

SB 74 Public Hearing

April 1, 2025

Written Testimony:

Jennie Bricker

Land Shore Water Legal Services, LLC

4110 SE Hawthorne Blvd. PMB 404

Portland, OR 97214

503-928-0976

jennie@landshorewater.com

On behalf of private property owners that include the petitioners in *Hardy v. State Land Board*, I request that Senate Bill 74-3 be revised as proposed in the redline below.

Where a waterway channel has changed locations since statehood, SB 74 provides for the Department of State Lands to negotiate with affected landowners to obtain deeds to the current channel in exchange for clear title to upland property within the historic channel. That should happen through a clear, transparent process that is cost-neutral to the landowner. Critically, it should happen **before** a declaration of ownership.

Section 3 amends ORS 274.406 to make the standard more lenient for the state to identify property it claims. That greater leniency is a trade-off for the requirement—and it should absolutely be a **requirement**—that the department initiate negotiations so that the state can own the present river channel.

SB 74 provides that a declaration can be recorded in the county real estate records. The declaration is an assertion of ownership and has the potential to transfer title, or at least to create a cloud on title that would render property unmarketable. That should not happen before involving the property owner.

As written, SB 74 allows the Land Board to declare ownership of submerged lands, submersible lands, and potentially uplands—before negotiating with landowners and before knowing what the claim will include. If there **is** a problem with the navigability study statute, this doesn't solve it.

PROPOSED AMENDMENTS TO SENATE BILL 74

In line 2 of the printed bill, after “waterways” insert “; creating new provisions; and amending ORS 274.408”.

Delete lines 4 through 8 and insert:

“SECTION 1. Section 2 of this 2025 Act is added to and made a part of ORS 274.400 to 274.412.

“SECTION 2. (1) As used in this section:

“(a) ‘Geothermal resource’ has the meaning given that term in ORS 522.005.

“(b) ‘Meandered lake’ has the meaning given that term in ORS 274.425.

“(c) ‘Mineral’ has the meaning given that term in ORS 273.775.

“(2) Notwithstanding common law principles of accretion and avulsion, the Department of State Lands may include in a report under ORS 274.404 a finding that the state’s interest in a waterway should extend to the current submerged and submersible lands within the waterway. Nothing in this section affects any existing right, title or interest in property.

“(3) Upon the adoption of a report described in subsection (2) of this section, the State Land Board shall direct the department to negotiate an exchange of deeds with any property owner whose ownership of upland property would be affected by a declaration under ORS 274.406.

“(a) In any negotiation with an affected property owner, the department shall prioritize the goal of state ownership of the current waterway and need not seek an equal exchange of property values or acreage.

“(b) Notwithstanding ORS 273.780, the department may convey the mineral and geothermal resource rights of property exchanged by the department pursuant to this subsection.

“(4) When the department has completed an exchange of deeds with all affected property owners, the board may make a declaration under ORS 274.406. The board may include in the declaration a finding that the boundary of the waterway should remain ambulatory and change with future accretion.

“(5) If the declaration of ownership approved by the board under ORS 274.406 is filed with the county clerk for recording, then the county clerk shall record the declaration in the deed records of the county where the waterway is located.

“(6) Subsection (2) of this section does not apply to a meandered lake.