

HOUSE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

May 15, 1997 Hearing Room D

08:00 AM Tapes 82 - 84

MEMBERS PRESENT: Rep. Charles Starr, Chair

Rep. Terry Thompson, Vice-Chair

Rep. Dennis Luke

Rep. Ken Messerle

Rep. Kurt Schrader

Rep. Judith Uherbelau

Rep. Larry Wells

STAFF PRESENT: Judith Gruber, Administrator

Linda Kowal, Administrative Support

MEASURE/ISSUES HEARD: HB 3725 Work Session

HB 2499 Public Hearing

SB 402-A Public Hearing

SB 1086 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 82, A		
<u>HB 3725</u> <u>WORK</u> <u>SESSION</u>		
010	Chair Starr	Calls the meeting to order at 8:09 a.m. and opens the work session on HB 3725.
013	Rep. Luke	MOTION: Moves to SUSPEND the rules for the purpose of RECONSIDERING HB 3725.
019		Administrator, explains the necessity of reconsidering HB 3725.

	Judith Gruber	
032	Rep. Luke	Requests additional explanation.
035	Rep. Uherbelau	Requests additional explanation.
040	Chair Starr	Recesses work session on HB 3725.
<u>HB 2499</u> <u>PUBLIC</u> <u>HEARING</u>		
043	Chair Starr	Opens public hearing on HB 2499.
046	Justin Burns	Owner and operator, Cunningham Sheep Ranch. Lose 25 to 150 sheep annually to cougars. The existing damage control statutes require that there be damage in order to take the cougar. Cougars take 20 to 30 sheep per night, and the farmer is forced to sustain grave economic losses to prove that there is damage. Worked with the Oregon Department of Fish and Wildlife (ODFW) to draft an amendment to HB 2499. Submits and discusses the -4 amendments. (EXHIBIT A)
078	Rep Luke	Asks if landowner, as well as federal official, can determine that a cougar is posing a threat.
081	Burns	Yes. That is done for expediency. When cougar were still considered predators, most shepherds carried firearms. Now, the cougar cannot be killed until it is in the herd.
084	Rep. Uherbelau	Asks if action is allowed if a predator is heading for the herd.
091	Burns	No. There has to be damage, and that is the issue.
094	Jim Greer	Chief, Wildlife Division, ODFW. The current statutes allow a landowner to take an animal, such as bear, cougar, red fox, or bobcat, after the damage has occurred. Submits and reviews testimony in opposition to HB 2499 as written. (EXHIBIT B)
110	Rep. Uherbelau	Asks if the landowner would have to wait for the damage to occur before taking action.
112	Greer	Technically, yes.
113	Rep. Uherbelau	Asks for definition of "poses a threat."
115	Burns	There is a federal animal damage control officer, employed by the U.S. Department of Agriculture (USDA), who does predator control for the ranch. When tracks are seen near the herd, the rancher is informed. Within three to four days, there is loss. The amendments would allow the rancher to begin hunting for the cougar as soon as tracks were sighted. Submits photographs for review by committee. (EXHIBIT C)

127	Rep. Luke	Asks if the cougar would come back to eat the sheep.
129	Burns	Sometimes, but not always.
131	Rep. Messerle	Asks how many sheep are lost per year to cougar.
133	Burns	Typically, an average of 80 are lost. The value of the sheep is approximately \$500.00 each. Cunningham Sheep has been one of the largest producers of this type of sheep and has the finest breeding stock in the world. Some of the rams have sold in Salt Lake City for up to \$15,000.
144	Rep. Schrader	Asks if ODFW is comfortable with allowing the landowner to determine if a bear or cougar poses a threat.
156	Burns	Would not have a problem with conceptually amending the amendments to limit it to damage within the last two years.
164	Greer	Recognizing the situation that Cunningham Sheep has outside the Pendleton area, it has been more or less an annual situation. However, that situation is not typical across the state. As written, there is not enough clarity on the determinations the landowner could make. There is too much flexibility in terms of interpretation. As livestock is moved onto public land, there are more instances of predation. There needs to be more accountability placed on the landowner.
201	Rep. Uherbelau	Comments on difference between the -4 and the -3 amendments in regard to the affected land.
209	Burns	Clarifies that it would also include land lawfully occupied, in the case of grazing permits, on federal land.
224	Rep. Uherbelau	Asks if sheep are the most affected by cougar predation.
229	Burns	Yes. Typically, cougar will kill 30 in one area and then leave.
233	Rep. Uherbelau	Asks if the statute could be limited to sheep holdings.
237	Greer	It is not just sheep. In southwest Oregon it includes all livestock such as sheep, calves, and horses. That is where the greatest amount of livestock damage by cougar and bear is occurring.
247	Burns	Working in good faith with the legislature and the Fish and Wildlife Commission to reach a solution to this. Would be amenable to any type of solution such as permitting the ranch to have an annual take on cougars.
258	Chair Starr	Recesses public hearing on HB 2499.
<u>HB 3725</u> <u>WORK</u> <u>SESSION</u>		
269		Reopens work session on HB 3725.

