

JOINT COMMITTEE ON STREAM RESTORATION
AND SPECIES RECOVERY

January 29, 1999 Hearing Room 50

9:00 AM Tapes 8 - 10

MEMBERS PRESENT: Sen. Ted Ferrioli, Co-Chair

Rep. Ken Messerle, Co-Chair

Sen. Joan Dukes

Sen. David Nelson

Sen. Veral Tarno

Rep. Bob Jenson, Vice-Chair

Rep. Al King

Rep. Jeff Kruse

Rep. Randy Leonard

Rep. Lynn Lundquist

Rep. Susan Morgan

Rep. Bruce Starr

Rep. Terry Thompson

MEMBER EXCUSED: Sen. Ginny Burdick, Vice-Chair

STAFF PRESENT: Judith Callens, Administrator

Stephen Kosiewicz, Administrative Support

MEASURE/ISSUES HEARD: Oregon Plan Activities Overview

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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TAPE/#	Speaker	Comments
TAPE 8, A		
005	Chair Ferrioli	Calls the committee to order at 9:05 a.m.
<u>OREGON PLAN ACTIVITIES OVERVIEW</u>		
016	Lorna Youngs	Acting Director, Department of Agriculture (ODA). Begins testimony on ODA's Oregon Plan activities.
072	Youngs	Continues testimony on ODA's Oregon Plan activities.
117	Rep. Messerle	Referring to the CAFO program, asks if this also includes poultry and fur bearing animals.
121	Youngs	Responds that it does.
127	Sen. Dukes	Asks for clarification that they have determined that dogs are livestock for purposes of confinement.
128	Youngs	Responds that she will look into this and get Sen. Dukes an answer.
135	Rep. Lundquist	Asks if the first two basin plans ODA developed were the Tualatin and the Bear Creek.
138	Youngs	Responds that this is correct.
139	Rep. Lundquist	Asks Ms. Youngs to go into some detail on where they are with these plans.
143	Youngs	Comments on where they are with the Tualatin and Bear Creek basin plans.
167	Rep. Kruse	Asks if it is still reasonable to expect that ODA will have the 1010 planning done in the next two years.
177	Youngs	Responds that they will not have all plans in place four years from when Bruce Andrews said it.
178	Rep. Kruse	Asks if it would be appropriate to reassess and modify the original plan that was put in place two years ago.

181	Youngs	Responds that ODA's goal is to be as flexible as they can.
198	Rep. Kruse	Expresses concern that the development of these 1010 plans is going to take some time, and states that ODA should not force timelines on local folks.
216	Chair Ferrioli	Comments that everybody is feeling pressure from timelines.
230	Rep. Messerle	Asks where we are at in the state as far as coordination between watershed associations and soil and water districts.
246	Youngs	Responds that she is not in a position to give a good overall assessment of where the coordination is or is not working. Notes that the Oregon Association of Conservation Districts has been working hard to increase this cooperation.
255	Chair Ferrioli	Expresses concerns about the TMDL and 1010 issues. Asks how agencies get the information they need to make management of the issue and the public policy work.
269	Youngs	Responds that she is not in a position to answer in terms of how other state agencies function. Comments on how ODA works with other agencies.
302	Chair Ferrioli	Expresses concern that between the work on the ground and the monthly cabinet-level meetings of natural resource producers is the opportunity for better coordination. Comments that he would like someone from ODA to tell him who is responsible, what is the coordinating mechanism, and how do they work with the other key state agencies.
340	Youngs	Comments that with ODA, there is not much middle, so the people on the ground are very closely connected with what's going on in the front office.
354	Rep. Messerle	Expresses concern about the process for getting approval of the 1010 plans. Asks where ODA is with their benchmarks and what progress they've made over the last few years.
391	Youngs	Clarifies the 1010 plan approval process. Comments on the progress ODA has made in meeting its benchmarks.
TAPE 9, A		
021	Rep. Lundquist	Comments on his involvement with 1010 plan development.
032	Rep. Messerle	Explains the reason for his question.
036	Chair Ferrioli	Notes the importance of maintaining a good relationship between an agency and

