

Senate Committee on Environment and Natural Resources
Hearing on SB 787
April 2, 2009

Chair Dingfelder and members of the Committee,

I am Anita Winkler, Executive Director of the Oregon Water Resources Congress (OWRC). OWRC represents irrigation districts, water control districts and other local governments formed to deliver irrigation water.

OWRC agrees that “responsible water management includes ensuring basic conservation, efficiency and management measures”. These are practices that irrigation districts and their patrons exercise every irrigation season. The situation with most irrigation districts is not a lack of wanting to do additional conservation projects but one of funding, and to that end we are in support of creating a Water Supply Development Project Fund.

It is important to understand that all irrigation districts and their available water supply are NOT created equal. Many districts have sufficient water supply to serve their communities and patrons while many other districts do not. Therefore the water supply / conservation projects that are contemplated by irrigation districts (and therefore under this bill if it became statute) can differ in their purpose and that difference may not be adequately understood for the purposes of this bill and funding eligibility.

So from this perspective there are a few issues in the bill as currently written on which we request clarification and one provision that we ask be significantly amended.

SECTION 2

Section 2 (5)(a) – the definition of “Water supply development project”. We request clarification of or a better definition of the terms “new water supply” and “increasing the capacity of an existing water supply”. Does new water supply mean a new water right or possibly something else?

For example, is a project undertaking to pipe a very leaky earthen canal to retain the water that is lost from the leaky ditch to get more water to the headgates considered as the development of a new water supply or somehow increasing capacity of an existing water supply? As another example, if a district wants to pipe a very leaky canal and use some of the saved water to serve additional acres and allocate some of the saved water to instream use, would that project be considered a new water supply in this bill if the same amount of water is diverted from the stream or river as before the project?

Section 2 (5)(b) – We request clarification or better definition of the phrase “projects meant to improve water quality”. It is unclear whether or not this pertains to both municipal and agricultural water users. Agricultural water suppliers and users are not engaged in water quality improvements as a primary activity, but water quality improvements may occur as a side benefit of a water conservation project that results in

some of the saved water being transferred instream. It is also unclear whether or not an agricultural conserved water project where all, or only a portion of the conserved water is placed instream is excluded from any conditions in this bill, and whether or not those type of projects would qualify for the Fund. Most if not all conserved water projects placing water instream can be considered to improve water quality.

SECTION 4

OWRC has some questions about terms used in this section. While our members are water suppliers and would be subject to the provisions of Section 4(2), our questions also apply to Section 4(1) which could apply to the water users served by our members.

Section 4 (2)(a) & (b) – We are not clear on the definition of “full measurement”. Are state or district maintained and operated gauging stations at the districts’ diversion points sufficient? This definition or clarification applies to (2)(a) & (b) also.

Section 4 (2)(c) – The requirement in this subsection is rather broad and open to many different interpretations. Sorting this out in the rulemaking could be difficult without more succinct guidance from the Legislature. As an example, would the fact that a district does not have available water supply to fulfill its already existing water right certificate be sufficient justification for this requirement? How much analysis is required?

OWRC requests several amendments to Section 4. :

- Section 4 (2)(a) and (b) be amended to exclude agriculture water deliver systems that measure at the point of diversion from the requirements to measure individual agricultural water users.
- Section 4 (2)(d) be amended to provide that an approved Agricultural Water Management and Conservation Plan would meet the requirements of this subsection. This might also be an appropriate amendment to Section 4(1)(d).

Irrigation districts and other agricultural deliver systems that are public entities are required to measure the amount of water diverted. The district is required to manage the water it diverts in accordance with the water certificates or permits that specify the amount of water that can be delivered to the lands within the district. Water right certificates, permits and decrees for agricultural water right specify the amount of water that is appurtenant to each quarter-quarter of land served the by that water right. The district is responsible for complying with the terms of that water right when delivering water and monitors water delivery and use in various ways to ensure that the water users comply with the provisions of the water rights. These vary from district to district and may include measuring at each canal after the point of diversion, measuring the amount of water sent down each lateral (that may serve multiple water users), and measuring each individual delivery points either on a regular basis on when the district suspects abuse may be occurring. Further districts employ ditch riders to monitor water use – a kind of water master that manages the water user among the district water users. ,

Many districts utilize rotations in distributing the water. A rotation is created in situations where land use changes through partitions have created multiple parcels and therefore multiple deliveries within a 40 acre quarter-quarter where originally it was all one parcel and one delivery. These partitioned parcels would all be past the district's point of delivery (POD), measurement point and easement access. In these situations the district measures at the POD for the appropriate amount of acres of water right the POD serves and the patrons receive that water based on a timed rotation schedule. There is no specific measuring for these parcels on an individual basis but is done on a time basis.

There should be an exception allowed for these situations in order to keep eligibility for funding as the water is measured for that delivery through time versus a specific measuring device at the individual parcel. To construct measuring devices in these circumstances is unnecessary and would carry an onerous expense to many districts and patrons. In addition this would require an expanded operational responsibility for district personnel with no derived benefit and in many instances limited access for district personnel.

OWRC has discussed these amendments with some of the bill sponsors and they have indicated they are willing to work with us on these amendments. We ask the committee to give us time to submit the amendments for your consideration.