

TESTIMONY  
OF  
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**DEPARTMENT OF STATE LANDS**  
**On House Bill 2438**  
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Good afternoon, Chair Clem and members of the Committee. I am Eric Metz, Senior Policy and Legislative Analyst with the Department of State Lands and I'm here to talk to you today about Compensatory Mitigation in Oregon.

**Context in Oregon:**

Oregon currently has approximately 1.4 million acres of wetlands, over 100,000 miles of rivers and streams, 1,400 named lakes, 360 miles of coastline, and an additional 3,800 ponds and reservoirs. Although Oregon's wetlands comprise only about 2 percent of the state's land base, these wetland ecosystems have many functions that provide numerous benefits to the environment and to people, including flood control, protection of drinking water, habitat for fish and wildlife, and recreation.

Historically, Oregon has experienced a reduction of more than 1 million acres waters and wetlands due to agricultural and urban development. In 1967, the Legislature recognized that the protection, conservation and best use of the water resources of the state is vital to the economy and well-being of the state and its people. The primary state law that authorizes the regulation of activities within the waters of the state is the Oregon Removal-Fill Law.

Oregon has set a "no net loss" of wetlands goal and is required to "maintain a stable resource base of wetlands," to "encourage wetland restoration and creation," and to "offset losses of the functions and values of the water resources" of the state.

In 1989, the Department of State Lands' wetlands program was established by statute through a comprehensive wetland conservation bill. Today, DSL's Aquatic Resources Management Program is responsible for issuing removal-fill permits, developing and maintaining the Statewide Wetland Inventory, providing wetland planning assistance to applicants and local governments, developing wetland protection standards and functional and value assessment tools, and providing public information and training for identifying potential wetland areas.

Though there has been a decrease in the rate of loss, ongoing development and land use activities continue to threaten and degrade wetland resources. Our concern about this trend is that when we lose wetlands, we lose the functions they perform and the

values that they provide including, flood control, protection of drinking water, habitat for fish and wildlife, and recreation.

In order to respond to the cumulative loss of wetlands the State of Oregon has a set a goal of “no net loss” for wetlands. The concept of no net loss does not preclude developing wetlands with projects that require removal and fill—rather, compensatory mitigation is required of applicants to replace lost wetland acres and functions in order to prevent overall wetland losses.

### **What is compensatory mitigation?**

Compensatory mitigation is a sequenced approach that first seeks to avoid any impacts to aquatic resources, then to minimize the magnitude of the impacts, then to repair or restore impacted areas after a project is complete, and finally to compensate for any unavoidable losses.

Compensatory mitigation includes four basic steps:

1. Assess the functions and values of the proposed impact area.
2. Identify places where mitigation can be performed, i.e., mitigation sites, that best offset the impacts and develop a mitigation plan for the permit application.
3. Carry out the approved compensatory mitigation.
4. Monitor the success of the compensatory mitigation project and assure its management in the future.

This can be accomplished in three ways:

- Purchasing credits from an approved mitigation bank or an In-Lieu-Fee (ILF) project, if available.
- Permittee-responsible mitigation where the applicant builds the mitigation on the project site or elsewhere within the watershed.
- Payment-in-lieu mitigation when no bank or ILF credits are available and when the applicant cannot identify a suitable mitigation project, DSL may accept payment-in-lieu of mitigation, but the Corps does not.

### **How does compensatory mitigation serve as a tool for balancing competing state objectives of resource protection and development?**

Although all wetlands share many basic features, their ecological functions and the ecosystem services they provide differ between regions and between landscapes. Oregon’s wetlands and their ecosystems are a highly diverse resource that reflect the robust physical and biological variability of the state.

To achieve the State’s goals for maintaining, improving and increasing healthy ecosystems, DSL coordinates with local governments in their land use planning efforts.

City and county planners use Local Wetlands Inventories to determine when coordination with DSL is needed, through Wetland Land Use Notices.

DSL reviews and responds to these notices to provide planners and applicants with information about the likelihood that wetlands and waters are in the project area. DSL alerts landowners and developers to the possible need for a wetland delineation or a state permit and is required to respond to Wetland Land Use Notices within 30 days.

The appropriation in the bill will ensure that DSL continues to provide quality customer service even after the Department releases a new online Statewide Wetlands Inventory map later this year, which may affect workloads. The position will also increase DSL capacity for onsite visits. Site visits can reduce the need for costly delineation reports and speed up project timelines.

This coordination helps prevent inadvertent activity in wetlands, helps avoid impacts, and helps prevent project delays. The coordination between DSL, applicants, and land use planners is critical to ensure that there is a balance between the state's "no net loss" goal and development.

### **In closing...**

Thank you for the opportunity to provide testimony today. I am happy to take any questions you may have. Planning and Policy Manager, Dana Hicks, an expert on mitigation, is also in the room if you would like to address any questions to her. Thank you.