

# SENATE COMMITTEE ON WATER AND LAND USE

March 24, 2003  
3:00 PM

Hearing Room D  
Tapes 32-34

**MEMBERS PRESENT:**     **Sen. Ted Ferrioli, Chair**  
                                  **Sen. Charlie Ringo, Vice-Chair**  
                                  **Sen. Jason Atkinson**  
                                  **Sen. Rick Metsger**

**STAFF PRESENT:**       **Judith Callens, Committee Administrator**  
                                  **Megan Jensen, Committee Assistant**

**MEASURE/ISSUES HEARD:**     **SB 82 Public Hearing**  
                                  **SB 836 Public Hearing**  
                                  **SB 837 Public Hearing**  
                                  **SB 838 Public Hearing**

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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.

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<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
<b>TAPE 32, A</b>		
005	Vice-Chair Ringo	Calls meeting to order at 3:09 p.m. and opens public hearings on SB 82 and SB 836.
<b><u>SB 82 – PUBLIC HEARING</u></b>		
010	Sen. Messerle	District 5 State Senator. Provides testimony in support of SB 82 and explains that SB 82 allows an exemption to a water right holder for both residential or agricultural purposes to obtain an the easement that would be valid as long as the water right is valid.
<b><u>SB 836 – PUBLIC HEARING</u></b>		
040	Sen. Messerle	Provides testimony in support of SB 836. Gives historical background and discusses the fiscal impact of SB 836.
104	Vice-Chair Ringo	Asks why DSL is having difficulty clearing up title issues.
107	Sen. Messerle	Responds that DSL does not have the resources to deal with the issues effectively and explains.
133	Vice-Chair Ringo	Closes public hearings on SB 82 and 836. Opens public hearings on SB 837 and SB 838.
<b><u>SB 837 and SB 838 – PUBLIC HEARING</u></b>		
140	M.D. Van Valkenbergh	Wasco County. Provides testimony in support of SB 837 and SB 838. Believes the bill is necessary to streamline agency processes and to protect the rights of property owners.
193	Lloyd Ogbin	Provides testimony against SB 837 and SB 838. Believes the bills require more analysis.
230	Robert Kerivan	Josephine County. Provides testimony against SB 837 and SB 838. Discusses non-navigable waterways.
250	Vice-Chair Ringo	Closes public hearings on SB 837 and SB 838. Opens public hearing on SB 836.
<b><u>SB 836 – PUBLIC HEARING</u></b>		
254	Chuck Bennett	Confederation of Oregon School Administrators. Provides testimony against SB 836. States opposition to SB 836 only as it relates to the impact it might have on the Common School Fund. Discusses the financial impact on the Common School Fund if

		SB 836 passes.
324	Vice-Chair Ringo	Asks if the financial information mentioned is available in a fiscal statement.
326	Bennett	Responds that his information is from DSL.
333	Judith Callens	Committee Administrator. Remarks that no fiscal statement has been issued from the Legislative Fiscal office.
336	Vice-Chair Ringo	Wonders where the figures originated from.
340	Bennett	Offers to withdraw specific financial information and submits instead his belief that there will be a substantial impact from a decrease in income from leases and from sales.
352	John Marshall	Oregon School Board Association. Provides testimony against SB 836. Talks about the impact on the Common School Fund.
393	Laurie Wimmer-Whelan	Oregon Education Association. Provides testimony against SB 836 and supports the statements of Marshall and Bennett.
399	Sen. Metsger	Asks if submersible lands are Common School Fund lands.
408	Bennett	Responds that submersible lands statutorily benefit the Common School Fund.
419	Sen. Metsger	Comments that if lands were quitclaimed to landowners, there would be a potential increase in the state tax base.
437	Bennett	Addresses the question of navigability and discusses Common School Fund lands.
<b>TAPE 33, A</b>		
005	Jay McCaulley	The Salmon Restoration and Enhancement Coalition. Provides testimony in support of SB 836 ( <b>EXHIBIT E</b> ). Believes SB 836 resolves uncertainty regarding title to currently fee simple upland properties subject to historically filled lands and which affects property owned primarily by the private sector, municipalities, counties, and port authorities.
100	McCaulley	Continues testimony in support of SB 836. State that SB 836 provides a resolution consistent with previous legislative actions.
204	Vice-Chair Ringo	Asks for clarification on lands that are not trust properties but have a statutory designation to benefit the Common School Fund.
207	McCaulley	Explains the statutory requirements.
217	Vice-Chair Ringo	Asks for more information on the fiscal impact to the Common School Fund.
219	McCaulley	Believes there is no fiscal impact and elaborates.
296	Vice-Chair Ringo	Comments on the complex nature of the issue.
330	Glen Stonebrink	Oregon Cattlemen Association. States support for SB 836, 837 and 838.
362	Vice-Chair Ringo	Asks about the fiscal impact of SB 836.
366	Stonebrink	Replies that he is unsure of the fiscal impact of SB 836. Discusses SB 82.
<b>TAPE 32, B</b>		
006	Phil Donovan	Association of Northwest Steelheaders. States opposition to SB 836 and SB 837.
015	Larry Beaver	River Access Committee, Association of Northwest Steelheaders. Provides testimony against SB 836, SB 837 and SB 838 ( <b>EXHIBIT H</b> ). Believes that the bills will adversely affect the public trust.
037	Vice Chair Ringo	Inquires if Coos Bay has quitclaim issues different from other areas.
040	Beaver	Responds that he does not believe Coos Bay has special circumstances relating to the issues at hand.

