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June 7, 2017

Senate Rules Committee
Chair Burdick and Committee Members
900 Court Street NE
Salem, Oregon 97301

Re: Proposed Amendment to HB 2873-A

Chair Burdick and Committee Members –

Our firm represents the Klamath Irrigation District (“KID”). On behalf of KID, we respectfully request your support for the proposed amendment to HB 2873.

The purpose of the proposed amendment is to allow irrigation districts within the Klamath Reclamation Project to participate in the irrigation district pilot program the legislature originally created in 2003. This program, which automatically sunsets in January of 2022, affords participating districts the flexibility to transfer water rights within district boundaries, provided such transfers do not increase the amount of the water the District appropriates and other requirements of the pilot program are satisfied. The existing statutes establishing and governing this program are attached as Exhibit A.

When the existing pilot program was originally created in 2003, water rights within the Klamath Project had not yet been administratively quantified through the Klamath adjudication process. It therefore did not make sense to include irrigation districts within the Klamath Project in the pilot program. However, in 2013, a final order of determination was issued in the Klamath adjudication that quantified the Klamath Project water rights for the first time.

After the Klamath Project water rights were administratively quantified in 2013, it was recognized that irrigation districts within the Klamath Project needed a mechanism for transferring their newly quantified water rights, but that no legal mechanism for doing so existing. Consequently, in 2015, the Legislative Assembly enacted SB 206, which set up a procedure for irrigation districts within the Klamath Project to temporarily transfer their water rights within District boundaries, as other irrigation districts throughout the state are permitted to do. This 2015 legislation (SB 206) is attached as Exhibit B.

Unfortunately, the solution that SB 206 was intended to provide has not been

workable. Although water rights within the Klamath Project have now been administratively quantified, the administrative quantification remains subject to judicial review. This judicial review is currently occurring in Klamath County Circuit Court. It is widely anticipated that the judicial review process will take many years, if not decades, to fully resolve.

There are many legal issues that will be resolved through the ongoing judicial review process. For example, one such issue is whether or to what extent water rights within the Klamath Project are held by the Bureau of Reclamation, the irrigation districts within the project (as KID maintains), or individual landowners within the Districts.

While the parties to the judicial review process have varying and conflicting positions on how the pending legal issues should be resolved, all parties agree that the ongoing judicial review process is the proper legal forum for resolving the outstanding legal issues between the parties.

One of the reasons SB 206 has proven practically unworkable is that it has the unintended consequence of forcing Bureau of Reclamation, irrigation districts, and district patrons to prematurely confront unresolved legal issues that are currently pending in the ongoing judicial review process. For example, to transfer a water right under SB 206, an irrigation district must submit a transfer application. However, since the Bureau of Reclamation and individual irrigation districts are currently in litigation on the question of who owns or holds the water rights within the Klamath Project, neither party can agree to let the other submit the necessary application, or jointly submit the application, without running the risk of potentially waiving their legal positions in the ongoing judicial review process. Consequently, it is nearly impossible for an application to be submitted – even though neither the Bureau of Reclamation nor the irrigation districts object to the transfers.

The proposed amendment is a simple solution to a complex problem in that it provides the needed water management flexibility that SB 206 (2015) was intended to provide, without forcing the parties to prematurely confront legal issues currently pending in the ongoing judicial review process. Neither Bureau of Reclamation nor the irrigation districts within the Klamath Project disagree that this water management flexibility is necessary. In addition, the proposed amendment ensures that this increased water management flexibility is used in a manner that is supported by individual landowners within the District as, among other landowner safeguards, the proposed amendment only allows irrigation districts added management flexibility upon an affirmative vote of their individual patrons.

On behalf of KID, we strongly encourage the committee's support for the proposed amendment, which would allow the intent of SB 206 (2015) to be carried out in a manner that does not interfere with the ongoing judicial process currently underway in

Klamath County Circuit Court. The amendment will not increase the amount of water that any irrigation district can appropriate. The amendment will not permit any water right to be permanently transferred. The amendment will not cause harm to any party. It will simply allow irrigation districts within the Klamath Project to manage their recently quantified water rights in the same way other irrigation districts within the state are managing their water rights currently.

While we recognize this committee and the Oregon Legislature have a great many other significant issues to confront before the conclusion of the session, this issue is of profound importance to the people of the Klamath Basin. We appreciate your consideration of this matter and respectfully request your support.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Rietmann', with a long horizontal line extending to the right.

Nathan R. Rietmann

CHAPTER 384

AN ACT

SB 267

Relating to a pilot program for the temporary transfer of water use within a district; creating new provisions; and amending sections 23 and 25, chapter 705, Oregon Laws 2003.

Be It Enacted by the People of the State of Oregon:

SECTION 1. The Water Resources Department shall report to the Eighty-first Legislative Assembly, no later than January 31, 2021, on the operation of the pilot project established under section 23, chapter 705, Oregon Laws 2003.

SECTION 2. Section 23, chapter 705, Oregon Laws 2003, as amended by section 1, chapter 283, Oregon Laws 2009, is amended to read:

Sec. 23. (1) In order to increase district water management flexibility, the Water Resources Department shall establish a pilot project in which districts may temporarily allow, for water uses subject to transfer, the use of water on any land within the legal boundaries of the district established pursuant to ORS chapter 545, 547, 552, 553 or 554.

