

HOUSE COMMITTEE ON WATER POLICY

January 23, 1997 Hearing Room D

3:00 P.M. Tapes 6 - 8

MEMBERS PRESENT: Rep. Ken Messerle, Chair

Rep. Tim Josi, Vice-Chair

Rep. Jo Ann Bowman

Rep. Tony Corcoran

Rep. Steve Harper

Rep. Jeff Kruse

Rep. Jim Welsh

VISITING MEMBER: Rep. Bob Jenson

STAFF PRESENT: Pat Zwick, Policy Analyst

Rebecca M. Nickel, Administrative Support

MEASURE/ISSUES HEARD: Agency Overviews

* Dept. of Land Conservation and Development

* Division of State Lands

* Governor's Office

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 6, A | | |
| 003 | Chair Messerle | Calls the meeting to order at 3:04. Informs committee that there is a change in the order of overviews to be presented. The Governor's Office representative will be speaking at 4:00 p.m. |
| <u>DEPT. OF LAND CONSERVATION AND DEVELOPMENT - AGENCY OVERVIEW</u> | | |
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| 014 | Bob Rindy | State Agency Coordinator, Program Development Division, Dept. of Land Conservation and Development (DLCD), presents and reviews written testimony. (EXHIBIT A) |
| 046 | Rindy | Review - Overview of DLCD |
| 085 | Rindy | Review - Goal 5 Amendments |
| 108 | Chair Messerle | Asks for clarification on the role of DLCD. |
| 114 | Rindy | The Goal 5 rewrite was meant to clarify the role of DLCD in the management of wetlands by defining its role as land use planning. |
| 153 | Chair Messerle | Asks if zoning changes are required if industrial or agricultural sites are needed for mitigation site. |
| 160 | Rindy | Depends on the situation and local government ordinances. |
| 174 | Chair Messerle | Asks if hearing or formal action is required for approval in rezoning of agricultural land. |
| 178 | Rindy | It depends on the land is going to be used If it is to be put it into a wetland, there should be no problem |
| 189 | Rep. Kruse | Asks for specific role of agency in regards to wetlands. |
| 191 | Rindy | DLCD focuses on wetlands within urban growth boundaries because of the tendency for conflict, in the case of agricultural land there is usually little conflict. Discusses the role of DLCD in relationship to other agencies for areas outside of urban growth boundaries. |
| 264 | Rep. Kruse | Comments on the large number of agencies which are involved in these projects and the need for reduction of agencies involved in authorization.. |
| 275 | Rindy | Goal 5 amendments will not completely alleviate this problem, but they should help the process by having local governments take more responsibility in advanced zoning decisions. |
| 290 | Rep. Bowman | Asks for clarification on the inventory of wetlands on the local level, and what will compel local agencies to comply with the requirement to complete their inventories. |
| 299 | Rindy | Requirement that is in place had a loop-hole which allowed jurisdictions to circumvent state and federal requirements. EPA and Division of State Lands (DSL) have been working on the funding and methodology for the inventory of wetlands. |
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| 339 | Chair Messerle | Asks for clarification regarding mitigation within urban growth boundaries. |
| 345 | Rindy | DLCD does not require mitigation within urban growth boundaries. Tries to get wetlands decisions made in advance at the local level. |

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| 390 | Chair Messerle | Asks that overview continue. |
| 392 | Rindy | Review - Goal 5 and Coastal Salmon Initiative |
| TAPE 7, A | | |
| 009 | Rep. Kruse | Asks if the responsibilities overlap with those of Oregon Department of Fish and Wildlife (ODFW) |
| 011 | Rindy | There is some overlap, but ODFW does not have the authority to enforce what is called for in Goal 5. |
| 018 | Rep. Kruse | Comments on the appearance of DLCD as being the enforcement arm of state government which will "pound on these folks if they don't conform to a standard that you've set." |
| 021 | Rindy | The standard has been in place for over 20 years and DLCD is trying to provide technical assistance and planning grant assistance for local governments to make land use decisions in advance. |
| 037 | Rindy | Review - Legislative Proposals * SB 196 * SB 197 * SB 198 |
| 062 | Rep. Josi | Asks if SB 198 will apply to landslide areas. |
| 065 | Rindy | It would require seller to disclose those hazards that are officially known. |
| 071 | Rep. Josi | Asks if disclosure of land slide hazards is required under current law. |
| 074 | Rindy | Current law requires that geologic hazards be disclosed, however it is rather generalized and SB 198 would make it more specific. |
| 077 | Rep. Josi | Comments regarding this issue. |
| 080 | Chair Messerle | Informs Mr. Rindy that five more minutes will be allowed for his presentation. |
| 082 | Rep. Bowman | Asks if developer would also be required to make disclosure of geological hazards prior to sale. |
| 086 | Rindy | Not specifically developers, only sellers in a real estate transaction however, they may be required to map geological hazards for the city planning commission. |
| 091 | Chair Messerle | Asks for continued review on the salmon recovery issue. |
| 092 | Rindy | Review - Coastal Salmon Management Program |
| 122 | Rep. Josi | Asks for clarification of Dept. of Environmental Quality (DEQ) role in the program. |