045	Donovan	Comments that SB 836 is difficult to support in the current format but he is open to an amendment which allows for quitclaim consideration on a case-by-case basis.
052	Beaver	States total opposition to SB 838 and believes the bill is unnecessary.
081	Sen. Atkinson	Inquires if there are any rivers listed as non-navigable that should be listed as navigable.
083	Beaver	Responds that there is no list of non-navigable rivers.
090	Vice-Chair Ringo	Asks for his opinion on the motivation of proponents of the bill.
092	Beaver	Believes it is a stall on a long-standing issue.
110	Donovan	Agrees with Beaver's assessment.
126	Gerald Workman	States opposition to SB 82, SB 836, SB 837 and SB 838. Discusses issues of navigability.
165	Vice-Chair Ringo	Opens public hearing on SB 82.
<b><u>SB 82 – PUBLIC HEARING</u></b>		
170	Jeanette Holman	DSL. Provides testimony in support of SB 82 ( <b>EXHIBIT I</b> ). Explains the background of SB 82 and expresses concerns. Believes SB 82 establishes a precedent for using state owned lands without permission of the state and without allowing the state to recover any costs for administering that land.
226	Vice-Chair Ringo	Asks if proponents of SB 82 want to avoid permit fees.
228	Holman	Explains that Sen. Messerle does not want an application fee. Discusses liability issues.
255	Vice-Chair Ringo	Asks if the only definite objection to the bill is the application fee.
257	Holman	Explains that the biggest concern is the liability issue but the application fee is a secondary concern.
265	Vice-Chair Ringo	Confirms that DSL supports SB 82 and the -1 amendments.
273	Holman	Affirms.
277	Vice-Chair Ringo	Asks if DSL will continue to work with Sen. Messerle.
278	Holman	Affirms.
280	Vice-Chair Ringo	Requests DSL continue to work on SB 82 with Sen. Messerle.
282	Holman	Agrees. Provides testimony in support of SB 836 ( <b>EXHIBIT J</b> ).
348	Vice-Chair Ringo/Holman	Discussion about the number of pending cases.
389	Chair Ferrioli	States that land underneath the fill are owned by the state.
392	Holman	Believes the question should address what the negotiated settlement should be to clear the title.
395	Chair Ferrioli	Comments that the title companies are less than forthcoming with reasonable notification when there is a question on the title.
<b>TAPE 33, B</b>		
002	Sen. Ringo	Asks if citizens seek DSL's assistance.
007	Holman	Responds that there are few people waiting for assistance with pending issues.
011	Chair Ferrioli	Wonders if the issue is a lack of awareness.
012	Holman	Believes quite a few people are unaware of DSL's resources.
013	Chair Ferrioli	Comments on the lack of awareness on question of state title ownership.
025	Holman	States that access to resources has been a problem with DSL.
036	Chair Ferrioli	Asks how much of the Port of Portland belongs to the state.
038	Holman	Offers to provide that information.
040	Chair Ferrioli	Asks about resolutions on filled land issues.
044	Holman	Explains that filled lands have a public right and a private right.
050	Chair Ferrioli	States that the state cannot extinguish the right to public access

