

Back To Basics Review – Comments by Stan Dean

568.550 General powers of board of directors; erosion control covenants; interagency cooperation; land use regulations; department rules. (1) The board of directors of a soil and water conservation district has the following powers:

Item (a) gives authority for surveys and investigations for erosion, flood, sediment and water resources. Does this mean that SWCDs can't do surveys and investigations on other types of natural resources? Plants and wildlife? Soil quality? Pollution? Climate? Agricultural practices? Forestry practices?

Why is the term "secure" used in paragraph (a)? Do we really want to be able to "conduct" surveys and investigations?

(a) To secure surveys and investigations and do research relating to:

(A) The character of soil erosion;

(B) The character of floodwater and sediment damage;

(C) All phases of the conservation, development, utilization and disposal of water; and

(D) The preventive measures, control measures and improvements needed.

(b) To conduct demonstrational projects on lands within the district upon obtaining the consent of the owner and occupier of such lands.

Paragraph (c) uses the term "preventative and control measures." Much of our work is also focused on "improving" natural resources which should be included.

(c) To carry out preventive and control measures on lands within the district upon obtaining the consent of the owner and occupier of those lands.

In paragraph (d), what is the definition of "non-governmental agency?" Does it include non-profit corporations?

(d) To enter into written agreements with and, within the limits of appropriations duly made available to the board by law, to furnish financial or other aid to any governmental or nongovernmental agency or any owner or occupier of lands within the district, for the purpose of:

(A) Carrying on within the district soil erosion control and prevention operations, water quality improvement, watershed enhancement and improvement, fish and wildlife habitat management activities and other natural resource management activities; or

(B) Carrying out district responsibilities under ORS 541.898, 568.225, 568.550 and 568.900 to 568.933.

(e) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest or devise any property, real or personal or rights or interests therein, to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of ORS 568.210 to 568.808 and 568.900 to 568.933, and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of ORS 568.210 to 568.808 and 568.900 to 568.933.

Why does paragraph (f) only give the opportunity for landowners to be heard? Shouldn't all citizens be given the opportunity? The paragraph also says that ODA shall adopt rules on this matter. Has this been done? Should it?

(f) To borrow money and to mortgage personal property of the district as security for the borrowed money, if the district first gives notice of and holds a public hearing within the district to provide landowners with the opportunity to be heard. The State Department of Agriculture shall adopt rules specifying the manner for giving notice of a hearing under this subsection.

(g) To issue general obligation bonds of the district as provided in ORS 568.803.

In paragraph (h) why is the equipment only made available to landowners or occupiers?

(h) To make available, on such terms as the directors shall prescribe, to landowners or occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings and other material or equipment.

(i) To construct, operate and maintain such structures as may be necessary or convenient for performance of any of the operations authorized in ORS 568.210 to 568.808 and 568.900 to 568.933.

In paragraph (j) why is developing plans and specifications limited to conservation of soil? Shouldn't this authority be given to all natural resources?

(j) To develop comprehensive plans and specifications for the conservation of soil resources and for the continued control and prevention of soil erosion within the district, and to publish such plans, specifications and information and bring them to the attention of owners and occupiers of lands within the district.

Why are paragraphs (k), (l), and (m) limited to soil conservation and erosion?

(k) To take over, by purchase, lease or otherwise, and to administer, any soil conservation, erosion control or erosion prevention project, or combination thereof, located within district boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies.

(l) To manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil conservation, erosion control or erosion prevention project, or combination thereof, within district boundaries.

(m) To act as agent for the United States or any of its agencies, in connection with the acquisition, construction, operation or administration of any soil conservation, erosion control or erosion prevention project, or combination thereof, within district boundaries.

(n) To accept donations, gifts and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials or other contributions in carrying on its operations.

(o) To sue and to be sued in the name of the district, to have a seal, which shall be judicially noticed, to have perpetual succession unless terminated as provided by law, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and to

make, and from time to time amend or repeal, rules not inconsistent with ORS 568.210 to 568.808 and 568.900 to 568.933 to carry into effect its purposes and powers.

(p) To purchase liability or indemnity insurance, in such amounts and containing such terms and conditions as the board believes necessary for the protection of directors, officers and employees of the district against claims incurred in the performance of official duties. The premiums for such insurance shall be paid out of moneys available for expenditure by the district.

(q) To place liens on real and personal property.

