

SENATE COMMITTEE ON WATER AND LAND USE

April 13, 1999 Hearing Room A

6:00 p.m. Tapes 60 ñ 61

MEMBERS PRESENT: Sen. Veral Tarno, Chair

Sen. Gary George

Sen. Marylin Shannon

Sen. Thomas Wilde

MEMBER EXCUSED: Sen. Tony Corcoran, Vice-Chair

STAFF PRESENT: Raymond J. Kelly, Administrator

Diana Bronson, Administrative Support

MEASURE/ISSUES HEARD: SB 832 Public Hearing and Work Session

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 |
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| TAPE 60, A | | |
| 004 | Chair Tarno | Opens meeting at 6:10 p.m. and opens public hearing on SB 832. States the committee will address issues for both sides. Acknowledges that everyone wants it their way and the committee will try to make |

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| | | everyone comfortable with the decisions made. |
| <u>SB 832 PUBLIC HEARING</u> | | |
| 028 | Chair Tarno | States the committee has been working with state agencies, as well as the individuals who are sponsoring SB 832 in trying to put some programs into the bill that may be beneficial. Asks Phil Donovan to come forward. |
| 037 | Phil Donovan | Association of Northwest Steelheaders. Submits (EXHIBIT A) . States that the ñ5 amendments will provide more provisions for special interest groups. States the most significant is the creation of a pilot project which seeks to address the sanitation facilities, access facilities, and user education. |
| 064 | Chair Tarno | Asks if that is stated in Section 16 of the ñ5 |

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| | | amendments. |
| 065 | Donovan | States that is correct. Describes the need for a pilot project to include the implementation of river facilities throughout the state. |
| 083 | Chair Tarno | Asks Donovan what he is referring to when he speaks of river facilities. |
| 084 | Donovan | Replies sanitation facilities, primarily, as well as access facilities, boat launches, and the like. |
| 088 | Chair Tarno | Asks for the different agencies that would be involved to accomplish this pilot project. |
| 088 | Donovan | Replies that state parks would be involved, primarily, but it is also critical to involve organizations like the Northwest Steelheaders and the Oregon Wildlife Heritage Foundation. |
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| 101 | Rod Brobeck | Executive Director, Oregon Wildlife Heritage Foundation. |
| 106 | Chair Tarno | Discusses the need for facilities for the public to use along the waterways so that there is no trespassing on private property. Thanks the foundation for the willingness to promote the program. |
| 124 | Brobeck | States this plan is fairly new. Describes projects the Oregon Wildlife Heritage is promoting. States they have the biologists to help with these programs. |
| 147 | Chair Tarno | States this is a start that is needed. Asks Cleary if he has any thoughts to add to this project. States the basic concept is to provide rest stops for the public so that the public does not use private property for restrooms. Asks Lindsey Ball to come forward and give a brief |

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| | | summary of experiences as far as working with these kinds of issues. |
| 178 | Lindsey Ball | <p>Captain, Fish and Wildlife Division, Oregon State Police. Gives history of his family moving and owning land in Oregon. States whether the line is drawn up or down, there will be conflict. States that most complaints are due to unwanted guests using the private property for a restroom. States there is a need to provide facilities so that sportsmen know where the facilities are located.</p> |
| 230 | Ball | <p>States there may be a way the Oregon waterways can use the same program. Since this is public/private problem, and there is a need for private/public programs to be developed. Until the conflict is addressed, the conflict will not be erased.</p> |
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| 256 | Chair Tarno | Thanks Captain Ball and asks Lockwood and Cleary to give thoughts on this issue. |
| 275 | Jim Lockwood | Oregon Parks and Recreation Department. (EXHIBIT B) . States that SB 832 reaffirms several statutory programs administered by the Oregon Parks and Recreation Department for the purpose of protecting waterways and providing recreation opportunities. |
| 318 | Paul Cleary | Director of Division of State Lands. States they are willing to help promote a pilot project. |
| 343 | Chair Tarno | States the committee wants a program put together in an expedient manner. States the committee wants a working document to build from. Asks that the testimony presented be short and succinct. Calls Betsy Johnson, Gail Achterman, |

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| | | and Chuck Bennett. |
| 376 | Gail Achterman | Attorney, Portland. Introduces Betsy Johnson and Chuck Bennett. Testifies on behalf of two landowners. |
| 380 | Betsy Johnson | Scappoose, OR. Presents (EXHIBIT C) . Reads testimony in opposition to SB 832. |
| 416 | Chair Tarno | States that if there are amendments, the chair will review them before any testimony. Requests that all proposed amendments be presented to the chair in advance of scheduled meetings, not during the meeting. |
| 420 | Achterman | States her amendments were submitted last week and were drafted by Legislative Counsel. |
| 426 | Chair Tarno | Acknowledges receipt of Achterman's amendments. |
| TAPE 61, A | | |
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| 004 | Johnson | Asks that some rivers be designated as being too fragile to have people walking on the banks or manipulating flotation devices in the bed of the river that are frequently fish habitat areas. |
| 013 | Achterman | States she is representing Mrs. Samuel Johnson, Betsyís mother, and speaks on behalf of Kim Lungren, who owns another extraordinary parcel of land on the Metolius River. Presents (EXHIBIT D) . States that SB 832 seems to have been drafted without any consideration of the existing case law in Oregon that is established and defines the nature and extent of the floatage easement. |
| 054 | Achterman | States that the ñ4 amendments make it clear that the floatage easement does not include the right to use the land, it only encompasses the right to use |

