

To: Senate Committee on Environmental and Natural Resources

Re: SB 1512 (-4)

Date: February 5, 2014

Chair Dembrow, Vice Chair Olsen, members of the Committee:

We represent the landowners in the Rogue River Valley Irrigation District, Medford Irrigation District, and Talent Irrigation District (the “Rogue Valley Districts”) and write to express our concern about SB 1512 (-4). Together, the Rogue Valley Districts supply water to over 35,000 irrigated acres, as well as to industrial and municipal users stretching from Ashland to Central Point. They also provide water necessary to fulfill instream flow needs in Rogue Basin streams. We believe SB 1512 (-4) has the potential to jeopardize our ability to continue serving these needs.

Background on District Use of Klamath Basin Water and the Klamath Basin Adjudication

The Rogue Valley Districts are heavily dependent on access to water that they store in Klamath Basin reservoirs and deliver to the Rogue Basin. For this reason, SB 1512, which has the potential to impact Klamath Basin water rights, is of vital interest to the Rogue Valley Districts.

In 1975, Oregon initiated the Klamath Adjudication to judicially determine the validity of pre-1909 water right claims in the Klamath Basin. The administrative phase of the case was completed in March, 2013, and the case is now before the Klamath County Circuit Court, which sits as the Decree Court under Oregon law (ORS Chapter 539). The Rogue Valley Districts are participating in the Adjudication in order to defend their certificated Fourmile Reservoir water rights against competing unadjudicated claims by other water users in the Klamath Basin. The Oregon Water Resources Department completed the administrative phase of the Adjudication by entering administrative orders preliminarily determining the extent of pre-1909 claims throughout the basin. Such determinations are subject to a final adjudication by the Decree Court—an evidentiary and legal process, which is scheduled to begin in 2014. The court’s determination of these claims is a critical and final piece of the Adjudication process.

Significance of Proposed Changes under SB 1512

Oregon law (ORS 537.348) currently only allows a person holding a certificated or court-adjudicated water right—designations which confirm such a right as final—to permanently or temporarily change the legal characteristics of that right to instream use. In order to protect such existing certificated and decreed water rights, the statute does not allow a person to make such a change to a water use evidenced by only a permit or an unadjudicated claim.

Section 1 of SB 1512 (-4) would remove this necessary restriction on instream transfers by allowing parties to change unadjudicated claims to instream use before the Decree Court has a chance to conclusively determine the legal validity of those claims. If permitted, such a change would alter the very subject matter of the pending Adjudication proceedings and could cause harm to existing water rights.

Adverse Effect on Klamath Adjudication Stakeholders

It is our opinion that the Legislature should not put itself in the middle of the pending court proceeding. If the legislature allows irrigation claims to be converted to instream use before those claims are judicially confirmed, the Legislature risks depriving stakeholders of their due process rights to challenge the underlying claims.

Moreover, such instream conversions bring with them the risk of increased harm to existing water right holders in the basin. The Water Resources Department has only been regulating the Klamath Basin since June 2013. It simply has not yet developed the critical understanding of the basin's hydrology that would be necessary to determine if an instream conversion would cause injury to existing water right holders in the form of more frequent regulation or by otherwise depriving those rights of water to which they are entitled. Such a result would fly in the face of the fundamental public policy objective that vested water rights be protected in priority so as to avoid injury.

Conclusion

As currently written, SB 1512 (-4) would impose an increased risk to the Rogue Valley Districts' future administration of the water and rights they store in Fourmile Reservoir. For these reasons, we oppose SB 1512 (-4) and request that the Committee not move the bill forward unless these fundamental fairness questions can first be addressed.



Carol Bradford



J. H. H.



Brian Hamer