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March 15, 2013

NAME
ADDRESS
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CITY, STATE, ZIP

Re: _____

We write to clarify and restate our opposition to Senate Bill 401 (SB 401) sponsored by Senator Bates. This bill amends Oregon's Scenic Rivers Act (ORS 390.805 et seq.) to place 27 additional rivers and streams under Oregon's Scenic Rivers Act, regardless of whether the segment of the stream or river is scenic. The bill would place every stream or river in southwest Oregon under this Act. This will impose punitive new restrictions on property owners (especially agricultural use of adjacent lands). Southwest Oregon is an area that is already suffering economically due to overregulation of lands. Please do not impose further regulations by enacting this legislation. SB 401 imposes senseless and duplicative regulation on landowners for the following reasons:

SB 401 grants the Parks Department a "RIGHT TO CONTROL USE OF ADJACENT LAND." Adjacent Land is land one fourth of a mile from the bank of a stream (*i.e.*, imposes a scenic easement over 1,320 feet). A 1,320 foot scenic easement imposes senseless regulation on a lot of agricultural land. Attached are two maps showing the effect on Bridgeview's Cave Junction vineyard and winery (Attachment A) and Applegate Valley Vineyard (Attachment B). Under the bill, Bridgeview could not make any material changes to its vineyard, winery, or homes without Parks Department approval. All like adjacent owners of land would be in the same position.

Oregon's rivers and streams are already protected by removal fill rules (ORS 196.800 et seq.). These rules have carefully legislated exemptions to allow farmers and ranchers to use their lands for all purposes allowed under exclusive farm use zoning. This set of rules is administered by Oregon's Division of State Lands with the expense funded by state funds. SB 401 does not provide any greater protection for Oregon rivers and wetlands than currently exists under Oregon's removal fill rules and the Federal Clean Water Act.

SB 401 is discriminatory. The Willamette Greenway rules (ORS 390.310 et seq.) impose a 150-foot easement from the ordinary low water mark. SB 401 imposes a scenic easement that is roughly nine times larger on landowners in southwest Oregon (an area that is already suffering economically due to overregulation of forest lands). Further, the Greenway rules expressly limit the Parks Department's ability to condemn agricultural lands. SB 401 contains no such limitations. Article I, Section 20 of the Oregon Constitution provides for equal treatment of Oregonians. SB 401 does not provide for equal treatment of adjacent landowners.

Oregon rivers, streams and wetlands are already protected from gold mining or any other type of mining under existing rules. The land use rules (ORS 197.015(10)) apply to any significant mining activity. The local county would have to approve such mining before it can happen. The Oregon Department of Geology and Mining also has regulatory authority over any mining activity (ORS 577.790). Both of these regulatory agencies are funded with state funds. SB 401 is not necessary to protect Oregon's streams and wetlands from mining. Further, it would be a waste of government funds to have to fund a Parks Department duplicative regulation regime (i.e., a third level of duplicative regulation). It is far better to use the limited state funds for education.

SB 401 will place a cloud on the title of all adjacent land owners' property. Title companies would broaden the general exclusion in title policies to cover this easement. The scenic easement on these lands would also have to be disclosed in all sales or borrowing transactions. This would make these lands harder to sell and difficult, if not impossible, to finance (especially any new improvements). Banks understand the exclusive farm use rules applicable to rural adjacent lands; they do not understand the dramatically more restrictive use rules applicable under the scenic easement rules which prohibit nearly all uses.

It is time that we quit wasting limited state funds on senseless duplicative regulation. SB 401 is bad law. There are many more pressing problems our lawmakers should focus on solving and funding with limited funds – schools, job-generating business environment, highways and bridges, prison reform, etc. Given these more pressing issues, it is unconscionable to me that any lawmaker would consider imposing a third layer of regulation and diverting limited state funds for parks to such senseless regulation.

Sincerely,

Robert E. Kerivan

cc: Governor John Kitzhaber
Oregon Farm Bureau
Oregon Wine Board
Oregon Winegrowers Association
Oregon Association of Realtors
Oregon Cattleman's Association
Oregon State Chamber of Commerce