

JOINT COMMITTEE ON STREAM RESTORATION
AND SPECIES RECOVERY

February 15, 1999 Hearing Room 50

7:00 AM Tapes 24 - 25

MEMBERS PRESENT: Sen. Ted Ferrioli, Co-Chair

Rep. Ken Messerle, Co-Chair

Sen. Ginny Burdick, Vice-Chair

Rep. Bob Jenson, Vice-Chair

Sen. Veral Tarno

Rep. Randy Leonard

Rep. Al King

Rep. Jeff Kruse

Rep. Lynn Lundquist

Rep. Susan Morgan

Rep. Terry Thompson

MEMBER EXCUSED: Sen. Joan Dukes

Sen. David Nelson

Rep. Bruce Starr

VISITING MEMBER: Rep. Jason Atkinson

STAFF PRESENT: Judith Callens, Administrator

Stephen Kosiewicz, Administrative Support

MEASURE/ISSUES HEARD: Use Attainability Analysis (HB 3720 ñ 1997)

TAPE/#	Speaker	Comments
TAPE 24, A		
004	Chair Ferrioli	Calls the committee to order at 7:06 a.m.
<u>USE ATTAINABILITY ANALYSIS (HB 3720 ñ 1997)</u>		
009	Dick Nichols	Bend Water Quality Section Manager, Department of Environmental Quality. Submits and reads written testimony regarding use attainability analyses conducted as directed by HB 3720 (1997) (EXHIBIT A).
050	Nichols	Continues reading written testimony.
066	Rep. Thompson	Asks what temperature standard the Lahontan cutthroat trout needs.
069	Bruce Hammon	Department of Environmental Quality. Responds that they do not know at this time.
077	Rep. Thompson	Asks if the Lahontan cutthroat trout are a warm water or a cold water trout.
079	Hammon	Responds that all trout are cold water species and there is a natural range of variability within species.
085	Rep. Messerle	Asks if the temperatures have met the present standards and what kind of trend they are seeing so far.
090	Hammon	Responds that the work done in Willow Creek confirms that the stream does not met the 64° generic temperature standard.
101	Rep. Messerle	Asks how many days the stream did not meet the standard, and if there were pools within the stream that did meet the standard will the study show this information.
105	Hammon	Responds that the study will show this information.
110	Rep. Messerle	Asks what the use attainability has shown so far.
112	Pete Test	Oregon Farm Bureau. Responds that this is the only means to change the statewide temperature standard.

135	Rep. Messerle	Asks if doing the standards by region will get them where they want to go, or do they need to go by stream.
138	Test	Responds that this is probably true.
144	Rep. Lundquist	Asks what has to happen this session to build on what started last session.
149	Test	Responds that they have a placeholder bill through Rep. Messerle and they have been given a proposal that would take on five more streams.
163	Rep. Lundquist	Asks for clarification that this is the only opportunity they have to revise the current temperature standard.
166	Test	Responds that this is correct.
172	Rep. Thompson	Asks whether they would have to consider revising temperature standards down if cutthroat species are discovered on the coast that need water temperature below the 64° standard.
176	Test	Responds that this might be a possibility if the population is not thriving.
192	Rep. Thompson	Notes that following this course of action could have a negative impact on Western Oregon.
206	Test	Comments that what they hope to see is a regional breakdown for temperature standards.
241	Sen. Tarno	Asks for a definition of use attainability.
243	Nichols	Explains use attainability.
265	Sen. Tarno	Asks for clarification that there is no federal standard for temperature.
268	Nichols	Responds that there is not.
269	Sen. Tarno	Asks for clarification on what was meant by refining the standard.
272	Nichols	Responds that currently the temperature criteria for salmonids during rearing time is 64° .
274	Sen. Tarno	Asks where this temperature standard came from.

275	Nichols	Responds that this was adopted by the Environmental Quality Commission in the winter of 1996.
277	Sen. Tarno	Asks where the 64° temperature standard came from.
281	Nichols	Responds that it was based on information that was available to DEQ.
290	Chair Ferrioli	Comments that there was more than a notion that east-side streams are not capable of meeting the 64° standard.
326	Chair Ferrioli	Asks what the timeframe is to get more data back.
333	Nichols	Responds that data on Willow Creek has been collected and they are in the process of analyzing this information. States that they hope to have some data available by March or April.
346	Chair Ferrioli	Asks Mr. Nichols to make a presentation to the committee on their Willow Creek findings when the data is available.
354	Rep. King	Asks what sort of policy exists for streams that historically or naturally cannot get to cold enough water.
373	Nichols	Responds that the way the temperature standard works is that when certain temperature criteria are exceeded, the human-caused activities are addressed.
385	Rep. King	Comments that activities earlier in history could have caused the water to become warm.
394	Chair Ferrioli	Comments that use attainability problems can be at either end of the spectrum—the water is too warm or too cold.
TAPE 25, A		
007	Rep. Kruse	Asks how big of a region the Willow Creek study will allow DEQ to encompass.
017	Nichols	Responds that DEQ's plan with Willow Creek is to develop criteria protective of Lahontan cutthroat salmonids and then revise the standard to include these criteria, and apply it to all areas where Lahontan cutthroat trout reside.
025	Rep. Kruse	Questions whether DEQ is defining by species rather than geography.
036	Nichols	Asks if Rep. Kruse's concern is that if criteria for Lahontan cutthroat trout are developed, they will be applied to other cutthroat species.

