



## **Please Ensure Farmers Can Maintain Their Drainage Ditches**

### **SUPPORT HB 2437**

Chair Clem and Members of the Committee,

Our coalition is writing to urge the Committee to adopt HB 2437, with minor amendments, to enable farmers to have a solution to long-standing conflicts with the state over their ability to maintain drainage ditches.

Our organizations represent thousands of farmers across the state, many of whom depend on well-maintained drainage ditches to protect the viability of their operations. The maintenance of agricultural ditches is essential to the viability of farms and ranches in the wetter parts of the state, particularly the Willamette Valley and coastal areas. Oregon's most productive agricultural lands are the low-laying, floodplain lands with highly productive soils, which are capable of growing many of Oregon's 225+ commodities. The health of these lands is dependent on adequate drainage, which is achieved through drainage ditches that were dug at the time the land came into agricultural production, often in the early 20<sup>th</sup> Century. However, because of the geographic location of these lands, the drainage ditches essential to removing water during the growing season can become clogged over time, requiring regular maintenance.

At the time the state developed its regulatory "fill and removal" program, it exempted the maintenance of drainage ditches from regulation under the program, an exemption that is still on the books today.<sup>1</sup> However, over time, the Department of State Lands (DSL) has taken the position that if a drainage ditch was dug in a wetland or where water otherwise would have flowed, than that is not a "drainage ditch" but rather a channelized stream, and therefore jurisdictional under fill and removal laws. Given that drainage ditches are only dug where water would otherwise flow, DSL's interpretation has rendered the maintenance exemption virtually meaningless. Therefore, DSL has found that the maintenance of most drainage ditches would require an individual permit from DSL. While our coalition has always disagreed with DSL's interpretation of the law, we have long searched for a workable administrative or legislative solution to avoid the time and expense of protracted litigation.

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<sup>1</sup> ORS 196.905 provides:

- (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches and tile drain systems, provided that:
  - (a) The structure was serviceable within the past five years; and
  - (b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.

However, the vast majority of farmers in the Willamette Valley and coastal regions are not aware that DSL has read their exemption to be devoid of meaning, with many even having advice from legal counsel that their activities are exempt. As such, most farmers are still cleaning their ditches as needed, totally unaware that the state has determined a permit is required for the activity. This results in a handful of sporadic enforcement actions, usually resulting in fines, each year. One of our farmers, who called DSL before doing work on his ditch, worked to complete an individual permit with significant help from Oregon Farm Bureau. It took both OFB and the farmer over 50 hours and several meetings with DSL to complete the permit for ditch cleaning. This permit would not be attainable for most farmers without outside technical assistance, and a willingness to invest hundreds of hours in the process, all for work they've been doing their whole life.

For the past several years, we have worked with DSL administratively to create a long-term solution without success. As such, we were very grateful when the interim House Agriculture and Natural Resources Committee were interested and willing to invest in a long-term solution to this long-standing dispute. Oregon Farm Bureau and Oregon Water Resources Congress, with the support of our coalition, participated in the wetlands workgroup and the agricultural ditches subworkgroup, working to find a compromise with all parties interested in this issue.

Oregon Farm Bureau, the Oregon Water Resources Congress, and two impacted farmers spend hundreds of hours working within the subgroup to create a path that could allow for the maintenance of drainage ditches while protecting environmental values associated with those ditches. They took the proposals and compromise out to coalition partners and impacted members to ensure the program we created would be workable for farmers while honoring the compromises needed to move the process forward. The end result, while a long ways from the original idea we proposed, creates a path for cleaning ditches with a regulatory backstop that ensures the work will be done in a manner that protects the waterways and the environment.

The compromise bill authorizes the maintenance of historically maintained drainage ditches only when those ditches are dry. The bill moves the program into the Oregon Department of Agriculture in a manner that is designed to be complementary to the agency's existing Agricultural Water Quality Management Plan. The proposal allows ditch maintenance to be completed after providing notice to the Oregon Department of Agriculture. The work is subject to a significant number of conditions designed to protect water quality and other ecological values. The work is subject to ODFW's prescribed in-water work periods, despite the fact that the maintenance is occurring in dry channels. The proposal provides for study and adaptive management around ditch cleaning, allowing the Oregon Department of Agriculture to modify the program as it learns new information. The proposal also authorizes DSL to create a general permit for streamlined permitting of maintenance in wet ditches in the future, though such a permit would likely not move forward until a long-term solution is reached with the federal

agencies that regulate fill and removal in coastal areas. The proposal also allows drainage districts to use the program, as the drainage districts in the Valley and along the coast are farmer run and need a streamlined solution to maintain drainage for their members. While we have minor amendments we believe would make the bill's intent more clear, we support the compromise proposal embodied in HB 2437.

Ditch cleaning is essential for farms in the wet areas of the state, and this activity has and continues to occur, with most farmers unaware that DSL considers this activity jurisdictional. As such, a long-term solution is needed to provide a clear path for compliance, avoid protracted litigation, and move the program into an agency with a better ability to provide oversight and education to farmers on ditch cleaning. Moving the program to ODA will only improve environmental outcomes associated with ditch cleaning, and will ensure that all farmers are complying with terms and conditions designed to ensure the work is occurring in a way that will protect and improve water resources.

Thank you to Chair Clem, Representative McLain and Representative David Brock Smith for your tireless work on the wetlands workgroup. We are grateful for the opportunity to bring this important issue forward, and hope that the Committee will move forward with the group's compromise proposal, as embodied in HB 2437.

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