		the individuals being regulated.
052	Ann Hanus	Assistant State Forester, Department of Forestry (ODF). Submits written material (EXHIBIT A) and reads written testimony on ODF and forest landowner involvement in the Oregon Plan.
079	David Morman	Policy Unit Manager, Forest Practices Program, Department of Forestry. Begins slide presentation on key forest landowner voluntary measures.
127	Morman	Continues discussing key forest landowner voluntary measures.
167	Morman	Concludes slide presentation and continues reading written testimony regarding key ODF accomplishments and efforts.
204	Hanus	Continues reading written testimony regarding the Forest Practices Advisory Committee.
242	Rep. King	Asks if the Oregon Forest Practices Act is adequate and current enough to be consistent with the mandates the state faces with respect to salmon, particularly riparian zoning and stream protection.
252	Morman	Responds that their water protection rules were last revised in 1994 and they are actively monitoring the effectiveness of these rules.
263	Rep. King	Asks if there are any rules that appear to be in conflict with what the state is trying to accomplish.
267	Hanus	Responds that it is difficult to answer this question because they are waiting for the IMST report.
277	Rep. Messerle	Expresses concern that the large, woody debris being laid in streams can be damaging, and asks if they have a balance in this area so that they aren't creating excessive erosion. Asks if they have a dollar figure on the value of timber they are leaving in these riparian zones.
311	Morman	Responds that ODF is always going to be dealing with the struggle of how they manage the woody debris in the streams.
337	Sen. Nelson	Asks if ODF controls the Tillamook State Forest.
339	Morman	Responds that they do.
340	Sen. Nelson	Asks for an update on the good things that are happening there and what some of the problems, issues, and barriers are.

342	Chair Ferrioli	Notes that this could be a lengthy presentation and suggests they take it up at a future meeting. Comments that road decommissioning should be driven by something other than road density, and asks if ODF is doing road decommissioning on the state forests.
374	Morman	Responds that if it is being done, it is being done purely on a management basis.
395	Chair Ferrioli	States that legislators owe taxpayers explanations and disclosure of the scientific basis for a public policy decision that gets implemented. In regard to the placing of woody debris in water, asks whose tree it is when the tree falls into the river. Explains the reason for his question.
TAPE 8, B		
019	Morman	Responds that there is some liability protection for forest landowners in statute, and that they have no jurisdiction over the woody debris once it moves downstream off of forestland.
039	Chair Ferrioli	States that this is a question they are going to have to answer and that they need to figure out who has jurisdiction to deal with woody debris if it is threatening private property.
051	Rep. Thompson	Comments on an incident in his district involving a buildup of woody debris. States that this kind of situation needs to be resolved.
070	Morman	Notes that through the Forest Practices Act ODF's jurisdiction would be limited to a commercial forest operation.
082	Rep. Thompson	States that there are problems among the natural resource agencies in this area that need resolved.
093	Rep. King	Asks whether he would own a log he had branded that fell into a river.
100	Morman	Responds that branded logs would be the property of the landowner and they could claim those wherever they end up.
103	Rep. King	Asks what liability a landowner has if they provide trees for woody debris in a stream that later cause damage to someone's property.
106	Morman	Responds that there is a liability exemption in statute for these landowners because they did the work to comply with the law.
117	Rep. King	Asks if they have a way to deal with the woody debris if it creates a problem for someone's property.

121	Morman	Responds that there is flexibility in ODF's rules to waive or modify requirements for public safety.
126	Chair Ferrioli	States that they will have to consider this issue in light of the fact that one of the objectives of rehabilitation of salmonid habitat is braided and meandering streams.
148	Paul Cleary	Director, Division of State Lands (DSL). Comments on the issue of woody debris in streams with regard to ownership.
187	Rep. Thompson	Asks for clarification that the state owns the logs if they are floating down a navigable waterway
192	Cleary	Responds that this is correct.
197	Sen. Dukes	Referring to the incident in Rep. Thompson's district, asks what would happen if the homeowner had taken care of the logjam with a chainsaw.
202	Cleary	Responds that several things could have been done to address this situation.
215	Sen. Dukes	Comments that the government's solutions do not always seem to be logical for the problem. Asks for clarification that if someone used a chainsaw to clear out woody debris they would not run into legal trouble right away.
228	Cleary	Responds that DSL does not regulate the removal of the woody debris.
247	Cleary	Submits written material (EXHIBIT B) and testifies on DSL's Oregon Plan implementation activities.
304	Chair Ferrioli	States that having a rule requiring a permit to remove woody debris is the wrong solution to this problem. States that if there are proposed administrative rules regarding essential habitat and the designation of ditches and irrigation structures as waterways, the committee should get an update.
334	Cleary	States that he will get copies of the proposed administrative rules to the committee. Responds that in regard to the definition of irrigation ditches, they have tried to clarify that if there is an open and continuous connection between constructed waterways and "natural" waterways, then this is a jurisdictional waterway.
369	Sen. Dukes	Notes that people are being asked to replace non-functioning tide gates and to put in culverts to link up streams with stuff on their property, and asks if a situation is being created where what is on their property becomes part of a public stream area.

