



The League of Women Voters of Oregon is a 101-year-old grassroots nonpartisan political organization that encourages informed and active participation in government. We envision informed Oregonians participating in a fully accessible, responsive, and transparent government to achieve the common good. LWVOR Legislative Action is based on advocacy positions formed through studies and member consensus. The League never supports or opposes any candidate or political party.

December 15, 2020

To: House Interim Committee on Agriculture and Land Use
Representative Brian Clem, Chair
Members of the Committee

Email: haglu.exhibits@oregonlegislature.gov

Re: **Consideration of Partial Assumption of Federal 404 Permit Authority—Comments**

The League of Women Voters of Oregon believes that water is a resource that should be managed for the benefit of the public and as sustainable habitat for all life forms. The League supports Oregon state policies and statutes that promote comprehensive long-range planning for conservation and management of ground and surface water and the improvement of water quality. The League believes that the interdependence of land use planning and water planning must be recognized and required at all levels of government.

From the League of Women Voters of Oregon water study “Water in Oregon—Not a Drop to Waste”:

Wetlands are considered “waters of the state” and are defined by soils, vegetation, and hydrology. Oregon, like the federal government, is committed to a goal of “no-net-loss” of wetlands. Mitigation is required if wetland loss is deemed unavoidable.

League members have been engaged in wetlands issues and in the state’s removal/fill program since its inception. In 1987 we worked on and supported a bill for a pilot project to establish wetland mitigation banks to be overseen by State Lands. Members have served on a Technical Advisory Committee for the Dept. of State Lands removal/fill program and participated in the last “assumption” discussion in 2012.

Wetlands help clean water and provide some protection from flooding. The League has been a part of the Work Group on the Department of State Lands (DSL) whose [report](#) is provided to the Committee today. **It is with this background that we provide the following comments:**

The work over the past year by DSL and the Work Group has clarified many of the issues brought forth in the 2012 discussion:

- 1) **Assumable vs. Retained Waters:** Much progress has been made between the U. S. Army Corps of Engineers (Corps) and DSL in this area. However, **the League is still unclear as to how DSL will be able to monitor and change their coverage as Urban Growth Boundaries in Oregon change. These changing boundaries may make it difficult for owners, developers, and the general public to know “who’s in charge”.**

- 2) **Endangered Species Act Compliance:** DSL has enlisted a staffer from the Oregon Dept. of Fish and Wildlife (ODFW) to address Oregon's many endangered species that live in or near our wetlands. Recently, the U.S. Environmental Protection Agency (EPA) has agreed to consult on ESA issues (Appendix F). However, **it is unclear if this newly offered process will provide the same level of protection both to the species and to the public's access to the process.**
- 3) **National Historic Preservation Action (NHPA) (Section 106):** We understand that the EPA has now agreed to consider a "consultation" with Oregon's tribes to address this issue and DSL has committed to hiring an archeologist in order to protect cultural and historic resources. **The League will depend on the voices of the tribes to determine if this proposal is adequate to protect these important resources.**
- 4) **National Environmental Policy Act (NEPA):** Oregon does NOT have a NEPA process. Our Land Use Planning [Goals](#) are assumed to provide that process but not all the Goals have been kept current and many local jurisdictions have not done adequate inventories of the lands around Goals 5, 6, 7, 16 and 17, in particular. **The League continues to be concerned that the public's right to engage in these issues may be reduced or eliminated by state assumption of the 404 process.**
- 5) **Tribal Rights:** As is clearly noted in this report, although the State of Oregon recognizes our nine tribes and consults with them, **it is the federal treaties that provide the clear rights of the tribes. Again, the League will depend on the voices of the tribes to determine if there is a solution to this issue.**
- 6) **Federal Trust Responsibility:** The federal government has a legal obligation owed to all tribes related to actions that may impact tribal rights and resources. **The League believes that the federal government has not always addressed this responsibility but it is important to LWVOR that those obligations are upheld.**
- 7) **Federal Consistency Review Related to the Coastal Zone Management Act (CZMA) and State 401 Water Quality Certification:** Discussions around the nexus between 404 Assumption and the CZMA and DEQ's 401 program have just begun. It is unclear how state assumption will affect these programs. **The League depends on both these programs for protection of Oregon's waters, including wetlands of all kinds. Until there is a clearer understanding around the consequences of assumption for these programs, we believe the state should not move forward.**
- 8) **Cost/Benefit Analysis:** *In making budget projections of the total cost to the state of an assumed program, it is important to note that Oregon's networked natural resource agency-system of government, requires coordination among individual agencies. Budgeting is decentralized.*

The League follows the budgets of all the natural resources agencies, especially those related to water. The italicized statements above, from the DSL report (page 17) is one of the reasons we have questions about the Legislature's ability to fully understand the cost to the State of Oregon in embarking on this path. DSL is suggesting a need for \$920,072 for their part in continuing to work on this issue. For actual implementation and operation, they calculate a cost of \$1,705,183 for their costs. That figure does NOT include costs to other agencies (for instance, DLC and DEQ). **What is clear is that DSL needs to embark on a discussion to increase their fees for the current permitting they are legally required to do.** Unlike other natural resource agency permits, DSL's cost to permittees is well below the 50/50 cost share that the League supports for most permits.

The League believes that this last year's work has been valuable and productive. There is better clarity on the issues raised in 2012. However, the barriers to success

still exist. Rather than continuing this effort, we recommend that DSL continue its work to streamline the current process as has been done by the creation of a Joint Permit Application. We encourage and would support further work between the Corps and DSL to find efficiencies while accepting that the differences in responsibilities do not benefit Oregon moving forward with 404 assumption. As in 2019, we support state funding to help small local jurisdictions with mitigation banking or other strategies that will provide certainty to their development questions while still protecting Oregon's valuable wetlands.

Thank you for the opportunity to discuss this important work. Oregon has a goal of no net loss of wetlands. We also want to be sure that development occurs safely so neither homeowners nor business interests have to deal with the flooding we must acknowledge will occur more often due to the effects of climate change. Those costs may well outweigh any benefits seen by some.



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