

Smith Holly

From: Teresa Kilmer <teresa@wwriver.com>
Sent: Monday, March 20, 2017 11:56 AM
To: HEE Exhibits
Subject: Public testimony HB 2706

Honorable Representative Ken Helm
900 Court Street NE, H-490
Salem, Oregon 97301

RE: Opposition of House Bill 2706

Dear Representative Helm,

The Walla Walla River Irrigation District opposes HB 2706. The bill imposes a water management fee of \$100.00 on each primary and each supplemental water right held for waters of this state under a water right permit, water right certificate, decree or groundwater registration. We believe the fee, as proposed, is inherently inequitable in its distribution and the fee does not correlate to the benefits received by the water right holders subject to the fees. We believe that the Oregon Water Resources Department has adequate funding to effectively manage the waters of the state of Oregon and that implementing such a fee constitutes a conflict of interest for the Oregon Water Resources Department.

The fee, as proposed, is inherently inequitable in its distribution. Water rights in Oregon are complex. There are water rights that are served through federal storage projects operated by the Bureau of Reclamation (BOR). We have Irrigation Districts that hold numerous water right certificates of varying priority dates that serve landowners. Our Irrigation District serves approximately 3,400 acres of some of the oldest water rights in the state of Oregon, some dating back to 1868. All of the water right certificates in our Irrigation District are held by the individual landowners. The Supremacy Clause of the United States Constitution establishes that the federal government is immune from state taxation absent its consent under the principles of sovereign immunity. If HB 2706 passes as proposed, water rights held by the Bureau of Reclamation could not be charged the fee. Landowners that are served by an Irrigation District that holds the water rights in their name would pay a minimal annual fee. For instance, if a District that serves 8000 acres has to pay an annual fee of \$1000.00, the District could raise the landowner's assessments by 13 cents per acre to recoup the costs associated with the fee. The landowners served by our Irrigation District hold the water rights in their names. Many of them would be required to pay an annual fee of several hundred dollars per year (some would pay \$1,000.00 per year), in addition to their irrigation assessments of \$76.15 per acre.

The annual water right fee does not correlate to the benefits received by the water right holders subject to the fees. As you are aware, a fee can be charged by a government entity so long as it does not exceed the reasonable cost of providing services necessary to regulate the activity for which the fee is charged. Our Irrigation District is responsible for distribution and regulation of water rights within our District. Our customers pay assessments for the operation and maintenance of our distribution system. Essentially, the landowners in our Irrigation District would be paying a fee to the state for no net benefit. An across the board fee that serves no purpose except to raise money for the Oregon Water Resources Department is not defensible.

We believe that the annual water right fee, as proposed, constitutes a conflict of interest for the Oregon Water Resources Department. The Department has issues water right certificates without regard to water availability in the Walla Walla Basin. The Walla Walla River has been over-appropriated in the spring, summer and fall since 1908, yet the Department continued to issue water right certificates until 1988. The shallow alluvial and basalt aquifers are also

severely over-appropriated. Issuing water right certificates that far exceed available supply and then implementing a fee based on the number of water right certificates is a direct conflict of interest.

The premise that if the Oregon Water Resources Department had additional funding they would be able to better manage the waters of the state is false. The Oregon Water Resources Department currently has a budget of approximately \$33 million per year. Over \$7 million of that comes from water rights transaction fees. The Department has a back log of several years on their water right transactions. The remaining \$25+ million dollars a year has not been spent on surface or ground water availability studies. The Oregon Water Resources Department has had the opportunity to work with other state funded agencies (Watershed Councils) to share data. This would have enabled the Oregon Water Resources Department access to a plethora of surface and groundwater data specific to Oregon watersheds. To date, this data sharing has not occurred, at least not in the Walla Walla River Basin. This is not a funding issue, it is a priority issue. The waters of the state of Oregon are severely over appropriated and there are major conflicts in many of Oregon's watersheds. The Department's priorities have shifted to defending themselves in legal battles over water rights and addressing issues that have resulted from the Department's historical uninformed decision making process.

If the Department needs to secure additional funding, we believe the Department should be looking at creating a fee schedule to charge for services that they are providing and not currently charging for (i.e. conflict resolution, water measurement and reporting, etc).

Sincerely,

Teresa Kilmer
District Manager
Walla Walla River Irrigation District

"I wouldn't give you two cents for all your fancy rules if, behind them, they didn't have a little bit of plain, ordinary, everyday kindness and a little looking out for the other fella, too."

~Jefferson Smith (Mr. Smith goes to Washington)