JOINT COMMITTEE ON STREAM RESTORATION

AND SPECIES RECOVERY

March 16, 1999 Hearing Room 50

4:30 PM Tapes 54 - 55

MEMBERS PRESENT: Sen. Ted Ferrioli, Co-Chair

Rep. Ken Messerle, Co-Chair

Rep. Bob Jenson, Vice-Chair

Sen. Frank Shields

Sen. Veral Tarno

Rep. Al King

Rep. Jeff Kruse

Rep. Randy Leonard

Rep. Lynn Lundquist

Rep. Susan Morgan

Rep. Bruce Starr

Rep. Terry Thompson

MEMBER EXCUSED: Sen. Joan Dukes, Vice-Chair

Sen. David Nelson

STAFF PRESENT: Judith Callens, Administrator

Stephen Kosiewicz, Administrative Support

MEASURE/ISSUES HEARD: SB 1166 Public Hearing

TAPE/#	Speaker	Comments
TAPE 54, A		
004	Chair Messerle	Calls the committee to order at 4:50 p.m. Opens the public hearing on SB 1166.
SB 1166 ñ PUBLIC HEARING		
008	Judith Callens	Committee Administrator. Explains the provisions of SB 1166.
024	Pete Test	Associate Director of Governmental Affairs, Oregon Farm Bureau. Testifies in support of SB 1166.
036	Jean Underhill Wilkinson	Oregon Cattlemenís Association (OCA). Submits written material **(EXHIBIT A)** and gives background information on the Outstanding Resource Waters (ORW) program.
086	Wilkinson	Continues giving background information on the ORW program.
130	Wilkinson	Continues testimony by discussing the ORW program that DEQ has setup.
191	Wilkinson	Continues testimony by explaining OCAís proposed amendment to SB 1166.
214	Chair Messerle	Asks for clarification on what the proposed amendment will do.
220	Wilkinson	Responds that OCAís amendment would replace Section 2 of SB 1166.
228	Chair Messerle	Asks for clarification that Section 2 is replaced and Sections 3 and 4 are deleted.
229	Wilkinson	Responds that this is correct.
231	Chair Messerle	Notes that the term pristine is not defined.
234	Wilkinson	Confirms that this term is not defined anywhere. Gives her definition of pristine.
243	Chair Messerle	Asks if this term should be defined.
247	Wilkinson	Responds that if the term were not defined, DEQ would have the authority to define the term by rule or policy as they are implementing the ORW program. Notes that high quality waters are defined in SB 1166.

267	Sen. Tarno	Expresses confusion over what the proposed amendments do.
277	Callens	Explains that the amendment would delete Sections 2 through 4 of SB 1166, but would not delete statute.
286	Sen. Tarno	Asks for clarification that the proposed amendment would be the new Section 2 of the bill.
287	Wilkinson	Responds that this is correct.
290	Rep. Starr	Asks for clarification that all of the criteria listed would have to be met in order for an ORW designation to be given.
294	Wilkinson	Responds that this is correct.
297	Rep. King	Asks for clarification that the current language in Section 2 of the bill remains in statute.
300	Wilkinson	Responds that this is correct.
301	Rep. King	Asks for clarification that the proposed amendments would be added to the statutes.
304	Wilkinson	Responds that this is correct. Explains that Subsection (5) in the proposed amendment would replace Subsection (3) on page 2 of SB 1166.
308	Rep. King	States that it is his understanding that all of the text in the proposed amendment would be added to the bill.
312	Wilkinson	Clarifies that this language was included because it is in current statute, but the only new language would be Subsection (5).
321	Rep. King	Asks for clarification that Subsections (1) through (4) are in current statute and are listed here simply for clarification.
323	Wilkinson	Responds that they just want to add Subsection (5) to the statutes.
333	Rep. King	Notes that the proposed amendment states that ORS 468B.110 is being amended.
337	Rep. Leonard	Clarifies that this is the way bills are written and that text in bold is the only parts being amended.

341	Rep. King	Questions what happens with streams that currently do not qualify as high quality waters because they are messed up, but they are rehabilitateable.
355	Wilkinson	Comments on efforts to get these waters back up to meeting water quality standards.
372	Rep. King	Asks for clarification that the ORW program has to do with the classification of high quality waters, not the aspects of doing rehabilitation.
378	Wilkinson	Notes that everyone is working to get water bodies back up to water quality standards. Responds that the ORW program is a "super protection" to place on water bodies that are the best of the best.
TAPE 55, A		
002	Rep. Jenson	Expresses confusion over where the proposed amendments go and what they do.
018	Rep. Thompson	Questions why the committee is discussing the proposed amendments went they are not in LC form.
019	Chair Messerle	States that the committee is trying to understand the concept behind the proposed amendments.
024	Wilkinson	Explains why they are proposing the amendments.
029	Rep. Thompson	Notes that there is plenty of time to get the amendments drafted in LC form.
034	Rep. Kruse	Asks for clarification that the level of protection for ORWs in the proposed program exists regardless of what happens with SB 1166.
040	Wilkinson	Responds that this is correct. Notes that this currently exists under federal law.
047	Rep. Kruse	Expresses concern that the ORW program could restrict activities at Crater Lake.
056	Sen. Tarno	Explains that he was confused by the amendment because it addresses ORS 468B.110, which is not mentioned in the header of the SB 1166.
063	Wilkinson	States that they will clarify the amendment and come back to the committee.
068	Rep. King	Asks if activities such as fishing in Waldo Lake or Crater Lake would be prohibited under an ORW designation.

