

HOUSE COMMITTEE ON STREAM RESTORATION
& SPECIES RECOVERY

February 14, 2001
1:00 PM

Hearing Room E
Tapes 34 – 36

MEMBERS PRESENT: **Rep. Bob Jenson, Chair**
 Rep. Jan Lee, Vice Chair
 Rep. Tim Knopp
 Rep. Jeff Kruse
 Rep. Patti Smith
 Rep. Al King
 Rep. Carolyn Tomei
 Rep. Kelley Wirth

MEMBER EXCUSED: **Rep. Randy Leonard, Vice Chair**

MEMBER VISTING: **Rep. Wayne Krieger**

STAFF PRESENT: **Sandy Thiele-Cirka, Committee Administrator**
 Linda K. Gatto, Committee Assistant

MEASURES/ISSUES HEARD:
 Informational Meeting
 U.S. Fish and Wildlife Service
 Department of Environmental Quality
 Oregon Department of Agriculture
 Public Hearing
 HB 2711
 HB 2341

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.

TAPE/#	Speaker	Comments
TAPE 34, A		
005	Vice Chair Lee	Calls meeting to order at 1:12 p.m. as a subcommittee for the purpose of accepting testimony.
<u>U.S. FISH AND WILDLIFE SERVICE</u>		
010	Kemper McMaster	State Supervisor, U.S. Fish and Wildlife Service (USFW). Submits and reads written testimony regarding USFW's role in and support for the Oregon Plan (EXHIBIT A).
095	Rep. Lee	Comments on the Walla-Walla case relating to the diversion of a water for fisheries. Expresses concern that any reduction in water use follow Oregon's prior appropriation doctrine. Notes that NMFS is developing a MOA with the Water Resources Department to try to effect any regulation and asks if USFW is looking at doing something similar.
107	McMaster	Responds that they are involved in the Walla-Walla issue.
140	Rep. Lee	Notes that only 40% of the people in the basin were involved in this issue. Comments that they are looking at long-term resolutions.

149	Rep. Tomei	Referencing page two of the submitted material, asks for clarification on the difference between NMFS and USFW in the application of the take prohibition.
154	McMaster	Explains that when a species is listed, USFW automatically places take prohibitions.
193	Chair Jenson	Asks for clarification that any species, except ocean going species, has the potential to fall under USFW's jurisdiction.
210	McMaster	Responds that this is correct. Comments on the definitions of a listable entity under the ESA.
225	Chair Jenson	Asks for specific funding that USFW contributes to habitat restoration on private lands.
230	McMaster	Responds that he does not have this information, but he will provide it to the committee.
237	Chair Jenson	Asks what USFW's impression is of the success of the CREP program in Oregon.
251	McMaster	Responds that he did not handle USFW's involvement with the CREP program in Montana. Comments that what he sees in Oregon is a cooperative attitude and approach.
265	Chair Jenson	Notes that one of the basic intentions of the committee is to try to improve the Oregon Plan. Questions what Oregon needs to improve in the Oregon Plan.
313	McMaster	Responds that he is still learning the Oregon Plan, but one thing is to empower state agencies and programs to make the hard decisions.
345	Rep. Kruse	Asks who at the federal level is in charge of endangered plants.
360	McMaster	Responds that it would be USFW for listed plants.
362	Rep. Kruse	Asks what USFW does when they find an endangered animal eating an endangered plant.
367	McMaster	Notes that there are other situations where they have a listed animal eating a listed animal. Responds that the only prohibition that comes with listed plants is that there is no protection for plants on private property.
389	Rep. Kruse	Asks if the listing process for plants is different than it is for animals.
390	McMaster	Responds that it is not.

DEPARTMENT OF ENVIRONMENTAL QUALITY

400	Dick Pedersen	Watershed Management Section Manager, Department of Environmental Quality (DEQ). Submits written material (EXHIBIT B) and begins overhead presentation on Oregon's Total Maximum Daily Loads (TMDLs).
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TAPE 35, A

067	Rep. Kruse	Asks if DEQ is concerned that there are so many miles of stream that the only problem they have is temperature.
080	Pedersen	Notes that the majority of the listings are for temperature. Responds that DEQ sees temperature as a problem in the state based on data they have compared to existing standards.
092	Rep. Kruse	States that DEQ is setting up a criteria list that is beyond their ability to have impact on.
100	Pedersen	Notes that part of the responsibility DEQ has is to account for what might be natural.
103	Chair Jenson	Comments that he has seen material that indicates that shade is not as significant in controlling or lowering temperature as they had been told at one time.
106	Pedersen	Responds that in DEQ's analysis, shade is critical to keeping

