



House Committee on Business and Labor

Testimony on HB 3408

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By Heath Curtiss

The Oregon Water Resources Congress (OWRC) is a trade association representing irrigation districts, water control districts, and other water delivery organizations throughout Oregon. On behalf of OWRC, I appreciate the opportunity to provide comments on HB 3408.

HB 3408 would amend ORS 215.213(1)(w) and 215.283(1)(t) to make clear that irrigation district reservoirs are uses allowed outright in EFU zones. While it might seem obvious to most that an irrigation district storing irrigation water in a reservoir should amount to a farm use allowed outright, this view is not shared by everyone. In fact, some opposed to new agricultural water storage projects have interpreted the existing statutes to require everything from a Goal 3 exception, to a process for updating Goal 5 resource inventories, to conditional use approval criteria that would require applicants to do full-blown alternatives analyses, engage in long-term environmental, economic, social and energy (EESA) impact studies, and even establish irrigation reservoirs as “utilities necessary for public service.”

OWRC does not believe any of the above was ever intended when irrigation districts seek to site irrigation reservoirs on EFU lands. Rather, in the interest of furthering the very purposes of EFU zones, we believe irrigation district reservoirs were always intended to be permitted outright.

Oregon’s land use laws provide two different paths for authorizing uses on EFU lands. “Sub(1)” uses in ORS 215.213 and 215.283 are uses that may be established in EFU zones and are considered uses allowed outright. Meanwhile, “Sub(2)” uses in these same statutes are nonfarm uses that may be established in EFU zones, subject to various findings and conditions of approval, many of which can be quite onerous if not impossible to meet. These latter uses are considered conditional uses.

At issue here are the Sub(1) uses contained in ORS 215.213(1)(w) and 215.283(1)(t), which allow outright on EFU lands:

“Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.”

While some read this language as clearly including irrigation district reservoirs, some have not. In particular, some have even gone so far as to acknowledge that while an irrigation district dam amounts to a structure allowed outright under this provision, they nevertheless argue that the language does not allow for any inundation caused by such a dam.

OWRC believes this view is incorrect. HB 3408 would clarify the existing statutes to allow outright on EFU lands:

“Irrigation **reservoirs**, canals, delivery lines and [*those structures and accessory operational facilities associated with*] **any other structures or facilities managed, operated or maintained by a district as defined in ORS 540.505.**” (**Bold** signifies proposed additions; *italics* signifies proposed deletions.)

OWRC appreciates DLCD’s acknowledgment of the need for irrigation districts to site irrigation reservoirs in a timely and reasonable matter, and further appreciates the recent appointment of the rule advisory committee (RAC). However, it has become clear that DLCD, counties, irrigation districts, and those participating in the RAC would benefit from clear legislative direction as to whether irrigation district reservoirs can and should be included in ORS 215.213(1)(w) and 215.283(1)(t). Such a direct approach would avoid the awkwardness of the current approach of categorizing irrigation reservoirs as “utilit[ies] necessary for public service.” Despite the good intentions of this approach, irrigation reservoirs are not utilities, are not intended to be a public service, and are rarely if ever “necessary” for public service. Rather, irrigation district reservoirs are simply intended to supply irrigation water to district patrons.

As for those who would argue that irrigation reservoirs on EFU lands ought to be subjected to rigorous conditional use permitting in order to resolve conflicts with, or attempt to minimize impacts on, farm uses, OWRC does not believe that farm uses should be subjected to such review. Put another way, EFU zoning has been established to protect farm uses on agricultural lands. The EFU zones were not established to protect existing farm uses as opposed to future farm uses, or a particular farm use over another farm use. If the proposed use on EFU lands (here, an irrigation district reservoir) is in and of itself a farm use, then there is no reason for counties to look at potential conflicts with other farm uses. Neither DLCD nor the counties should be attempting to mediate disputes between farmers or between farm uses as part of the siting process.

Others might argue that a rigorous conditional use process is needed in order to protect other values, such as fish and wildlife, wetlands, or water quality. However, these other values are the focal points of the many other permitting processes required before water may be stored and ultimately delivered for irrigation use. For example, irrigation storage reservoirs require water rights issued by the Oregon Water Resources Department, and the issuance of new water rights requires a public interest review. The water rights will be conditioned by the Oregon Department of Fish and Wildlife to protect fish and wildlife, whether through fish passage, fish screening, or other conditions. Meanwhile, the Oregon Department of State Lands will be involved with any removal-fill activity, and the Oregon Department of Environmental Quality will have input on water quality matters. Suffice it to say, rather than require counties to wade into these issues when they often do not have hydrologists and biologists on staff to do these kinds of substantive reviews, these issues should be left to the state agencies with authority and expertise.

We have also heard the view that a conditional use process is necessary to ensure that irrigation reservoirs are protected from conflicting uses, which may ultimately interfere with the irrigation storage objective. OWRC believes this concern is premature and misplaced. If an irrigation reservoir needs to get built today to support farmers in need today, and the reservoir happens to attract the interest of some additional use in the future, it should not be in DLCD’s or the counties’ purview to restrict or condition the reservoir today in anticipation of what someone

might want to do years from now. Those future activities will be subjected to the applicable local land use requirements when those activities are actually proposed and pursued.

Finally, OWRC would underscore that the entire rationale behind new irrigation district reservoirs is to address declining water supplies, which are often ground water supplies. With the state currently engaged in the process of developing a long-term, statewide water supply strategy, the last thing our state needs is more time-consuming, expensive, and duplicative local permitting processes. HB 3408 is not only a step in the direction of opening the door to new engineering and construction jobs, but it's a step in the direction of preserving and protecting many of the existing farm jobs currently at risk in our State due to a lack of secure, long-term water supplies.

The Oregon Water Resources Congress appreciates this opportunity to provide this written testimony.

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