

November 5, 2025

Via Email

Marion County Planning Division
5155 Silverton Rd. NE, Salem OR 97305
planning@co.marion.or.us

RE: Santiam Water Control District Comments to Remington BESS Administrative Review 25-015

Santiam Water Control District (“SWCD”) appreciates the opportunity to comment on the Remington BESS appeal of the Planning Division Decision. SWCD previously submitted comments on July 17, 2025, to Marion County Planning regarding the initial Remington BESS application (“Application”).

1. Background.

SWCD is an Oregon water control district formed under ORS Chapter 553. SWCD provides irrigation and drainage services to its members. SWCD owns and operates water conveyance facilities (“SWCD Facilities”) for the benefit of its members. SWCD currently provides irrigation water to the 46.35-acre parcel located in the 5200 block of Pearson Rd SE, Turner, Oregon which is the subject of the Application (“Property”) and to adjacent properties under SWCD water rights. The Property is within SWCD district boundaries and subject to the SWCD Rules and Regulations. The Property is also burdened by a SWCD water delivery contract.

SWCD delivers irrigation water to the Property through SWCD Facilities including the SWCD canal which is located east of the Property. SWCD Facilities provide drainage services to the Property. The SWCD canal is shown in white on the attached LiDAR map running east of the Property (Exhibit A – Map). A drainage ditch is located on the north portion of Property and enters the SWCD canal. The Map indicates that the Property slopes downwards to the drainage ditch. Therefore, stormwater runoff, unless otherwise contained, flows into the drainage ditch and then into SWCD Facilities.

The Map also shows three stormwater retention ponds on the east boundary of the Property (“Stormwater Ponds”). The Stormwater Ponds have been disconnected from the Property’s drainage system and are currently not in use.

SWCD wishes to address several issues with the Application and is concerned that County approval of the Application without additional conditions would violate the Marion County Code and Statewide Planning Goals.

2. Compliance with Marion County Code.

Two of SWCD's concerns with the Application are: (A) adverse impacts on water quality and water quantity from construction stormwater, due to the increase in stormwater resulting from the Application's proposed increased impervious surfaces, and from pollutants from Facility operations, spills, leaks, or fires; and (B) adverse impacts on farm practices.

A. Adverse Water Quality and Quantity Impacts.

Applicant is required to meet Marion County ("County") conditional use review criteria, including that the proposed use not "have a significant adverse impact on . . . water quality." MCC 17.136.060(A)(3). The construction and operation of the 15-acre battery storage facility ("Facility") will have significant adverse impacts on water quality unless the County includes conditions on Application approval.

The Application includes a preliminary Site Plan that does not identify stormwater drainage, and the Application does not include information on surface water drainage other than a square labeled "Proposed Stormwater System" on the preliminary Site Plan. The Application notes that a detailed site plan would not be available until after county land use approval and that all information in the preliminary Site Plan is subject to change.

a. Ongoing and Construction Stormwater.

Silt caused by erosion and land management practices is already an issue at the Property. Landowner has repeatedly requested additional maintenance from SWCD on the SWCD Canal and the pump that pulls irrigation water for the Property due to silt accumulation. If the proposed use is approved, the permanent increase in impervious surface on the Property created by converting farmland to the Facility will increase the annual volume and the peak flows of Property stormwater. This will exacerbate the existing silt issue on the Property and create adverse water quality impacts. In addition, the construction of the Facility, access roads and utilities will temporarily increase erosion and water quality issues.

SWCD is concerned about the proposed increase in annual volume and peak flows. Stormwater discharges temporarily increase the volume and flow of water in SWCD Facilities. Peak flows SWCD acknowledges that flow, considered alone, is not primarily a water quality concern. However, stormwater contributes to peak flows which may exceed the load capacity of SWCD Facilities and result in increased erosion. Increased erosion causes turbidity and related water quality issues. Increased peak flows also cause flooding and damage to SWCD Facilities and to private property. Erosion, canal damage, and flooding impact water quality by introducing sediments and other pollutants into the SWCD Facilities.

SWCD is also concerned about the water quality issues from the construction stormwater from the Property. The construction activities proposed in the Application such as excavation and grading, and if improperly controlled, will cause sediment runoff into SWCD Facilities.

Sediment runoff is of special concern because the Property is within the Willamette Basin which is water quality impaired for mercury. Therefore, waterways around the Property are subject to the Willamette Basin Mercury TMDL established by the U.S. Environmental Protection Agency on December 30, 2019 ("Mercury TMDL"). Mercury stored in the soil may be released by the construction activities proposed in the Application such as excavation and grading, and if improperly controlled, may be released by erosion and runoff and cause negative water quality impacts on SWCD Facilities and receiving waters. Mercury a serious health concern because mercury in its various forms can accumulate in the body and damage the nervous system, kidneys, and brain. Without proper protections, increased runoff from the Facility will cause sediment accumulation in SWCD Facilities.

