



Oregon
Environmental
Council
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March 16, 2021

Representative Helm, Chair
House Committee on Water

Re: HB 2616

Dear Chair Helm and Members of the Committee,

Trout Unlimited, WaterWatch of Oregon, Wild Salmon Center and Oregon Environmental Council (hereinafter Conservation Groups) oppose House Bill (HB) 2616. HB 2616 would legalize one currently illegal reservoir on a specific tax lot in the Big Butte Creek Watershed. Except for water rights in existence as of 1925, all the waters of Big Butte Creek were statutorily granted to the City of Medford for municipal purposes. The statute is clear that "No person shall appropriate or be granted a permit to use any of the waters except as provided by this section". ORS 538.430 (1). This bill would carve out an exception to this law for a sole property owner.

Conservation Groups **oppose HB 2616** because it is bad public policy to pass a law that will allow one landowner to circumvent existing law. Oregon's existing water rights regulatory system is complex, and its success is contingent on applicable laws and regulations being consistently and equitably applied. Legislatively overriding this system for the benefit of one landowner sets a dangerous precedent that will be difficult to control once set. We are aware of a number of other properties in the Big Butte Basin that have illegal ponds; if this bill passes, we expect those landowners would also approach the legislature for a legislative end run. The requests will not be limited to this basin either. Passage of HB 2616 would likely result in a cascading of similar requests around the state. The end result being ad-hoc, inequitable water policy decisions that undermine the existing regulatory structure and threaten lawful water right holders.

Beyond the potential for bad precedent, it has not been established that granting this water right would be without impact. Big Butte Creek is over-appropriated year-round and supports Endangered Species Act (ESA)-listed fish species. The legislative carve-out proposed in HB 2616 would legalize an illegal use without any assessment of the state of the water resources of the Big Butte Creek watershed, or the effect on the fish species that depend upon it. As such, HB

2616 not only gives this one property owner a pass from the legislative withdrawal of Big Butte Creek, but also of the many environmental and public interest standards that would apply to any other person who wanted to get a legal right to appropriate the public's water, including important laws that protect fish, water quality and water quantity.

In the face of climate change and ever-increasing conflicts over water, providing legislative one offs to single property owners undermines water management efforts to protect the public's waters in a sustainable manner. The unfortunate reality is that this landowner's predicament could have been avoided if the necessary due diligence was done prior to purchasing the property or if the previous landowner had taken advantage of the State's time-limited process to legalize storage ponds. The legislature should not compound these omissions by upending the existing water rights management system.