



HB 2277

Testimony of WaterWatch of Oregon Submitted to House Committee on Rural Communities, Land Use and Water

February 26, 2015

Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. We work to ensure that enough water is protected in Oregon's rivers to sustain fish, wildlife, recreation and other public uses of Oregon's rivers, lakes and streams. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

WaterWatch opposes HB 2277 as drafted

What HB 2277 does: HB 2277 expands the authority of drainage districts from drainage and irrigation purposes to allow the construction, operation, maintenance or improvement of flood control projects.

Flood control projects include but are not limited to dams, storage reservoirs, canals, ditches, dikes, levees, revetments and floodwalls for the control, diversion, conservation or abatement of floodwater, or of an excessive or unusual accumulation of water in a natural or artificial body of water. See Section (2)(1)(a).

While WaterWatch is still analyzing HB 2277, as written we do have a few areas of concern.

First, as drafted HB 2277 is not clear that the drainage district would need to obtain a reservoir right from the Oregon Department of Water Resources were it to seek to build a dam or reservoir. In other sections of the Drainage Act it is clear that the district would need to obtain water rights for any ensuing irrigation, but there is no mention of reservoir rights.

Second, given that the Drainage Act allows for use of "reclaimed" waters for later irrigation, it is unclear if this expansion to storage is simply a mechanism to increase associated irrigation supplies. That the bill allows for the building of dams and reservoirs, and allows the "diversion" (again without reference to a water right) of high waters is where the concern originates.

Third, the flood control provisions are not limited to floodwaters, but also include "excessive or unusual accumulation of water" in a "natural or artificial body of water". There are two concerns with this provision. First, it is unclear what "excessive or unusual accumulations of water" is meant to be. This seems overly broad. Second, when combined with "in a natural

body of water”, we are concerned this bill is seeking to grant drainage districts statutory access to peak and/or ecological flows, which are incredibly important to the hydrologic functioning of rivers.

Fourth, it is unclear how Section 11 dovetails with state and federal wetland protection laws. As written, it appears to allow authority of a drainage district to form to reclaim lands from a body of swamp, wet or overflowed lands to further agricultural purposes. It would be helpful if this section could be amended to make clear that any reclamation must be consistent with wetland/environmental protection laws.

Fifth, HB 2277 greatly expands already broad condemnation authority. Section 11 grants landowners of only 50 percent of the “swamp, wet or overflowed lands” or even “irrigated lands from which waters contribute to the swamp or to the wet or overflowed condition of the same or different land” the broad authority to form a drainage district. This district then enjoys the broad condemnation authority of Section 14. Section 14 now extends drainage district’s already broad condemnation authority to flood control projects. Condemnation is not limited to drainage district lands, but includes any lands--including public lands. The reach over public lands is especially troubling as Section 14 includes the ability to condemn public lands that are already devoted to public use that is “less necessary” than the use for which it is required by the district, whether used for drainage, irrigation or “any other purpose”. This, basically, allows condemnation for any purpose whatsoever. We would suggest that the Legislature take this opportunity to narrow existing and proposed condemnation language to be more in line with modern day values (the original language, as we understand it, was adopted in 1917).

Also of concern is the fact that Section 14 allows the condemnation for the construction, operation or maintenance of any drainage or irrigation works, including the enlargement, improvement or extension of any natural or artificial waterway for such purposes. When applied to flood control directives, it appears to us that this could lead to substantial changes to stream channel structure and/or morphology.

Conclusion: While we understand this bill originates from current issues facing Multnomah County Drainage District, the reach of the bill is statewide. It is because of this statewide reach that WaterWatch has the concerns outlined above. As noted, WaterWatch currently opposes HB 2277, however, we are hopeful that we can work with bill proponents to address our concerns in a manner that preserves the intent to allow Drainage Districts to control flood waters that pose a risk to human life or property.

Contacts:

Kimberley Priestley, Sr. Policy Analyst, 503-295-4039 x 3, kjp@waterwatch.org
Jonathan Manton, 541-729-2923, jonathan@sawneeservices.com