	Chair Starr	
279	Rep. Luke	Asks why potatoes do not go through the same procedures as other produce and livestock.
274	Chuck Wilson	Legislative Counsel. Those inspections are health and sanitation inspections, not marketing inspections. The proposal to amend the potato bill refers to potatoes of a certain grade or size. The disease, health, and sanitation inspection is always an adequate reason for states to regulate interstate commerce, but marketing is not.
298	Rep. Luke	It states that all potatoes below grade #2 require a permit.
309	Wilson	That is a marketing regulation. The problem is the adoption by reference of the federal regulations and adopting prospectively all amendments to the marketing order, and then trying to enforce them as if it were state law. It is delegation of legislative authority to the federal government, which is not permitted. Another problem is that it is an attempt to regulate interstate commerce for marketing purposes. Could ask the Oregon Department of Agriculture to regulate the potatoes that are marketed here, and give them instructions to consider the federal marketing orders.
345	Chair Starr	It is clear that this amendment cannot go forward as written.
350	Rep. Luke	Asks if the measure is okay without the amendment.
351	Chair Starr	Yes.
354	Rep. Uherbelau	Asks where the amendment came from.
355	Chair Starr	From the potato growers.
358	Rep. Luke	Points out that the Klamath Basin potato growers include farms located in California.
360	Rep. Uherbelau	Asks what processing permit the growers were seeking.
369	Rep. Luke	There was a concern about processing potatoes as animal feed.
375	Rep. Messerle	Asks how it relates to an old Oregon milk law and the federal milk marketing order.
383	Phil Ward	Assistant Director, Oregon Department of Agriculture (ODOA). There was a law in the past that addressed the marketing of milk in the state. There is a federal marketing order currently relative to milk in Oregon. No longer functioning under the Oregon law, which would allow some of the same things. The federal market order would have to be inoperative in Oregon for the Oregon law to be in effect. Not sure how this relates to the discussion on potatoes.
389	Rep. Luke	Asks if ODOA could regulate potatoes if the legislature gave it the authority.
393	Ward	

		Not sure. The -2 amendments would require that potatoes be a certain grade in order to enter the state, unless there is a processing permit for animal feed. The intent of the original measure would not require the -2 amendments to be effective. The -2 amendments would keep potatoes out of the state that the industry did not want coming in. If the intent is to delete the Oregon law and function under the federal marketing order, then adoption of the -2 amendments is irrelevant.
TAPE 83, A		
017	Rep. Schrader	Comments on the original intent of the measure, and the addition of the -2 amendments.
025	Chair Starr	Need to vote on the motion for reconsideration. Heard from the potato growers that there is no problem with going forward with the measure as written.
035	Rep. Uherbelau	Asks if ODOA deals with the processing issue.
041	Ward	Hesitates answering due to lack of study of the law.
047	Chair Lewis	Hearing no objection, declares the motion CARRIED.
048	Rep. Luke	MOTION: Moves to RECONSIDER the vote by which HB 3725 was sent to the floor as amended with a do pass recommendation.
		VOTE: 7-0 AYE: In a roll call vote, all members present vote Aye.
057	Chair Starr	Having received the required majority, declares the motion CARRIED.
059	Rep. Luke	MOTION: Moves to RECEDE from the conceptual amendments to HB 3725 amendments dated 05/13/97.
	Chair	Hearing no objection, declares the motion CARRIED.
063	Rep. Luke	MOTION: Moves HB 3725 to the floor with a DO PASS recommendation.
		VOTE: 7-0 AYE: In a roll call vote, all members present vote Aye.
	Chair	The motion CARRIES. REP. LUKE will lead discussion on the floor.
072	Chair Starr	Closes work session on HB 3725.

