

JOINT COMMITTEE ON STREAM RESTORATION
AND SPECIES RECOVERY

April 22, 1999 Hearing Room 50

7:00 AM Tapes 98 - 100

MEMBERS PRESENT: Sen. Ted Ferrioli, Co-Chair

Rep. Ken Messerle, Co-Chair

Sen. Joan Dukes, Vice-Chair

Rep. Bob Jenson, Vice-Chair

Sen. David Nelson

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

STAFF PRESENT: Judith Callens, Administrator

Stephen Kosiewicz, Administrative Support

MEASURE/ISSUES HEARD: SB 1163 Public Hearing and Work Session

SB 1287 Public Hearing and Work Session

HB 2881 Public Hearing

SB 778 Public Hearing

SB 862 Public Hearing

SB 1160 Public Hearing

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 98, A		
004	Chair Ferrioli	Calls the committee to order at 7:15 a.m. Asks members of the audience who have brought children for "Bring Your Son/Daughter to Work Day" to introduce themselves and their children. Opens the public hearing on SB 1163.
<u>SB 1163 n PUBLIC HEARING</u>		
025	Judith Callens	Committee Administrator. Explains the provisions of SB 1163.
053	Terry Lamers	State Issues Coordinator, Oregon Small Woodlands Association. Submits written testimony (EXHIBIT A) and testifies in support of SB 1163.
073	Chair Ferrioli	Notes that it is the tree, "leave" tree, wildlife tree, or other that is required to be left that is being referred to.
075	David Morman	Forest Practices Program Policy Unit Manager, Department of Forestry. Submits written testimony (EXHIBIT B) and testifies on potential difficulties and unintended consequences with SB 1163.
111	Sen. Shields	Asks for clarification on the Chair's early remark regarding "leave" trees.
118	Chair Ferrioli	Clarifies what he meant by "leave" tree.
129	Ray Wilkeson	Oregon Forest Industries Council. Testifies in support of SB 1163.
164	Greg Miller	Weyerhaeuser Co., Inc. Testifies in support of SB 1163.
191	Sen. Tarno	Asks if this is why there is language in the bill that relates to the diversion of waters.
193	Miller	Responds that this is correct.
195	Chair Ferrioli	Asks Mr. Miller and Mr. Wilkeson to respond to Mr. Morman's comment that the language in SB 1163 is overly broad.

199	Wilkeson	Responds that their desire is to get some protection from liability for trees that fall into streams and potentially cause problems down stream.
222	Chair Ferrioli	Asks for clarification that if there is an issue that has potential liability, it is the courts that are going to have to settle these things anyway, and that SB 1163 just provides an affirmative defense for a landowner.
227	Miller	Responds that this is their intent.
232	Rep. Messerle	Asks if SB 1163 only applies to trees that fall into streams, or does it also apply to trees that fall in the riparian zone.
242	Wilkeson	Responds that the bill would cover an array of instances.
250	Rep. Kruse	Asks for clarification that if they are talking about trees and debris left under these provisions in the ORS, they are talking about riparian areas anyway.
259	Callens	Responds that this is correct.
262	Wilkeson	Notes that the statutory citations are the Forest Practices Act.
270	Rep. Kruse	States that they are dealing with things that are being left under compliance with regulations.
284	Charlie Stone	Assistant State Forester, Department of Forestry. Clarifies ODF's concern about the language in SB 1163 being too broad.
307	Sen. Tarno	Asks if it is possible for the Chair to enter this dialogue into the record and make it part of the intent of SB 1163.
310	Chair Ferrioli	Responds that this is possible. Notes that ODF would like to have this language in statute. Asks the committee if they would like to take action on SB 1163 today, with the caveat that they will work with ODF on an amendment that could be introduced when the comes back for consideration on the House side.
326	Stone	States that ODF would be willing to help draft some language to insert into the bill on the House side.
334	Callens	States that the committee could conceptually amend SB 1163.
345	Chair Ferrioli	Notes that the conceptual amendment would be for an exemption under the Fire Protection clauses.

