



Senate Bill 846: OPPOSE
Testimony of Kimberley Priestley, WaterWatch of Oregon
Before the Senate Environment and Natural Resources Committee
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For nearly a decade, battle has been waged within the halls of Salem on the issue of Columbia River water. Since 2007 bills have been introduced to try to circumvent existing state and federal protections for water in the Columbia River necessary for imperiled Columbia River Salmon and Steelhead.

Federal fisheries managers have set minimum river flows needed by fish ("target flows") that federal agencies, together with state agencies and some irrigation districts are working to meet. To address recognized dry season flow problems in the river and help recover fish listed as endangered under the federal Endangered Species Act, Oregon adopted rules that limit new water withdrawals to, among other things, ensure no further diminishment of critical seasonal flows in the Columbia system (OAR 690-33, "Sensitive Stock" rules). The Sensitive Stock rules set seasonal limits on new water appropriations (withdrawals allowed October 1 through April 14).

Despite failed attempts in the 2007 (SB 483/SB 610/HB 3525), 2009 (HB 2406), 2010 (SB 1012) and 2011 (HB 3509, SB 190) sessions to undermine these and other Columbia River protections, 2012 brought another bill (HB 4101) that tried to circumvent state fishery protection laws/rules. This bill also failed.

In an effort to stave off yet another legislative battle on the issue of Columbia River flows in 2013, Governor Kitzhaber forged a new path forward. Under the Oregon Solutions process, Governor Kitzhaber convened a diverse group of stakeholders---including key irrigation interests of the Umatilla Basin---to develop a path forward to find water for Umatilla farmers, but only in a way that would do no harm to flows needed by imperiled fish.

After eight months of meetings, this group of eighteen stakeholders---representing Umatilla farmers, state and federal agencies, the Confederated Tribes of the Umatilla Indian Reservation and conservation groups---came to agreement. In February of 2013, Governor Kitzhaber and all the stakeholder groups signed the Columbia River-Umatilla Solutions Taskforce Declaration of Cooperation, known as the CRUST. WaterWatch is a signatory of the CRUST.

Relevant to SB 846, ten components of the CRUST are especially noteworthy:

1. CRUST members agreed that all water development projects adhere to a basic governing principle that the water development project would "not negatively affect streamflows needed for fish species." CRUST, page 1.
2. CRUST members agreed that "[t]he group is not recommending changes to existing fish protection laws". CRUST, page 4.

3. The CRUST group agreed to a package that would “result in both economic and environmental benefit, including aquifer restoration, tributary streamflow enhancement, and/or mainstem flow enhancement.” CRUST, page 2
4. The CRUST group agreed that consensus options should support, rather than impede, other water related planning efforts including the Tribal Water Rights Settlement discussions, the Integrated Water Resources Strategy and Columbia River Salmon and Steelhead Recovery plans. CRUST, page 2.
5. CRUST members agreed that all storage projects are specifically limited to “winter” water withdrawals. CRUST, page 4.
6. The CRUST recommends investigation into certain named storage projects, and explicitly rejects select storage proposals on tributaries to the Umatilla River. CRUST, page, 5-7, 13.
7. The CRUST directs members to develop projects that are: a) technically feasible, b) economically feasible, c) legally feasible and d) politically feasibility. CRUST, page 2. Screening of agreed upon projects utilized these parameters, plus an evaluation of “ecological impacts”. CRUST, page 4.
8. CRUST members agreed that governance going forward would adhere to the following structure: “The Governor’s Natural Resource Office will convene a work group over the interim to detail the appropriate structure and elements of a statewide OWRD [Oregon Water Resources Department] program of new water storage, conservation, utilization and instream flow protections and augmentation.” CRUST, page 14.
9. CRUST members agreed to forgo developing or supporting legislation that would promote spring and summer water withdrawals, or any of the project options for which there was not consensus. CRUST, page 12-13.
10. Aside from legislative approval for budget request to fund CRUST options, the CRUST did not recommend any legislative changes. All storage and conservation options identified in the CRUST can be implemented under current law without legislation (see “next steps” under each recommended option, CRUST pages 5-12).

WaterWatch of Oregon opposes SB 846. SB 846 is inconsistent with the CRUST and undermines many of its key provisions. In the end, SB 846 is yet another attempt to undermine the laws and policies that protect Columbia River fish.

1. SB 846 is at odds with the fish protection measures of the CRUST and Oregon’s Sensitive Stock Rules. As noted, the CRUST dictates that water development projects must not negatively impact instream flows needed for fish species. This principle was negotiated early in the process by a subgroup that included WaterWatch. The entire CRUST membership voted on this language, and all agreed that this was a principle that the CRUST would adhere to.

Moreover, in the final signed document CRUST members also agreed not to seek changes to fish protection laws. The CRUST maintains the protections of the Sensitive Stock Rules (OAR 690

Division 33), requirements that water be available according to the WRD statutes and rules, and adherence to Basin Plan classifications and/or closures.

SB 846 is at direct odds with the fish protection measures of the CRUST and the state's Sensitive Stock Rules. Section 1 of SB 846 requires development of a storage program that will "maximize" agricultural development while only "considering" the instream flow needs of fish. SB 846, Page 1, Lines 14 and 16. These legal standards are not equal. Merely "considering" the instream flow needs of fish greatly dilutes existing laws and the CRUST agreements that storage projects not negatively impact flows needed for fish and must adhere to existing fish protection provisions, including the Sensitive Stock Rule's limitations on months of live flow diversion. These are very different legal standards.