381	Cleary	Responds that DSL has decided to narrow the definition in order to focus on fish.
TAPE 9, B		
001	Sen. Dukes	Comments that some of these things did not have open connections, but these are being created.
009	Cleary	Notes that one of the goals of the Oregon Plan is to try to open up some of the historical spawning and rearing areas that have been blocked off.
014	Sen. Dukes	Expresses concern that they make sure that private landowners understand that there may be other strings attached [comments inaudible at times].
018	Chair Ferrioli	Notes that this is an issue they need to clarify for people.
029	Rep. Leonard	Asks for clarification that DSL issues a permit to Ross Island Sand & Gravel.
031	Cleary	Responds that this is correct.
032	Rep. Leonard	Asks what this permit is for.
033	Cleary	Responds that the permit is for removal of sand and gravel, and the fill for the reclamation after they remove.
038	Rep. Leonard	Asks how much of the original island has Ross Island Sand & Gravel dug away.
042	Cleary	Responds that he is unable to answer this because they've been operating there since the 1920s and DSL's removal law has only been in affect since 1967.
047	Rep. Leonard	Asks Mr. Cleary to explain how permitting the Port of Portland to put toxic waste into the lagoon, which feeds into the Willamette River, is consistent with the Oregon Plan and the Governor's Executive Order.
052	Cleary	Responds that both the fill and removal parts of the permit have expired and that DSL is processing a temporary permit to cover removal so they can address concerns associated with the fill activities.
062	Rep. Leonard	Clarifies his previous question.
075	Cleary	Responds that DSL is not allowing Ross Island Sand & Gravel to do any fill activities until DSL addresses questions such as Rep. Leonard has raised.

083	Rep. Leonard	Asks Mr. Cleary to explain how the mining at Ross Island is consistent with the Oregon Plan and the Governor's Executive Order.
089	Cleary	Responds that this activity can be an acceptable practice if appropriately regulated, and if the concerns raised are addressed.
098	Rep. Leonard	Asks how DSL can issue a permit to allow Ross Island Sand & Gravel to remove the island in light of all of the efforts to create healthy streams for salmon.
116	Cleary	Responds that DSL works closely with ODFW and DEQ on all of their permits to ensure that adequate conditions are put on these extractions to protect the resource.
131	Rep. Leonard	States that there appear to be some deep inconsistencies in how the state is trying to make our waterways healthier for salmon.
142	Chair Ferrioli	Notes Rep. Leonard's concerns about this issue, and suggests he work with Mr. Cleary to come up with a presentation for the committee at a later time.
154	Rep. Thompson	Notes that the area where the mining is taking place is a transit area and not a spawning ground area, so the gravel conditions there are different.
165	Chair Ferrioli	Asks Mr. Cleary to get copies of the proposed administrative rules to the committee.
171	Rep. Messerle	Expresses concern about the balance between the needs of the public and the needs of the fisheries.
197	Cleary	Comments that DSL believes they have a process that provides for input from all interest groups.
215	Rep. Messerle	Asks Mr. Cleary to provide information to the committee on how many permits DSL has issued and how many the Corps of Engineers has rejected.
229	Martha Pagel	Director, Water Resources Department (WRD). Submits written material (EXHIBIT C) and discusses WRD's strategic plan.
282	Chair Ferrioli	Requests that staff draft a memo to committee members asking them to review the strategic plan for discussion at a later meeting. States that Sen. Burdick is excused for today's meeting.
288	Geoff Huntington	Deputy Director, Water Resources Department. Begins testimony by discussing WRD's data collection and dissemination efforts.

336	Huntington	Continues testimony on WRDis data collection and dissemination efforts.
373	Huntington	Continues testimony by discussing WRDis groundwater studies.
TAPE 10, A		
005	Huntington	Continues testimony by discussing WRDis efforts to enhance their field programs and staff presence.
032	Rep. Jenson	Asks what can be done to make the Oregon Plan work if it is based on cooperation.
047	Pagel	Responds that an area everyone can work on more has to do with how much flexibility there is for building a mitigation plan. Notes that there is not a solid information base on the effectiveness of mitigation. States that WRD can help steer people to sources of water supply that are going to avoid the impacts to fish.
077	Rep. Jenson	Notes that this is an issue they need to address.
080	Chair Ferrioli	Adjourns the committee at 11:02 a.m.

Submitted By, Reviewed By,

Stephen Kosiewicz, Judith Callens,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ Oregon Plan activities overview, written material, Ann Hanus, 10 pp.

B ñ Oregon Plan activities overview, written material, Paul Cleary, 13 pp.

C ñ Oregon Plan activities overview, written material, Martha Pagel, 72 pp.