



February 1, 2021

House Committee on Water
900 Court Street NE
Salem, OR 97301

RE: Oregon Natural Desert Association testimony in opposition to HB 2298

Dear Chair Helm and Honorable Members of the Committee:

Thank you for the opportunity to provide written testimony on HB 2298. Oregon Natural Desert Association (ONDA) is a not-for-profit conservation organization based in Bend that exists to protect, defend and restore Oregon's high desert on behalf of our more than 10,000 members and supporters from across Oregon and beyond.

Over the past decade, ONDA has been working with diverse stakeholders throughout Oregon's high desert to restore streams, fish habitat and native beaver populations. ONDA has employed the use of Beaver Dam Analogues (BDAs) and other permeable instream structures in its restoration projects to improve stream function and re-establish conditions required for healthy stream function, including channel complexity, woody vegetation, deep pools and cold water. We also participated in the Department of State Lands' 2016-2017 Rules Advisory Committee which sought to define Administrative Rules for stream restoration actions.

While we support efforts to encourage voluntary stream restoration we are concerned that HB 2298 is not specific enough in its definition of what qualifies as an "environmental restoration weir." The definition does not include an adequate description of what constitutes an effective structure that will actually accomplish the restoration purposes described in HB 2298. For example, a rip-rap rock structure (sometimes called a "check dam") and a live-cutting BDA would both be permitted under this bill. However, the rock structure would likely bring detrimental impacts to habitat and stream function while the live-cutting BDA would likely bring habitat improvements.

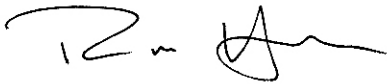
We understand that some of these definitions would be refined in rule making but it is imperative that adequate side boards be established in this bill. HB 2298 should more clearly define the form, function and composition of an environmental restoration weir per established, scientifically-based principles similar to those discussed in prior Rules Advisory Committees. In addition, because of the potential complexity involved, Oregon Department of Fish and Wildlife (ODFW) should be authorized to determine whether the design of a proposed weir is consistent with the best available science, likely to produce the intended ecological benefits and, therefore, able to qualify under HB 2298.

Further, HB 2298 would exempt certain projects from fish passage requirements if native fish are absent from the stream where a project occurs, even if native fish historically occupied the area. In the event

that native fish are found in a stream after a structure has been constructed, HB 2298 conditions fish passage requirements on, among other factors, whether it is economically practicable for the project applicant. Given that restoring fish to historically occupied habitat can play a very important role in fish population restoration broadly, fish passage should not be conditioned on a vague consideration of economic practicability. Instead, if a project is constructed in habitat historically occupied by native fish, the project design should account for fish passage or the applicant should be responsible for providing fish passage if native fish are found to be in the vicinity of the project after construction. In many cases, the design and composition of a structure (*e.g.*, the difference between a rock check dam and a BDA as described above) is also related to fish passage because well-designed structures relying on the best available science often allow for fish passage as an inherent part of their design.

We recommend that you oppose the bill unless it more narrowly defines what qualifies as an environmental restoration weir and takes a more conservation-focused approach to ensuring fish passage.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ryan Houston', with a stylized flourish at the end.

Ryan Houston
Executive Director
Oregon Natural Desert Association

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