

Before the Senate Committee on Natural Resources and Wildfire Recovery

TESTIMONY ON HOUSE BILL 2616

Presented by Brad Taylor, Medford Water Commission

HB 2616 would grant one property owner the authorization to store water in a reservoir despite the fact that the water to be stored has already been legally granted to the City of Medford. Accordingly, the Medford Water Commission (MWC), which by charter manages the water supply for the City of Medford, must oppose HB 2616.

According to the landowner who requested this bill, they were unaware that the reservoir did not have a water right when they purchased the property. This is perplexing since it is common practice to conduct a due diligence evaluation prior to a land sale transaction, especially for a property with a reservoir. Typically, in cases where a seller indicates a water right exists the buyer seeks documentation of the right and confirms this with the Oregon Water Resources Department. The landowners appear to have failed to do so here. The resolution to this landowner's lack of due diligence should not be to deprive the MWC of a portion of its property rights – a water right it has held for nearly 100 years.

In 1925, the Oregon Legislature granted the City of Medford “the exclusive right to use for municipal purposes all of the waters of Big Butte Creek...and of its tributaries” subject only to existing water rights at that time. ORS 538.430 states “No person shall appropriate or be granted a permit to use any of the waters except as provided in this section and for the use and benefit of the city.” The Oregon Legislature recognized that Medford needed sufficient water supply to meet the city's future water needs in a relatively dry portion of the state. Over-turning this exclusive right granted to Medford by passing HB 2616 creates a dangerous precedent that threatens not only municipal water supplies, but water right holders across the entire state.

This bill has been justified by claiming the reservoir may have been eligible for “registration” in the mid-1990's under previous “ponds bills.” However, the ponds bills addressed a statewide policy issue; it was not an attempt to override Oregon's fragile prior appropriation system for the benefit of a single landowner. Moreover, it is unclear whether the subject pond would have even met the statutory criteria for granting amnesty.

This bill is especially egregious because water resource constraints are not the same today as in the mid-1990's. Circumstances have fundamentally changed and granting any additional authorizations to appropriate water in the Big Butte Creek basin will injure MWC's existing senior water rights.

- **Recurring Drought** - Since the mid 1990's the MWC and the rest of the region have been facing reoccurring drought conditions, which have impacted MWC's water supply sources. Water supply coming from MWC's Big Butte Springs source is currently reduced to amounts not normally seen until mid-summer.
- **Limits on MWC Water Rights** – Recently, several of MWC's water use permits have been conditioned in order to keep more water instream to meet the needs of listed fish species. These water right conditions apply to MWC's senior priority date permits to divert water from Big Butte Creek and to store water in Willow Lake Reservoir.

The result of these combined circumstances leaves the MWC with a reduced ability to provide water supply as demands within the region increase. As a result, any measures that grant additional appropriations from the Big Butte Creek basin will reduce MWC's ability to meet its duty to serve water to the citizens of Medford and the region and will injure its existing senior rights.

There are numerous other examples across the state of good people discovering that they have an unpermitted water use and that they cannot obtain a new water right. These people have either terminated water use or found another way to comply with Oregon water law. This could include acquiring an existing water right, harvesting rain water, having water trucked to them, etc. It is simply unjust that many other individuals have been compelled to comply with Oregon water law and implement one of these solutions, while this single landowner receives the benefit of HB 2616.

Finally, MWC is aware of claims that the subject reservoir provides a critical source of water supply for fire suppression. I would just note that there are multiple legal ponds in the area and multiple large reservoirs within a few miles of the subject reservoir that could serve this purpose. Such a speculative use should not over-ride the documented need for water supply within this **closed** basin. Moreover, authorizing additional appropriation of water as contemplated in HB 2616 is inconsistent with state and federal actions to protect stream flows for listed fish species -- and a slap in the face to MWC whose senior water rights were recently limited for that very purpose.

The MWC is opposed to resolving this single landowner's problem at the expense of Oregon's system of water rights management. Such an action will injure the MWC's existing water rights. MWC is opposed to HB 2616.