



Testimony to the
Senate Committee on Judiciary & Ballot Measure 110 Implementation
In Support of SB 213

March 22, 2021

Good morning Chair Prozanski, Vice Chair Thatcher and members of the Senate Committee on Judiciary and Ballot Measure 110 Implementation. For the record, my name is Marjorie Wolfe representing Wolf Water Resources, Inc. a woman owned emerging small business. We have been in business in Oregon since 2014 and employ 20 people 58% of our staff are women and/or minorities. Our services benefit the State not just by improving infrastructure but also building resilience in natural systems such as rivers and floodplains. **I am writing today to strongly support the -2 amendment to Senate Bill 213.**

Senate Bill 213 will bring fairness to professional services contracts by ending the inclusion of duty to defend clauses in public and private agreements. This duty to defend clause is onerous as it requires the design professional be responsible to defend an owner or other party against claims asserted by a third-party **even if the design professional is not negligent.** This duty to defend clause is not fair, equitable or inclusive. This means that even when our designs effectively reduce flood risk and contribute to a more resilient infrastructure, we may be required to defend others in court against any potential lawsuit. As a small business, this situation would very quickly deplete our cash reserves and we would likely have to close our business. Not only losing jobs but losing the ability to contribute our skills in resilient infrastructure design.

This requirement in professional services contracts is not fair to design firms of any size, but it is especially damaging to emerging and small businesses that typically don't have the ability to advocate against these contract requirements. We find these duty to defend clauses to be a major deterrent to compete for certain projects, many of which are with governmental agencies. Our firm's experience with duty to defend has been that we have had to turn down work rather than risk losing the firm. In a bad economy turning down work could lead to layoffs. We have hired qualified women and minorities whenever possible and mentor them in responsible design and risk management. They are growing in their careers and becoming leaders in infrastructure design and ecosystem resilience. We want to be able to continue to provide meaningful career opportunities for women and minorities in an industry where that is lacking. Help our business be more resilient so that we can help the State be more resilient.

We respectfully ask this committee to support the -2 amendment to SB 213 and send this bill to the Senate floor. This is good business policy that will assist firms across the state in being able to engage in construction projects, including many government-funded projects, by removing this onerous duty to defend clause.

Thank you for your service and we are happy to be a resource if you have additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marjorie Wolfe", is written over a light blue horizontal line.

President Wolf Water Resources