Along the same lines, Section 3 directs a workgroup to develop "amount targets" for use of Columbia River and Snake River waters to develop agriculture while only giving "due consideration" to environmental impacts. SB 846 Page 2, Line 25. "Due consideration" is not a meaningful legal standard. "Due consideration" is much weaker than existing state fishery protection laws or the CRUST agreement that any increased utilization of Columbia River water must be done "without negatively impacting streamflows needed for fish species."

2. SB 846 creates a means to undermine existing fish protection laws: As noted, the CRUST members agreed not to seek changes to fish protection laws.

SB 846 creates a means to undermine existing fish protection laws. In addition to the points made previously, Section 3 of SB 846 calls for a workgroup to be convened to provide the legislature with recommendations regarding "legal authority" needed for implementation of projects (not limited to CRUST projects). SB 846 Page 2, line 21-22. This workgroup is narrowly limited to looking at solutions that extract water for economic development. SB 846 Page 2, line 13. Of importance, is the fact that the workgroup is tasked with specifying "amount targets for use of Columbia River and Snake River waters" to develop agriculture while only giving "due consideration to environmental impacts" SB 846 Page 2, lines 25-27. The workgroup recommendations move forward on a majority, rather than the full consensus required by CRUST. SB 846 Page 2, lines 33-34. (Note, river interests are general in the minority).

In a nutshell, SB 846 sets up a workgroup that is directed to develop recommendations to change existing law so as to be able to implement those projects that extract water for economic development, with only "due consideration" given to environmental impacts.

All these provisions, combined with the SB 846's directive that the Program "maximize" agricultural development with only "due consideration" to flows needed by fish, sets up legal mandate to build a program that will maximize agricultural development, even if it requires changes to existing fishery protection laws that the CRUST agreement sought to protect. SB 846 is this session's addition to a long line of flawed bills that have attempted to undermine state fishery laws but have failed for good reasons. (2007 (SB 483/SB 610/HB 3525), 2009 (HB 2406), 2010 (SB 1012) , 2011 (HB 3509, SB 190), 2012 (HB 4101).

3. SB 846 directive on storage is inconsistent with the CRUST and fish protection laws. Storage under the CRUST must not negatively impact flows for fish. Storage under the CRUST, and under the state's Sensitive Stock Rules, is limited to winter water withdrawals. Storage projects agreed to by the CRUST must be technically, economically, environmentally and

politically feasible. Storage under the CRUST must not impede Tribal Water Rights Settlement discussions. The CRUST identifies specific storage projects to investigate. The CRUST explicitly rejected select storage projects on tributaries to the Umatilla River (i.e. Bear Creek, SF Umatilla River) and those projects that would impede Tribal Water Right Settlement discussions. CRUST pg. 13.

SB 846's "Storage Program" is not consistent with the sideboards instituted by CRUST, many of which reflect state law. The SB 846 program only requires consideration of instream flow needs (rather than no negative impacts), only requires technical feasibility (rather than technical, economic, environmental, and political feasibility), does not limit storage to winter projects, does not require that projects be consistent with Tribal Water Right Settlement discussions and/or Columbia River Salmon and Steelhead Recovery plans and promotes the concept of storage beyond the specific projects agreed to by the CRUST (i.e. includes the Umatilla, for which storage projects were explicitly rejected by the group).

4. SB 846's mandate to develop a "Umatilla Basin Water Storage Program" is inconsistent with the CRUST. The CRUST did not agree to the development of a "Storage Project". Rather, the CRUST agreed to the development of a statewide OWRD program of new "water storage, conservation, utilization, and instream flow protections." This balance was of great importance to many CRUST members.

5. Future governance as outlined in SB 846 is inconsistent with the CRUST. CRUST members agreed that governance going forward would follow the following structure: "The Governor's Natural Resource Office will convene a work group over the interim to detail the appropriate structure and elements of a statewide OWRD [Oregon Water Resources Department] program of new water storage, conservation, utilization and instream flow protections and augmentation." CRUST, page 14.

SB 846's directive on governance conflicts with the CRUST agreement. Of particular concern is the fact that SB 846 fails to put that office within the Oregon Water Resources Department. This point is one that was negotiated and agreed to after many hours of subgroup and larger group discussion. This is a key point of the agreed upon governance structure. The agreement on this was specifically geared at trying to curb recent efforts to divest the Water Resources Department of its authority to manage water resources in the Umatilla basin. Water, by statute, belongs to all citizens of the state and it is imperative that management of our water resources remains with the state. All participants of the CRUST agreed to this, and this is captured by explicit language in the CRUST (page 14).

SB 846 Section 3 is further inconsistent with the agreements in CRUST because it does not name the Governor's office as the convening group. Taking the workgroup out of the Governor's office would likely free the group of the strong leadership we have seen from the Governor's Natural Resource Division, including its directive that any solution "do no harm" to fish resources and/or fish laws.

WaterWatch urges the Committee to reject SB 846 as it is inconsistent with state fish protection laws and the recently agreed upon CRUST agreement.

SB 846 is not only inconsistent Oregon's Sensitive Stock Rules, but actually sets a path forward to change this, and other, key protections that protect flows needed for Columbia River Fish.

SB 846 is also inconsistent with both the language and the intent of the CRUST. The CRUST agreement and, importantly, the language capturing the agreement, were painstakingly negotiated over the course of many months. Any argument that this bill is in furtherance of the CRUST ignores the not only the specific language of the agreement, but also the process of getting to full consensus.

As a signatory to the CRUST agreement WaterWatch is bound not to violate the terms of that agreement. We believe that supporting SB 846 would be in violation of the agreement and for that reason alone we cannot support the bill.

WaterWatch urges the Committee to reject SB 846.

Contact: Kimberley Priestley, WaterWatch of Oregon, 503-295-4039 x 3, kjp@waterwatch.org