



HB 2277A

Testimony of WaterWatch of Oregon Submitted to Senate Committee on Environment and Natural Resources

May 6, 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 2277A as drafted

What HB 2277A does: HB 2277A expands the authority of drainage districts from drainage and ancillary irrigation purposes to allow the construction, operation, maintenance or improvement of flood control projects. Per the definition offered in HB 2277A, flood control projects are not limited to capturing floodwaters, nor are these new flood control powers limited to controlling water that will harm life or property. Under the auspices of "flood control", drainage districts can condemn private and/or public lands that simply are subject to "effects of water".

As drafted, WaterWatch opposes HB 2277A.

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. If the bill were narrowed so that the bill's flood control provisions only applied to Multnomah County Drainage District, WaterWatch would not oppose. As is, however, it applies to all drainage districts across the state.

The Drainage District Act is an archaic law that dates back to the turn of the 19th century. This powers and purposes of this Act deserve a wholesale review. HB 2277A does not supply the comprehensive overhaul that is needed. A subset of our concerns are as follows:

First, the expansion to "flood control" is not about protecting life/property. HB 2277A Section 2(1) sets forth a definition of "flood control project" that is not limited to protection of life and property, because of the inclusion (per the -2 amendments) of the word "or" between Section 2(1)(a) and (b).

Second, 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”. See Sect. 2(1)(a). 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.

Third, HB 2277A greatly expands already broad condemnation authority. Section 10 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 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: As noted at the outset, 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 opposes the bill.

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