



March 9, 2017

To: Chair Michael Dembrow, Vice-chair Alan Olsen, and Members of Senate Environment and Natural Resources Committee

RE: Testimony in Support of SB 865 and SB 866

Dear Chair Dembrow, Vice-Chair Olsen, and Members of the Committee:

The Oregon Water Resources Congress (OWRC) is testifying in support of SB 865 and SB 866. SB 865 and SB 866 address two important intertwined issues and are designed to increase communication and cooperation between public entities.

SB 865 will ensure that there is a consistent process for districts to provide information to cities and counties prior to the completion of the plat review process and so that development can occur without unintended consequences or unnecessary delays. SB 866 will increase communication and cooperation between public entities in managing urban stormwater and reduce legal battles that occur when agreements are in not in place. **SB 865 and SB 866 will help increase coordination between public entities, reduce delays to development, and prevent adverse impacts to irrigated agriculture and Oregon's water resources.**

Background & Need

OWRC is a nonprofit association representing irrigation districts, water control districts, improvement districts, drainage districts and other government entities delivering agricultural water supplies. The water stewards we represent operate complex water management systems, including water supply reservoirs, canals, pipelines, and hydropower production, and deliver water to roughly 1/3 of all irrigated land in Oregon. OWRC has been promoting the protection and use of water rights and the wise stewardship of water resources on behalf of agricultural water suppliers for over 100 years.

SB 865 and SB 866 are intended to increase cooperation between public entities and reduce inadvertent consequences that can arise when urban development occurs in and around traditional agricultural land. The subject of plat review and stormwater discharge have been highlighted in previous legislative sessions, separately, and without resolution, the adverse impacts from the underlying issues have only increased. SB 865 and SB 866 are significantly different from language in previous bills and are based on feedback received from various stakeholders.

SB 865 Plat Review

The concept of district review of draft plats is not new and historically irrigation districts and other agricultural water suppliers have been able to approve or wholly disapprove plats. In fact, districts used to have the authority statewide under ORS 92.110 to review and approve plats until 1993 when the entire statutory section was removed with little legislative history as to why. Since the repeal of this important tool, districts around the state have faced challenges from development occurring in or near district facilities and infrastructure that could have been prevented if there had been greater communication and coordination with the districts. The placement of structures or materials in or near district canals and other infrastructure has led to serious problems including canal breaches, flooding of property, impacts to water quality, increased risk to public safety, and numerous insurance claims.

Oregon irrigation districts and other agricultural water suppliers are seeking a consistent process for providing information to cities and counties during the plat review process so that property development near district facilities can occur without unintended negative consequences. Currently, a number of cities and counties do provide districts with some sort of notice or process to review and sign off on plats. However, these processes vary across the state and some districts have limited or no ability to provide information until the development process is finalized. In some circumstances, the information provided by districts when they engage in the land use process is summarily ignored, which is why SB 865 is needed. If the development occurs without the ability for the district to provide information about where facilities are located or recommend conditions, it can lead to costly and time consuming litigation for all parties involved and insurance claims when there are problems.

SB 865 would address these issues by partially reinstating a plat review process, ensuring that districts receive notice and have a specific avenue for providing information that governing bodies may use to prevent problems that can arise when development occurs near district facilities. And it is important to note that this bill does not create a veto process for districts, it simply provides an avenue for districts to submit recommendations, which may or may not be used as permit conditions by the relevant city or county during the plat process. The information that can be submitted about potential development impacts must be based on policies adopted by the district board of directors, which are themselves local governments. Once this bill is passed, the districts' board approved policies related to development can be included the appropriate city or county plat signing packet that is given to developers to encourage communication between the developer and district early in the development process.

