

Testimony of City of Gresham Water Resources Program Staff Keri Handaly

In Opposition to SB 865 and SB 866

Senate Committee on Environment and Natural Resources

3/9/17

Chairman Senator Dembrow and Members of the Committee, good afternoon. My name is Keri Handaly. I am the Stormwater Permit Coordinator for the City of Gresham. The City's address is 1333 NW Eastman Parkway.

Our city's understanding of these bills is that they were put forward by the interests of irrigation districts. While generally, we support the idea of creating appropriate structures or procedures to ensure the safe discharge of water from one entity to another where they do not already exist, we are very concerned about the breadth and overreach of these bills.

SB 865 Specifically, duplicates a notification procedure that is already in place between the City and the Multnomah County Drainage District that occurs at the pre-application and land use process which is earlier and more informative than the plat approval. The timeline stated conflicts with timeframes for review already codified at the City and State Land Use Regulation level.

Therefore, we oppose SB 865.

SB 866 is an overreach of authority. SB 866 language seems to apply to any discharge, anywhere, for any population size. The Oregon Department of Environmental Quality oversees the implementation of the Clean Water Act and State Water Quality Standards, which are currently not applied to all cities and counties. Clean Water Act standards are applied to entities based upon population size thresholds. Moreover, it is unclear what constitutes "reasonable steps" to comply with the Clean Water Act or whom would oversee and make that determination, making this bill impossible to administer.

Long-standing Oregon Water Law requires upstream property owners to avoid altering the natural flow path, and requires downstream property owners to accept and convey water flowing onto their property. SB 866 requires written approval from a downstream property owner for water to continue flowing downhill (as it always has), creating a massive administrative burden.

While it is one thing to envision this bill as only affecting private man-made canals and irrigation districts, the bill's language also applies local government to local government and describes requesting approval to discharge to another's "infrastructure." In reality, stormwater is usually discharged to natural water bodies via outfalls. Streams, creeks, and rivers are not infrastructure and must not be defined as such. Moreover, watersheds do not follow political boundaries and we must not set up laws requiring all agencies uphill from another to obtain permission for natural drainage?

For example, could every city and county in the Willamette watershed be prohibited from discharging stormwater without the permission of Portland because they are the downstream local government? In Gresham, the drainage district has the responsibility of pumping water to manage the Columbia Slough, itself. Our smaller creeks naturally flow into the Columbia Slough long before the drainage district was established. This bill would remove the City's ability to develop unless it controls 100% of its discharges

within its boundary OR pay any associated liability or fee requested by the drainage district for managing the water as it flows downstream. Either one of these scenarios applied across the state would likely result in paralysis of Oregon's economy because of litigation and associated fees for discharging.

In Gresham, the financial impact to the development community and the City is estimated to be somewhere between \$50M and \$200M, respectively. This would likely grind development to a halt, heavily impact our economic development efforts, and spike stormwater fees well beyond residents' ability to pay.

The Oregon Dept. of Environmental Quality requires the urban population centers across the state to create stormwater management plans and treatment and discharge control development standards and manuals to comply with the Clean Water Act. Cities also create stormwater master plans to identify capital project needs to manage stormwater effectively. There are already effective management permitting and notification procedures for the state, cities and drainage districts to communicate with another to manage stormwater.

Therefore, we oppose SB 866.