



To: Chair Edwards, Members of the Senate Committee on Environment & Natural Resources

From: Tracy Rutten, League of Oregon Cities

Date: March 16, 2015

Re: Support for SB 712 with -3 Amendments

On behalf of Oregon's 242 cities, the League of Oregon Cities appreciates the opportunity to testify in support of SB 712 with the -3 amendments. We have introduced this bill as it is of critical importance to some of our smallest members and the ratepayers they serve. This bill provides a legislative fix to a 2013 Court of Appeals decision which retroactively applied what are known as "fish persistence conditions" to municipal water right permits. This has resulted in a portion of water that may have been used by certain communities since the mid-1990s being no longer available for use.

Since the existence of "fish persistence conditions", the Oregon Water Resources Department adopted rules and provided communication to our members that the application of those conditions to the "undeveloped portion" of their permit, would occur "to date" or in other words, at the time of processing an application for an extension of time. Administrative rules were adopted to support that application of the statute.

We have a number of permits that have been processed with conditions not having been applied retroactively. Therefore, failure to pass SB 712 would create an unfair playing field, with certain permits being retroactively conditioned when others that are similar from neighboring communities were not, simply because of the timing of their extension being filed and processed. If a municipality was able to get through the extension application process prior to the court decision, they were not retroactively conditioned and with no one protesting the Department's application of the statute, the decision became a final order. For example, one community may have filed for an extension of time in 2008 and the Department conditioned the undeveloped portion of the permit "to date", which would be 2008. The extension was approved and is now final. The court's decision would not impact that community and they will not be retroactively conditioned as a result. We therefore, now have municipalities who will be either winners or losers based on their timing and when the Department was able to get to their permit extensions.

-
- SB 712 provides critical clarification and certainty to municipal water and the citizens who depend upon it.

- It protects existing drinking water supplies for a number of Oregon communities, many of which are small and rural.
- The bill ensures that bond ratings are not adversely impacted due to retroactive application of conditions when public investments have already been made in community water supply projects. Certainty of water can be a component and factor in determining a community's bond rating.
- Municipalities invest substantial resources on conservation efforts. For many years we have engaged in legislation in order to advocate for the importance of preserving continuing education for landscape contractors because outdoor landscape-related irrigation in our cities can account for up to 50% of our overall water use. We are working to support legislation that will address significant water supply issues on a statewide basis including having worked to support Oregon's new water supply development fund in 2013. Our municipalities spend public resources on education and outreach about conservation, we adopt billing structures that incentivize our consumers to use less water, and we are working to expand financial opportunities to upgrade aging pipes and infrastructure that can conserve significant amounts of municipal water.
- Municipalities also have a substantial interest in ensuring adequate flows as wastewater discharge permits are dependent upon adequate flows in order to achieve compliance through DEQ and the EPA.
- We are not talking about a substantial amount of water, but for these communities and their ratepayers, this water is of critical importance. Communities need to ensure adequate supply, but they also must secure alternate sources and back-up supplies in case drinking water becomes contaminated due to spills or even risk from forest fires.

Oregon's Integrated Water Resources Strategy gives a good picture of overall water use for the state of Oregon and I think this helps to provide some perspective of the amount of water we are talking about protecting today.

"Water users in Oregon divert about 9 million acre-feet of water each year for out of stream uses. This represents approximately eight percent of the estimated annual yield. These diversions serve four primary types of user groups: agriculture, municipalities, self-supplied industry, and domestic (well) users." Again, that is of the approximately 9 million acre-feet diverted each year. "The water that is not diverted totals approximately 91 million acre-feet. A portion of this water, approximately 19 million acre-feet is protected by approximately 1,400 instream water rights held in trust by the State."

Municipal water use accounts for approximately 6% of the 8% that is used annually or out-of-stream uses, or approximately one half of one percent. SB 712 provides certainty for a very small subset of these municipal water providers. They are primarily small and rural communities. We are talking about a small percentage of one-half of one percent of the statewide picture.

Thank you for your consideration of SB 712 with the -3 amendments. Please contact me at trutten@orcities.org with any questions.