



## Oregon Water Resources Congress

1201 Court St. NE, Suite 303 | Salem, OR 97301-4188 | 503-363-0121 | Fax: 503-371-4926 | [www.owrc.org](http://www.owrc.org)

October 3, 2011

Land Conservation and Development Commission  
Attn: Chairman John VanLandingham  
635 Capitol St. NE, Suite 150  
Salem, OR 97301-2540

Delivered via email to Lisa Howard, Commission Assistant ([lisa.howard@state.or.us](mailto:lisa.howard@state.or.us))

Subject: October 6, 2011 LCDC Meeting Agenda Item No. 6. Possible Adoption: Proposed Amendments to Rules Regarding OAR Chapter 660, Division 33, Irrigation Reservoirs on Farmland.

Dear Chairman VanLandingham and Commissioners:

As I am unable to attend the Land Conservation and Development Commission meeting on October 6<sup>th</sup>, I am sending this letter to respond to the request you made at your last Commission meeting for DLCD staff to meet with me to discuss whether or not the Oregon Water Resources Congress (OWRC) would be willing to support the continuation of the rulemaking for irrigation reservoirs on EFU lands with a more limited scope that had been suggested to the Commission. I appreciate the courtesy you extended to OWRC and me in asking staff to explore the limited alternative for a rulemaking with OWRC. I also appreciate the time Katherine Daniels spent explaining the concerns that had been presented to the Commission about the irrigation reservoirs.

First, I would like to take this opportunity to respond to the question someone asked at the last Commission meeting about the number of irrigation reservoirs likely to be built using the exemption in HB 3408. Over the last several years we have canvassed our members several times about their plans for new infrastructure and there are only one or two that are have a new reservoir in their ten year horizon. We do not know if those would be on EFU lands and would thus trigger this new exemption. In general, reservoirs are expensive to bring to completion and involve a long process of many different kinds of approvals, not the least of which is the application process for a water right from the Water Resources Department that includes opportunities for public input.

The Oregon Water Resources Congress remains opposed to continuing the rulemaking for irrigation reservoirs on EFU lands even with a limited scope.

1. We do not believe there is any need to develop a definition for "irrigation reservoir." We believe that the Legislature was clear about its intent in the adoption of HB 3408. Further, we believe that the term "irrigation reservoir" is self-explanatory using the normal meaning of those words. If there is ever disagreement about the definition, state statutes and rules governing the beneficial uses for water rights and governing special districts will further clarify the meaning of "irrigation reservoirs".

In addition, the provisions of HB 3408 apply only to specific types of special districts (not to general purpose governments or to private parties). The authorities of those districts, as provided by the statutes governing their formation and operation, are limited to delivery of

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water for irrigation, providing flood control, and/or providing drainage. One type of district does also have the authority to create a rural water delivery system for domestic use, but we believe the definitions in the water code for irrigation water taken together with the term "irrigation reservoir" would preclude using the exemption in HB 3408 from being used to supply water for domestic use.

2. The issue of ensuring consistency between the language of HB 3408 and existing statutes can be handled through a "housekeeping" rulemaking and does not require the continuation of the current rulemaking for irrigation reservoirs.
3. We do not see the necessity for a rulemaking that states that current provisions governing airports near water impoundments apply to irrigation reservoirs. There is no challenge to the fact that an irrigation reservoir is a water impoundment. The concern that counties be aware that the existing provision would apply to an irrigation reservoir can be addressed by a reminder from the Commission or the Department to the county planning departments. The intent of the Legislature in creating the exemption for irrigation reservoirs did not include any additional checklists or requirements for such projects beyond what may already be required for an exempt project on EFU lands.
4. As far as restricting uses on lands adjacent to irrigation reservoirs, the provisions of HB 3408 apply only to a reservoir being constructed on EFU lands. The adjacent lands would also be EFU lands and would be subject to the existing statutes and rules governing proposed developments or changes in land use on EFU lands. We believe that the current laws governing EFU lands provide sufficient protection for owners of lands adjacent to an irrigation reservoir built under the provisions of HB 3408 provide against the development of conflicting land uses.

DLCD staff has stated publicly that the original notice of the rulemaking triggered an onslaught of phone calls and emails to staff from land owners concerned about the impact this rulemaking might have on their ability to use their lands as they see fit. Trying to impose restrictions on land next to an irrigation reservoir is overreaching and unnecessary.

Thank you for your consideration of our original comments and these additional comments urging the Commission to terminate the rulemaking on irrigation reservoirs.

Sincerely,



Anita Winkler  
Executive Director