

**Testimony and Statement of Robert E. Bluth
Senior Vice-President, General Counsel for Harry & David Holdings, Inc. and its
Subsidiary and Affiliated Companies
Before the U.S. House of Representatives**

**Committee on Resources
Subcommittee on Water and Power
HR 4195
Southern Oregon Bureau of Reclamation Repayment Act of 2005
November 9, 2005**

Mr. Chairman and members of the subcommittee, my name is Robert Bluth. I am a Senior Vice President and General Counsel of Harry & David Holdings, Inc. and its subsidiary and affiliated companies. The Harry & David parent corporation was formerly known as Bear Creek Corporation. We are best known for our brands Harry and David, the gourmet fruit and gift company, and Jackson & Perkins Company, the largest rose developer and grower in the United States. We grow the majority of the Royal Rivera® pears, which are the signature product of Harry and David, in Southern Oregon and we grow our Jackson & Perkins roses in Wasco, California.

I am here testifying in favor of H.R. 4195. H.R. 4195 not only resolves unique problems that exist within southern Oregon, but also allows early and full repayment of Reclamation projects. Moreover, H.R. 4195 leaves intact all water rights pursuant to Oregon state law without altering Harry & David's (or any other landowner's) obligation to either the Rogue River Valley Irrigation District or the Medford Irrigation District. After the enactment of H.R. 4195, Harry & David will remain fully obligated to pay all appropriate district rates and assessments, including payment of a proportionate share of all district operation and maintenance costs.

As a patron of all three irrigation districts in southern Oregon, Harry & David receives water, from the Rogue River Valley Irrigation District, Medford Irrigation District and Talent Irrigation District. While all three of these irrigation districts have benefited from Bureau of Reclamation projects and have repayment contracts with Reclamation,

only the Talent Irrigation District contract allows for early repayment. In California, Harry & David receives water from the Shafter Wasco Irrigation District which is also subject to Reclamation regulation. As a limited recipient under current law, Harry & David can only receive Reclamation water on 640 acres of its lands.

Compliance with Reclamation law has been complicated by the historical fact that the three southern Oregon districts all had developed water rights and facilities and were delivering water to Harry & David and other landowners prior to the Bureau of Reclamation's enhancement projects in southern Oregon. The Reclamation projects were, of course, welcome and allowed the districts to expand the acreage that could be put into production. Lands irrigated before the Reclamation projects were denoted "old lands." Lands that benefited from the Reclamation projects were denoted as "new lands." The acreage limitations only applied to the "new lands."

Compliance with the acreage limitations mandated by Reclamation law is monitored and enforced through reporting requirements where land ownership (direct and indirect) is "attributed to all those who have an 'ownership' interest in lands receiving or benefiting from Reclamation law." The statutes and applicable rules and regulations require anyone who has an attributed ownership interest of 40 acres, or more, to complete and file detailed reporting forms. Under the current application of Reclamation rules, rather than using a reporting basis of 640 acres of land (the "new lands"), all of Harry & David's lands (both the "old lands" and "new lands") are included for the calculation. Thus, the reporting requirement is triggered at a lower percentage of ownership threshold than if only 640 acres were subject to reporting.

As our company has grown, Harry & David would now like to avail itself of equity capital through public offerings of its stock. With the low reporting threshold associated with our company, any individual or entity with more than a 1% ownership interest will need to file Reclamation reporting forms. Our underwriters and the SEC staff have

confirmed our view that this is a significant issue requiring prominent disclosure to potential purchasers of stock. This disclosure is likely to severely impair our ability to market Harry & David stock and may, in fact, preclude our ability to do so. Due to our situation, large “institutional” investors (such as mutual funds, pensions funds, etc.) who purchased only slightly more than a 1% ownership interest in Harry & David, would themselves be required to investigate and determine whether those who own an interest in these institutional owners must also report. This atypical requirement associated with the ownership of Harry & David stock would further discourage institutional investors. In addition to the above, given the fact that these shares would be bought and sold on a daily basis, actually attempting to comply with the reporting requirement would become a practical impossibility for Harry & David, the districts, and the Bureau of Reclamation.

The law does not provide Harry & David with a mechanism to compel a stockholder to file Reclamation reports. Failure to file by any stockholder, individual or entity that is required to file, would subject that shareholder to civil and criminal sanctions. More importantly, such a failure would result in the denial of irrigation water from the four irrigation districts to all the “new lands” and the “old lands” owned by Harry & David, thereby putting our entire enterprise at risk.

It was in the context of discussing how to deal with these compliance issues that it was suggested by Reclamation that Harry & David simply buyout its proportionate repayment obligation. This makes good common sense because once the obligation is repaid, and we rely solely on our private well in the Wasco irrigation district, Harry & David would not be required to report. Also, the United States would benefit from early repayment.

Early payment was already provided for in the Talent Irrigation District’s contract with Reclamation. The Rogue River Valley Irrigation District and Medford Irrigation District contracts do not include early repayment provisions. Due to certain limitations in

Section 213 of the Reclamation Reform Act, those two irrigation districts cannot be amended to allow early repayment.¹

Therefore, proceeding with H.R. 4195 will allow early repayment within Rogue River Valley Irrigation District and Medford Irrigation District, fiscally benefit the United States, and resolve the issues that had been identified while preserving state water rights and obligations to the irrigation district.

I respectfully request the Committee to move this legislation forward.

This concludes my testimony: I am pleased to answer any questions.

¹ Shafter Wasco District is within the Central Valley Project which has not been declared complete and, for that reason, among others, is not able to determine what a final landowner repayment obligation would be. Our company has private wells that would be the sole source of water on our California lands.