



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

HB 3365

Testimony of WaterWatch of Oregon

by Kimberley Priestley

House Committee on Agriculture, Land Use, Natural Resources and Water

April 3, 2023

Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. We work to ensure that enough water is protected in Oregon's rivers and aquifers to sustain fish, wildlife, recreation, and other public uses of Oregon's waters. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

WaterWatch strongly opposes HB 3365: WaterWatch strongly opposes this bill. The bill catchline for this bill is very misleading and does not disclose the sea change to Oregon law that is embedded in this bill. Concerns include but are not limited to:

HB 3365 represents a sea change in Oregon water law: This bill would allow--for the first time in Oregon's history---the spreading of water from one district to another based on "split rate" or "split duty". What this means is that a water right that is currently serving one parcel of land, can now serve unlimited lands by splitting the rate (cubic feet per second) or the duty (acre feet per acre). This is especially troubling in the Deschutes basin where districts such as Central Oregon Irrigation District have water right duties that are nearly three times the statewide average. Concerns with allowing split rate and split duty include:

- Contravenes beneficial use without waste: A basic tenant of western water law is the principle of beneficial use without waste. Under Oregon Water law there is no legal right to water that is wasted. This bill would allow movement of wasted water to other lands. This turns the longstanding principle of beneficial use without waste on its head, contravenes existing law and sets horrible precedent.
- Allows enlargement of a water right: Water rights grant a rate and duty that is tied to appurtenant lands. Under current law, transferring water to other lands requires drying up the original lands. If the original lands are not dried up, spreading of water to other lands constitutes legal enlargement under Oregon law. In a nutshell, this bill would legalize enlargement. This contravenes existing law and sets horrible precedent.

HB 3365-1 divests management authority of the state: The Oregon Water Resources Department is the state agency that has sole statutory authority to manage Oregon's water rights. The -1 amendments would divest the state of this authority by directing administration of the transfers allowed under this bill to the Deschutes River Conservancy (DRC). DRC is not a public body that is accountable to the public. While WaterWatch has collaborated with the DRC on many projects over the years and highly respect the organization, we do not support divesting the state of its authority to oversee and manage water rights. This sets horrible precedent.

WaterWatch of Oregon
Main Office: 213 SW Ash St. Suite 208 Portland, OR 97204
Southern Oregon Office: PO Box 261, Ashland, OR, 97520

www.waterwatch.org
Main Office: 503.295.4039
S. OR Office: 541.708.0048

HB 3365 would allow a sea change in use of water rights with absolutely zero public process: This bill allows this monumental shift in what is an allowed use under a water right without providing a single opportunity for public comment in advance of water being moved. This is not in the public interest and goes against principles of water equity.

HB 3365 carries forward the long standing inequities of the Oregon's prior appropriation doctrine: A 2023 Secretary of State Advisory Report on Water Security outlines the longstanding inequities found in Oregon's water allocation laws and policies. HB 3365 makes existing inequities worse by allowing districts the ability to lock in further consumptive use of water that should technically, under the state's principles of waste, go back to the system for the next junior users.

HB 3365 prohibits transfers of water instream under this new program: The bill's preamble suggests this bill will help both irrigation and the environment. This bill specifically temporary transfers to instream use.

There are existing pathways to get COID water to NUID: This bill is not necessary to get COID water to NUID. A number of tools already exist to achieve this. One pathway that dovetails with HCP requirements is the agreement between COID and NUID to have COID bypass conserved water so it simply stays in the stream so NUID can pick it up under their right. Forbearance agreements from intervening districts are needed, but this pathway is largely accepted by all stakeholders in the basin. Another avenue is transfers. COID can, at any time, transfer water to NUID under existing statutes. Long story short, WaterWatch has been involved in basin discussions for years about various strategies to move water around to get water to both NUID and the Oregon Spotted Frog. Split rate and split duty is not needed to achieve this.

Efficiency Standards: What is really needed in the Deschutes Basin to advance water equity. We would urge legislative attention to the need to set basin wide irrigation efficiency standards in the Deschutes basin and beyond. While much attention is being directed at "irrigation modernization" there has been no commitment to clean up archaic century old water rights to bring them in line with the rates and duties that the state limits modern day water rights to. We would urge attention to this in the future.

Conclusion: This bill will upend longstanding principles of beneficial use without waste and allow enlargement of water rights. The bill is not simply about allowing flexibility within districts that adhere to the basic principles of transfers under existing statutory structures as the bill catchline implies, but rather is a sea change to how water rights are allowed to be used in Oregon. And while a pilot, this bill is the proverbial camel nose under the tent on a number of significant water issues.

We urge rejection of this bill. It would set horrible precedent.

Contacts: Kimberley Priestley, WaterWatch of Oregon, kjp@waterwatch.org, Jack Dempsey, jack@dempseypublicaffairs.com, 503-358-2864