



WaterWatch of Oregon
Protecting Natural Flows In Oregon Rivers

HB 3274

Testimony of WaterWatch of Oregon
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House Energy and Environment Committee
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Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. We work to ensure that enough water is protected in Oregon's rivers to sustain fish, wildlife, recreation and other public uses of Oregon's rivers, lakes and streams. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

WaterWatch opposes HB 3274

This bill requires that 8% of electricity sold in this state by each electric company that makes sales to 25,000 or more retail electricity consumers to be generated by small-scale renewable energy facilities or certain biomass facilities. This includes in-conduit hydro.

In-conduit hydro could in fact be a win-win form of clean energy that could also benefit Oregon's rivers; but nothing in this bill, or the existing laws governing in-conduit hydro, requires this. To the contrary, existing in-conduit hydro laws incentivize continued use of long-standing inefficient and environmentally harmful water diversions that impair Oregon rivers, fish and other aquatic species across the landscape. Rather than promote irrigation modernization that will improve irrigation efficiencies and help restore Oregon's rivers and streams, HB 3274 will incentivize the development of projects that lock in longstanding inefficient water diversions.

Additionally, not only does the bill ignore the effects of these projects as they relate to the underlying water right, but HB 3274 (Section 1(i)(A)-(G)) declares that small scale renewable low-impact hydroelectric facilities "can" improve ecological flow regimes; water quality that supports fish and wildlife and resources and human uses; safe, timely and effective downstream and upstream fish passage; protection, mitigation and enhancement of the soils, vegetation and ecosystem functions of a watershed; protection of threatened species; protection from impacts on cultural and historic resources; and recreation access. The bill does not in fact require any conditions to ensure these benefits come to fruition. Ironically, the benefits that the bill claims "can" accrue in Section 1(i)(A)-(G) largely mimic requirements that adhere to all other hydro rights that bill proponents successfully stripped from regulations governing in-conduit projects in past legislative sessions. To now claim that these projects "can" provide these benefits misrepresents both the law and the on the ground effects of some of these projects; in other words, it does nothing but provide a statutory smoke screen.

“Green” in-conduit hydro:

In conduit projects could be designed to be truly green projects, but existing law does not require nor incentivize good projects. Rather than pass this bill, we urge the Legislature to use this bill as an opportunity to amend the in-conduit hydro statutes found in ORS 543.765. Suggested amendments include but are not limited to:

- Require use of the Conserved Water Statute for any piping project associated with an in-conduit project. This will result in at least 25% of saved water to be returned to the stream; more if public funds are used.
- Mandate efficiency standards for irrigation districts (and others) who want to take advantage of in-conduit on existing water rights. While in-conduit projects are limited by underlying water rights; there is no requirement that the underlying use be efficient. This needs to apply to both end-use and delivery systems.
- Require Fish passage: This was required in the original “streamlining bill” that allowed in-conduit hydro to piggyback on existing water rights, but was later stripped from the law through the efforts of the same proponents that are backing HB 3274.
- Minimum flows: Require that any in-conduit project that piggybacks on existing water rights be subject to a minimum instream flow on the affected river.

History of in-conduit hydro laws in our state:

Prior to 2007 if an irrigation district or other water right holder wanted to install in-conduit hydro on existing infrastructure it needed to go through the state’s environmentally rigorous hydro statutes, which ensure protection of Oregon’s fish, wildlife, recreation and cultural assets (see ORS 543.017).

This process was deemed too burdensome by irrigation interests to incentivize in-conduit hydro. In 2007 HB 2785 passed, which set up an “expedited” process that would allow in-conduit to avoid existing hydro requirements by piggybacking onto existing water rights, provided that a few negotiated resource protections were met, including, importantly, fish passage.

Despite agreements on fish passage that allowed the bill to pass, this requirement was immediately deemed too burdensome to incentivize robust in-conduit hydro development by the very irrigation groups who had agreed to it. In 2010 and 2011 irrigation interests attempted, and failed, to strip the fish passage requirement from the in-conduit law. In 2012, a workgroup was set up. In 2013, in-conduit proponents succeeded with the passage of SB 837 which allowed water users to skirt the fish passage requirement that was negotiated in 2007, and instead have the option of paying into a fish passage fund that would, theoretically, result in funding of priority fish passage projects statewide.

The 2013 fiscal impact statement for SB 837B projected 30 projects would be paying into the restoration account within three years, and that \$75,000 would be available in the restoration subaccount by the end of 2017. Despite representations made by in-conduit hydro proponents at that time that this change to the law would open the door to a plethora of in-conduit hydro

projects and at the same time raise thousands of dollars for high priority fish passage projects, a 2019 Report to the Legislature on this program show that representations have missed the mark: Only 8 projects have been built since 2013, with only \$600 deposited into the fish passage account. Despite repeated miscalculations, in-conduit proponents are now back in front of the Legislature again.

Conclusion: All in all, the effect of this bill will be to incentivize additional in-conduit hydro regardless of the effect of the underlying diversion on Oregon's rivers and streams.

We would urge the Committee to reject HB 3274 and instead turn its efforts towards amending the in-conduit hydro statutes so that in-conduit projects in the future really do provide "green" energy. This could be achieved under the relating clause of this bill.

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