



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

HB 4148

Testimony of WaterWatch of Oregon

By Kimberley Priestley

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Founded in 1985, WaterWatch is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. We work to ensure that enough water is protected in Oregon's rivers and that groundwater is responsibly managed in order to sustain fish, wildlife, recreation and other public uses of Oregon's rivers, lakes, wetlands and streams. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

WaterWatch opposes HB 4148: While WaterWatch is supportive of incentivizing salmon restoration projects, HB 4148 is flawed on many levels; and rather than ensure that the program will result in restoring habitats across the landscape, it leaves Oregon's rivers, streams, wetlands and aquatic species, including salmon, vulnerable to harm. Concerns include but are not limited to:

HB 4148 provides a direct end run around Oregon's removal fill laws for salmon credit projects of any size: Section 3(5) exempts any and all salmon credit projects from having to get a permit for the removal and/or fill of materials in the waters of the state. Under Section 3(5), a salmon "restoration" project of any size, of any type, in any location would be allowed to skirt existing laws meant to protect Oregon's aquatic habitats and the species that rely upon them. The bill does this without any sideboards, or even a basic requirement that the salmon restoration projects result in no harm. There is no volume threshold, so even very large projects could use this loophole. Unlike most other removal fill exemptions, Section 3(5) would allow removal fill activities without a permit in state scenic waterways, essential salmon habitat and in compensatory mitigation sites. This puts scenic waterways, wetlands, water quality and other important salmon habitat values that are protected by Oregon's removal fill laws at risk of harm under this program.

Existing law already allows for exemptions for restoration projects from removal fill permits, but unlike HB 4148 these exemptions have sideboards to protect aquatic habitat: Current law already allows exemptions for certain restorations projects. OAR 141-085-0534. However, unlike HB 4148, current exemptions have protective sideboards to ensure protection of Oregon's aquatic habitats, including but not limited to prohibition of work in scenic waterways, volume thresholds, work must take place during ODFW work windows, cannot convert wetlands to uplands, cannot cause more than minimum adverse impact, and must have received all necessary rights of way and local, state and federal approvals. HB 4148 contains none of these sideboards for a removal fill permit exemption, but rather provides an exemption to existing exemptions.

HB 4148 prohibits DSL from requiring that mitigation projects offset harm in the same waterway, which could lead to a net loss of salmon habitat on important streams across the state: Section 3(4) of the bill prohibits DSL from developing rules that would limit use of the credits to offset impacts of development projects in the same waterways. Under this program, mitigation credits established in the Nehalem could be used to offset harm from development in Coquille. So while the accounting

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would call it even, there would be a net loss of habitat on the Coquille. The failure of this bill to match mitigation to harm will leave waterways and salmon populations across the state vulnerable to harm from development.

Existing law already allows for mitigation/banking credits; this appears to be an end run around that program's requirement: Existing law already allows for mitigation/banking to offset removal fill impacts, including the state's stream credit program. See ORS 196.615, 196.620, 196.623, 196.625. These programs have important checks and balances not found in this bill; including the fact that the program requires that mitigation credit projects match the stream where development will take place. These projects must also go through the removal fill program. Given a mitigation credit banking system already exists, including specifically a stream credit program, it seems the purpose here is, again, to get around removal fill requirements meant to protect aquatic habitats and species.

HB 4148 skirts tribal consultation and state and federal fisheries agency review that would occur if the projects went through existing removal fill processes: HB 4148 grants DSL the sole authority to approve salmon credit projects with no input from ODFW, DEQ, Tribes and/or federal agencies (NOAA, USFWS). Given this program will govern approval of "salmon" restoration projects, it is incongruous that the bill purposefully directs approval without input from state, tribal and federal biologists, in other words, the experts on salmon and aquatic habitats.

HB 4148 salmon credit project approval process is devoid of standards and rigor, and provides no certainty projects will help salmon habitat, let alone prevent harm to existing streams, wetlands and other aquatic habitats and species. The salmon project application review process is devoid of necessary detail to ensure that salmon credit projects are actually helpful to salmon, and that the crediting program will not result in net harm. The application review process does not allow for input from fisheries experts. There is no opportunity for site visits in advance of approval. The approval period is limited to 30 days. Projects do not have to have quantifiable results, nor is there any requirement that improvements to habitat be permanent. The bill does not contain any standards to guide agency approval and/or denial. The bill doesn't even require that DSL find no harm.

Other miscellaneous concerns: (1) There are no provisions to ensure that applicants are not double dipping: Under this program an applicant could use public funds to pay for their restoration project then also get paid in perpetuity by developers. (2) The bill is being represented as a grassroots path for restoration; but the only people that can use this program are agricultural or forestland owners. Industrial farms and corporately owned forests could use the loopholes in this bill; but "mom and pops" who live along a river cannot, nor could cities, rural communities, or other non ag/forest interests. (3) Presentations on the record assert the bill is to provide for restoration of low level off channel rearing habitat; nothing in the bill limits the bill's scope to this geography and/or reach. (4) The bill is devoid of basic definitions to guide the program. (5) The bulk of the authority to develop the program in rules lies in Section 3(2), which gives DSL (and ODA under amendments) sole authority to develop parameters for restoration projects, with no input from ODFW (ODFW can only provide input into the program under Section 3(1)).

Proposed -1, -2, -3 amendments do not address the original failings of the bill. The amendments do not assuage concerns; and in fact, increase them. Problems with the amendments include but are not limited to: **(1)** All of the amendments still contain provisions that would provide an end-run around existing removal fill permitting requirements, and all amendments would still prohibit the state from requiring that mitigation credits be used in the same waterway where the harm is taking place (see e.g. -3 amendments, Section 3(5) and Section 3(6)). All other concerns noted previously also still attach. **(2)** The amendments would transfer the authority to Department of Agriculture, which heightens existing concerns as the Department of Agriculture is not charged with protecting salmon and their habitat. **(3)** Pilots do not address the concerns in the original bill; they just lessen the geographic scope of impact in the short term. Moreover, while the proposed pilot restricts the geographic area where the restoration projects can occur; it does not appear to limit the use of the credits to that same watershed. **(4)** The -3 amendments set up a “Salmon Credit Advisory Council” to govern the program: state and federal fisheries agencies do not have a voting seat.

Conclusion: While the intent of this bill might be to incentivize salmon restoration projects that will help Oregon’s imperiled salmon species, the actual language of the bill could lead to net loss of habitat. Given existing law already allows for exemptions for restoration projects and also already allows for compensatory mitigation, including specifically “stream credits”, it is unclear what the bill is trying to achieve, unless it’s to provide exemptions to current removal fill provisions that exist to protect salmon habitat across the state.

We urge the Committee to oppose HB 4148. Thank you for consideration of our testimony.

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