



**Testimony of Brian Posewitz on HB 3217**  
**House Committee on Rural Communities, Land Use and Water**  
**March 31, 2015**

Chair Clem, members of the committee, my name is Brian Posewitz. I am a staff attorney for WaterWatch of Oregon. WaterWatch is a nonprofit organization that works to protect and restore stream flow in Oregon for the benefit of fish, wildlife and recreation, and for the people who enjoy those things. This year, WaterWatch celebrates its 30<sup>th</sup> anniversary.

While WaterWatch supports innovation in watershed restoration, WaterWatch has several serious concerns about House Bill 3217 and therefore opposes the bill as drafted.

In general, we do not understand why the stated objectives of the bill – to re-create the environmental benefits of beaver dams – cannot be accomplished within the existing regulatory framework. The requirements to provide fish passage at dams, to obtain permits for removing and filling stream channels, and to protect riparian vegetation seem to us to be reasonable requirements even for dams seeking to mimic beaver dams.<sup>1</sup>

In particular, WaterWatch opposes the bill’s provisions to exempt “artificial beaver dams” from Oregon’s fish passage laws and to require the state to pay for whatever fish passage is provided. Oregon’s fish passage laws have been carefully crafted over the years to balance a property owner’s interest in having a dam in a stream channel with Oregon’s interest in allowing native migratory fish to move freely within a stream system. *See* ORS 509.580 to 509.645. For example, the laws direct the Oregon Department of Fish and Wildlife to require fish passage at existing dams only when certain “trigger” events occur (such as a new dam), ORS 509.585(4), and the laws provide waivers and exemptions in appropriate cases, ORS 509.585(7)-(9). We see no reason to upset this balance for this particular class of dams.<sup>2</sup>

Although the bill would apply only on certain small streams not used by redband trout, or by “game fish” for “spawning, rearing or food production,” fish passage on such streams may be important. Game fish may use the stream for a reason other than those specified (migration, for example), or other native migratory fish may use the stream and require passage. Moreover, the streams may be used by fish in the future, which Oregon’s fish passage laws wisely recognize in requiring passage on streams “historically” used by native migratory fish even if they are not presently used by such fish.

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<sup>1</sup> We also agree that bringing real beavers back to the land seems like a better approach, although we understand that present habitat might not allow that.

<sup>2</sup> We have been told by fish biologists that real beaver dams generally do not prevent fish passage.

Finally, we would like to see it made clear that this bill does not create any exemption or modification to Oregon's water laws, which generally require a permit for a dam in a stream channel. We understand that proponents of these dams believe they do not require such permits, but we do not necessarily agree. If this bill moves forward, we would like to see language added to the bill to say it does not provide any exemption or modification to existing law except as expressly stated in the bill.

Thank you for the opportunity to testify today and I would be happy to answer any questions.

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