The potential for mercury runoff into SWCD Facilities exposes SWCD to regulatory liability and associated costs because the Mercury TMDL designated water conveyance entities, such as SWCD, as "responsible persons" who are responsible, and can be liable for, the mercury in their conveyance facilities. When increased sediment is discharged into SWCD Facilities, SWCD must perform maintenance activities which triggers mitigation responsibilities and associated costs under its Mercury TMDL Plan. County land use approvals should include conditions that protect against addition of pollutants into its waterways and not negatively impact SWCD's ability to comply with the Mercury TMDL.

b. Facility Pollutants.

In addition to the water quality concerns related to construction and ongoing stormwater, there are potential significant adverse impacts from the operation of the proposed use on water quality. These include pollutants from potential Facility spills and leaks, and pollutants from fire control measures.

If any of these potential water quality issues occur and affect water entering SWCD Facilities, the pollutants would be conveyed downstream and impact additional properties.

B. Adverse Impacts on Accepted Farm Practices.

For a conditional use to be approved in an EFU zone, it must not "force a significant change in, or significantly increase the cost of, accepted farm or forest practice on surrounding lands devoted to farm or forest use." MCC 17.136.060. SWCD's delivery of irrigation water to surrounding lands and SWCD members' irrigated agriculture on the surrounding lands are accepted farm practices. Removal of these approximately 15 acres of EFU land from agriculture will impact SWCD Facilities and water rights and will impact the ability of other SWCD members' farm practices

Without additional conditions, the Application could both force a significant change in and significantly increase the cost of SWCD operations. That increase in cost would be passed on to SWCD members who farm surrounding lands.

First, the 15-acres of the Property which will be converted from agriculture to the Facility is currently being irrigated with a SWCD water right ("SWCD Water"). If the 15 acres of SWCD Water is not removed from the Property and transferred to other SWCD lands through a permanent transfer application with Oregon Water Resources Department ("Transfer Application"), the water right may be forfeited. Water rights in the Willamette Basin are of great value especially as new water rights become unobtainable. OWRD requires landowner consent or a deed showing transfer of the landowner's interest in the water right SWCD in order to approve a Transfer Application. The Property is also subject to a SWCD water delivery contract that binds the acres currently receiving water.

Second, the current pump that provides SWCD Water to the Property will be oversized once the 15 acres is removed from irrigation. Without modification, the pump would distribute more water than the Property may legally use. Therefore, the landowner must install an SWCD-approved method of measuring use of water on the Property.

3. Compliance with Statewide Planning Goals.

Under the Statewide Planning Goal 11, counties are required to "plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." Public facilities specifically include storm sewer systems. See OAR 660-011-005(7)(c). The County does not have a system in place to meet the stormwater needs of a battery energy storage system on the Property. Instead, the Application proposes to utilize the SWCD Facilities as if they are County facilities. SWCD has not granted the Applicant permission to utilize its facilities. Therefore, County approval of the Application without the SWCD recommended conditions would be a failure to meet these Goal 11 requirements.

Under the Statewide Planning Goal 2, counties are required to coordinate their plans with affected government agencies, including special districts such as SWCD. The Application proposes to use SWCD Facilities without SWCD consent in violation of SWCD Rules and Regulations. Therefore, County approval of the Application without the SWCD recommended conditions would fail to meet these Goal 2 requirements.

Statewide Planning Goal 6 (OAR 660-15-000)(6) requires the county to insure that "waste and process discharges" of future development will comply with applicable state and federal environmental statutes and rules. Goal 6 requires that the county ensure that waste and process discharges from future development will not degrade, overload, or threaten the availability of air, water, or land. Without additional protections, approval of the Application will have the adverse impacts on water quality described above. Therefore, County approval of the Application without the SWCD recommended conditions would fail to meet these Goal 6 requirements.

4. SWCD Recommended Conditions.

SWCD recommends that County approval of the Application be contingent on the following conditions.

A. Water Quality Recommended Conditions.

To prevent significant adverse impacts on water quality, SWCD requests that the County condition the approval of the Application on the detention of all stormwater on-site through detention facilities sufficient for a 50-year storm event. Alternatively, if Property stormwater must enter SWCD Facilities, the County should require the Applicant enter into a consent agreement with SWCD. A consent agreement would allow SWCD the opportunity to evaluate the pollutants in the proposed discharges and gauge the impact of increases in stormwater flows. SWCD may then enter into an agreement to address liabilities surrounding water quality and increased stormwater flows.

SWCD also requests that the County require that any Facility environmental planning, such as pollution prevention plans or spill plans, are submitted to SWCD for review and approval to ensure that pollution is kept out of the drainage ditch and SWCD Facilities.

B. Farm Practices Recommended Conditions.

In order to prevent significant cost and impacts to accepted farm practices on surrounding lands, specifically to SWCD and its members, SWCD requests that the County condition approval of the Application on the landowner deeding its interest in the SWCD Water back to SWCD, landowner amendment of its SWCD water delivery contract to exclude the 15 acres, and landowner installation of an SWCD-approved method of measuring water use on the Property.

SWCD Comments - Exhibit A (Map)

