



# Oregon

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**Testimony for House Bill 2765**  
**House Committee on Agriculture, Land Use, Natural Resources and Water**  
**Representative Ken Helm, Chair**

Submitted by: Bryn Hudson, Legislative Coordinator  
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Thank you for the opportunity to provide information related to House Bill 2765 which grants to South Suburban Sanitary District exclusive right to use and sell treated wastewater discharged by district into Klamath River or tributaries. This testimony is provided for informational purposes and the Department is not taking a position at this time.

### **Background**

Generally, in order to use water in Oregon, one must obtain a water right from the Water Resources Department. Oregon's water laws are based on the principle of prior appropriation often referred to as "first in time, first in right." This means the first person to obtain a water right on a stream is the last to be shut off in times of low streamflow. The priority date of a right is typically the date the Department received the application for a permit to use water.

The Klamath Basin in Oregon is also unique in that it is still undergoing a comprehensive surface water adjudication in Klamath County Circuit Court. The adjudication process resulted in a large number of determined claims for water use on the Klamath River and upstream tributaries, with priority dates going back to the late 1800's, and to time immemorial (the most senior rights) for Tribal determined claims.

### **Department's Understanding of HB 2765**

House Bill 2765 grants to South Suburban Sanitary District exclusive right to use or sell treated wastewater discharged by the district into the Klamath River or tributaries. 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 in 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.