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Testimony on HB 2437: Authorizing maintenance activities in dry, traditionally maintained channels

House Committee on Agriculture and Land Use

Submitted by: Jena Carter, Oregon Coast and Marine Director, The Nature Conservancy

Thank you for the opportunity to provide testimony on HB 2437, a bill authorizing maintenance activities in dry, traditionally maintained channels to be conducted without removal or fill permit subject to certain condition.

The Nature Conservancy (TNC) is a science-based and non-partisan conservation organization. Our mission is to protect the lands and waters on which all life depends. TNC was incorporated in Oregon in 1961, and today we have over 70,000 supporters statewide with members in every county in Oregon. Our staff, based in communities across the state, work collaboratively with tribes, government agencies, elected officials, private landowners, businesses, and natural resource stakeholders to develop solutions to the major challenges facing people and nature.

The Nature Conservancy was invited to participate on the Wetland Regulation Work Group. Two of my colleagues were active in the group and one participated in Agricultural Channel Maintenance sub-work group. These colleagues report that the numerous meetings held by the Work Group provided an excellent platform for shared learning, scoping issues, and exploring solutions. We want to acknowledge and thank the Work Group Co-Chairs Representative Susan McLain and Representative David Brock Smith for launching this important dialogue on wetlands mitigation, assumption, mapping, and ditch maintenance.

Because HB 2437 specifically focuses on the agricultural ditch maintenance, we will limit our comments to that issue, recognizing that TNC may have positions on other wetland issues or bills emerging from the Work Group's efforts.

HB 2437 represents the beginning of a dialogue to address the needs of Oregon's agricultural community to control water on their property and maintain the infrastructure that helps this to occur. The water control systems used on each property are often unique and tailored to fit the

local landscape. Like Oregon's agricultural community, we face the challenge of water management on TNC's 150,000 acres located across the state from the Zumwalt Prairie to the Oregon Coast, and we work closely with many partners on working landscape projects. Through this, we are familiar with the impacts of water on the landscape, including when it is too wet, too dry, flooding, changing precipitation patterns, and everything in-between. We recognize the challenges facing Oregon's agricultural families and are committed to finding solutions that allow for robust agriculture while also ensuring nature can thrive.

HB 2437 presents a framework for addressing agricultural ditch maintenance and there are some good concepts contained within the bill, including:

- The policy statements that allow for the balanced approach of a workable maintenance process while protecting the ecology and life history functions of fish and wildlife;
- The opportunity to better understand the scope and scale of the maintenance need and increased education;
- Increased collaboration between the Department of State Lands, Oregon Department of Fish and Wildlife, and the Oregon Department of Agriculture;
- Recognition of lack of science and the desire to conduct studies to fill science gaps; and
- Authorization to adaptively manage the program.

While many of the aspects of HB 2437 are appreciated, there are still several critical issues where the Work Group was unable to reach unanimity and need further refinement. The Committee's materials from the Work Group provide a record of these unresolved decision points, particularly the document titled [Report of the Agricultural Channel Maintenance Sub-Work Group](#).

At this time, The Nature Conservancy believes HB 2437 as written would benefit from additional work to address some of the unresolved issues and unintended policy consequences in the current draft.

For example, the bill proposes a one-size, fits all solution that does not recognize the unique situations faced in different geographies or landscapes. We feel there may be other models or ways to approach this. For example, Whatcom County, Washington has implemented a proactive approach that considers variations within and between watersheds and the needs of the local landowners. The collaborative process results in a maintenance guide that outlines specific actions that will be undertaken over a five-year period to advance ditch maintenance while also lowering risks to fish.

In many cases, the traditionally maintained streams addressed in this bill are former wetlands, streams, or waterways that have been straightened, drained, ditched and diked into infrastructure such as constructed channels and intermittent channelized streams. Because wildlife no longer has access to their historic waters, these channels now provide important habitat. Studies are needed to determine the impacts, potential best management practices, and identify places where different solutions may be appropriate (e.g. some locations may have low impacts and ditch maintenance activities could proceed at an aggressive pace while other places may need a different approach).

As a science-based organization, we recommend deploying a framework that allows the science to be conducted first and utilizes that science to build out a workable program. We also recommend the precautionary principle to ensure we are minimizing risks to fish and wildlife as these activities occur. Elements we would like to see considered in the bill include:

- Start the program as a pilot project in a limited geography, conduct research in the pilot area and in other geographies as well as various habitat types, and then utilize the findings to refine and expand the program.
- Exclude Essential Salmon Habitat as well as tidal waters from this initial program until the proper studies are completed.
- Significantly lower the number of cubic yards that can be removed. The proposed 3,000 cubic yards is not science based, represents an increase of 5,900% over today's volume allowance, and does not accommodate nuances in local ecological or agricultural circumstances.
- Once a volume limit is set, increasing volume limits should be contingent upon findings that demonstrate a higher volume limit would not harm fish and other species.
- Add language limiting how much total volume may be taken out of an individual waterbody to reduce cumulative impacts to habitats, especially in small yet important waterbodies.
- Institute a "waiting period" between when the notice is filed and when the maintenance activities occur and allow the agencies an opportunity to review, comment or modify the activities. The bill currently allows a landowner to file notice and start their activities immediately. A waiting period would allow the agencies an opportunity to engage the landowner and discuss the aspects of their proposal.

- Include ODFW – the state’s agency with expertise in fish and wildlife – as a partner on any MOU between the agencies.
- In addition to salmonids, consider other species such as amphibians and Pacific lamprey when assessing impacts and developing best management practices.

In addition to the above recommended changes, TNC has some technical clarifications within the bill that we hope to discuss with you and Committee staff.

In closing, The Nature Conservancy believes there is more work to be done on HB 2437 at this time. We look forward to working with you and other stakeholders to develop a solution that allows low risk areas to move forward with maintenance activities while finding a path forward for areas where wildlife will be impacted.

Thank you for the opportunity to provide comments.

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