



To: House Committee on Rules
Chair Fahey
Vice-Chair Breese-Iverson
Vice-Chair Kropf
Representative Nosse
Representative Scharf
Representative Valderrama
Representative Wallan

From: Caylin Barter, Oregon Water Policy Program

Date: May 11, 2023

RE: **Oppose HB 2765 and -1 and -2 Amendments – Protect Oregon’s Publicly Owned Waters**

Chair Fahey, Vice-Chairs Breese-Iverson and Kropf, and Members of the Committee:

Thank you for the opportunity to provide testimony on HB 2765, which Wild Salmon Center strongly opposes as a violation of Oregon’s public ownership of all waters in the state, and as dangerous precedent for future end-runs around the prior appropriation doctrine. Wild Salmon Center also opposes the -1 and -2 amendments, which do nothing to fix the fundamental flaws of this bill.

Wild Salmon Center is an international nonprofit headquartered in Oregon that has worked with local partners since 1992 to protect and restore the strongest remaining runs of Wild Pacific Salmon. We use science to drive policy, lead planning processes, and support implementation, and we know that the health of our water resources is directly linked to the recovery of our iconic wild fish and the vitality of our communities and economy. Low streamflows and high water temperatures are stressing even our healthiest salmon runs, and these problems are worsening due to climate change and increased human demand for water.

We support policies that increase instream flow in struggling river systems, and we oppose policies that risk further depletion of our already overallocated streams. House Bill 2765 is particularly pernicious because it masquerades as a member of the former category, yet falls squarely in the latter.

House Bill 2765 would bestow ownership of a source of water supply by granting South Suburban Sanitary District the exclusive right to use and sell treated wastewater discharged by the District into the Klamath River or its tributaries, without requiring the District to apply for a permit to appropriate the treated wastewater. This flies in the face of bedrock principles of the Oregon Water Code:

All water within the state from all sources of water supply belongs to the public.

Oregon Revised Statutes 537.110

Subject to existing rights, and except as otherwise provided in ORS chapter 538, **all waters within the state may be appropriated for beneficial use, as provided in the Water Rights Act and not otherwise.**

Oregon Revised Statutes 537.120

INTERNATIONAL HEADQUARTERS

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Under Oregon water law, a water right is a right to use the public's water; it is not a right to the water itself. This basic tenet of prior appropriation is embedded in state constitutions and statutes across the western United States. Nevertheless, the proponents of HB 2765 seek to legislatively grant an exclusive right to the use and sale of a specific water supply — not in accordance with the Water Rights Act, without restrictions on how or where that supply is used, without considering impacts on downstream water rights or public interests, and without any regard for the “first-in-time, first-in-right” framework that undergirds our water rights system.

Wild Salmon Center fully endorses the testimony offered by the Oregon Water Resources Department, which plainly states the fatal flaw of HB 2765:

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.**

The Water Resources Department has done extensive work over the past three decades to calculate available water supplies across the state, including the Klamath Basin in Oregon. The water availability data show that water is not available from the Klamath River for new appropriations. **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.**

The Legislature should heed the clear concerns expressed by the state agency it has tasked with administering all water rights in Oregon, and reject HB 2765 as a bad bill that throws open the gates to similar bad bills in future sessions.

Finally, extensive testimony offered in support of the base bill regurgitates a talking point that the treated wastewater will go to supporting the Lower Klamath National Wildlife Refuge. Yet there is nothing in the base bill that requires this, and even the amendment language is crafted to avoid any mandate that any portion of the treated wastewater must be used within the Refuge (vaguely requiring the District to make a quarter of the treated wastewater supply “available” for fish and wildlife use within the Refuge is not the same as requiring the water to actually be used there). The District already has a process available to it to retain control of treated wastewater under the existing reclaimed water statutes (ORS 537.131, 537.132), and this legislation is an unnecessary and dangerous end-run.

Wild Salmon Center urges you to vote “NO” on HB 2765 and reject the -1 and -2 amendments.

Sincerely,



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