



**Date:** February 18, 2019

**To:** Oregon Senate Committee on the Environment and Natural Resources

**From:** Audubon Society of Portland, Center for Biological Diversity, Columbia Riverkeeper, Friends of Trees, Greater Hells Canyon Council, Onward Oregon, Portland Harbor Community Coalition, Urban Greenspaces Institute, Verde, WaterWatch of Oregon, Willamette Riverkeeper, Yakama Nation Fisheries, 350PDX

**Re:** Senate Bill 431

Dear Senator Dembrow and Members of the Senate Environment and Natural Resources Committee,

We are writing to express significant concerns with SB 431 which would create a new Flood Safety and Water Quality District to manage the Columbia River Levee System that extends from North Portland to Troutdale. The purported need for this legislation is to consolidate the four existing drainage districts along the Columbia Levee System into a single new agency with significantly expanded powers to address deficiencies in the current flood management system. We appreciate the importance of ensuring that the Columbia River Levee System is adequate to protect our communities and meet US Army Corps recertification standards. We also believe that a 21<sup>st</sup> Century vision of flood management needs to look beyond simply building larger and wider levees and integrate ecological health, environmental justice and climate change resiliency in order to develop a holistic approach to managing water.

We are deeply concerned about SB 431 and believe it needs substantial revision in order to meet the needs of our communities. SB 431 creates a new Flood Safety and Water Quality

District with sweeping powers to assess taxes, refer bond measures, condemn property, and make major alterations to our landscape. Of particular note is the fact that this new district anticipates passing the costs of the levee system not just to those within the boundaries of the levee system, but to all of Multnomah County. Many of its provisions are unclear or appear to give the new district powers that go well beyond what is necessary to accomplish its mission.

Although the legislation purports to give the new district an environmental mission, the language in the legislation pertaining to ecological health is weak, unclear and appears to be voluntary. Although this District will protect an area that experienced the 1948 Vanport Floods resulting in the displacement of the local African-American Community and other underserved populations, equity, inclusion and diversity objectives in this legislation are minimal. Finally, the governance structure for this new district demonstrates a remarkable distrust of community representation. The municipalities and agencies that currently dominate the Levee Ready Columbia process seem primarily interested in perpetuating themselves onto the governance structure of the new district with very limited opportunity available for community stakeholders outside of public agencies.

Although the Levee Ready Columbia process has been underway for several years, the legislation, as introduced, has received minimal public review and scrutiny and the vast majority of the outreach that has been conducted is to entities within the existing levee system even though it is anticipated that residents throughout all of Multnomah County will help pay for the costs of the new district. A new governmental entity with broad powers should not be created without substantial public engagement of affected stakeholders.

A new flood management agency is not necessary to address the deficiencies in the Columbia Levee System. If the legislature is going to create a new flood management agency, we urge it to take the time necessary to craft a bill which more clearly defines the purpose, goals, roles, responsibilities and governance of the new district. We see potential value in creating a new flood district if the legislation is carefully crafted to ensure that the new agency truly provides a 21<sup>st</sup> Century approach to flood management that integrates improvement of ecological health, equity and community engagement. Unfortunately as currently written, SB 431 adds a new layer of government with expansive powers, but which appears beholden primarily to existing governmental entities, and is which is lacking in a clear commitment to environmental health or environmental justice.

The following are our specific concerns and recommendations with SB 431. We look forward to working with Levee Ready Columbia and the Oregon Legislature to remedy these deficiencies. We respectfully urge you not to advance SB 431 until concerns are addressed.

## Section 2: Definitions

- Section 2(8) Works: This definition needs to be reworked to be in line with the publically stated flood control purposes of the new District. Include in the definition of “works” the term “green infrastructure”. Deleted from the definition of works “or supplying water for irrigation or any other purpose”. (Delete from the definition works that are tied to irrigation) The amended definition of “works” would read as follows:  
(8) “Works” means dams, storage reservoirs, canals, ditches, dikes, levees, revetments, **green infrastructure** and all other structures, facilities, improvements and property necessary or convenient for , controlling flood or surface waters, providing for flood safety or environmental benefits or water quality. ~~or supplying water for irrigation or any other purpose.~~
- Landscape Resilience: Add a definition for “Landscape Resilience” as follows: Landscape resilience as the ability of a landscape to sustain desired ecological functions, robust native biodiversity, and critical landscape processes over time, under changing conditions, and despite multiple stressors and uncertainties.
- Green Infrastructure : Add a definition for green infrastructure: Green infrastructure is an approach to wet weather management that is cost-effective, sustainable, and environmentally friendly. Green Infrastructure management approaches and technologies infiltrate, evapotranspire, capture and reuse stormwater to maintain or restore natural hydrologies. Green infrastructure approaches include protecting natural landscapes as well as rain gardens, porous pavements, green roofs, infiltration planters, trees and tree boxes, and rainwater harvesting for non-potable uses such as toilet flushing and landscape irrigation.”

## Section 3: Creation of urban flood safety and water quality district; purposes; limitation; filing boundary change with county assessor and Department of Revenue; protection of water rights.

