

## Smith Holly

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**From:** William D Kennedy <wdkennedy1955@icloud.com>  
**Sent:** Tuesday, March 21, 2017 12:31 PM  
**To:** HEE Exhibits  
**Subject:** HB 2705 / 2706

Dear Representative

I am a natural resource producer in Klamath County Oregon and Glenn County California. My daughters and I produce high quality rangeland and irrigated pasture. Our production is harvested with beef cattle as well as hay production. Our forest production is based on sustainable yield harvest in a 15 / 20 year rotation. All of our holdings are dedicated to wildlife habitat and are enrolled in Operation Stronghold, providing habitat and privacy to migrating waterfowl, regional wildlife and predators. Species include the Bald and Golden Eagle, Grouse, Sandhill Cranes, Canada Geese, Coyote, Badger, ducks and beavers.

I write you regarding HB 2705 and HB 2706

Both of these bills declare an emergency. The Legislative process becomes less than transparent when this action is taken. This needs to be called out.

Much of the language in these bills is clearly derived from administrative source. This also circumvents the legislative process and infers that the language is fully vetted. This is basically taking the wish list of the administration, in this case OR WRD, and legislating it into existence.

Regarding HB 2706:

I am opposed to any new fee / tax by our state until the state can demonstrate fiscal responsibility by actions such as discrepancies between federal and state funded health care and substantial reductions of the overall size of the state payroll and of course a resolution to the PERS fiasco.

I will focus on HB 2705.

HB 2705

*“Requires water appropriator to install device at point of diversion or appropriation to measure amount, and allow determination of rate and duty, of water being used. Creates exception for water being used for exempt purpose. Requires reporting measurements to Water Resources Department.*

*Allows civil penalty for violation, not to exceed \$500 per day.”*

My comments:

The measurement device is installed to measure. The measurement is usually in cubic feet per second, which can be converted into acre-feet, or gallons per minute. Determination of rate and duty is made by the water right that is held. The language of the bill is not clear.

This bill does not specify if the owner of the water right can do the measurement and reporting themselves or if they are required to hire a certified water rights examiner (CWRE) to do the work. This gets expensive. Most individuals are capable of measuring and reporting without hiring a CWRE.

Measurement devices vary from a simple weir to a sophisticated electronic device that uses ultrasound or Doppler radar to measure. The measurement method is to be determined by the Water Resource Commission. Some states are reasonable about this. Look at Idaho. My experience with OR WRD is that the direction is towards expensive and sometimes impractical technologies. I can imagine that some in the OR WRD will want the latest and greatest regardless of practicality and expense.

What is exempt?

*“Water appropriator” does not mean:*

*(A) The holder of an in-stream water right; or (B) A customer, district member or other secondary user of water that another entity has diverted or appropriated under a claim of right.”*

My comments:

(A) This is not equitable. Why not require an in-stream water right holder to make the same annual measurements and maintain the same devices? Knowing what our in-stream flows are is critically important. In most cases our state measures these flows. What we have learned from the Klamath River Adjudication Final Order of Determination is that the in-stream flows granted as rights are in many cases above the annual average stream flows themselves. This is an over appropriation. If measurement is going to be required it should include in-stream water rights.

(B) So while I receive water from the "A" canal I am not required to measure or report my use at my point of diversion. I do this within my irrigation district. This may be reasonable.

### **An unintended consequence.**

There is no mention of measurement of return flows in HB 2705. Sometimes the argument from OR WRD is that any return flow from irrigation use is wasted water. It is expensive to have return flows. If I am using expensive electricity to apply my appropriation I want to avoid "wasted" water. Throughout the west, the result of this direction is elimination of return flows. This has resulted in an overall reduction in water use efficiency, elimination of important groundwater recharge and water re-use.

Besides irrigating crops for harvest, I provide some of the best wildlife habitat in the Pacific Northwest flyway. Some of the greatest habitat is found in drainage at the tail end of our irrigated lands. We do not want to dry up this habitat. Water re-use is important to wildlife and to international commerce.

Unlike sprinkler or drip irrigation, practices of flood irrigation improve water quality. The water I apply has high levels of background phosphorus. This is natural. Spring water in Crater Lake National Park and spring water feeding Upper Klamath Lake has high background levels of phosphorus. This is why upper Klamath Lake is naturally hyper eutrophic. Some of this phosphorus is captured and utilized by my crops. This is one reason that the irrigated pasture in the Klamath Basin is the most productive pasture in the northern hemisphere. In the meantime, my tail water is cleaner than the headwater.

### **Another approach**

Prioritize. Someone at OR WRD has probably already done this. There is a list of water appropriations that are not measured. Decide which ones we want to know more about. Then come up with a reasonable and equitable collaboration between OR WRD and the owner of those water rights to measure and document. Collaboration can include OWEB funding and university knowledge. Collaboration can include OR Fish & Wildlife and OR Department of Forestry. I am certain that there is a private entity that is capable of doing the administrative work of this direction much more efficiency than our state government.

### **Holistic Resource Management**

Right now water is flowing out of our forests seeps and springs and into surface flows of licks, creeks, and rivers. Where private forestlands are managed to optimum densities there is clean water flowing. There is a slow absorption and release of water. Our federal forests that have been void of any management for the past 30 years do not yield these same flows or results. Look at the flows out of federal lands that have suffered from catastrophic wildfires. A priority can be to identify sources of water within our federal and state forests, measure their current annual output and quality, implement enduring forest management plans that harvest commercial timber with a goal of creating healthy forests. This will also create healthier rural communities.

I am reminded of a friend of mine, Dr. John Buckhouse of OSU who said, "The biggest threat to the environment is poverty." When we place an economic burden upon natural resource managers and producers, we stress the environment. When the rural communities that benefit from natural resource production work together and agree upon goals and objectives, our transparent collaboration can benefit the environment that we all want to live in.

I oppose HB 2705 because it is not holistic. It is a top down directive that is old and in the way. It is a mandate that stresses our economy without consideration of unintended consequences. I urge you to direct our state agencies to use collaboration and communication with the owners of all water rights. Use a carrot instead of a stick and enroll in a twelve-step program to take care of yourselves. We cannot expect anyone to be helpful if they cannot take care of themselves first.

Sincerely

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