<u>HB 2499</u> <u>PUBLIC</u> <u>HEARING</u>		
073	Chair Starr	Reopens public hearing on HB 2499.
078	Rep. Schrader	Asks if the state has an officer charged with animal damage control responsibility.
081	Greer	No, there is no one specifically assigned to animal damage. District biologists and assistant district biologists work on damage at the district level in addition to their other duties. The state has a contract with federal animal damage control to where they focus on different aspects of animal damage with private landowners.
088	Rep. Schrader	Asks if the Clackamas County trapper is funded by the county or with federal funds.
092	Greer	That depends on the county, but most are funded by numerous funding options.
096	Rep. Schrader	Suggests that the problems with the measure revolve around the broad powers granted to the landowner. Asks if there is a possibility of deleting the landowner reference, and changing the state official reference to be more specific.
101	Chair Starr	It is obvious that this will need to be tightened up.
103	Rep. Luke	If there is concern about different areas of the state, there could be a taking permit which could be issued to a landowner if there is past demonstrated damage in that area. The state and the federal government could work with the landowners on this.
114	Greer	The idea of preventative control is difficult, it is very subjective to determine if that animal is going to be a damage-causing animal or not. The department is trying to address the damage issue by having liberal hunting seasons in some areas. The harvest is now very limited in terms of the hunters' ability to take the animals. The Commission is proposing to expand areas within those areas where there are large concentrations of cougars and livestock. Trying to address population control along with damage control with hunting seasons.
128	Rep. Luke	Asks what can be done when a dog goes after sheep with the intent to chase them.
132	Burns	You can shoot it.
133	Rep. Messerle	Asks if biologists are the contact people for damage control.
136	Greer	Yes. They are the primary contact for the agency.
137	Rep. Messerle	Points out that he has heard that there is a week to ten day response time. The animal damage control (ADC) people are federally

		managed with partial funding from the county. Concerned that Measure 47 is resulting in counties dropping this program.
148	Greer	The response time to complaints is due to the number of calls. There are calls whenever there is a sighting. Respond very quickly when there is damage. The number of complaints has increased in the last couple of years, and if there is a pattern with the calls, the district biologist will respond.
161	Rep. Messerle	Asks how long response time is if there is damage.
162	Greer	The call will be made immediately to ADC.
169	Rep. Messerle	Asks what counties will be losing ADC because of the lack of funding.
172	Greer	Most of the counties are extremely concerned about holding onto whatever ADC program they currently have. There are only three or four counties which still have programs that work specifically on animal damage.
176	Rep. Messerle	In southwestern Oregon, those programs are in real jeopardy.
178	Rep. Uherbelau	States that this should be a simple matter. Humans can protect themselves when there is imminent danger of harm, and it seems that this measure could be worked to state that a landowner can take cougar, bear, or other wildlife that is an imminent threat of damage.
200	Chair Starr	Instructs Rep. Luke and Rep. Schrader to work with the interested parties on HB 2499.
215	Chair Starr	Closes public hearing on HB 2499.
217	Chair Starr	Leads discussion on work group assignments and next agenda item.
<u>SB 402-A</u> <u>PUBLIC</u> <u>HEARING</u>		
240	Chair Starr	Opens public hearing on SB 402-A
258	Judith Gruber	Administrator, summarizes SB 402-A.
265	Rep. Wells	Asks if the county or ODFW has control of this measure, as it came out of the Senate.
270	Gruber	The amendments made on the Senate side removed the provision that the county would establish criteria for public safety and gave ODFW that authority.
277	Jim Greer	Chief, Wildlife Division, ODFW. The original measure took away the authority of the department in terms of establishing any type of hunting season for cougars. Supports this measure because it would

