



April 26, 2021

To: Senate Natural Resources & Wildfire Recovery Committee

RE: HB 2616 Opposition

Senator Golden and Committee Members,

OACD opposes HB 2616 which exempts a pond facility from the required permitting process by an act of the legislature and injures water rights with a pre-existing date of appropriation.

OACD represents Oregon's 45 Soil and Water Conservation Districts, which are special districts governed by countywide elected boards. The Districts protect and enhance soil quality, water quality and quantity, and habitat by supporting voluntary conservation in partnership with private landowners and managers as well as federal, state, and nonprofit partners.

In the Big Butte Creek Watershed where this facility is located, ORS 538.430 withdrew the stream from appropriation in 1925 except for the municipal uses granted the City of Medford at that time. The withdrawal precludes the Water Resources Department from issuing a permit for this facility or any subsequent water right use. Therefore, the arguments about missing an opportunity under the 1990s special exemption for certain ponds is moot, as the city's water right extends back to 1925.

A series of state and federal court cases were filed from 2000-2018 in this same area by a nearby reservoir owner attempting to secure a water right for unauthorized use. In one case the court required the pond to be drained. It was drained; and when it was refilled again illegally, criminal proceedings resulted. Cases in the federal district court and an appeal to the Ninth Circuit Court were denied. The pond that is the basis of this legislation has the same conditions as the pond/reservoir in the lawsuit in the Ninth Circuit Court. Both were really reservoirs and not ponds and both were used for fire protection among other uses. In addition, the Water Resources Department indicated in its testimony before the House Water Committee that there are other unauthorized ponds on neighboring properties in this area which the department has not yet acted against due to their workload.

The pond that is the source of this statute exceeds the requirements for a "pond" by definition: less than 9.2 acre feet of stored water with a dam under 10' in height. It is actually a reservoir under the statutes and requires dam safety qualifications. An exemption would not have been allowed in the 1990s even if water was available because this was a reservoir and didn't meet the standard of the exemption for ponds.

We are strongly opposed to the concept of legislatively overriding the state water rights system for the benefit of one landowner, resulting in injury to existing appropriated water rights. The result will invite many similar requests, even in this immediate area. The basis of Oregon Water Law is priority and not causing "injury" to existing water rights. This proposed statute would fail on both points. This request injures the City of Medford's water right with an earlier appropriation date. In addition, Big Butte Creek is over-appropriated on a year-round basis already while also supporting ESA listed species. There is both a water right issue and an environmental issue in opposition to this proposed statutory change.

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