Consider amending paragraph (r) to include non-profit corporations. As written the powers of the board do allow contracting with many of our non-governmental partners such as watershed councils and other non-profits. This request was submitted to OACD in the summer of 2012 through OACDs solicitation of legislative issues from members.

Note there is also contracting authority under 560.550 (d) which includes “governmental and non-governmental agencies” and has a broad scope on the types of activities that can be contracted. Is the scope of contracting broader or significantly different in 560.550 (d) than in 560.550 (r)? Does the term “non-governmental agencies” include the non-profit corporations that that are our partners?

Might want to consider consolidating these two sections on contracting authority.

(r) To enter into written agreements with, coordinate activities with and provide assistance to landowners, managers and residents within the district and federal state and local governments, relating to natural resource issues, including but not limited to issues of:

- (A) Agriculture and forestry;
- (B) Economic development based on natural resources;
- (C) Watershed management and ecosystem health;
- (D) Invasive species;
- (E) Alternative and renewable energy;
- (F) Air quality;
- (G) Animal waste and nutrient management;
- (H) Carbon sequestration;
- (I) Access to market-based services and certification;
- (J) Fuel reduction and wildfire planning and management; and
- (K) Preservation of agricultural, forestry and other lands.

(s) To conduct outreach and conservation education activities.

(t) To provide financial assistance, including but not limited to loans and grants to implement activities and projects authorized under ORS 271.715 to 271.795, 568.210 to 568.808 or 568.900 to 568.933.

(u) To hold patents, trademarks and copyrights.

(v) To hold conservation easements under ORS 271.715 to 271.795.

Paragraph (2) allows districts to require contributions for services. This paragraph should be broadened to include all services that districts provide, not just benefits to “lands” and “landowners and occupiers” for the purpose of “prevent or control erosion.”

(2) As a condition to the extending of any benefits under ORS 568.210 to 568.808 or 568.900 to 568.933 to lands, or the performance of work upon lands, the directors may require contributions in money, services, materials or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

Why does paragraph (3) give the authority of the department to get assistance for only those activities contained in subsection (1) (a)? Should this authority cover more of the types of work done by Districts?

(3) In order to avoid duplication of activities under subsection (1)(a) of this section, the department may call upon other state and federal agencies for assistance and cooperation in their fields in accordance with memoranda of understanding to be signed by all cooperating agencies.

Why does paragraph (4) only give district standing of an “affected property owner...that affects properties within the district?” Shouldn’t these powers be more akin to the status as a citizen?

(4) A district may not adopt land use regulations under ORS chapter 197, 215 or 227. A district has the standing of an affected property owner to participate in public processes involving administrative rules, regulations, goals, guidelines, plans or other public body actions that may affect one or more properties within the district. [Amended by 1955 c.142 §16; 1957 c.603 §4; 1961 c.640 §3; 1973 c.656 §13; 1981 c.92 §29; 2005 c.22 §386; 2005 c.282 §1; 2009 c.220 §26]

Do we need a power to advocate in rulemaking or legislative actions in accordance with state laws?

568.552 Power of directors to manage and control water resources and projects; authority of Water Resources Commission. (1) The members of the local governing body of a soil and water conservation district shall have, in addition to the powers granted to them by ORS 568.550 and within the limits of appropriations and other moneys duly made available to the soil and water conservation district, the power:

(a) To plan, construct, maintain, manage, administer or control any works of improvement for flood prevention or for the conservation, development, utilization or disposal of water upon lands within their respective districts upon obtaining the consent of the landowner as defined in ORS 568.210, and the land occupier as defined in ORS 568.210, of such lands.

(b) To enter into written agreements to furnish financial or other aid to any agency, governmental or otherwise, or any landowner as defined in ORS 568.210, or land occupier as defined in ORS 568.210, or both of them, of lands within the district, for flood prevention or for the conservation, development, utilization or disposal of water within their respective districts.

(c) To manage, as agent, or to take over, by purchase, lease, or otherwise any flood prevention, drainage, irrigation or agricultural water management project or any combination thereof, undertaken by the United States or any of its agencies, or by this state or any of its agencies.

(2) Authority granted under this chapter shall be subject to the authority of the Water Resources Commission to formulate an integrated, coordinated program for the use and control of all water resources of this state and to classify and withdraw water resources of this state under ORS 536.300 to 536.410. [1961 c.640 §1]