



# Oregon

Kate Brown, Governor

**Department of State Lands**

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**Testimony of  
Bill Ryan, Assistant Director  
Aquatic Resource Management Program  
Department of State Lands  
on  
Senate Bill 249  
Senate Committee on Environment and Natural Resources  
March 4, 2015**

Thank you for the opportunity to testify today in support of SB 249, which would allow the Department of State Lands to recoup our costs for wetland mitigation projects in areas where there previously was no wetland mitigation bank.

The Department is responsible for implementing the state's removal-fill law, which requires permits for removing or filling material in wetlands and waterways. If a project's impacts to wetlands cannot be avoided, we require the permit applicant to compensate for wetland losses through some form of mitigation. Mitigation includes restoring, creating or enhancing wetland functions on a property. The options include:

- On-site mitigation
- Off-site mitigation
- Purchasing "credits" from a mitigation bank in the area of the project
- If there is no mitigation bank in the area, to make a payment to the Department's Removal-Fill Mitigation Fund

A mitigation bank is a property where wetlands have been restored, created and/or enhanced in advance in order to provide mitigation for multiple permits over time. The bank owner generates mitigation credits which can be sold to permit applicants in the vicinity of the mitigation bank site. The use of a mitigation bank is often preferable because mitigation banks tend to: (1) be more successful in replacing wetlands functions; (2) cost less and offer more certainty; and (3) allow more rapid issuance of permits. For this reason there is a market for private mitigation banks in areas of robust development, which is generally the Portland Metro area and the Willamette Valley. Most of Oregon's 25 private mitigation banks are in these two areas.

However, there is still a need for mitigation bank credits in areas that are not served by existing for-profit mitigation banks. For example, the Oregon Department of Transportation recognizes the value of mitigation banks and has developed banks for

their ongoing permitting needs in areas where private sector banks were not available, including Medford, Klamath Falls, Prineville, and Hillsboro.

The Department of State Lands provides mitigation credits in areas where others have not. This is a valuable service to private development and local governments – it facilitates economic and infrastructure development while providing improved environmental outcomes. The Department accomplishes this by selling credits to permittees, and subsequently pooling monies in the Removal-Fill Mitigation Fund to construct mitigation sites in areas where there is no bank. The projects are built through contracts with partners who have expertise in wetland construction and enhancement projects. The Department has been able to fund six wetland mitigation projects to date, in areas where there were no existing banks, including Forest Grove; Douglas, Lincoln and Clatsop counties; and the Tillamook area. The Removal-Fill Mitigation Fund is replenished through the sale of mitigation credits and those funds are used to create more mitigation credits in new areas.

Currently ORS 196.643 allows payment into the mitigation fund *only* if there are no credits available from an established mitigation bank within the region. The intent of this statute was to prevent the Department from competing with private sector banks based on the assumption that the state could sell credits cheaper than the private sector. This was not a problem until recently. The Department funded the Half-Mile Lane mitigation project in the Tualatin River watershed in 2010 in response to demand from applicants. The investment from the Removal-Fill Mitigation Fund was \$797,000. In the following 14 months, the Department sold 2.11 credits to 7 permittees recouping over \$150,000. In 2011 and 2012, two private mitigation banks were created in the same watershed. Under the current statute the Department cannot sell the credits it has while the private bank credits are available. As a result, funds are locked up at the Half-Mile Lane site, which could potentially be used to generate credits and meet unmet demand elsewhere in the state.

SB 249 would add language in statute to allow the Department of State lands to sell mitigation credits until we recover our investment costs. The change would not affect established private-sector mitigation banks, and would only apply in areas that did not have a private bank when the Department first began to sell credits.

Thank you, and I would be happy to answer any questions.