



# Oregon

Tina Kotek, Governor

## Department of State Lands

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### State Land Board

April 4, 2023

To: House Committee on Agriculture, Land Use, Natural Resources, and Water  
Representative Ken Helm, Chair  
Representative Annessa Hartman, Vice-Chair  
Representative Mark Owens, Vice-Chair

Tina Kotek  
Governor

Shemia Fagan  
Secretary of State

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

Re: Testimony on HB 2206-4

Tobias Read  
State Treasurer

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Chair Helm, Vice-Chair Hartman, Vice-Chair Owens, and members of the committee. My name is Bill Ryan, and I am the Deputy Director of the Oregon Department of State Lands. I appreciate the opportunity to speak with you today about House Bill 2206-4.

The Department of State Lands has no position on this bill but has identified a few implementation issues.

I first want to note, the Department fully supports restoration of salmon habitat. We believe the state should promote such efforts, and generally agree landowners should be encouraged to perform enhancement and change historical practices to improve salmon habitat.

That said, the outcome of the proposed salmon credit mitigation program is uncertain. The state's current regulatory framework for removal-fill permitting (in ORS 196.620 and OAR 141-085) requires mitigation of impacts to occur within the same ecological system, or service area. This ensures the important benefits provided by streams, wetlands and other waters are replaced where the loss occurred. The U.S. Army Corps of Engineers, our counterpart in the joint state-federal removal-fill permitting program, requires the same. HB 2206-4 attempts to address this by stating that rules must limit the use of salmon credits for permits, authorizations or resolution of violations related to development projects within the Coquille and Coos watershed basins. This addition increases the likelihood that a state-approved mitigation option may meet federal requirements. However, the Department cannot control the federal process with regards to adopting a salmon credit mitigation program for federal removal-fill permitting; and the approval of salmon credits by the U.S. Army Corps of Engineers under the federal mitigation rules in a timely manner may be a challenge. A state-approved mitigation option that does not meet federal requirements is unlikely to be beneficial to removal-fill permit applicants or the owner of the salmon credit project.

Though the outcome of the proposed program is uncertain, we do know significant resources would be required to implement this bill. The -4 amendment would create a pilot program for wild coho and chinook salmon in the Coquille watershed basin and the Coos watershed basin. To implement this bill,

even for a limited duration, the Department would need to establish an entirely new program and fund for salmon credit mitigation banking. Key components of this effort would include:

- DSL rulemaking in consultation with the Oregon Department of Fish and Wildlife to establish the program.
- Establishment of salmon credit projects, and an application review and approval process. The -4 amendment has timelines for application review, requires DSL to assign a credit value to a project, and then requires long-term inspection and monitoring to ensure that the credit-generating project is successful.
- Establishment of a salmon credit generator tool and program.
- Establishment of a salmon credit dividend program and annual payment process.
- Coordination with the Oregon Department of Agriculture and Oregon Water Resources Department on any salmon credit projects proposed on exclusive farm use land.
- Coordination with ODFW and the U.S. Army Corps of Engineers to establish a programmatic general permit to authorize restoration activities under the salmon credit pilot program.
- Establishment of the Salmon Credit Trust Fund at State Treasury.

Completing the above would require significant administrative, policy, information technology, and public engagement work. In particular, the Department will need to engage in significant stakeholder outreach and collaboration to complete the rulemaking process, create a general permit, and establish fees, and significant GIS mapping to create program-specific resources and tools.

Section 7 of the bill allows DSL to establish fees to cover costs associated with the implementation of the program. However, much of the cost to the Department is going to be up front in the creation of the mitigation program and the development of the administrative process for establishing projects, credits, dividends, tracking of credits, tracking of the fund, and other tasks necessary for implementation.

In closing, I again want to emphasize the Department's support for salmon habitat restoration, and for incentivizing landowners to perform this important work. However, given the reality of current state and federal regulations, we believe grant programs may be a more effective way to encourage habitat restoration on private lands. Establishing specific earmarks within one of the many grant programs already in place could be an effective way to fund and promote the type of salmon habitat restoration efforts envisioned by this bill.

Thank you for the opportunity to provide this testimony. I am happy to answer any questions.