

APKE Greg D * ODFW

From: Mark Kujala <mark.kujala@gmail.com>
Sent: Friday, May 07, 2021 2:03 PM
To: Greg D Apke
Cc: Steve Albertelli
Subject: Comments to the OARs

Greg,

I reached out to a few folks, but wasn't able to get much of a response at this time on the proposed OAR revisions.

I think my comments are that the OARs really need to be crystal clear how exactly they will calculate the 50% repair that will trigger the major procedures and costs under this proposed program.

If the 50% calculation includes the value of the levy and tide-gates together as a system, (as opposed to the each specific tide-gate in isolation), then this is much less of an issue to the cities and diking districts that would then be able to do their normal repairs and updates on their existing levies and tide-gates as they have been doing successfully for the past 100+ years.

If the 50% calculation is going to only be based on each concrete and steel tide-gate itself in isolation, then every standard tide-gate repair will trigger this process, and eventually will create serious cost problems for the cities and diking districts to be able to comply. Due to these major costs (and the general lack of funds most diking districts have) I would strongly advocate the 50% calculation must be based on their levy and tide-gate system as a whole.

Alternatively, if these lands then become unusable due to an inability of a city or diking district to comply because they cannot afford to repair/replace their next tide-gate that fails, are agencies admitting this will cause a regulatory "taking" of these lands under the Federal 5th Amendment, such that Oregon will have to pay all of the landowners just compensation (Real Market Value) and purchase their lands outright? This regulatory "taking" issue scenario should be admitted up front, or else farmers losing their land may face many thousands in attorney fees and years in court with an uncertain result. Oregon can ill-afford to lose more jobs and farming lands necessary to grow our food (and take even more lands off our taxing district rolls, and all of the lost income to all of the related businesses and citizens supported by these activities); and this is doubly true for Clatsop County.

What is the actual plan and procedures if a city or diking district cannot afford to comply? Will they be forced to actually have their lands flooded/given a moratorium from any future building/declared not habitable/condemned/etc.? As a matter of transparency and fairness, all proposed government regulations should have to honestly disclose their full actual and expected costs and burdens to the taxpayers and its citizens. We are dealing with these same issues currently regarding timber and fishing interests in Clatsop County. The economic impacts of regulatory actions need to be part of the discussion.