038	Rep. Kruse	Comments that when statewide standards were adopted it was known that there were going to be exceptions everywhere. Asks whether species or geography will be set as parameters.
055	Nichols	Notes that the standards are intended to protect the beneficial use and to show that the criteria will be protective of this. Responds that the standard does recognize that in certain cases it may not be feasible to meet specific criteria.
071	Rep. Kruse	States that the way the process is setup one has to prove that the standards do not fit the stream.
077	Chair Ferrioli	Notes that there is a need to have the data, but there are many intersects involved in this issue.
100	Rep. Messerle	Asks why the Environmental Protection Agency has not adopted these standards yet.
102	Nichols	Responds that he does not know.
108	Rep. Messerle	Asks Mr. Nichols if he has heard any dates as to when the EPA might adopt these standards.
110	Nichols	Responds that he has not.
114	Chair Ferrioli	Notes that Rep. Jason Atkinson joins the committee this morning. Asks about the continuation of the research that DEQ is doing.
117	Nichols	Responds that they are assuming that their current position will be extended into the new biennium.
127	Chair Ferrioli	Asks if anyone else is conducting this type of research.
129	Hammon	Responds that the State of Idaho is taking a similar approach.
139	Nichols	Responds that the University of Nevada is also doing some work.
148	Test	Responds that there are two studies going on in Oregon that may relate to this issue down the road.
157	Rep. Kruse	Asks if these studies will produce good data on the relationship between water temperature and ambient air and land temperature.
161	Test	Responds that the OSU studies in Burnt River will.

174	Chair Ferrioli	States that the committee looks forward to a further presentation when the Willow Creek data is available. Announces that the Willamette Restoration Initiative Executive Order will not be discussed today. States that the committee will have some legislative drafts to review.
189	Rep. Messerle	Describes LC 3365 and LC 3542, which he is proposing for introduction as committee bills.
203	Rep. Thompson	Asks if LC 3365 leaves the commission structure the way it is now and whether it addresses the problem of overworked commissioners who do not understand the issue.
208	Rep. Messerle	Responds that he has not seen the draft that Legislative Counsel has come up with, but it was his intent to take a look at making the commission partially, if not entirely, advisory to ODFW and that the director would report to the Governor.
216	Rep. Thompson	Expresses hope that the committee is willing to look at this issue.
230	Rep. Messerle	States that this is the type of thing he hopes to accommodate in LC 3365.
233	Rep. King	Asks for clarification on what LC 3542 will do.
238	Rep. Messerle	Responds that LC 3542 is a placeholder bill so that the committee has a bill to deal with Measure 66 at a later time.
243	Sen. Tarno	Asks what the bill introduction deadline is for the committee.
247	Chair Ferrioli	Responds that it is his intention to accept any legislative proposal a House member may have and introduce it as a committee bill on the Senate side.
263	Rep. Messerle	Notes that he does not have a problem introducing these drafts on the Senate side. Asks whether the committee can introduce these as bill drafts on the Senate side.
289	Jeannette Holman	Legislative Counsel Office. Responds that the committee can do this.
293	Rep. Leonard	Asks for clarification that bills can be introduced on the House side through the House Rules committee.
295	Chair Ferrioli	Responds that this is a possibility on both the House and Senate side.
298	Rep. Kruse	Notes that another option would be for Rep. Messerle to introduce these bills by today's deadline and then have them referred to the committee.

305	Jeannette Holman	Notes that introducing these drafts as Senate bills would allow Legislative Counsel's publication staff to thoroughly proofread them.
315	Rep. Thompson	Notes that the committee is going to do a lot of work on these bills. States that what they are looking for is the relating clause, and suggests that if they give Ms. Holman this instruction it might help ease her workload.
321	Rep. Kruse	Notes that the quicker they get these bills into the process, the better off the committee will be.
326	Chair Ferrioli	States that it is the intent of the Co-Chairs to get these bills into the process as soon as possible. Notes the Senate deadline for bill dropping.
347	Chair Ferrioli	Adjourns the committee at 7:57 a.m.

Submitted By, Reviewed By,

Stephen Kosiewicz, Judith Callens,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ Use attainability analysis, written testimony, Dick Nichols, 24 pp.