



Oregon

Kate Brown, Governor

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State Land Board

To: Representative Brad Witt, Chair, House Committee on Agriculture and Natural Resources Representative
Vikki Breese-Iverson, Vice-Chair, House Committee on Agriculture and Natural Resources
Representative Zach Hudson, Vice-Chair, House Committee on Agriculture and Natural Resources

Kate Brown
Governor

Shemia Fagan
Secretary of State

From: Bill Ryan, Deputy Director, Oregon Department of State Lands

Tobias Read
State Treasurer

Re: Follow-up on House Bill 2246

Thank you for the opportunity to provide testimony on HB 2246 on Tuesday, March 30. I appreciated having time to speak during a particularly long committee session. The Department would like to provide the additional information below for your consideration.

Oregon is home to many types of wetlands, providing many benefits. Wetlands store water to help reduce flood damage during wet months, and slowly return that water to rivers during dry months to increase water flows for agricultural irrigation, recreation, and fisheries. Wetlands can help remove pollutants from runoff, helping protect our fields, streams, and rivers. Wetlands also provide habitat for many fish and wildlife species.

Oregon's wetlands are as diverse as our landscapes. Wetlands can look like tidal salt marshes along the coast, freshwater marshes along inland streams and ponds, seasonal prairie wetlands in valleys, mossy fens in mountains, or ryegrass fields and pastures on agricultural lands.

The benefits wetlands provide goes beyond appearance. While glistening pools and lily pads may offer a peaceful setting, Oregon protects wetlands for the benefits they provide, not their appearance. The wetlands that provide these benefits – known as functions and values – may look very different from place to place. Wetlands on working lands provide significant benefits including water quality improvement, flood prevention and fish and wildlife habitat.

When wetlands are damaged, Oregon statute allows DSL to require restoration of the benefits provided by the wetland before the damage occurred. Oregon statute (ORS 196.825(5)) does not allow DSL to require benefits that did not exist prior to the removal-fill activity:

“Compensatory mitigation shall be limited to replacement of the functions and values of the impacted water resources of this state.”

Invasive species such as blackberries do not contribute to benefits. Oregon's Removal-Fill Law does not regulate removal of vegetation – but removal of blackberries and other plants is often accompanied by other removal-fill activities such as adding dirt and excavating. A restoration plan often aims to protect the positive effect of removing invasive species while also addressing how the removal-fill activity impacted wetland functions and values. Replanting with appropriate plant species helps ensure the successful restoration of benefits without continuing a nuisance.

This bill would impact the current collaborative, low-cost approach to identifying wetland impacts. As mentioned during yesterday's hearing, the Department currently uses information such as aerial photographs, available wetland inventories, information from the landowner, and data collected at a site visit to determine the extent of the wetlands affected. The information is then used to develop a restoration plan that roughly replaces lost functions and values. This cooperative process typically does not require the landowner to hire a wetland consultant. Most removal-fill law violations are resolved through voluntary consent without a formal judicial process.

This bill may result in the Department needing to require a forensic evaluation of the condition, functions, and values of the wetland immediately prior to the removal-fill activity to ensure any restoration proposal does not exceed what the Department could require. For example, this would be necessary if the Department and the responsible party were unable to come to agreement regarding prior conditions or the restoration plan.

This bill could increase the cost and time of reaching agreement, for both the landowner and DSL. A forensic evaluation could be needed to determine the functions and values that exist immediately prior to the violation, this would likely require hiring a wetland consultant. To ensure the intent of this bill was met, an initial condition, function and value assessment of the wetland prior to the disturbance would be required, followed by a second condition, function and value assessment of the restored site or the mitigation site to ensure that the intent of this statute was met.

The bill could even limit the options available to the responsible party for resolving the violation. For example, resolving a violation by means of compensatory mitigation that involves enhancing a wetland elsewhere may no longer be possible. This could significantly constrain the resolution options for the responsible party.

Increasing wetland awareness through outreach is essential. DSL currently seeks to raise awareness of wetland contributions and regulations through:

- *No-cost wetland determinations.* DSL offers a free wetland determination service to help property owners evaluate the likelihood of wetlands on their land. Information is available on the [DSL website](#).
- *Providing an easy-to-use online map.* The Statewide Wetlands Inventory, available on the [DSL website](#), lets Oregonians easily see whether wetlands may be present on a property. Checking for wetlands before beginning a project is as important as checking for gas lines and other buried utilities. DSL is continually working to make wetland information easily accessible and to add information to the online inventory.
- *Working with local governments to identify wetlands before a project begins.* DSL's focus is encouraging proactive compliance, which helps reduce removal-fill violations that damage wetlands. Oregon's statutory wetland land use notice process is essential to our proactive approach. When projects are proposed, local planning officials check national, state, and local wetland inventories and notify DSL if wetlands may be present on a project site. This process helps landowners avoid, reduce, or mitigate wetland impacts, and avoid removal-fill law violations.

DSL will continue to work to raise awareness, and we welcome outreach partnerships. Reaching farmers, landowners, developers, realtors, and ultimately all Oregonians with wetland information is essential to ongoing protection of these essential natural resources.

Thank you for the opportunity to provide this additional information. We are happy to answer questions or follow up as needed.