



**HOUSE OF REPRESENTATIVES**

June 18<sup>th</sup> 2019

Dear Chief Clerk Sekerak,

I wish to file a vote explanation for my vote on HB 2437, because I have been contacted by a number of constituents in House District 32 who have approached me with concerns over how this bill will impact not just our district, but our state's wetlands. I have also been approached by constituents in the district who are farmers that have enthusiastically advocated in opposition to this bill. When you hear from such a broad swath of constituents with differing opinions, and especially on an issue with such broad impacts, it's especially important to "do your homework" to make sure that decisions you make take into consideration all viewpoints.

Agricultural ditches are used by farmers to allow for runoff from their crops and essentially as a "drain" for that excess water. Over time, sediment and other waste can accumulate in the ditches. With that accumulation, if not maintained, the ditch can be rendered useless because the streamflow is impeded by that waste. So, farmers need the ability to periodically remove that accumulation from the ditch and dispose of the dredged material. While some ditches are wholly manmade, some are intermittent streams used for drainage purposes. Drainage channels that are streams are regulated by DSL. Farmers can remove up to 50 cubic yards without having to get a permit, but for amounts above that, they have to get a removal fill permit. Some farmers believe the permitting process is onerous, or they are unaware of the law, with the result being very few farmers actually apply for a permit and end up cleaning their ditches without authorization to remove more than the 50 cubic meters currently allowed by law.

The need for a fix being clear, a workgroup was convened in the legislative interim to address the needs of farmers, while at the same time making sure that environmental considerations were also addressed in a process that inevitably will end up impacting the habitats of animals, birds, and fish that live in and along agricultural ditches. From what I have been told about this workgroup, and based on some of the documents I've seen that came out of the group, a great deal of thought and consideration around all of these issues was made—and a lot of progress was achieved. For example, this bill was intended to create sideboards and involved three different agencies (the Department of State Lands, Oregon Department of Agriculture, and Oregon Fish & Wildlife) to make the process more accessible to farmers but at the same time allow for environmental conditions to attach to this work.





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That said, while I feel this bill is the result of a long and deliberative process that truly tried to strike a balance between the need to protect our natural resources and environment, while also seeing to the needs of our farmers, I feel this bill falls a bit short of what I would have needed to see in order to feel fully comfortable in voting for it. For example, while the current 50 cubic yard exemption from DSL permitting is admittedly insufficient—the jump to 3,000 cubic yards per linear mile is quite large and is a blanket amount that doesn't necessarily take into consideration the unique needs of the habitat that has cropped up around the waterway. Without additional protections around this process—it makes it difficult for me to be supportive of this particular approach.

Secondly, the language of the bill indicates that the dredge spoils from irrigation ditches can be placed on wetlands, rather than limiting it to converted wetlands. Though I truly believe that most farmers endeavor to act responsibly and historically have simply used dredge spoils to spread on their fields for fertilizer, there is still some ambiguity for me in reviewing the language of the bill that wetlands will be protected, in spite of the bill's assertion that any disturbance must be “temporary” and not “materially change the depth or functionality of a wetland.”

Additionally, the timeline in the bill that a notice of “go ahead” or denial must be issued is 45 days. If the agencies are unable to complete their process within that time frame, the removal of up to 3,000 cubic yards can proceed—and potentially without any oversight. The responsibility of reviewing notifications and assessing the need for environmental conditions is ultimately shared between three different agencies in this bill, creating a bureaucracy that while it might be thorough, would also potentially be constrained by that timeline in such a way that we might not have the necessary oversight to ensure proper protection of wetlands.

Finally, and most problematically for me, is the direction to DSL to establish by rule one or more general permits that allows for the removal of material from “waters of this state, including essential indigenous anadromous salmonid habitat” during “channel conditions where flowing or standing water is present.” The majority of this bill relates to a permitting exception process in channels where there is no standing or flowing water. Section 9, where this addition is made, potentially opens some dangerous pathways for areas to be impacted that probably should not. The permits referred to here will be created in rule, with no protections in statute that exist in the rest of the bill in dry ditches. Notably, current law allows for removal fill from wet waters for drainage activities with a cap of 100 cubic yards; this new section does not set a statutory cap.



**TIFFINY MITCHELL**  
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To its credit, Section 10 of this bill calls for Oregon State University to conduct “a study of benefits and impacts of maintenance activities” referred to in the bill. Given some of the fairly large changes to the permitting process, however, I believe that this study should have been conducted before implementing such a large change. If this study had been done in conjunction with a pilot first, and then changes made afterward based on the results of the pilot, we would at least have a program based on data that could give a clearer idea of the impact of some of these major changes.

I have to say that I feel this bill is about 90 percent of where it needs to be, which is a testament to the dedication of the participants in the workgroup to find a viable solution for our farmers that also respects the climate. Given some of the concerns I have outlined here, however, I feel that there would need to be a little more in the bill in order for me to be completely supportive of it. Obviously, this legislation passed without my vote—which does at least give our farmers a more accessible process. That said, I do hope that these concerns give rise to a desire by stakeholders to go back in the next legislative interim and undertake a similar process to resolve these remaining concerns.

Respectfully,

Representative Mitchell

