Water Code was enacted. An “adjudication” is a State administrative and judicial proceeding to identify, quantify and document water rights pre-dating the Water Code as well as rights held by the federal government or tribes. Until the Department conducts an adjudication, it cannot enforce the water rights of these pre-1909 and federal/tribal reserved claims.

The first phase of an adjudication is administrative, with OWRD reviewing claims and the administrative law judge’s proposed orders, and ultimately determining claims in a Findings of Fact and Order of Determination (FFOD). Once the FFOD is delivered to the circuit court, the claims become “determined claims.” Determined claims are not proof of the final water right, as individuals can file “exceptions” to those claims. The second phase of the adjudication involves court review of the FFOD and resolving exceptions to the claims. After hearing exceptions, the Court issues a water rights decree affirming or modifying the FFOD. The determined claims then become “decreed rights,” prompting the issuance of water right certificates. The rights as recognized in a decree are the final determination of any claims, and whether they exist.

*Transfers of Determined Claims*

Decreed, or certificated, water rights are eligible to go through a process called a transfer to change how that water right is used. Not knowing how long the judicial phase of the adjudication will proceed, in 2015, Senate Bill 206 was passed by the Oregon Legislature to allow holders of determined claims in the Klamath Basin Adjudication to apply to temporarily transfer their determined claims through a process similar to our regular temporary transfers.

### *Background on the Irrigation District Pilot Project*

House Bill 4016 seeks to allow the Klamath Project districts with determined claims to utilize a different process to temporarily transfer their water rights, which is similar to the Irrigation District Pilot Project.

The Irrigation District Pilot Project was initially passed in 2003, allowing three districts to make annual temporary place of use changes to water rights within their legal boundaries without making application to the Water Resources Department for a temporary transfer. To temporarily (annually) change the place of use of water rights under the Irrigation District Pilot Project Program, districts are required to satisfy standard water right transfer criteria and maintain records. The program was set up to allow efficient processing and review of simple and straightforward temporary transfers, with more complex or permanent changes needing to go through the regular transfer process. As such, the program is only intended for irrigation place of use transfers within a district's boundaries; it cannot be used to transfer acres between districts or for transfers involving water that the district does not manage. Finally, the district must have accurate measurement of water use, accurate maps, and a management structure to ensure that only authorized lands will receive water. The program was extended in 2007, extended and expanded to 15 districts in 2009, and again extended by Senate Bill 267 (2015). That program is set to sunset January 2, 2022.

### **Department's Understanding House Bill 4016 and the Adjudication (-1 Amendment)**

Exceptions have been filed on claims within the Klamath Project, which are still pending review by the court. It is the Department's understanding that the purpose for allowing temporary transfers of determined claims is to provide a tool for the holders of those claims to exercise the claim while the adjudication is pending. It is our understanding that there is no intent to modify or develop evidence to influence the court's decision in the adjudication. Stated differently, it is our understanding that House Bill 4016 is not a tool to influence the outcomes of the adjudication.