The environmental and equity elements of this statement as written are weak. We would recommend strengthening the statement as follows:

Section 3(1) An urban flood safety and water quality district is created for the purposes of acquiring, purchasing, constructing, improving, operating and maintaining works in order to reduce the risk of flooding, protect people and property **from flooding**, respond to flood emergencies, ~~contribute to~~ **improve** water quality, **fish and wildlife** habitat, **floodplain restoration** and landscape resiliency and **promote equity in all aspects of its operations**. ~~protect and provide the public with information regarding the cultural history of the territory in the managed floodplain.~~

## **Section 5:**

- Section 5(1) Initial Board of Directors: The initial board of directors is seriously lacking in community stakeholder representation. Of the 14 seats on the initial board, 11 represent public agencies or municipalities, 1 represents business interests, 1 is an at large seat for a resident from within the managed floodplain area and 1 represents a non-profit. Additionally, there has been discussion of adding two more seats for local municipalities to the initial board. Whether the board has 11 or 13 seats devoted to municipal governments or agencies, this composition is grossly disproportionate to the number of seats reserved for community stakeholders. We recommend that at least 50% of the board be reserved for community stakeholder groups with at least 2 seats reserved for conservation non-profits organizations, 2 seats reserved for environmental justice organizations and 3 seats reserved for residents within the managed floodplain.
- Section 5(4) The text should specific that if there is a vacancy, the remaining directors will fill the vacancy with a representative from the same sector as previously filled the vacancy.
- Section 5(6)(c)(A)(ii) The text should specify that the governor will appoint 1 representative from a conservation non-profit and 1 representative from an environmental justice non-profit.
- Section 5(6)(d) The ex officio seat for the Port of Portland should be removed. No existing governmental agency should have a designated seat on the new board (ex officio or voting).
- Columbia River Tribes should be directly consulted to determine tribal interest in the governance structure of the proposed district.

## **Section 7: Duties of the Board**

Section 7(10) Establishing boundaries of manage floodplains: This language is very vague and gives them very broad authority. This is especially problematic if the definition of “works” (Section 2(8)) and the “purposes” (Section 3(1)) are not amended as suggested.

**Section 8: Advisory Board:** All of the reserved seats on the advisory board are specified for municipalities, drainage districts and other governmental entities. This functionally reserves 11 seats on the advisory board for governmental entities. While it will be important for the new district to maintain communications with relevant governmental entities, we do not believe that the advisory board needs to include every governmental entity with holdings within the district. The board should be free to appoint an advisory board that it deems appropriate to provide it with the expertise it needs to meet its responsibilities. The legislation states that the purpose of the advisory board is to advise the district on all aspects of its operations and assist with community outreach and citizen participation—yet the legislation seems to go out of its way to avoid any community participation beyond local governmental agencies. .

### **Section 9: General Powers of District**

- Section 9(4): This grants broad power of condemnation of real or personal property, or any interest in such property, inside and outside of district boundaries for any purpose whatsoever. This section should be struck, or at the very least limited to the purposes of flood control works necessary to protect people and property from flooding. If the latter, there should be strict standards included to limit when this power could be used.
- Section 9(10): The section on water rights should be struck. The broad provisions granted in this section to sell, lease or deliver water for irrigation and other purposes both inside and outside the boundaries of the district is inconsistent with the purported purpose of the bill, which is to ensure safety of the levee system. Districts, like everyone else, have access to water right processes that exist under existing water law and do not need special carve outs.
- Section 9(12): Drainage district laws were adopted in 1917 and are, in many places, archaic, this section explicitly allows exercising of all existing drainage district powers, without limitation, which will perpetuate long standing problems instead of fixing them. This section should be struck.

### **Section 10: Eminent Domain**

- This section is overly broad. It allows the District to condemn property inside and outside of managed floodplains for very vague purposes, such as surface water control
- It allows the District to condemn public lands on the basis that the district board determines that the current use of the property is less necessary than the use for which the property is required by the board. This is very dangerous and could lead to the condemnation of public lands, not for public safety from floods, but simply to grant lands to private interests and/or others for uses unrelated to flood control and public safety.

### **Section 12: Cooperation with the United States:**

- Section 12(2)(a): It is not clear what this provision is intended to accomplish. Should be clarified or removed.

### **Section 13: Watershed Improvement**

- Section 13(1) Change “may to “shall.” The Watershed Improvement Plan should be mandatory, not discretionary.
- Section 13 (2)(a)(A) Add the term “Watershed Health” (“...relating to water use and control **and watershed health....**”)

## Section 16: construction on any public lands and or waterway

- Section 16(1)(b): This section should be clarified to ensure that it complies with DSL requirements.
- Section 16(2): Add the following: “When constructing works under this section, the district shall comply with any permitting requirements or restrictions imposed by the public body that owns or has jurisdiction over a street, right of way ~~or~~ lands, stream of water or watercourse.”

Conclusion: We appreciate the importance of addressing deficiencies in the Columbia River Levee System. At the same time, it is critical that the creation of new governmental agency with significant powers to affect the health and safety of our communities and our environment for decades to come be done right. As written, SB 431 fails in terms of clearly articulating and accomplishing core functions of the new district while at the same time giving the new district expansive powers that go far beyond what is necessary to accomplish its mission. We appreciate the work of Levee Ready Columbia to date, but believe that this legislation needs significant additional work and community involvement before it moves forward in the legislative process.

Thank you for your consideration of these comments.

Respectfully,

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