

MEMORANDUM

MEASURE: SB 1582
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SUBMITTED BY: Eric Lindstrom

To: Senator Jackie Dingfelder, Chair / Senate Environment and Natural Resources Committee and members of the committee

From: Eric L. Lindstrom, EdD

Date: 2/14/2012

Re: OSB 1582 / Arguments Against

OSB 1582 will lead to further degradation of the waters of the state by reducing the scope, authority and resources (both human and fiscal) of The Department of State Lands (DSL).

- OSB 1582 requires the DSL to enter into arbitration without option if and whenever a person so requests. In this manner any “final” decision by the director is inherently anything but final.
- By specifying that the Corps of Engineers 1987 manual (etc.) will be the *maximum* standard for Oregon’s approach to watershed delineation procedures, OSB 1582 binds the state to a *minimum* standard for the rest of the country.
- Given the ever-changing nature and inherent volatility of contemporary wetlands, particularly those in urban areas, any wetland delineation, no matter how expertly accomplished, should automatically expire in three years, not ten.
- The fiscal and administrative burden that passage of this bill could place upon an already heavily obligated agency could be ruinous, particularly since (1) the DSL is required to participate and (2) the mediators themselves will be allowed to determine the cost of mediation. All this is to say nothing of the foreseeable negative impact on morale.
- Finally, OSB 1582 specifically and exclusively favors only the applicant. Neither the DSL (the State) nor the citizens of the state can possibly benefit from this process. Indeed, the citizenry is inherently excluded from it.

The EPA calculates¹ that there are 114,823 miles of rivers and streams in Oregon. To date only 46,035 of those river and stream miles have been assessed. Of the assessed

¹ http://iaspub.epa.gov/waters10/attains_state.control?p_state=OR#STREAM/CREEK/RIVER

miles, 31,060 are either environmentally threatened and/or impaired. Closely associated with those impaired river and stream miles, and generally impaired themselves, are thousands of acres of wetlands too small to attract surveys but too large not to have significant impact upon the waters to which they ultimately commute. The negative impact of OSB 1582 on these already at-risk waters is potentially staggering.

Fanno Creek, the urban stream that I have studied for the last five years could be the poster-child for all the other streams and rivers in the EPA's list of impaired miles of waterways in the state. In the late 1960s the stream was so badly polluted that locals called it Drano Creek. If the wind was right you could smell it before you could see it. One of the major factors contributing to its near demise was the unbridled cut and/or fill practices of the pre-Environmental Enlightenment era. Even with today's regulatory practices significant chunks of the Fanno Creek watershed continue to be harmed or vanish completely on a far too regular basis. SBO 1582 will only serve to insure that Fanno Creek and the other 31,045 miles of Oregon streams in similar trouble will be less protected tomorrow than they are today.