		water from getting warm.
129	Rep. King	Expresses concern about the number of streams listed for temperature deficiencies that are located in eastern Oregon. Questions how they can develop a policy that is going to be inclusive.
146	Pedersen	Notes that temperature listings are uniformly spread around the state and that there are some places in eastern Oregon where the 64° standard will not be met.
166	Rep. King	States that he would like to see the information that indicates the temperature listings are throughout the state.
172	Pedersen	Notes that the water quality standards are currently being reviewed.
190	Rep. Smith	Asks who participated in the assessment work for the 303 listed streams.
191	Pedersen	Explains the process of how DEQ lists water bodies.
209	Rep. Smith	Asks if there is federal or special interest group involvement in the process.
210	Pedersen	Responds that the EPA has the responsibility to approve the list. Notes that they ask interest groups to submit and review data.
219	Rep. Smith	Asks Mr. Pedersen to name a few of the interest groups.
220	Pedersen	Responds that in the last listing cycle the U.S. Forest Service and the BLM submitted and looked at data. Notes that groups like the Oregon Cattlemen's Association, Oregon Farm Bureau, and the Oregon Forest Industries Council were invited to review the data.
235	Rep. Lee	Asks Mr. Pedersen if he is aware of the study that has been done on the Burnt River. Notes that the study showed that shading was less of a factor and that it was releases from the reservoir that was key to keeping the temperature at a lower threshold.
248	Pedersen	Agrees that it is important to look at getting colder water into streams.
259	Rep. Kruse	Asks if there has been any discussion about the baseline assumptions that are made from laboratory experiments and what is optimal for the fish.
280	Pedersen	Agrees with Rep. Kruse's comments and comments that these issues are being considered.
304	Rep. Kruse	Comments that if fish are surviving and thriving in streams that don't meet the temperature standard, then maybe the standard is wrong.
311	Pedersen	Continues overhead presentation.
366	Rep. King	Asks if in seeking EPA approval it is part of the state's mission to persuade the EPA that a standard that Oregon has developed might be a better standard than the EPA standard.
377	Pedersen	Responds that the EPA does not have their own standards; they are Oregon standards that EPA approves. Continues overhead presentation.
TAPE 34, B		
011	Chair Jenson	Asks if the schedule change in developing TMDLs for the Willamette is being done for the Willamette Restoration Initiative, or is it independent.
015	Pedersen	Responds that it is somewhat independent in that they have a job to complete TMDLs. Continues overhead presentation.
043	Chair Jenson	Asks if DEQ is on schedule with the timeframe for developing TMDLs around the state.
045	Pedersen	Responds affirmatively.

DEPARTMENT OF AGRICULTURE

084	Chuck Craig	Deputy Director, Oregon Department of Agriculture (ODA). Submits written material (EXHIBIT C) and testifies on how ODA's SB 1010 (1993) work relates to the TMDL process.
136	Chair Jenson	Asks if ODA has any illustrations of a 1010 plan that they could provide to the committee.
140	Craig	Responds affirmatively.
156	Mike Wolf	Senior Water Quality Specialist, Oregon Department of Agriculture. Describes the coordination with DEQ on the TMDLs.
176	Chair Jenson	Asks if they get any technical assistance from NMFS or USFW.
183	Wolf	Responds that some of the basins in northeastern Oregon have had some input at their advisory committees.
187	Chair Jenson	Asks if the state has solicited this input.
189	Wolf	Responds that they've offered it.
190	Craig	Continues testimony on how ODA's SB 1010 work relates to the TMDL process.
223	Chair Jenson	Asks how much does ODA rely on the OSU Extension Service.
228	Craig	Responds that they rely as heavily as they can on the extension service, the Natural Resources Conservation Service, and the capacity of the Soil and Water Conservation Districts (SWCDs).
233	Chair Jenson	Comments that the extension service has credibility with the farmers and ranchers.
244	Rep. Smith	Questions the local advisory committees' membership process.
248	Craig	Explains that nominations and suggestions are forwarded to ODA from the local SWCD. Responds that it is the ODA Director and the Board of Agriculture that make the final determination of who will serve on the local advisory committee.
276	Wolf	Comments that the seven regionally based water quality planners work with SWCDs and the agricultural groups in the area to develop a list of candidates for membership on the local advisory committee.
286	Rep. Smith	Asks how large local advisory committees are.
287	Wolf	Responds that they are limited to a maximum of 12 individuals, but they can be expanded by a special decision of the director.
306	Craig	Continues testimony on how ODA's SB 1010 work relates to the TMDL process.
320	Rep. Kruse	Notes that DEQ is basing TMDLs and achieving the goals on hard numbers and the 1010 process is basing compliance on a penny model without hard numbers. Asks how the two fit together.
329	Craig	Responds that through an evaluation the plan is put in place and evaluated after a period of time.
341	Rep. Kruse	Comments on assumptions of responsibilities.
361	Craig	Continues testimony on how ODA's SB 1010 work relates to the TMDL process.
370	Rep. Lee	Asks if there has been a problem with developing the plans.
391	Craig	Responds that when a problem arises, the process is halted and the situation is re-evaluated.