(2) The use of water on any land within the legal boundaries of the district may be allowed if:

(a) The rate and duty, and the total number of acres to which water will be applied under the transfer, do not exceed existing limits on the water use subject to transfer;

(b) The type of use authorized under the water use subject to transfer **is for irrigation and** remains the same; and

(c) The land from which the water use is being transferred does not receive any water under the right being transferred during the irrigation season in which the change is made.

(3) The department shall allow the pilot project to be implemented in the Talent Irrigation District, the Owyhee Irrigation District, the Tualatin Valley Irrigation District, the Central Oregon Irrigation District, the Swalley Irrigation District, the Westland Irrigation District, the North Unit Irrigation District, the Arnold Irrigation District, the Stanfield Irrigation District, the West Extension Irrigation District, the Hermiston Irrigation District, the Medford Irrigation District, the Sutherlin Water Control District, the Santiam Water Control District and the Ochoco Irrigation District or their successor districts. However, any district participating in the project must:

(a) Have defined state district boundaries;

(b) Have a management structure that can ensure that water is applied only where the water use is authorized;

(c) Not irrigate an area in any one irrigation season that exceeds the maximum number of acres

allowed to be irrigated under the original water right;

(d) Have a full and accurate measurement of the water appropriated;

(e) Have an accurate map identifying the location of authorized use, by priority date, for review upon request and provide a copy of the map to the watermaster; and

(f) Have on file statements by any landowner affected by the water use change indicating that the landowner agrees to the change.

(4) If any of the specified districts are unable to participate in the project, the department may identify another district for the project. **Before allowing another district to participate in the project for the first time, the department shall publish notice of the planned participation by publication in the weekly notice published by the department and shall allow the public at least 20 days to provide information to assist the department in determining whether the district meets the qualifications required under subsection (3) of this section.**

(5) The department may require that use of water under the pilot project cease and that the use revert to the use allowed under the water right of record if the department determines that:

(a) The district does not meet the qualifications established in subsection (3) of this section;

(b) The water is being used in a manner that violates the requirements in subsection (2) of this section; or

(c) The changes made to the use of water would result in injury to existing water rights or an enlargement of the original water right.

(6) The department shall annually, prior to commencement of the irrigation season, publish notice of the districts that might intend to make use of the pilot program during the year. The notice shall identify the districts by name and provide the contact information for the watermasters for the districts. The department shall publish the notice by publication in the weekly notice published by the department.

~~[(6)]~~ (7) Use of water under the pilot project constitutes a beneficial use of water and does not constitute nonuse for purposes of forfeiture under ORS 540.610.

SECTION 3. Section 25, chapter 705, Oregon Laws 2003, as amended by section 2, chapter 10, Oregon Laws 2007, and section 3, chapter 283, Oregon Laws 2009, is amended to read:

Sec. 25. Sections 22 and 23, chapter 705, Oregon Laws 2003, are repealed on ~~[June 30, 2016]~~ **January 2, 2022.**

Approved by the Governor June 11, 2015
 Filed in the office of Secretary of State June 15, 2015
 Effective date January 1, 2016

Enrolled
Senate Bill 206

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber, M.D.)

CHAPTER

AN ACT

Relating to alterations in determined water rights in the upper Klamath Basin; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section, “determined claim” means a water right in the Upper Klamath Basin determined and established in an order of determination certified by the Water Resources Director under ORS 539.130.

(2) Except as provided in subsections (3) and (4) of this section, during the period that judicial review of the order of determination is pending, a determined claim is:

(a) An existing water right that may be leased for a term as provided under ORS 537.348; and

(b) A primary water right that is subject to temporary transfer for purposes of ORS 540.523.

(3) Subsection (2) of this section:

(a) Does not apply to a water right determined and established in an order of determination that has been stayed by the filing of a bond or irrevocable letter of credit under ORS 539.180;

(b) Does not apply to a water right transfer that includes changing the point of diversion upstream; and

(c) Does not allow a person to purchase, lease or accept a gift of a determined claim for conversion to an in-stream water right as described in ORS 537.348 (1).

(4) For purposes of determining under ORS 537.348 (5) or 540.523 (2) whether the Water Resources Department may approve a lease or temporary transfer of a determined claim, an injury to another determined claim is an injury to an existing water right. Notwithstanding ORS 537.348 (6) or 540.523 (5), the department shall deny, modify or revoke the lease or temporary transfer of a determined claim if the department determines that the lease or temporary transfer has resulted in, or is likely to result in:

(a) Injury to another determined claim or other existing water right; or

(b) Enlargement of the determined claim.

(5) The department shall revoke the lease or temporary transfer of a determined claim if a court judgment stays the determined claim.

(6) If a determined claim is removed from land by lease or temporary transfer, the land from which the determined claim is removed may not receive water during the term of the lease or temporary transfer.

SECTION 2. (1) Section 1 of this 2015 Act is repealed January 2, 2026.

(2) Notwithstanding the repeal of section 1 of this 2015 Act by subsection (1) of this section, subject to modification or revocation under section 1 of this 2015 Act, a lease or temporary transfer of a determined claim under section 1 of this 2015 Act for a term beginning prior to January 2, 2026, may continue in effect for the term of the lease or temporary transfer. If a court judgment results in a modification of the determined claim, the parties may continue the lease or temporary transfer of all or part of the water right as modified for all or part of the original term of the lease or temporary transfer.

SECTION 3. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by Senate April 28, 2015

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 4, 2015

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2015

Approved:

.....M.,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State