		give the department a small amount of additional authority to establish seasons or zones for the purposes of human safety.
296	Rep. Messerle	Has heard concerns that the department could create a safety zone that could cover the entire state or an entire county. Asks the criteria for defining a safety zone and how it would be managed.
303	Greer	The historic area of concern would be examined. The criteria will be based on sightings and the establishment of cougars in populated areas. Criteria will be tied to general population concerns, and the history of the area. The Commission will have to establish what type of hunt will be appropriate in that area.
323	Rep. Messerle	There is concern about how far this could go. In District 48, there have been sightings within the city limits.
332	Greer	There are areas where cougars will not be welcomed because of human activity. The hunt will be limited in scope, but focused on where there is activity of animals.
343	Rep. Uherbelau	There seems to be no parameters other than the establishment of safety zones. Asks why the department feels that this measure does not give enough authority.
360	Greer	Currently, could set up seasons as a response to population control and damage complaints, however, these seasons are not set for the specific issue of human safety. Cannot think of many instances where the language which is specific to human safety would be the primary motivating factor for a special hunt.
373	Rep. Uherbelau	Asks if dogs can be used in these zones.
375	Greer	No.
376	Rep. Uherbelau	The language in Section 1 could be interpreted to mean that using dogs is allowable. If that is not the intent then this needs to be clarified in the statute.
385	Greer	It references ORS 490.012 and it should be reexamined. But it is the interpretation of the department that this doesn't usurp the statutes created for Measure 18. However, under Measure 18, the department or its designees can use dogs in their official capacity. Under this measure a zone would be established based on history and in a highly populated area, which is a situation where the use of dogs would be inappropriate.
TAPE 82, B		
005	Rep. Uherbelau	Asks if it would be agreeable to add language which would prohibit the taking of cougar with dogs.
008	Greer	No, because that is covered in another statute.
010	Rep. Luke	Comments that there are times when it would not be a good idea to have a dog running a cougar, however, it would be a good idea to use a dog to track a cougar.
015	Greer	

		If that situation occurred it would be at the request of the department, which already has the authority to do that.
016	Rep. Luke	Asks if the state police have that authority.
017	Greer	Yes, the department would give them that authority.
018	Rep. Schrader	Getting concerned with the discussion about hunting cougars in a residential area. Has no problem with federal officials, within their official capacities, doing that because that is already in the law.
024	Rep. Luke	There are areas of heavy population, such as in Pennsylvania, where deer are hunted with shotguns. Shotguns are used because of the dense population and a rifle causes too much damage. Asks if the department is proposing the use of weapons, other than rifles, in residential areas.
030	Greer	Shotguns can be used on deer in Oregon, but those are specific hunts where only shotguns are allowed. The department is not necessarily committed to this measure, just trying to do some things that can't be done now. In terms of urban areas, those zones would have to include some very definitive boundaries.
040	Roger Martin	Former State Representative. Sponsored HB 1301 in 1967, which moved the cougar from the category of predator (which allowed take at any time) to the game list of animals. That was done in an attempt to save cougars because in 1967 there were only an estimated 200 cougars left in Oregon. There had been indiscriminate hunting for several years. For the 10 years which followed, the Game Commission closed all season on hunting and the population of cougars recovered very quickly. There was concern in the legislature that this measure would prevent landowners being able to protect livestock. Finally added language that it would be lawful for any owner or occupier of the lands to kill bear or cougar at anytime such animals are causing damage. Recognize that rural legislators and their constituents were, and are, very concerned about this. The testimony in opposition to this measure will be primarily from urban residents who believe that Measure 18 is the law of the land.
076	Martin	The cougar population is now approximately 3,500 to 4,500 and is nearing capacity. Need to plan for how to protect the public. Cougars are extremely territorial animals and they'll take approximately 10 to 100 square miles for their territory. The cougars have moved so far into urban areas that there has been sightings in the canyon next to the University of Oregon Medical Center in downtown Portland. There are cougars in the hills above I-205 and there are reported sightings in West Linn. There have been tremendous reports of damage to pets. Concerned about humans.
100	Martin	Advises against prohibiting the use of dogs in the taking of cougar. A dog will run a cougar up a tree. In an urban area, that would be preferable to having the cougar running through a neighborhood. Urges the consideration of this measure.
127	Chair Starr	Announces that there will be a three minute limit for testimony.