TAPE 35, B

006	Chair Jenson	Opens public hearing on HB 2711.
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HB 2711 PUBLIC HEARING

017	Roy Elicker	Legislative Coordinator, Oregon Department of Fish and Wildlife (ODFW). Submits and reads written testimony in
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057 Rep. Lee opposition to HB 2711 (**EXHIBIT D**).
Asks if there is a distinction between the power to adopt rules on an emergency basis versus adoption of other rules.

062 Elicker Responds that there are other portions of statute that address the ability of the ODFW Director to adopt special emergency rules regarding angling and hunting regulations only.

072 Rep. Kruse Asks for an example of when ODFW would need to adopt a rule on an emergency basis.

074 Elicker Responds that it is very common for ODFW to adopt emergency rules on hunting and fishing regulations. Provides the example of the spring Chinook fishing season on the Willamette River.

088 Rep. Kruse Asks if the commission has the ability to call a meeting on an emergency basis and do they have the ability to hold a meeting via telephone.

093 Elicker Responds that to his knowledge they have the ability to call an emergency meeting and to meet by telephone. Notes that these still fall under the public meeting law.

099 Rep. Kruse Asks Mr. Elicker if he has any idea how far in advance the notice of the meeting has to be made.

102 John Perry Commissioner, Oregon Fish and Wildlife Commission.
Responds that he believes it is 48 hours.

104 Rep. Kruse States that the point he is trying to make is that there are ways the commission could be brought into an emergency situation.

107 Perry Comments on the availability of commissioners for emergency meetings.

120 Chair Jenson Notes that ORS 183.205 states the policy of the state is that the public be involved, whenever possible, in the development of public policies by agencies. Comments that the fundamental purpose is communication.

140 Chair Jenson Closes the public hearing on HB 2711 and opens a public hearing on HB 2341.

HB 2341 PUBLIC HEARING

143 Sandy Thiele-Cirka Committee Administrator. Explains the provisions of HB 2341.

150 Perry Submits and reads written testimony in opposition to HB 2341 (**EXHIBIT E**).

185 Rep. King Asks for clarification on what the department's position on the bill is.

190 Perry Responds that the commission has not taken a vote on the bill, but that his testimony represents the opinion of the commission as a whole.

197 Elicker Responds that ODFW is neutral on this bill.

205 Rep. Lee Comments on the Water Resources Commission's process for selecting a chair.

220 Chair Jenson Expresses his desire to strengthen and improve ODFW.
Comments on why these bills are being brought forward.

275 Rod Harder Executive Director, Oregon Sportsman's Defense Fund.
Comments on his organization's involvement with ODFW on various issues.

291 Chair Jenson Clarifies that this bill was a committee bill, but due to printing issues Rep. Morgan sponsored it.

298 Harder Continues testimony on HB 2314. States that his organization is open to working on some amendments to the bill.

313 Roger Martin Comments on his involvement in the creation of ODFW as a legislator. Testifies that these bills are an attempt to put more

political pressure and influence on the agency.

TAPE 36, A

005	Chair Jenson	Asks about the ESA in the 1970s and whether this was something the state had to deal with then.
023	Martin	Responds that the federal government has intruded greatly in this area and it has become very complicated.
039	Chair Jenson	Comments that the director position has become more difficult than in the past.
049	Chair Jenson	Closes the public hearing on HB 2341 and reopens the public hearing on HB 2711.

HB 2711 PUBLIC HEARING (CONTINUED)

053	Harder	Testifies in opposition to HB 2711.
072	Glen Stonebrink	Oregon Cattlemen's Association. Testifies in opposition to HB 2711.
080	Rep. Lee	Asks if exempting the emergency rule making power, but making the major rule making powers stay with the commission would address the concerns expressed by Mr. Harder and Mr. Stonebrink.
086	Harder	Responds no. States that these powers should be delegated. Suggests that communication is the key to correcting this, not legislation.

Written testimony from Jim Myron in opposition to HB 2341 and in support of HB 2711 submitted by staff for the record (**EXHIBIT F**). Written testimony from Charles Woosley in opposition to HB 2341 submitted by staff for the record (**EXHIBIT G**).

093	Chair Jenson	Closes the public hearing on HB 2711. Adjourns the committee at 3:10 p.m.
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Submitted By,

Reviewed By,

Linda K. Gatto,
Committee Assistant

Sandy Thiele-Cirka,
Committee Administrator

Transcribed By,

Stephen Kosiewicz

EXHIBIT SUMMARY

- A – U.S. Fish and Wildlife Service, written testimony, Kemper McMaster, 3 pp.**
- B – Department of Environmental Quality, written material, Dick Pedersen, 8 pp.**
- C – Department of Agriculture, written material, Chuck Craig, 9 pp.**
- D – HB 2711, written testimony, Roy Elicker, 1 p**
- E – HB 2341, written testimony, John Perry, 1 p**
- F – HB 2341 and HB 2711, written testimony of Jim Myron, Staff, 1 p**
- G – HB 2341, written testimony of Charles Woosley, Staff, 1 p**