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| | | the water for transportation. Presents (EXHIBIT E) . |
| 061 | Chair Tarno | Asks how she can use the words, "portage" and "camp" in the same sentence. |
| 061 | Achterman | Replies that they both involve more than incidental use. States that what is created with portage, is a recreational easement over the upland that never has existed under case law. |
| 105 | Chuck Bennett | Presents (EXHIBIT F) . States he has resided on the Santiam for 25 years. States that 14 years ago, they made a mistake in the navigability laws and now it is time to correct it. States that fires, camping, and the associated uses of private property need to be addressed. |
| 148 | Wendee Kellington | Portland, OR. Agrees with Achterman with regard to the legal analysis that applies. Testifies that |

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| | | camping, fires, and restrooms must be addressed and not allowed on private lands. |
| 212 | Sen. Shannon | Asks where the ñ6 amendments are. |
| 212 | Chair Tarno | States the chair has them along with the ñ 4 and the -3 amendments, and the others that have not been presented. |
| 213 | Sen. Shannon | Asks if there are dams along the Umatilla River. |
| 218 | M.D. Van Valkenberg | Attorney. States this is an issue that needs to be let go of. States he does like the bill, feels it is unnecessary and thinks it is a lawyeris dream for employment. |
| 282 | Tammy Simantel | States she is speaking on behalf of herself and many of her neighbors on the John Day River. Testifies in opposition to SB 832. States she and her husband are now being sued by the Steelheaders. States her |

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| | | property is 20 miles from town and 30 miles from the closest emergency service provider. |
| 317 | Wilkinson | States that if this legislature attempts to do something with this bill, they could possibly start with the 4 amendments. |
| 359 | Leo Meysing | Testifies that SB 832 constitutes an extreme amount of confusion. Testifies in opposition to SB 832. |
| 402 | Dan Primus | Lyons, OR. States that most of his concerns have been mentioned. Meander lines need to be addressed. States no one should be allowed to pack through someone's back yard. Asks where the protection is for the landowner. |
| TAPE 60, B | | |
| 036 | Liz Hamilton | Northwest Sportfishing Industry Association. |

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| | | <p>Presents (EXHIBIT G). States that SB 832 represents a reasonable compromise for both sides of the issues by avoiding the controversial issue of ownership.</p> |
| 070 | John Garren | <p>National Organization for Rivers. Presents (EXHIBIT H). States that if SB 832 is drafted correctly, it will not infringe on public rights.</p> |
| 094 | Jim Reed | <p>Jasper, OR Member of the Oregon Canoe and Packing Club. States his concerns are guaranteed rights for safe passage. Testifies in support of SB 832.</p> |
| 107 | Elizabeth Thompson | <p>Member Northwest Steelheaders. Presents (EXHIBIT I). States that property owners do not own the beds and banks. Reads testimony in support of SB 832 and feels it is a move in the right direction.</p> |
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| 136 | Kathy Amudson | Sandy River property owner. Testifies in opposition to SB 832 in that not all rivers can be classified the same as the Columbia River. |
| 168 | Beverly Jones | Sandy River property owner. Presents (EXHIBIT J) . States she finds it offensive the way the Division of State Lands has helped the Northwest Steelheaders. States she supports the floatage easement issues. Testifies in opposition to SB 832 as written. |
| 178 | John Urkhard | Sandy River property owner. States he recommended legislation that would clarify the public rights to the waterways. States he opposes SB 832 as presently written. |
| 201 | Greg Leo | States he has been working on this issue for two and one-half years |

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| | | for the Sandy River property owners. States SB 832 is out of balance. States there needs to be a sportmanis code of ethics so that behaviors are controlled. |
| 219 | Susan Davenport | Property owner on the north fork of the Santiam. States her area has a real problem with alcohol and emergency vehicles. States there are no hours of closure to this bill. |
| 235 | Chair Tarno | Asks if she would feel better if the issue of camping, hunting, and picnicking were not part of the language in SB 832. |
| 237 | Davenport | Replies it would help in that it would stop the partying. States there is no law enforcement capable of controlling the partying. |
| 250 | Lara Smith | Oregon Cluster of YMCAs. Presents (EXHIBIT K) . States amendments have been |

