July 20, 2007

The Honorable Ron Wyden
United States Senate
230 Dirksen Senate Office Bldg.
Washington DC 20510


Dear Senator Wyden:

The purpose of this letter is to express the Department’s support for the Clean Water Restoration Act of 2007 and to encourage you to become a cosponsor of the bill when it is introduced by Senator Feingold. As you know, Oregon’s Removal-Fill Law, administered by this Department, regulates activities in waters of the state, which are broadly defined and include nonnavigable waters.

In Oregon, the Removal-Fill Law is administered through separate authority from the Clean Water Act, but with a joint permit application form and many coordination points. As a result of the United States Supreme Court decisions in SWANCC and Carabell/Rapanos, federal jurisdiction over waters of the United States within Oregon has been uncertain for applicants, which creates an unpredictable business climate. A 7-page jurisdictional determination form including complex determinations for “significant nexus” is now required to determine federal jurisdiction. For many projects, such as energy pipeline projects crossing several counties, completing these determinations for dozens or hundreds of sites translates to very long delays. The federal jurisdictional uncertainty also adversely affects the state’s continued efforts to streamline the wetland and waterway permitting process in Oregon.

Our second concern is that traditionally navigable waters are a very small fraction of the waters of the United States and that the smaller streams and headwaters or “isolated” wetlands are more important to maintaining clean water — and many other ecological services — than are the larger rivers. Although the state Removal-Fill Law covers many of these waters, loss of federal regulatory protection removes some important protections and reduced protection in adjacent states, lacking a comprehensive state program, will adversely affect the condition and functions of Oregon’s streams and wetlands. Many of these vital functions and services are regional and national in scope.
The Clean Water Restoration Act of 2007 will restore the scope of the Clean Water Act, retain existing exemptions for ongoing agricultural activities similar to exemptions in the state Removal-Fill Law, and improve predictability for businesses in Oregon. Please feel welcome to contact me with any questions you may have.

Sincerely,

Louise Solliday
Director