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April 12, 2013

Senator Jackie Dingfelder, Chair
Senator Alan Olsen
Senator Alan Bates
Senator Bill Hansell
Senator Mark Hass

Re: Public Hearing April 15, 2013, on SB 401 and SB 838

Dear Senator Dingfelder and members of the Committee on Environment and Natural Resources:

Enclosed pursuant to the instructions on your Agenda is supplemental written testimony in addition to the oral testimony I hope to be allowed to present at the hearing on Monday. As you can see, my supplemental written testimony is submitted in the event you decide to move the original version of SB 401 through the Committee and beyond to the full Senate.

If my understanding is correct that the original version of SB 401 will not proceed and instead will be replaced with the amendments posted yesterday, I will not testify in opposition to the amended version. Instead, my oral testimony will address two issues: (1) why the amended version is preferable, both as consistent with the procedural steps set out in the current Scenic Waterways Act, and substantively for those of us on one of the affected rivers and (2) why I and others who live and work on the Little Applegate River and enjoy the many recreational opportunities provided by other rivers in Oregon, wholeheartedly support SB 838.

This will be my first experience either attending or testifying at a legislative hearing in Oregon. I look forward to meeting each of you and to participating in this part of the democratic process. Thank you for your service to all of us who live and work in Oregon.

Sincerely,

Encl.

Senate Committee on Environment and Natural Resources
Public Hearing on April 15, 2013
Additional written testimony submitted by Priscilla Weaver
in opposition to SB 401 as originally proposed
to include designation of the entire Little Applegate River as a "Scenic Waterway"

SB401, as originally proposed, incorrectly designates several dozen rivers and parts of rivers as "scenic waterways" without first having been conducted the statutory analysis called for prior to designating a river for inclusion in the Scenic Waterways Act of 1970, as revised.

Why does it matter that the bill designates rivers without the study and analysis?

One example is the Little Applegate River. To place this testimony in context, we are interested and affected parties. My husband Steve and I own property on both sides of the river at the six-mile mark. We are full-time farmers raising the oldest breed of sheep in the world, Soay sheep. We have the largest flock in North America, numbering over 200 by the time lambing ends next month. We have a full-time employee in residence. We have undergone substantial conversation efforts on our farm that benefit the river, including forest thinning, reclamation of acres of pasture previously overrun with starthistle and blackberry, riparian fencing to keep our livestock and other animals out of the river, and conversion of our old water rights from inefficient and wasteful ditch irrigation to in-stream pumping. The success of our farm is entirely dependent on the health of the Little Applegate River and we conduct all of our farm operations so as to minimize our impact on the river and to enhance its health however we can.

Notwithstanding our commitment to the robust health of the Little Applegate River, it does not meet the statutory criteria in ORS 390.855 for designation as a scenic waterway, and here's why:

(1) "... and the scene as viewed from the river ... is pleasing ..."

Although technically there is a view "from" the Little Applegate River if one wades out into the middle of it, the plain language of this criterion requires that a river be large enough to support recreation within the river itself, e.g., boats or other watercraft from which a person may survey the scenic views in the "related adjacent land." The Little Applegate River fails this test. Those of us who live and work astride the river do not wade into it for the view; we wade only to loosen large trees and other debris clogging the river during spring runoff. Because fishing is prohibited on the entire Little Applegate River, there are no fishermen in waders using the river or viewing the surrounding farms and woodlands from the river.

(2) "The river ... and its setting possess natural and recreation values of outstanding quality."

Although some of the hillsides surrounding the Little Applegate River in its upper reaches (more than 8-10 miles up from the confluence with the big Applegate River) are wooded, attractive, and occasionally include public walking trails, the last 8-10 miles are entirely

privately-owned agricultural land on one or both sides, and there are a number of areas within the "related adjacent lands" that consist of ugly flooding debris or barren rocky hardscape created by prior mining. Those of us who own the farms on these 8-10 miles of the river certainly enjoy taking a lawn chair down by the river in the places that are not too steep. Aside from this occasional use, the Little Applegate River itself possesses little recreation value, much less "values of outstanding quality," since it cannot support watercraft (even nostalgic inner tubes) and fishing is prohibited. Even if the analysis were extended to the riparian areas adjacent to the river, there are few places (other than pastures and fields in full-time agricultural use) wide enough for camping tents, and these places are within privately-owned farms.

(3) "The river ... and its setting are large enough to sustain substantial recreation use ..."

The Little Applegate River is not large enough to sustain any recreation use other than watching it from a lawn chair. To the extent there are hillsides and wooded areas up above the headwaters that can sustain recreation use, any special designation of those areas should be addressed directly as land areas under other statutes, not by shoehorning them into a statute intended to cover rivers.

"... and to accommodate existing uses without undue impairment of the natural values of the resource or quality of the recreation experience."

This portion of the statute illustrates most simply why the Little Applegate River does not meet the statutory criteria. The analysis assumes a false premise: that the river provides a significant recreational experience. Because it is not big enough to support recreational activities, much less significant ones, even adding in the adjacent privately-owned farm land, there is no significant "recreation experience" that could be protected at the expense of existing uses.

What is the practical effect of an inappropriate designation? Again, the example of the Little Applegate River.

The last 8-10 miles of the river, from 2-4 miles upriver from the intersection of Little Applegate Road and Yale Creek Road and extending down to the confluence of the big Applegate River, consists of privately-owned working farms (at least one of which – ours - has been in operation for over a hundred years), two wineries, and related agricultural activities on one or both sides of the river. As far as I have been able to determine, all or major portions of properties devoted to any kind of agricultural or other commercial activity, as well as all residential, commercial and agricultural buildings along these 8-10 miles, would be within the ¼ mile considered "related adjacent land" and thus regulated to the same degree as the river itself.

The statute and the regulations pertaining to all designated rivers and adjacent lands would significantly impair the ability of existing farms to continue to operate using responsible farming techniques that have been practiced on the Little Applegate River for decades, or to adopt new techniques and uses to meet changing climate and economic conditions.

It is my understanding that the original version of SB401 will not move out of committee and instead will be replaced with an amended version that provides for the statutory analysis of several rivers, including the Little Applegate, prior to possible designation of any of them as scenic waterways. If my understanding is mistaken and the original SB401 proceeds, I respectfully request – as a full-time farmer and property owner adversely affected by the original SB401 -- the opportunity to supplement this testimony with detailed examples of the significant burden, including the economic burden, designation of the Little Applegate River as a scenic waterway would place on the numerous existing farms on our river.

I urge the Committee not to allow the original version of HB 401 to proceed through the legislative process. If the original version is replaced with the amended version, Steven and I, and a number of our neighbors, look forward to working with the State Parks and Recreation Department in their analysis of the Little Applegate River.

Thank you for the opportunity to participate in the democratic process.

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