347	Stone	Clarifies that the conceptual amendment would make sure that SB 1163 did not provide an affirmative defense against cost collection for fire liability.
352	Callens	Notes that they could also have an actual LC amendment drafted for consideration when the bill comes back to the committee on the House side.
360	Chair Ferrioli	States that he is more comfortable putting an amendment in when the bill comes back to the committee.
369	Chair Ferrioli	Closes the public hearing and opens the work session on SB 1163.
<u>SB 1163 ñ WORK SESSION</u>		
371	Rep. Kruse	MOTION: Moves SB 1163 to the floor with a DO PASS recommendation.
		VOTE: 14-0
376	Chair Ferrioli	Hearing no objection, declares the motion CARRIED. SEN. FERRIOLI will lead discussion on the floor.
378	Chair Ferrioli	Closes the work session on SB 1163 and opens the public hearing on SB 1287.
<u>SB 1287 ñ PUBLIC HEARING</u>		
381	Callens	Explains the provisions of SB 1287 and the proposed ñ1 amendments.
TAPE 99, A		
033	Rep. Jeff Kropf	House District 37. Testifies in support of SB 1287.
085	Kropf	Continues testimony in support of SB 1287.
109	David Moon	Representing the owners of Thompsonís Mills. Testifies in support of SB 1287.
159	Moon	Continues testimony in support of SB 1287.
180	Moon	Continues testimony by explaining the changes proposed in the ñ1 amendments.
236	Sen. Dukes	Asks Mr. Moon if he has looked at the Parks and Recreation Department's

		(OPRD) budget as it came out of the Ways and Means subcommittee.
238	Moon	Responds that he has not reviewed this budget.
239	Sen. Dukes	Notes that there is a lot of backfill in this budget and that there was no additional money for purchase of property. Asks how SB 1287 and a budget without money for new lands fit together.
245	Moon	Responds that he is unable to answer this because he has not reviewed OPRDis budget.
247	Sen. Dukes	Notes that SB 1287 says that OPRD shall buy this property out of Measure 66 money.
251	Moon	States that he is not aware that OPRD has set forth any acquisition money in their budget.
254	Chair Ferrioli	Asks if there is a deadline for purchase in the bill.
256	Moon	Responds that there is not.
265	Rep. Thompson	Asks how they determine fair market value of the property.
267	Moon	Responds that this would be done by appraisal.
276	Rep. Thompson	Asks who establishes who the appraiser is.
284	Moon	Responds that it is not specified in the bill. Notes that OPRD would probably select the appraiser.
288	Rep. King	Notes that one of the reasons why the state would be involved in the purchase of Thompsonís Mills would be for salmon recovery, which is not an OPRD function. Questions why OPRD is involved.
298	Chair Ferrioli	Notes that SB 1287 specifies Measure 66 money. States that there is the possibility of a cooperative purchase between the parks side and the salmon side.
307	Moon	States that the resource and development of Thompsonís Mills as a state park is very important.
317	Rep. Lundquist	Expresses concern that there may be other parks in the state that need to be developed by the state.

344	Harry Seely	Research Associate, Columbia Economics. Testifies on the value of the water rights of Thompson's Mills.
412	Chair Ferrioli	Asks Mr. Seely if it is his contention that the value of the water is high.
414	Seely	Responds that he is not trying to make this contention at all. States that he is trying to provide a value for the water right at Thompson's Mills.
TAPE 98, B		
003	Seely	Continues testimony on the value of the water rights of Thompson's Mills.
009	Sen. Dukes	Asks what kind of range are they looking at in terms of the total purchase of the property.
012	Seely	Responds that the purchase price for the 35cfs water right would be between \$1.6 and \$1.9 million.
017	Sen. Dukes	Asks if these figures include the value of the land.
018	Seely	Responds that they do not.
019	Sen. Dukes	Asks if there is an estimate for what the whole purchase price is likely to be.
019	Seely	Responds that he was not asked to appraise this.
020	Sen. Dukes	Notes that there is a blank space on page 2 of the bill that needs to be filled in.
021	Chair Ferrioli	States that this is what the appraisal is all about.
024	Dave Babits	Owner and operator, Thompson's Mills. Submits written material (EXHIBIT C) and testifies on how SB 1287 came about and why he wanted it introduced.
081	Babits	Continues testimony on why he wants to sell the property.
101	Rep. King	Asks who owns the river bottom.
102	Babits	Responds that in some areas of the channels they use to provide flows to the mill they own both banks and the river bottom; in other areas of the channel they have easements that allow them to levy water through the system; and some portions of the property have the survey boundary to the center of the river.

112	Rep. King	Asks if this is considered a navigable river.
114	Babits	Responds that in 1983, part of the Calapooia River was declared navigable.
125	Rep. King	States that for salmon issues, the bottom of the river has substantial value as well.
130	Rep. Lundquist	Asks for clarification that the water right is primarily for the operation of the mill.
132	Babits	Notes that they have a number of water rights in force. Responds that two are used as power claims to drive the mill machinery, one allows them to generate and sell electricity, and a number of water rights allow them to irrigate all of their farmland.
139	Rep. Lundquist	Asks how much farmland they are irrigating.
140	Babits	Responds that it is about 55 acres.
143	Rep. Lundquist	Asks what percentage of the water rights is for the mill operation.
144	Moon	Responds that 100cfs are the mill's water rights in total.
150	Rep. Lundquist	Asks if there is any way to determine what the value of buying water rights to operate a mill would be.
154	Babits	Responds that the only way to buy water rights to power a mill today would be to purchase them from another landowner.
165	Moon	Notes that they are talking about 180cfs in water rights, and it would be impossible to purchase something like this on the open market.
169	Rep. Lundquist	Asks if it would be a positive endeavor financially if water rights such as these could be found to purchase to run a mill.
173	Babits	Responds that buying this amount of water to power a mill today would not be economically justifiable.
186	Rep. Lundquist	Asks if these water rights could be purchased for agricultural purposes.
189	Moon	Responds that this would not be possible.

