



February 11, 2021

Representative Ken Helm, Chair
Representative Mark Owens, Vice-Chair
Representative Jeff Reardon, Vice-Chair
House Committee on Water

Re: Trout Unlimited Comments on House Bill 2244

Dear Chair Helm and Members of the Committee,

Thank you for the opportunity to present testimony on House Bill (HB) 2244. My name is Chandra Ferrari and I represent Trout Unlimited (TU), a non-profit organization dedicated to the conservation of cold-water fishes, such as trout and salmon, and their habitats. Trout Unlimited has more than 300,000 members and supporters nationwide including over 3,000 in Oregon. TU is interested in ensuring the fair and equitable administration of water rights in accordance with existing law. This is especially important in the Klamath Basin where the water right issues are complex and water shortages are becoming more common. TU has worked closely with all Klamath stakeholders over the past twenty years to resolve water management challenges in the Klamath Basin and to restore habitat, fish passage and water quality in Klamath Lake and its tributaries.

TU supports HB 2244. HB 2244 seeks to close a procedural loophole that has been preventing appropriate allocation of adjudicated water with particularly severe consequences for senior water right holders, such as the Klamath Tribes. In 2013, the Klamath Basin Adjudication quantified and determined all water rights at issue in the Klamath Basin and the Oregon Water Resources Department (OWRD) was authorized to enforce the water calls of the Klamath Tribes, as senior water right holders, against junior water right holders. However, in most years since the adjudication was completed, junior irrigators have effectively stayed OWRD enforcement orders by filing a Petition for Judicial Review (PJR) pursuant to ORS 536.075. The mere filing of a PJR results in an automatic stay of the OWRD enforcement order. In effect, junior irrigators that are being called off their water right can expend relatively minor resources to file a PJR and avoid enforcement. This allows junior irrigators to continue to divert water, despite a senior water right holder not having their right fulfilled, while the PJR is in progress. At the end of the irrigation season, the diverters can withdraw the PJR. Another PJR can be filed during the next irrigation season if an enforcement order is issued and the cycle continues. The deeply inequitable outcome is that junior water right holders still have the benefit of use of their water for the minor legal fee it costs to file a PJR and the senior water right holders are left without full use of their water right year after year.

TU recognizes the need for water users to seek legal review in circumstances where they dispute the State's allocation and regulation of water. However, the early withdrawal of most PJR petitions at the end of irrigation season means that no substantive decision on the merits of the petition can ever be reached. This allows the same process to repeat year after year, essentially subverting the normal legal process for allocating water and resolving disputes about the allocation. In effect, the PJR process prevents senior water right holders from enjoying the benefits of their water right on an on-going basis, without an opportunity for recourse. This is not a fair or balanced outcome. Accordingly, TU supports the provisions in HB 2244 to remove the automatic stay provision for final OWRD orders that regulate off diversions in favor of determined claims, instream water rights or water rights held by federally recognized tribes.

TU looks forward to continuing discussion on this legislation. Thank you for the opportunity to testify on HB 2244.



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