136	Carey Theil	Resident of Portland, submits and reviews testimony in opposition to SB 402-A. (EXHIBIT D)
193	Sally Mackler	Resident of Jacksonville, submits and reviews testimony in opposition to SB 402-A. (EXHIBIT E)
253	Brooks Fahy	Executive Director, Predator Defense Institute. Testifies in opposition to SB 402-A. Produced a report on Oregon's cougar controversy. This is the first comprehensive report on how the cougar is managed. This report documents serious discrepancies of ODFW numbers of cougar sightings and damage complaints. Also demonstrates that ODFW has acted in a blatantly political manner by manipulating these numbers. Based upon these findings, the Predator Defense Institute (PDI) is concerned that ODFW continues to manipulate data according to its own political agenda.
285	Rep. Luke	Objects to the testimony.
286	Chair Starr	Cautions Mr. Fahy about combative testimony.
288	Fahy	This testimony is relevant because Sen. Tarno's information is based on information received from ODFW regarding sightings.
291	Fahy	<p>PDI's initial review of cougar incidents compiled by ODFW was released last October following a legal battle to obtain records from 16 districts. There is a newly revised edition containing information from an additional five districts. Major findings of this report include:</p> <ul style="list-style-type: none"> * 95.5% of all cougar incidents reported to ODFW from January 1994 to May 15, 1996, were unconfirmed * majority of reports were based on nothing more than phone calls to district offices * of the 947 cougar incidents reported, 719 were recorded as sightings and 228 as damage complaints
305	Chair Starr	Time is up, asks Mr. Fahy to summarize.
310	Fahy	<ul style="list-style-type: none"> * 3.3% of sightings and 8.3% of damage complaints were confirmed * some complaints included hunters seeing cougars in wilderness <p>"It is apparent that a large part of the alleged increase in cougar incidence is a contrived campaign of the hunting lobby, which has exploited ODFW's sloppy and unprofessional methods of record keeping of cougar incidence."</p>
323	Chair Starr	Time has been exceeded.
330		

	Rep. Messerle	Originally concerned that this was a sports hunting and hound issue. Checked with ODFW and it is not their intention that this is a sports hunting and hound issue, this is a safety issue. Need to be careful that testimony is focused on the intent.
342	Theil	Sharon Harmon will address this issue, and will provide information that does prove that this a sports hunting issue.
346	Rep. Thompson	Asks how people will report to ODFW, other than by telephone.
350	Fahy	Since 1994, there has been an active solicitation by ODFW for information. If an agency actively solicits information from the general public, there will be an increase in complaints.
368	Rep. Thompson	Because of Measure 18, the department is trying to get accurate statistics. Cougar are particularly hard to deal with when gathering data. If there are other ways to collect data, then these should be taken to the department.
371	Fahy	Have tried to take alternative data collection plans to the department. Quotes biologist, Dr. Paul Byer, who believes that sighting data is not accurate when dealing with cougar.
387	Rep. Uherbelau	Both sides have exaggerated in their testimony. It does not help the cause to be inflammatory and attack a state department. What is helpful for the legislative body are facts, not inflammatory or emotional statements. The issue is the language of SB 402-A.
TAPE 83, B		
016	Charles Williamson	Representing the Humane Society of the United States, submits and reviews testimony in opposition to SB 402-A. (EXHIBIT F)
064	Kerry Mullin	Community Relations Director, Humane Society of the Willamette Valley, submits and reviews testimony in opposition to SB 402-A. (EXHIBIT G)
078	Sharon Harmon	Operations Director, Oregon Humane Society, submits and reviews testimony in opposition to SB 402-A. (EXHIBIT H)
109	Cornelia Cerf	Resident of Milwaukie, submits and reviews testimony in opposition to SB 402-A. (EXHIBIT I)
135	Dr. Paula Wilson	Resident of West Linn, submits and reviews testimony in opposition to SB 402-A. (EXHIBIT J)
155	Sanford Wilson	Resident of West Linn, submits testimony in opposition to SB 402-A (read by Dr. Wilson). (EXHIBIT K)
209	Chair Starr	Closes public hearing on SB 402-A.

