

HOUSE COMMITTEE ON WATER

February 13, 2003 Hearing Room B
8:30 A.M. Tapes 18 - 19

MEMBERS PRESENT: Rep. Bob Jenson, Chair
Rep. Jeff Kropf, Vice-Chair
Rep. Linda Flores
Rep. Jeff Kruse
Rep. Mike Schaufler
Rep. Carolyn Tomei

MEMBER EXCUSED: Rep. Jackie Dingfelder, Vice-Chair

STAFF PRESENT: Pete Test, Committee Administrator
Ryan Sherlock, Committee Assistant

MEASURE/ISSUES HEARD: Introduction of Committee Measure LC 2226 – Work Session
Informational Meeting
Oregon Department of Environmental Quality (DEQ) Update
Update on Hawes, et al vs. State of Oregon

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 18, A		
004	Chair Jenson	Calls meeting to order at 8:30 a.m. and opens work session on LC 2226 (EXHIBIT A).
<u>LC 2226 – WORK SESSION</u>		
010	Rep. Kropf	Asks what is the intention of the LC draft.
015	Chair Jenson	Defers to Mr. Ashcom.
025	Scott Ashcom	Oregon Agriculture Alliance, Inc. Offers written testimony (EXHIBIT B) supporting the committee adoption of LC 2226.
035	Chair Jensen	MOTION: Moves LC 2226 BE INTRODUCED as a committee bill.
		VOTE: 6-0
		EXCUSED: 1 - Dingfelder
	Chair Jenson	Hearing no objection, declares the motion CARRIED.
040	Chair Jenson	Indicates his and Rep. Kropf's need to leave the meeting and testify before another committee. Turns the Chair over to Rep. Kruse.
045	Rep. Kruse	Closes the work session on LC 2226, and opens an informational meeting.
<u>INFORMATIONAL MEETING</u>		
050	Mike Llewelyn	Water Quality Division, Administrator. Offers written testimony (EXHIBIT C) and presentation regarding the function and operation of the Water Quality Division, and explanation of the Clean Water Act.

		<ul style="list-style-type: none"> • Federal Clean Water Act • Water Quality Standards
095	Rep. Kruse	Refers to a past case where a Hyundai plant was discharging water that was too clean.
105	Llewelyn	Indicates that he is unaware of that specific case, but responds that his further testimony may address the issue. Continues with presentation:
		<ul style="list-style-type: none"> • Water Quality Standards.
175	Rep. Kruse	Asks for a document comparing Environmental Protection Agency (EPA) and Department of Environmental Quality standards.
176	Llewelyn	Indicates that he will provide said document to the committee. Continues with presentation:
		<ul style="list-style-type: none"> • Criteria • 303D List
305	Rep. Tomei	Clarifies the ten percent figure mentioned.
310	Llewelyn	Explains that of the 130,000 stream and river mile in the state, 13,000 are on the 303D list, or about 10%
315	Rep. Schaufler	Clarifies that not all of the streams include run year round, and ask what the cutoff is for including these streams on the list.
320	Llewelyn	Discusses at which point streams are recorded and placed on the list.
355	Rep. Schaufler	Asks if most of the 13,000 are flowing year round.
360	Llewelyn	Answers affirmatively. Continues with presentation:
		<ul style="list-style-type: none"> • Non-point Sources
405	Rep. Kruse	Questions the geographical biased relevance of non-point source classifications.
425	Llewelyn	Responds that the definition of non-point sources his broad and includes problems coming off of federal lands.
435	Rep. Kruse	Points out that the ability of the State to affect water control of federal lands is limited.
440	Llewelyn	Agrees, and discusses the role of federal agencies in controlling standards on federal lands within the state.
460	Rep. Kruse	Clarifies that federal agencies may not have to follow standards if the funding is not available.
465	Llewelyn	Concurs.
470	Rep. Tomei	Ask if Mr. Llewelyn could review a skipped slide.
TAPE 19, A		
025	Llewelyn	Apologizes for missing the slide, and continues presentation:
		<ul style="list-style-type: none"> • Point Source Management
035	Rep. Kruse	Refers to Portland's new storm water system and the change in classification for some of the sources involved. Asks about the relationship between treatment and source in such a situation.
045	Llewelyn	Offers a history and current state of EPA regulations on storm water runoff. Continues with presentation:
		<ul style="list-style-type: none"> • Evolution of CWA
150	Rep. Kropf	Asks whether there is conclusive science which links toxics in water and fish deformity.
155	Llewelyn	Explains that there is good evidence and research of the link, but indicates the situation of the Newburg Pool is still unsolved. Continues with presentation:

		<ul style="list-style-type: none"> • Sample Watershed • Municipalities • Industries • Growth Impact • Anti-degradation
260	Rep. Tomei	Ask for a clarification of a specific slide.
265	Llewelyn	Offers an explanation of the slide. Continues with presentation: <ul style="list-style-type: none"> • Anti-degradation • Non-point Sources
310	Rep. Kruse	Asks whether economic factors are taken into account when allowing discharge.
325	Llewelyn	Explains that economic factors are taken into account, and offers examples.
340	Rep. Kropf	Explains a circumstance in his district where discharge issues were at odds with growth issues, and asks for an explanation of the Three Basin Rule.
380	Llewelyn	Offers an explanation of the Three Basin Rule.
TAPE 18, B		
020	Rep. Kropf	Explains that the City of Detroit, Oregon would like to install a water treatment plant but is limited by the cost of such a project due to the discharge regulations, asks if the rules can be changed in this case.
030	Llewelyn	Responds that the relevant issue is a public policy which is certainly subject to change through the proper process.
040	Rep. Schaufler	Asks what happens when the level of omissions produced is lessened over time, and new industry would like to move into the region.
045	Llewelyn	Explains that at a certain level below the limits there is the ability for further development.
065	Rep. Kropf	Asks if Mr. Llewelyn's presentation will later address the opportunities for communities to obtain financial help in addressing these regulations while sustaining growth.
070	Llewelyn	Offers an overview of the grant programs and other means which help local communities meet water quality regulations.
095	Rep. Kropf	Asks if the Oregon Economic Community Development also helps with these issues.
097	Llewelyn	Responds affirmatively.
100	Chair Jenson	Mentions the committee may be running short on time, and asks that Mr. Llewelyn continue with his presentation.
105	Llewelyn	Continues with presentation: <ul style="list-style-type: none"> • Non-point source • New Twists • Impaired Water bodies in Oregon • Total Maximum Daily Load (TMDL) • Adaptive Management
260	Rep. Kruse	Acknowledges that temperature is extremely controversial, and expresses concern for how temperature is recorded.
265	Llewelyn	Addresses Rep. Kruse's concern and discusses the issues regarding the temperature standard.

295	Rep. Kruse	Clarifies his concerns regarding.
320	Chair Jenson	Thanks Mr. Llewelyn for his testimony and recognizes Richard Whitman.
325	Richard Whitman	Oregon Department of Justice, Natural Resources Section, Attorney In-Charge. Offers testimony regarding Hawes, et al vs. State of Oregon.
360	Rep. Kruse	Clarifies the specificity of the decision was on purpose.
365	Whitman	Confirms, and continues with presentation.
400	Rep. Schaufler	Clarifies that the Hawes disagreed with the authority of DEQ or the amount of the TMDL.
405	Whitman	Clarifies that Hawes disagrees with the authority of the DEQ.
TAPE 19, B		
005	Rep. Kruse	Asks the point of the lawsuit is to determine if the EPA has the authority to regulate non-point sources.
010	Whitman	Refers to and discusses other case around the country similarly challenging the EPA's authority in this area.
030	Rep. Kruse	Refers to arguments that the EPA is exceeding its authority which is the reason for these law suits.
040	Whitman	Concurs.
042	Rep. Kruse	Asks if there is a court that has been overturned by the 9 th District court.
045	Whitman	Acknowledges that the 9 th district court has been the most overturned court by the Supreme Court.
050	Rep. Kropf	Asks for the reasoning in the circuit ruling in why they ruled in favor of the plaintiff.
052	Whitman	Discusses the decision of the court.
065	Rep. Schaufler	Asks what sort of impact the Hawes decision would have on the Hawes family.
070	Whitman	Indicates that he is not the trial attorney for this case, but speculates on the outcome of the decision and the impact on the Hawes.
080	Rep. Kropf	Asks whether the Oregon Department of Justice was involved in the original decision, in the form of filing a brief
085	Whitman	Explains that because the state was the defendant they were involved, and further discusses the states role in other cases.
095	Rep. Kropf	Asks what the States argument is for signing onto the aforementioned case.
100	Whitman	Addresses the role of the state in other cases.
115	Rep. Kropf	Clarifies the previous statement of Mr. Whitman.
125	Whitman	Further explains his statement.
145	Rep. Kropf	Asks for a reiteration as to where the State is on the Hawes case.
150	Whitman	Reiterates the States stance on the Hawes case.
165	Rep. Schaufler	Asks whether the requirements at issue in the Hawes case are currently law or is the issue on hold until the outcome of the case.
175	Whitman	Discusses the affects of the case on the Hawes on current law.
205	Rep. Schaufler	Clarifies the makeup of the Hawes property.
210	Whitman	Indicates he doesn't know.
212	Chair Jenson	Responds that he thinks the Hawes have pasture land, and further discusses the issues, indicating that the case is primarily a test case to clarify the current law.
230	Rep. Kropf	Asks why the state of Oregon is seeking a stay on the Hawes case.
235	Whitman	Explains the intent of the state in clarifying the courts judgment.

240	Rep. Kropf	Asks what the implications of not being granted the stay would be.
242	Whitman	Explains that not receiving the stays could cause the possible delay in final adoption of some TMDL's.
260	Rep. Kruse	Asks for a clarification regarding why EPA is able to declare TMDL's but not to regulate non-point sources.
275	Whitman	Discusses the DEQ's authority in regards to TMDL's and non-point sources.
285	Rep. Kruse	Further questions the issue.
295	Whitman	Agrees and further explains.
300	Rep. Flores	Asks whether the number of required trees planted is directly related to the number of stream miles.
305	Whitman	Explains that the actual cost of tree planting is debated.
315	Chair Jenson	Closes the informational meeting and adjourns the meeting at 10:24 a.m.

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EXHIBIT SUMMARY

A – LC 2226, draft, staff, 1 p.

B – LC 2226, written testimony, Scott Ashcom, 12 pp.

C – Informational meeting, presentation, Mike Llewelyn, 10 pp.