Ensuring that districts have an opportunity to provide recommended actions prior to plat approval will **help prevent unintended consequences to district facilities and the farmers they serve while ensuring that planned development can occur without costly delays.**

SB 866 Stormwater Discharge

The discharge of urban stormwater into the canals and drains of irrigation districts and similar entities is an issue that nearly every district in the state of Oregon has faced or will soon. The circumstances of how the urban stormwater ended up in the district facilities varies widely and the decision of whether to accept non-agricultural drainage is one ultimately made by the Board of Directors of the district. SB 866 is intended to address the most egregious issues that arise when non-agricultural water is intentionally discharged into district canals and other conveyance infrastructure and provide a clear avenue for public entities to cooperatively address municipal stormwater.

There are several issues that arise when a district is faced with conveying non-agricultural water, intentionally or by default. The main issues are: the district may or may not have the legal authority to accept the stormwater in their facilities or associated easements, some districts have additional federal requirements that preclude the acceptance of non-agricultural water, the district's facility may not have the capacity to handle the additional water, and other plethora of other legal liabilities. All of these issues are magnified if the stormwater discharge is done without an agreement with the district or other public entity and only leads to protracted legal battles. A common example is a pipe being placed to purposefully discharge water from paved impervious surface into a nearby canal and without the district's knowledge or permission this can lead flooding, canal breaches and potentially polluted water being put on to a farmer's fields. SB 866 would address these issues and increase cooperation between public entities in managing stormwater.

One of the important distinctions is that not all districts are alike and OWRC members include irrigation districts, water control districts, improvement districts, and drainage districts all of whom operate under specific state statutes and most districts were formed for a specific purpose. In all cases, the districts were formed to provide a service to the land included in the district and those assessed landowners pay the cost of operating and maintaining the irrigation and drainage facilities. Irrigation districts organized under ORS 545 generally have no specific authority to accept municipal stormwater, to convey that water, or otherwise be involved in the management of that water without a legal agreement. Generally, irrigation districts are only granted with powers that are in statute and while there are authorities under ORS 545.257 for the acquisition and operation of municipal water systems, there is no specific authority for the acceptance or conveyance of stormwater as part of that system. Conversely, drainage districts organized ORS 547 are authorized to accept and manage municipal stormwater. Water control districts organized under ORS 553, water improvement districts organized under ORS 552, and other districts formed under ORS 549 all have different authorities which may or may not authorize the acceptance or conveyance of stormwater. These distinct authorities are an important reason public entities need to communicate and work together on managing non-agricultural stormwater discharges into public conveyance structures.

The other major area of concern is over liability issues that can arise if there is not an agreement in place. The liability issues include but are not limited to water quality, water quantity, and public safety. Non-agricultural water that is intentionally discharged into a canal from impervious urban surfaces can carry a variety of pollutants that could potentially violate the Clean Water Act, Endangered Species Act, Food Safety Modernization Act, and other related laws. The increased amount of water in canals and other infrastructure leads to flooding of property and creates a safety issue. In the absence of an agreement the cost for cleaning up pollutants, repairing canal breaches, paying damages to flooded properties, and other costly liabilities are unfairly shouldered by the individual district or other public entity.

An agreement between public entities for the acceptance of non-agricultural stormwater is essential to protect all parties from costly litigation. SB 866 will reduce legal battles that occur when agreements are not in place and will increase communication and cooperation between public entities in managing urban stormwater.

Proposed Amendments

We have already drafted an amendment to SB 865 that addresses concerns from stakeholders about the timeframe and clarifies the intent. The proposed revisions include reducing the timeframe for providing recommendations from 30 days to 15 days, which we understand would better match city/county timeframes for plat review. We are also striking reference to "indorsement" as that is no longer applicable to the proposed process. The other changes address a scrivener's error in the draft that clarifies that "structural integrity of" should be part of Section 2, (2)(a) rather than preceding the list. We are willing to make further revisions if other stakeholders have constructive feedback to share. We are also open to revising SB 866 to better clarify our intent and welcome stakeholder feedback.

In summation, the SB 865 & SB 866 will help increase communication and collaboration between districts and other public entities and help prevent unintended consequences from urban development occurring in and around irrigation districts. **We respectfully request that you support SB 865 and SB 866.**

Sincerely,
April Snell
Executive Director