



May 12, 2023

David E. Filippi
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
D. 503.294.9529
david.filippi@stoel.com

The Honorable Julie Fahey, Chair
Oregon House Committee on Rules

RE: Support for House Bill 2765-2

Dear Chair Fahey,

Thank you for the opportunity to provide comment on House Bill 2765. I am a partner with Stoel Rives LLP, a law firm that represents the South Suburban Sanitary District on water rights matters.

I would like to address several concerns that we have been hearing about HB 2765.

First, we have heard some say that all water in the state of Oregon belongs to the public, and this bill somehow puts the District in a position of owning the water it treats. That is simply not true.

While the state of Oregon owns the water, the state also grants rights to use water. And here, the water that the South Suburban treats is groundwater that has already been appropriated by the City of Klamath Falls under water rights issued by the state of Oregon. The fact that water is used by the City's residents and businesses, and will then be reused under HB 2765, does not somehow shift ownership of the water to the District.

Second, we have heard some say that because the bill allows the South Suburban to charge for the delivery of treated water, South Suburban is somehow privatizing the water or unduly profiting from the use. Again, that's simply not true.

By law, South Suburban Sanitary District is not a private venture. It's a local government with authorities set by statute, and it's no different from a City that charges residents and business that reside within the City's service territory for the treatment, delivery, and management of water.

Charging end users for reuse water is simply another way of recouping a small portion of the cost that is being borne by the citizens of South Suburban for the plant upgrades being required by the Oregon Department of Environmental Quality. No one is getting rich or profiting off the sale of reuse water. Particularly given the millions of the dollars of cost being imposed on an economically depressed community by the state of Oregon, allowing for some cost recovery should be applauded, not denigrated.

Third, we have heard some say that HB 2765 somehow undermines or "turns on its head" the prior appropriation doctrine, which governs the allocation of water in our state. In essence, the doctrine provides that those with the most senior water rights (or those that were developed first) have priority over more junior water rights (or those that were developed later). And the argument we have heard is that by enabling the reuse of treated water in the refuges, the District is taking water away from senior water right holders.

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This concern is unfounded for several reasons.

First, we are not aware of a single senior water right holder downstream of South Suburban's discharge point that has expressed any concern. In fact, groups that represent water users in the area, like the Klamath Water Users Association, have come out in support of the bill.

Second, the argument assumes that downstream water users are somehow entitled to use South Suburban's treated wastewater, and that South Suburban is legally barred from enabling the reuse of its treated water. That is not true. Under existing statutes (ORS 537.132), there is already a process in place that would enable South Suburban to pipe its discharge to the National Wildlife Refuges. And if cost were not an issue, and no one cared about the environmental benefit of conveying the reuse water through a natural system, South Suburban could do just that.

However, that's the entire point of the bill. Because South Suburban has the option to pipe, and because it could save \$20 million and provide environmental benefits through natural conveyance, the HB 2765 enables South Suburban and the local community to get to the same result as ORS 537.132 but enables it to save \$20 million and provide environmental benefits by avoiding the cost of constructing a nine-mile pipeline.

Third, and this is a key point—just because South Suburban has essentially made its discharged wastewater available to senior water users for appropriation in the past, it does not mean that those senior water users are somehow entitled to the wastewater, or otherwise entitled to rely on the wastewater to fulfill their water rights. The same principle applies to water users who become more efficient over time. The law is clear that one water right holder is not entitled to another water user's waste. And while those water users on the Klamath system may have been receiving a windfall up until now, they are not entitled to continue to receive that windfall going forward. Again, South Suburban should be applauded for pursuing options that help to reimburse its citizens for the costs they are incurring to generate high-quality, reuse water.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read "David E.", is written over a light blue horizontal line.

David E