200	Rep. Jason Atkinson	House District 51. Testifies in support of SB 1287.
250	Atkinson	Continues testimony in support of SB 1287.
292	Rep. Thompson	Notes that there are sites along the coast that are equally as valuable to the citizens of Oregon. Asks if it is fair to say that this site takes a higher priority over these beach sites in the state.
302	Atkinson	Clarifies that his testimony is that this property be put on a priority list. Notes his interest in the historical aspects of Thompson's Mills.
323	Rep. King	Comments that this is not the committee to deal with park issues. Expresses concern about requiring the state to purchase Thompson's Mills.
352	Atkinson	Comments that this property does the right thing for the issue of salmon.
384	George Pugh	Boston Mill Society. Submits written material (EXHIBIT D) and testifies in support of SB 1287.
TAPE 99, B		
018	Martin Thompson	President, Boston Mill Society. Testifies in support of SB 1287.
038	Chair Ferrioli	Asks if there is any national recognition for the preservation of this mill.
039	Thompson	Responds that it is listed on the National Register for Historic Places. Notes that the site has also been nominated as one of the 11 most endangered sites in America.
045	Chair Ferrioli	Asks for clarification that this is one of the 11 most endangered sites in America.
046	Thompson	Responds that this is correct.
054	Gary Springer	Springer Tree Farm. Submits and reads written testimony in support of SB 1287 (EXHIBIT E).
095	Terry Lamers	State Issues Coordinator, Oregon Small Woodlands Association. Testifies in support of SB 1287.
119	Jim Lockwood	Parks and Recreation Department. Testifies in support of SB 1287.
148	Joe Rohleder	Assistant to the Director, Department of Fish and Wildlife. Testifies in support

		of SB 1287. Notes that he has not had a chance to review the ñ1 amendments.
178	Peter Jensen	President, Calapooia Irrigation District. Submits and reads written testimony in support of SB 1287 (EXHIBIT F).
234	Rep. Lundquist	Asks how what happens to the mill affects Mr. Jensen's water rights.
244	Jensen	Responds that the concern is that if someone other than the state buys these water rights, they might be less friendly to the citizens in terms of allowing them to use the water.
262	Rep. King	Notes that if the state buys the water rights, citizens will probably be dealing with ODFW rather than OPRD.
284	Lucy Skjelstad	Citizen, Corvallis. Submits written testimony (EXHIBIT G) and testifies in support of SB 1287.
348	Jimmie Lucht	Executive Director, Albany Convention and Visitors Association. Submits and reads written testimony in support of SB 1287 (EXHIBIT H).
395	Lucht	Continues reading written testimony.
TAPE 100, A		
002	Pete Test	Oregon Farm Bureau. Testifies in support of SB 1287.
011	Sen. Dukes	Asks if this is EFU land.
013	Test	Responds that it is outside of the urban growth boundary.
014	Sen. Dukes	Asks for clarification on what the Farm Bureau feels is okay or not okay for EFU land.
015	Test	Responds that in this particular situation it will have a tendency to protect the EFU land around it.
018	Chair Ferrioli	Closes the public hearing and opens the work session on SB 1287.
<u>SB 1287 ñ WORK SESSION</u>		
026	Rep. King	Notes that there are several dams on the Calapooia River and they appear to be "fish friendly". Asks if passing SB 1287 could impact the ability to operate these