<u>SB 1086</u>		
<u>PUBLIC</u>		
<u>HEARING</u>		
216	Chair Starr	Opens public hearing on SB 1086.
229	Pete Test	Associate Director, Oregon Farm Bureau, submits and reviews testimony in support of SB 1086. (EXHIBIT L)
290	Rep. Luke	Asks what the point is.
291	Test	This measure says that for intent or purposes of the Endangered Species Act (ESA), the definition of "land" does not include "water."
295	Rep. Luke	In 1993, counties were required to inventory stock watering ponds as wetlands. Asks if this is similar.
300	Test	Similar, but different in that it involves the Water Resources Department (WRD) doing a management plan for the waters of the state.
321	Sen. Ted Ferrioli	District 28. SB 1086 attempts to make clear that land management and land owning organizations have specific management responsibilities. For example, ODFW manages natural resources in terms of wildlife and the Department of Forestry manages forest lands. There is a series of opinions which have been rendered recently where landowning agencies of Oregon are now responsible for water as well as land. The problem is that it makes some of the agencies responsible for the development of plans for management of their resources under Oregon's ESA. That complicates the requirements of agencies that manage land. If the definition of land includes water then some agencies that are landowning agencies now have to file ESA management plans for everything that lives within the water that they manage. This complicates water resource allocations and irrigation rights issues. Simply want to have land mean land, and water mean water, and the agencies required by statute and rule to manage those resources should continue to do those things.
373	Rep. Luke	Asks if the Attorney General has been asked if this would clarify his opinion.
375	Sen. Ferrioli	The Attorney General is responsible for indicating that land is water. Have not been back to his office, but has legal counsel available who can help with that question.
382	Rep. Thompson	Concerned that SB 1086 would be contrary to the ESA, and would want an Attorney General's opinion before proceeding.
392	Test	This relates only to the state's ESA and does not involve the federal Endangered Species Act. The state's ESA basically limits the process of management of what the state considers to be endangered or sensitive species.
400	Rep. Uherbelau	Asks if this may have an unintended effect on the federal ESA.

408	Test	Many species in the state are considered sensitive or endangered that are not considered so by the federal government. Once the federal government lists an endangered species, it falls under that Act.
TAPE 84, A		
005	Test	The intent is to just involve the lands, and water was never considered an issue. This does not reduce protection of endangered or sensitive species, but it clarifies who does what.
019	Sen. Ferrioli	If water is included in the definition of land, there is concern that ODFW will be in a cross-jurisdictional relationship with the Department of Agriculture, the Water Resources Department, and others. There is some confusion as to whether ODFW could affect water rights. This should be done with coordination between agencies.
030	Jean Wilkinson	Representing the Oregon Cattlemen's Association, submits and reviews testimony in support of SB 1086. (EXHIBIT M)
052	Rep. Thompson	Agrees with the frustration over the overlapping of the agencies, but more time is needed for research and evaluation.
055	Rep. Schrader	Asks that the Water Resources Commission, the Department of Agriculture, and the Attorney General's office be present when this measure is heard again.
058	Rep. Uherbelau	This issue may need to be settled.
063	Chair Starr	Closes public hearing on SB 1086 and adjourns meeting at 10:00 a.m.

Transcribed By, Reviewed By,

Rebecca M. Scott, Judith Gruber,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2499, -4 amendment dated 05/14/97, Justin Burns, 3 pp.

B - HB 2499, written testimony, Jim Greer, 4 pp.

C - HB 2499, photographs, Justin Burns, 7 pp.

D - SB 402-A, written testimony, Carey Theil, 3 pp.

E - SB 402-A, written testimony, Sally Mackler, 2 pp.

F - SB 402-A, written testimony, Charles Williamson, 13 pp.

G - SB 402-A, written testimony, Kerry Mullin, 1 p.

H - SB 402-A, written testimony, Sharon Harmon, 1 p.

I - SB 402-A, written testimony, Cornelia Cerf, 1 p.

J - SB 402-A, written testimony, Paula Wilson, 8 pp.

K - SB 402-A, written testimony, Sanford Wilson, 4 pp.

L - SB 1086, written testimony, Pete Test, 11 pp.

M - SB 1086, written testimony, Jean Wilkinsen, 2 pp.