



March 28, 2023

Representative Ken Helm, Chair
Representative Annessa Hartman, Vice-Chair
Representative Mark Owens, Vice-Chair
House Committee on Agriculture, Land Use, Natural Resources, and Water

Re: Trout Unlimited Opposes HB 2765

Dear Chair Helm, Vice-Chairs Hartman and Owens, and Members of the Committee,

Trout Unlimited (“TU”) is a non-profit dedicated to conserving cold-water fish (such as trout, salmon, and steelhead) and their habitats. TU has more than 350,000 members and supporters nationwide, including many members in Oregon.

HB 2765 would grant South Suburban Sanitary District the exclusive right to use and sell treated wastewater discharged by the District into the Klamath River or its tributaries.

Trout Unlimited opposes HB 2765.

As a preliminary matter, TU supports efforts that conserve migratory birds and benefit habitat in the Pacific Flyway. Unfortunately, any such benefits to birds pursuant to this legislation would come at the expense of senior water users as well as fish, aquatic species, and other wildlife, without appropriate process. This bill does not require or guarantee benefit to migratory birds.

HB 2765 effectively grants ownership to water that constitutes a public resource. Today, the District treats and discharges water into the Klamath River, where it is then available for other users, instream flows, and fish. This bill would convert that water into a commodity exclusively controlled by the District. Exclusive control and right to sell a product is effectively ownership of that product. TU wishes to flag that this seems to contravene a bedrock principle of Oregon law; that “All water within the state from all sources of water supply belongs to the public.” ORS 537.110.

TU shares the concerns that the Oregon Water Resources Department (“OWRD”) provided in its written testimony on the bill:

“Currently, if treated effluent is discharged into a surface water system, it becomes live flow eligible for appropriation by other users downstream or instream water rights. This bill would essentially create a new appropriation of surface water that would otherwise be available for public use. If enacted, this would authorize the South Suburban Sanitary District to make water allocation decisions without considering existing water rights or public values. . . . **This legislation circumvents the doctrine of prior appropriation**

and potentially enlarges the water right in a system that is fully allocated, which could result in injury to other senior water rights.”¹

In other words, as Ivan Gall (OWRD) stated during the March 27th public hearing, the bill would serve as “a short-circuit of the prior appropriation system, as it stands today, because [the exclusive right proposed in the bill] wouldn’t go through the traditional application and permitting approach.”²

There is a process for the District to retain control of this water after treatment. Under the reclaimed water statutes,³ entities such as the District may obtain authorization from OWRD to implement continued use of reclaimed water under facts similar to the ones here. However, that process includes important considerations for fish, wildlife, and water quality interests,⁴ which are not included in this bill.

Trout Unlimited opposes HB 2765 because it grants a valuable and unusual “exclusive right to use” a limited public resource, contrary to the norms of Oregon’s water law and the public interest.

Thank you for this opportunity to provide comments, and please let me know if you have questions.

Sincerely,

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Trout Unlimited
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¹ Oregon Water Resources Department, Testimony for House Bill 2765, 3/27/23 (emphasis added) (available at: <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/PublicTestimonyDocument/87155>).

² House Committee on Agriculture, Land Use, Natural Resources, and Water, 03/27/2023 Meeting Recording, at 1:45:35 (available at: <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2023031423>).

³ See ORS 537.131 – 537.132; ORS 540.510; ORS 540.610.

⁴ ORS 537.132(1).