074	Wilkinson	Responds that it is hard to say what activities would be prohibited under an ORW designation.
095	Mike Llewelyn	Water Quality Division Administrator, Department of Environmental Quality. Submits written material **(EXHIBIT B)** and testifies in opposition to SB 1166.
133	Llewelyn	Continues testimony in opposition to SB 1166.
190	Llewelyn	Continues testimony in opposition to SB 1166.
226	Chair Messerle	Asks what is being gained by having an ORW designation.
239	Llewelyn	Gives example that explains the difference between an outstanding resource water body and a high quality water body.
272	Rep. Lundquist	Asks if there is a timeline for having the ORW program ready.
275	Llewelyn	Responds that the most pressing timeline for DEQ is that the Governorís Executive Order on the Oregon Plan has asked them to evaluate the potential of using this designation.
294	Rep. Kruse	Comments that he would be interested in knowing what the Governorís intent was in the Executive Order.
316	Sen. Ferrioli	Notes that anti-degradation will be discussed in the triennial review. Asks what there is to report in terms of progress on the issue of anti-degradation.
326	Llewelyn	Responds that there would be nothing to report at this time on ORW designation. Notes that the issue of whether they are implementing the high quality water policy needs to be addressed in the triennial review.
346	Sen. Ferrioli	Comments on the issue of anti-degradation.
370	Rep. Kruse	Asks for a definition of discharge.
374	Llewelyn	Defines discharge in the context of ORWs.
384	Rep. Kruse	Asks for clarification that there is not a lot of understanding on the issue of discharge.
389	Llewelyn	Responds that one of the keys of ORW designation is identifying a particular value to protect and then identifying the pollutants that impact this value.

TAPE 54, B		
001	Rep. Kruse	States that the management strategies could be very constrictive.
003	Chair Messerle	Notes that this is an issue the committee decided it needed to address.
007	Sen. Tarno	Referencing page 2 of the Environmental Quality Commission memo, asks where DEQ is in developing the screening criteria to identify ORWs and what is the anticipated time of completion.
012	Llewelyn	Responds that the flowchart on page 7 of Attachment A is DEQís final draft given to the workgroup.
024	Rep. King	Referencing page 3 of the Environmental Quality Commission memo, asks for clarification that DEQ would develop the nondegradation standards and the policies and enforcement that go along with this.
029	Llewelyn	Responds that this is correct.
035	Jim Myron	Representing Oregon Trout and Northwest Environmental Advocates. Submits written testimony **(EXHIBIT C)** and testifies in opposition to SB 1166.
071	Chair Messerle	Asks Mr. Myron what kinds of streams he would suggest might be designated, and what would be gained by the designation.
077	Myron	Responds that he cannot remember all of the streams that they had applied for designation. Responds that the purpose of the designation is to maintain these high quality waters in their current condition.
090	Sen. Tarno	Asks Mr. Myron if sees difficulty in designating streams as ORWs in light of the 303(d) list.
094	Myron	Responds that this depends on the screening criteria DEQ develops.
103	Rep. Kruse	Notes that the Scenic Waterway designation has been incredibly restrictive and states that he sees the ORW designation being more restrictive than this.
108	Myron	States that he is not aware that the Scenic Waterway Act has been that restrictive.
112	Rep. King	Notes that Mr. Myron testified that the ORW program does not give DEQ any new authority. Questions whether this is the case.
122	Myron	Clarifies that the ORW program does not give DEQ any more authority than they

		already have.
127	Rep. King	States that maintaining an ORW designation is different than having practices to keep water clean. Gives example of a fire retardant that was used near Waldo Lake and asks if an ORW designation would prevent this from being used.
141	Myron	Responds that he is unable to answer this question.
143	Rep. King	Comments on the potential usefulness of the ORW program.
152	Myron	States that if ORWs are defined as they are in SB 1166, the opportunity to use that tool in Oregon would be eliminated because you would be unable to determine where the 2% level is nationwide.
158	Rep. King	Asks if there are other criteria besides the 2% that would prohibit an ORW designation.
161	Myron	Responds that there are. Gives example of the North Fork of the John Day River as the last stronghold for spring Chinook and summer Steelhead in the John Day basin.
167	Rep. King	Notes that parts of Section 4 are flawed in terms of identifying clean water.
170	Chair Messerle	Asks if there needs to be better definition of the ORW designation.
173	Myron	Responds that there does. Notes that this why his organizations have been participating in DEQís workgroup.
176	Chair Messerle	Asks why whatever happens on this issue should be done in administrative rules through DEQ, rather than statute.
177	Myron	Responds that administrative rules are easier to change.
187	Chair Messerle	Asks for clarification that when Mr. Myron referred to the group he meant the ORW workgroup.
188	Myron	Responds that this is correct.
189	Chair Messerle	States that he did not see a lot of natural resource people represented on this workgroup.
190	Myron	Notes that there are timber representatives, representatives from the Farm Bureau, and representatives from the Oregon Cattlemenís Association on the

		workgroup.
198	Callens	Announces the agenda for Thursdayís meeting. Announces that there is no meeting Friday. Notes that next Tuesdayís meeting is in Portland.
207	Chair Messerle	Adjourns the committee at 6:00 p.m.

Submitted By, Reviewed By,

Stephen Kosiewicz, Judith Callens,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 1166, written material, Jean Underhill Wilkinson, 4 pp.

B ñ SB 1166, written material, Mike Llewelyn, 30 pp.

C ñ SB 1166, written testimony, Jim Myron, 4 pp.