		dams and the mill.
037	Rohleder	Notes that he has not had time to review the bill amendments. Responds that they have had a difficult situation over fish passage at this site.
050	Rep. King	Asks for clarification that Mr. Rohleder is not able to testify as to whether the fish passage issues are adequate for endangered species needs or to state any idea in terms of the future use, non-use, or existence of these dams.
056	Rohleder	Responds that this is correct. Suggests that the committee consider an amendment that gives a priority to the water at the site for fish passage.
065	Rep. King	Notes that there could be the possibility that OPRD might have one authority and set of goals and ODFW may have another. Questions whether there is a way for one department to have its purpose supercede that of another.
071	Rohleder	Notes that this is an inherent problem that needs to be addressed in some way.
078	Rep. Thompson	Asks for clarification that SB 1287 would come back to this committee before going to the House floor.
080	Callens	Clarifies that this bill has a prior reference to Ways and Means.
082	Rep. Thompson	Asks what happens after it comes out of Ways and Means.
083	Callens	Responds that it would go to the Senate floor and then to the House floor.
084	Rep. Thompson	Asks for clarification that SB 1287 will not come back to this committee.
085	Callens	Responds that this is correct.
086	Rep. King	Asks whether SB 1287 would go through the Ways and Means Transportation and Economic Development Subcommittee.
090	Callens	Responds that once the bill is assigned to Ways and Means, it will be assigned to a subcommittee.
096	Rep. Thompson	Explains that he will be voting no on SB 1287.
102	Chair Ferrioli	Asks Rep. Thompson if he could support the bill if the committee made a recommendation to have the bill referred to the Transportation and Economic Development Subcommittee of Ways and Means.

104	Rep. Thompson	Responds that he still thinks there are problems with the bill.
108	Sen. Dukes	Explains that she will be voting for SB 1287. Notes that she shares Rep. Lundquist's concerns about super siting.
120	Rep. King	Explains that he will be voting no on SB 1287.
132	Rep. Lundquist	Notes that he will vote for the bill in committee, but he is not sure how he will vote on the House floor.
145	Sen. Tarno	MOTION: Moves SB 1287 to the floor with a DO PASS recommendation and BE REFERRED to the committee on Ways and Means by prior reference.
		VOTE: 9-2 AYE: 9 - Dukes, Jenson, Leonard, Lundquist, Morgan, Nelson, Tarno, Ferrioli, Messerle NAY: 2 - King, Thompson EXCUSED: 3 - Kruse, Shields, Starr
158	Chair Ferrioli	The motion CARRIES.
160	Rep. Thompson	States that he hopes this site is bought by the state.
161	Chair Ferrioli	Notes that some of the concerns that have been raised need to be addressed. Explains that the committee needs to reconsider the vote on SB 1287 because they forgot to consider the 11 amendments.
169	Sen. Dukes	MOTION: Moves to RECONSIDER the vote by which SB 1287 was moved to the floor with a DO PASS recommendation and BE REFERRED to the committee on Ways and Means by prior reference.
		VOTE: 11-0 EXCUSED: 3 - Kruse, Shields, Starr
170	Chair Ferrioli	Hearing no objection, declares the motion CARRIED.
171	Chair Ferrioli	MOTION: Moves to ADOPT SB 1287-1 amendments dated 4/14/99.

		VOTE: 11-0 EXCUSED: 3 - Kruse, Shields, Starr
173	Chair Ferrioli	Hearing no objection, declares the motion CARRIED.
176	Sen. Tarno	MOTION: Moves SB 1287 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means by prior reference.
		VOTE: 9-2 AYE: 9 - Dukes, Jenson, Leonard, Lundquist, Morgan, Nelson, Tarno, Ferrioli, Messerle NAY: 2 - King, Thompson EXCUSED: 3 - Kruse, Shields, Starr
185	Chair Ferrioli	The motion CARRIES.
186	Chair Ferrioli	Closes the work session on SB 1287 and opens the public hearing on HB 2881.
<u>HB 2881 ñ PUBLIC HEARING</u>		
189	Chair Ferrioli	Closes the public hearing on HB 2881 and opens the public hearing on SB 778.
<u>SB 778 ñ PUBLIC HEARING</u>		
191	Chair Ferrioli	Closes the public hearing on SB 778 and opens the public hearing on SB 862
<u>SB 862 ñ PUBLIC HEARING</u>		
193	Chair Ferrioli	Closes the public hearing on SB 862 and opens the public hearing on SB 1160
<u>SB 1160 ñ PUBLIC HEARING</u>		
195	Chair Ferrioli	Closes the public hearing on SB 1160. Adjourns the committee at 9:19 a.m.

Submitted By, Reviewed By,

Stephen Kosiewicz, Judith Callens,
Administrative Support Administrator

EXHIBIT SUMMARY

- A ñ SB 1163, written testimony, Terry Lamers, 1 p**
- B ñ SB 1163, written testimony, David Morman, 2 pp.**
- C ñ SB 1287, written material, Dave Babits, 49 pp.**
- D ñ SB 1287, written material, George Pugh, 7 pp.**
- E ñ SB 1287, written testimony, Gary Springer, 2 pp.**
- F ñ SB 1287, written testimony, Peter Jensen, 1 p**
- G ñ SB 1287, written testimony, Lucy Skjelstad, 1 p**
- H ñ SB 1287, written testimony, Jimmie Lucht, 2 pp.**