		to waterways.
055	Holman	Affirms. Expresses concern with how public rights are taken into consideration and how the fiduciary interests of the Common School Fund are considered.
092	Chair Ferrioli	Asks if DSL could collect rent on the properties.
094	Holman	Affirms.
095	Chair Ferrioli	Asks why a fair market rent is not assessed on a regular basis.
100	Holman	Explains that DSL staffing issues make it difficult to assess rents.
107	Chair Ferrioli	Wonders about the public reaction if adequate staffing allowed DSL to assess rents.
108	Holman	Responds and discusses land value.
117	Vice-Chair Ringo	Asks for more fiscal information.
120	Holman	Offers to provide the information. Talks about the Land Board's concern with the filled lands questions.
130	Chair Ferrioli	Asks if DSL maintains a website with the legal description of the properties that are on filled land.
136	Holman	Explains that there is no website that lists those properties.
141	Chair Ferrioli	Believes a website would be a good way to educate the public about the issue.
146	Holman	States that 30 years ago the landowners were most likely notified.
153	Chair Ferrioli	Requests DSL look into posting information on the internet.
159	Vice-Chair Ringo	Asks about the issue of public access.
163	Holman	Offers to research the policies in other states.
167	Vice-Chair Ringo	Inquires if DSL will address the issue parcel by parcel.
169	Holman	Affirms and offers to research the issue.
176	Chair Ferrioli	Wonders about ways to overcome the right of public access.
187	Holman	Believes some case law addresses the issue and offers to obtain the information.
208	David Bartz	Multnomah County. Provides testimony in support of SB 837 and states that SB 837 will require DSL to follow federal law.
293	Vice-Chair Ringo	Asks about the real motivation behind the bill.
295	Bartz	Believes it requires DSL to follow the law
307	Vice-Chair Ringo	Asks about the practical side of SB 837.
311	Bartz	States it is appropriate to follow federal law.
317	Vice-Chair Ringo	Asserts that the bill allows property owners to exclude others from their property.
326	Bartz	Agrees.
358	Vice-Chair Ringo	States his interest in the practical impact of the bill.
380	Chair Ferrioli	Comments on the issue of property ownership.
383	Greg Leo	Sandy River Property Owners. Provides testimony in support of SB 836 and SB 837. Discusses issues surrounding navigable waters on the Sandy River.

**TAPE 34, A**

017	Vice-Chair Ringo	Wonders about how property taken by the state.
018	Beverly Jones	Explains that the river was declared navigable so the state has claimed some of the land that she owns.
021	Vice-Chair Ringo	Asks for clarification of the actual land taken.
022	Jones	States that she owns two parcels to the center of the river and a parcel that goes across the river.
024	Vice-Chair Ringo	Clarifies that the state has taken the land from the middle of the stream to the edge of the water.
026	Jones	Affirms.

028	Vice-Chair Ringo	Clarifies that before the water was declared navigable she owned the land and now the state owns the land.
025	Leo	Explains that the Joneses have spent their own money to pursue the issue through the federal courts.
032	Vice-Chair Ringo	Asks how the property will be managed differently by the state.
034	Jones	States that she has lost property rights but is still paying for the property and has not been refunded any property taxes.
041	Vice-Chair Ringo	Asks about a management plan for the land.
044	Jones	Explains that she requested a management plan for public access and that the land remain in her name but the request was denied.
060	Chair Ferrioli	Asks if the property appraisal puts a value on the land that is in the river.
065	Jones	Replies that the appraisal hasn't been affected.
071	Vice-Chair Ringo	Believes a property owner should not have to pay taxes on land owned by the state. Talks about the issue of excluding public access.
075	Jones	Responds that she does not want to exclude public access to the waterways on her land.
085	Vice-Chair Ringo	Asks about people standing on the banks of her property to fish.
087	Jones	Responds that is acceptable on her own property but cannot speak for other Sandy River property owners.
091	Leo	Discusses reasonable public uses issues and talks about management plans.
100	Jones	Comments that the work group has asked for a ten foot easement with restrictions.
108	Leo	Mentions three pressing issues: <ul style="list-style-type: none"> <li>● Give the Land Board the ability to reverse decisions declaring waterways navigable</li> <li>● All rivers should be allowed to have a management plan in lieu to having property taken</li> <li>● The State of Oregon should pay for all legal costs because currently landowners must use personal funds to pursue issues of a state policy</li> </ul>
137	Chair Ferrioli	Requests testimony in writing for the work group.
143	Leo	Believes SB 836 will solve one problem but leaves the management plan issue unsolved.
152	McCaulley	Provides testimony in support of SB 837 and SB 838. Talks about the navigability issue and states that SB 837 and SB 838 will end the contention between fishermen and landowners.
213	Chair Ferrioli	Closes public hearings on SB 82, SB 836, SB 837 and SB 838 at 5:18 p.m.

## **EXHIBIT SUMMARY**

- A – SB 82, SB 82-1 amendments dated 3/14/03, staff, 1 p.**
- B – SB 836, SB 836-1 amendments dated 3/14/03, staff, 2 p.**
- C – SB 837, SB 837-1 amendments dated 3/14/03, staff, 2 p.**
- D – SB 838, SB 838-2 amendments dated 3/14/03, staff, 1 p.**
- E – SB 836, written testimony, J. McCaulley, 5 pp.**
- F – SB 837, written testimony, J. McCaulley, 6 pp.**
- G – SB 838, written testimony, J. McCaulley, 5 pp.**
- H – SB 836, SB 837, SB 838, written testimony, Larry Beaver, 5 pp.**

- I – SB 82, written testimony, Jeanette Holman, 2 pp.**
- J – SB 836, written testimony, Jeanette Holman, 27 pp.**
- K – SB 837, written testimony, Jeanette Holman, 2 pp.**
- L – SB 838, written testimony, Jeanette Holman, 2 pp.**