



James Fraser

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Representative Ken Helm, Co-Chair
Representative Mark Owens, Co-Chair
Representative Sarah Finger McDonald, Vice-Chair
House Committee on Agriculture, Land Use, Natural Resources, and Water

Re: Trout Unlimited Opposes HB 4006 (Water Law Exemptions for Mid-Columbia Water Users)

Dear Chair Co-Chairs Helm and Owens, Vice-Chair Finger McDonald, and Members of the Committee,

Trout Unlimited (TU) is a nonprofit dedicated to conserving cold-water fish (such as trout, salmon, and steelhead) and their habitats. We have thousands of members in Oregon, and our national staff includes about 15 people who spend their days restoring fish passage, instream flows, and habitat in this state—often in close collaboration with private landowners.

TU opposes House Bill 4006 for the following reasons:

1. Exempting one group of water users from a suite of water laws is a major change to the water code, and creates a “one-off” that minimizes the state’s role in regulating water use in just one place.

Legislators heard a lot last year about water right changes, or “transfers.” Current law requires anyone proposing a change to a water right—whether where it’s diverted, where it’s used, or how it’s used—to apply to the state. The Oregon Water Resources Department (WRD) then reviews the application for things like “injury,” and has authority to deny or approve that request. As you heard last year, the existing system is outdated; for instance, WRD doesn’t have authority to consider or account for the environmental effects of a water right transfer.

This bill would mark a sea change by entirely exempting certain users in a specific place from even needing to run these things by the state. Never mind the discussion about whether current water right reviews for a transfer are sufficient; this bill says that this water right holder wouldn’t even need to apply for permission to make the change, let alone be subject to state reviews. That takes our outdated and unfair water system backwards in time, not forward.

2. We’ve all heard about the need for better water management. But management implies a state manager, and this series of exemptions mostly removes that state oversight.

Advocates for this bill are clearly experts on their basin, and we are not disputing that.

Rather, TU’s engagement on this bill regards the impropriety and unfairness of the Legislature opening the statutes to exempt just one water right holder from most regulation by the state’s water

agency, and from the laws intended to ensure equitable and evenhanded distribution of water in the state.

3. There's an uncomfortable disconnect between the principles of this bill, and ORS 537.110, which provides that all water within the state—from all sources—belongs to the public.

Three years ago, the Legislature considered another bill (HB 2765)¹ which would have granted a certain entity in the Klamath the exclusive right to use certain water, including the express authority to sell it after discharging that water back into the river. TU and others opposed on the grounds that water is a public resource, and an exclusive right to control and sell something is effectively ownership. This bill does not do the same thing, but it has a similar flavor.

If one can change the place water is diverted, use it in a new place, use it in a new way—all of which are allowed under this bill without state oversight or involvement—it starts to look a lot like ownership of the water as a commodity itself, rather than exercise of a right to use that publicly-owned resource.

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

Sincerely,

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¹ <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/PublicTestimonyDocument/98748>