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| | | <p>worked out with Northwest Steelheaders and some adjustments are still needed. States that signs posted by the state impose more authority and will draw less attention to the fact that the area is a youth camp and that children are present.</p> |
| 269 | Marlis Miller | <p>Portland Area Council of Camp Fire. Presents (EXHIBIT L). States they have operated a 600 acre camp on the Sandy River for 75 years. States the Council will support the amendments made to SB 832 if changes are made. States their main concern is for the safety of the children attending the camp.</p> |
| 289 | George Hadley | <p>Fly Country Outfitters and river guide. Testifies in support of SB 832. Presents written testimony on behalf of John Colburn, Legislative Chairman for the Oregon Council of the Federation of</p> |

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| | | Fly Fishers. (EXHIBIT M). |
| 310 | Allison Smith | Presents (EXHIBIT N). Testifies in support of SB 832. |
| 316 | Andy Ewing | Property owner on the Kilches River. States that when he purchased his property, he thought he owned the land and water to the center of the river. States that when the navigability issues came up, he felt it was a land grab. |
| 339 | Bob Hall | Portland General Electric Company. Presents (EXHIBIT O). Testifies as being neutral on SB 832, however, there is one section that is of concern. States that for safety purposes, access above, around, and below a dam must be restricted to ensure public safety. |
| 370 | Norm Ritchie | Vice President, Association of Northwest Steelheaders. Presents (EXHIBIT P). |

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| | | <p>Testifies in support of SB 832. States the Steelheaders support the proposed pilot projects with the State Parks Department.</p> |
| 423 | Steve Babjar | <p>Northwest Steelheaders, Albany. Presents photographs (EXHIBIT Q). States he does not understand why the property owner has posted a no trespassing sign as they have used his river frontage before for fishing.</p> |
| TAPE 61, B | | |
| 028 | Art Israelson | <p>Presents recorded message from the Clackamas County Sheriff's office. States they have no history of any recorded complaints. Presents (EXHIBIT R). States there are brochures from the Bureau of Land Management containing information of acts that are prohibited on the John Day River. States the Bureau also has literature on boating regulations and</p> |

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| | | portable toilets. |
| 059 | Chris Foster | Lake Oswego. Thanks committee for hearing SB 832. States he is a member of the Northwest Steelheaders, and a volunteer for the Oregon Department of Fish & Wildlife. Testifies in support of SB 832. |
| 078 | A. D. Dority | Testifies in opposition to SB 832. Presents (EXHIBIT S) . States his property gets wash-outs during periods of flooding. Proposes amendments he would like the committee to review. |
| 166 | Jim Virgin | President, Oregon Kayak and Canoe Club. Presents (EXHIBIT T) . Testifies in support of SB 832. |
| 195 | Tom Wolf | Chairman, Oregon Council Trout Unlimited. Presents (EXHIBIT U) . Testifies in support of SB 832. |
| 199 | Chair Tarno | Closes public |

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| | | hearing and opens work session. |
| <u>SB 832 WORK SESSION</u> | | |
| 214 | Chair Tarno | Asks committee administrator to pull together all the amendments and report back to the committee. States the amendments will be reviewed to see how they impact SB 832. |
| 215 | Sen. Wilde | Asks what the committee should do when only certain aspects of an amendment are favorable but, on the whole, none of the amendments are favorable by themselves. |
| 217 | Chair Tarno | Replies that the committee will try to put together a package that is favorable and that can be agreed upon. Adjourns meeting at 7:50 p.m. |
| | | Testimony from Oregon State Marine Board on SB 832 (EXHIBIT V) is submitted |

Submitted By, Reviewed By,

Diana Bronson, Raymond J. Kelly,
Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 832, proposed amendments, LC staff, 4 pp.
B ñ SB 832, written testimony, Jim Lockwood, 2 pp.
C ñ SB 832, written testimony, Betsy Johnson, 2 pp.
D ñ SB 832, written testimony, Gail Achterman, 5 pp.
E ñ SB 832, proposed amendments, LC staff, 3 pp.
F ñ SB 832, written testimony, Chuck Bennett, 10 pp.
G ñ SB 832, written testimony, Liz Hamilton, 2 pp.
H ñ SB 832, written testimony, John Garren, 23 pp.
I ñ SB 832, written testimony, Elizabeth Thompson, 1 p.
J ñ SB 832, written testimony, Mike Jones, 17 pp.
K ñ SB 832, written testimony, Lara Smith 1 p.
L ñ SB 832, written testimony, Marlin Miller, 1 p.
M ñ SB 832, written testimony, John Colburn, 1 p.
N ñ SB 832, written testimony, Allison Smith, 1 p.
O ñ SB 832, written testimony, Bob Hall, 1 p.
P ñ SB 832, written testimony, Norman Ritchie, 1 p.
Q ñ SB 832, pictures, Steve Babjar, 4 pp.
R ñ SB 832, written testimony, Art Israelson, 6 pp.

S ñ SB 832, written testimony, A. D. Dority, III, 4 pp.

T ñ SB 832, written testimony, Jim Virgin, 2 pp.

U ñ SB 832, written testimony, Tom Wolf, 1 p.

V ñ SB 832, written testimony, Paul Donheffner, 34 pp.