



# 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 847  
Senate Committee on Environment and Natural Resources  
April 8, 2015**

### State Land Board

Kate Brown  
Governor

Jeanne P. Atkins  
Secretary of State

Ted Wheeler  
State Treasurer

Thank you for the opportunity to testify on SB 847, which would redefine the term “waters of the state” to specifically exclude lands certified by the Natural Resource Conservation Service (NRCS) as “prior converted cropland” (PCC).

The Department of State Lands (DSL) regulates removal and fill in wetlands and waterways (waters of the state), and has established through statute and rule certain exemptions. Senate Bill 847 would eliminate the current exemption for farm uses on Exclusive Farm Use land that is also certified as “PCC.”

Current statute provides a broad exemption from the removal-fill law for farm use on certified PCC farmland designated for exclusive farm use (EFU) [ORS 196.905(5)]. The exempt farm uses include anything that is defined as a farm use by the Statewide Land Use Planning statute. For example, farm uses include gravel or paved areas for loading trucks to transport agricultural products, all barns and similar farm buildings, stockpiling compost, construction of commercial riding stables and arenas, feedlots, and construction of ponds for aquatic crops.

The committee should know that certified PCC determinations are for wetlands only and are valid as long as the area is used specifically for agricultural use. The jurisdictional status under the removal-fill law of ditches, streams and ponds within PCC areas would not be affected by this legislation.

The Department of State Lands is concerned that because SB 847 would exempt PCC farmland from the state’s removal-fill law, property owners would be less likely to know a removal-fill permit is needed for using PCC wetlands for non-agricultural use, such as commercial or industrial development. Technically, PCC certification would be invalidated by a conversion to non-farm use and therefore the Oregon removal-fill law would apply to wetlands on the site. However, in practice, this would be less protective of wetlands than the current situation because farmers/landowners would be starting from a position of their PCC certified lands not being considered waters of the state. It is a nuanced difference and would require significant outreach and education to explain.