



To: Chair Dingfelder, Vice-chair Olsen, and members of the Senate Committee on Environment and Natural Resources

RE: Testimony in Support of SB 837, Fish Passage Restoration Subaccount

Dear Chair Dingfelder, Vice-Chair Olsen, and members of the Committee:

The Oregon Water Resources Congress (OWRC) is testifying in support of SB 837, with the proposed amendments. **SB 837 provides a balanced solution to advance beneficial renewable energy projects while providing funding for meaningful fish passage restoration in Oregon.**

OWRC is a nonprofit association representing irrigation districts, water control districts, improvement districts, drainage districts and other agricultural water suppliers. These local government entities operate complex water management systems, including water supply reservoirs, canals, pipelines, and hydropower production, and deliver water to roughly 1/3 of all irrigated land in Oregon. OWRC has been promoting the protection and use of water rights and the wise stewardship of water resources on behalf of agricultural water suppliers for over 100 years.

SB 837 represents the culmination of efforts by a workgroup, convened by the Governor's office in 2011, to find a path forward for in-conduit hydropower projects while supporting fish passage restoration efforts. OWRC has been heavily engaged in this issue for several years, and actively worked with the various workgroup stakeholders to develop the compromise language reflected in SB 837.

SB 837 is needed because the current status quo is a huge barrier to making progress towards both renewable energy and fish restoration goals. The lack of flexibility in the current statute has resulted in the imposition of costly and burdensome fish passage requirements upon project applicants, which essentially stymied many new in-conduit projects. As a result, numerous opportunities for both renewable energy development and fish passage improvements have been lost. SB 837 will reverse this trend and provide a viable path forward for both clean, green, in-conduit hydropower projects and significant fish passage restoration efforts statewide.

Background of the Issue

In-conduit hydropower is installed in a screened canal or pipeline to generate renewable energy. It uses water that is already being diverted for an approved beneficial use and does not use additional water or diminish water available for agriculture, instream benefits, and other water users. Furthermore, in-conduit hydropower is an efficient use of an existing water right for a supplemental use without negative impacts. In addition to the environmental benefits of generating clean and green energy, in-conduit hydropower projects can increase water conservation and efficiency through related piping and lining projects.

The mission of the Oregon Water Resources Congress is to promote the protection and use of water rights and the wise stewardship of water resources.

In 2007, a streamlined water right application process for in-conduit hydropower projects was created to allow these beneficial types of projects to move forward, using ORS 543.765. Even though the streamlined process is simpler than the process that a large hydropower project has to undertake, there are still several complex steps and strong environmental standards in place that applicants must meet. However, ORS 543.765 did not clarify under what circumstances the Oregon Fish and Wildlife Department (ODFW) can require fish passage. The imposition of overly burdensome requirements on in-conduit projects has resulted in virtually no new in-conduit projects in the past several years.

Because restoring fish passage can be extremely expensive, the standards are highly variable, and funding is difficult to obtain at the state or federal level, it is cost-prohibitive for most districts to address fish passage as part of an in-conduit project. From a project applicant perspective, it also seems unwarranted because fish barriers are often many miles away from the proposed in-conduit project, many of the barriers that are in place were built or are owned by other entities, and the development of an in-conduit project does not directly impact fish passage. Due to these obstacles, many potential projects have been shelved—which means that no new renewable energy is generated, fish passage barriers remain unaddressed, and all other potential environmental and economic benefits are lost.

SB 837 will address these problems by providing a viable option for in-conduit projects applicants to pay into a statewide fund for priority fish passage, benefitting not only the applicant but the state as a whole from the multiple public benefits that accrue from these projects.

Benefits of SB 837

Recent advances in hydropower technology have resulted in more viable options for agricultural, municipal, and industrial water suppliers and users to pursue in-conduit hydropower in Oregon. Roughly half of OWRC members are interested in pursuing in-conduit hydropower projects to help offset energy costs using existing water rights and delivery systems. Hydropower projects are often part of larger district infrastructure and conservation projects, with the projected revenue used to help pay for the costs of construction. Also, the increased water conservation and efficiency from the related piping and lining projects leads to more water instream for fish and wildlife. Additionally, efforts at the federal level to promote small-scale and in-conduit hydropower will lead to even more interest in developing these types of projects in Oregon.

SB 837 will allow these beneficial projects to become a reality while addressing critical fish passage needs in an equitable manner.

The funding structure in SB 837 reflects a careful balance between ensuring that enough funding is generated to provide significant fish passage restoration while keeping the fee at a level that does not create a greater disincentive to in-conduit project development. Because in-conduit projects often have marginal net income, particularly in the first few years, it is important that the fee is tiered and gradually increases over time.

The funding structure under SB 837 will also allow for fish passage restoration on a more comprehensive and prioritized manner which will benefit fish passage on a larger scale rather than site by site piecemeal restoration. SB 837 creates an optional path for a project applicant to pay into a statewide fish passage fund instead of paying for fish passage improvements upfront when there is a fish passage obstruction associated with the project.

This optional path does not change existing options for addressing fish passage, including the individual project applicant choosing to fund fish passage directly or seeking a waiver from ODFW. Even if the project operator chooses to pay into the fund, they can still choose to address the fish passage issues directly, and once they do so, the annual fee for fish passage is no longer applied. SB 837 also does not change any existing fish passage or fish screening requirements, or lessen any of the authorities of either the Oregon Water Resources Department (WRD) or ODFW. It simply provides a viable option for in-conduit projects to contribute to fish passage restoration.

OWRC has been, and continues to be, a strong advocate for federal funding for fish passage. SB 837 will ensure that any federal funding that becomes available for fish passage restoration can be used in combination with the new Oregon Fish Passage Restoration Subaccount and maximize state and federal investment. SB 837 also creates options for other funding sources, including grants and donations, to be contributed into the Fish Passage Restoration Subaccount to maximize available funding for fish passage.

Amendments to SB 837

OWRC is supportive of the proposed amendments to SB 837 and feels the language more accurately reflects the workgroup's efforts as a whole. The changes are needed to better encapsulate the intent of the workgroup and in some instances the precise words used reflect rigorous negotiations to reach balanced language. SB 837 is a collaborative workgroup product created by diverse stakeholders—which means that no one interest was completely satisfied, but as a whole, the package provides a benefit for all stakeholders involved.

The amended language includes an important clarification that will allow districts that are a part of Bureau of Reclamation projects to utilize ORS 543.765 to develop in-conduit hydropower projects and contribute to fish passage restoration in the same manner as non-federal projects. There are several efforts underway at the federal level, including legislation co-sponsored by Oregon's Senator Wyden, to further incentivize small, low-impact, in-conduit hydropower projects. The amended language of SB 837 will ensure that projects in Oregon can not only benefit from greater opportunities for renewable energy development but also help increase funding for fish passage.

We urge you to support SB 837, with the proposed amendments, and provide viable opportunities for both renewable energy development and fish passage restoration.

Sincerely,

A handwritten signature in blue ink that reads "April Snell". The signature is written in a cursive, flowing style.

April Snell
Executive Director