

WALDENSEE, LLC

March 4, 2019

via e-mail to hnr.exhibits@oregonlegislature.gov

House Committee on Natural Resources
Oregon State Legislature
Oregon State Capitol
900 Court Street NE, Room 347
Salem OR 97301

Re: HB2085 regarding Oregon Dams and Oregon Water Resources Department

Dear Chair Witt, Vice Chair Gorsek, and Members of the Committee:

My name is Genice Rabe and I am a member of Waldensee LLC. Waldensee LLC owns a dam in Oregon.

Waldensee's dam was constructed by engineers in accord with state oversight and inspection. Since its construction it has been inspected by the Oregon Water Resources Department (OWRD). It is now inspected annually. The OWRD inspection reports have indicated that the dam is well maintained and have given the dam the highest rating available and possible.

This testimony is submitted with regard to HB2085 as originally written. I have discussed HB 2085 with the OWRD State Engineer Keith Mills and OWRD Senior Policy Coordinator Raquel Rancier on February 28, 2019. They said that OWRD had submitted a proposed amended bill to Legislative Counsel and may propose other amendments. At the time this letter was written no amendments had been issued by Legislative Counsel. Waldensee has provided to and discussed amendments with Legislative Counsel this morning. Waldensee's amendment will not be issued by Legislative Counsel prior to the March 5, 2019 hearing. There is no practicable time to review any proposed amendments and future amendments cannot be reviewed before public hearing. If amendments are issued, Waldensee requests that the amendments be scheduled for hearing and with enough time to allow the public to review and respond to the amended proposed bill.

Waldensee, at this time opposes HB 2085 on grounds, including the following:

Oregon dams are already highly regulated by statute. And the 2017 Legislature passed a statute requiring Emergency Action Plans from owners of "High Hazard"¹ Dams.² The present proposed bill is not necessary. Waldensee has an Emergency Action Plan that comports with the 2017 statute and that the OWRD said it will follow.

¹ A "high hazard rating" is not related to the condition and maintenance of the dam. It is determined by the likelihood of danger to persons should the dam breach.

² ORS 540.353

The proposed statute is overbroad in terms of powers granted to the OWRD. For example it states that the OWRD can propose action up to requiring the removal of a dam upon its “belief” that a dam is “unsafe” or “potentially unsafe,” without any prior discussion or input of the owner. And by definition almost all dams can fit into these terms. The statute allows taking of property without due process. The proposed statute also imposes all liability and responsibility on the owner even when the owner follows the statute and does everything the OWRD suggests. The owner is even responsible for actions the OWRD takes unilaterally.

The statute overburdens dam owners. Even if a dam owner has a well designed, well constructed, and well maintained dam and complies with all that the OWRD has required, HB2085 gives the OWRD power to require more and to even propose removal of the dam the OWRD has previously and repeatedly approved.

Respectfully submitted,

Waldensee LLC

By _____

Genice Rabe

Member