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| 124 | Rindy | Coastal Zone Program is under DLCD's jurisdiction and therefore they have the authority to require local governments to institute new requirements for new development. |
| 134 | Rep. Josi | Comments on his perception of this situation. |
| 135 | Rindy | Continues discussion on this subject and offers to return with additional information. |
| 145 | Chair Messerle | Thanks Mr. Rindy and states his intention of having DEQ and DLCD back at a later date. |
| <u>DIVISION OF STATE LANDS - AGENCY OVERVIEW</u> | | |
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| 151 | Paul Cleary | Director, Division of State Lands, presents and reviews written testimony on agency overview. (EXHIBIT B) |
| 201 | Cleary | Review - Agency Overview and Status Report |
| 251 | Cleary | Review - Major Policy Issues by Program |
| 301 | Cleary | Review - Removal Fill Law Amendments |
| 351 | Cleary | Review - Wetlands Conservation |
| 375 | Chair Messerle | Asks for the rules on mitigation banking. |
| 378 | Cleary | Will supply those after they have been finalized. |
| 387 | Cleary | Review - Mission Statement |
| TAPE 6, B | | |
| 009 | Cleary | Review - Budget Notes |
| 054 | Cleary | Review - Pre-Session Filed Bills |
| 055 | Chair Messerle | Comments on the fisheries recovery and habitat stabilization issues and the lack of database. Asks if DSL has compiled the information on salmonid habitat summary as required by the 1993 Session. |
| 061 | Cleary | The 1993 Legislature adopted an amendment to the Removal Fill Law which directed DSL to work with ODFW in identifying essential indigenous anadromous salmonid habitats. This has been completed. As a result of the changes to the Removal Fill Law, recreational placer miners were brought under DSL's jurisdiction and a set of rules regarding this are being compiled. |
| 091 | Cleary | Review - Pre-Session Filed Bills |
| 133 | Cleary | Review - Coastal Salmon Restoration Initiative |
| 160 | Chair Messerle | Asks about agency funding. |
| 161 | Cleary | Funding comes from fees, revenues from the Common School |

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| | | Fund and the General Fund. |
| 174 | Chair Messerle | Asks if there are additional questions. |
| 175 | Cleary | Offers additional help. |
| 180 | Chair Messerle | Announces next agency overview |
| <u>GOVERNOR'S OFFICE - AGENCY OVERVIEW</u> | | |
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| 214 | Paula Burgess | Natural Resources Advisor, Governor's Office, provides some background on the Governor's Office interest in natural resources and Governor Kitzhaber's policy of meeting with representatives of diverse interests. |
| 250 | Burgess | Presentation and review of written testimony regarding Oregon Natural Resources Investment Account. (EXHIBIT C) |
| 299 | Burgess | Review - Oregon State Parks |
| 331 | Burgess | Review - Restoration of Salmon Runs |
| 385 | Burgess | Review - Implementation of the Plan |
| TAPE 7, B | | |
| 006 | Burgess | Review - Cost of Recovery |
| 064 | Burgess | Review - The Consequences |
| 087 | Rep. Josi | Asks regarding the listing deadline on April 25 and the deadline for the funding package. |
| 091 | Burgess | Oregon's Plan will be submitted in February or March; April 25 is the deadline to fund the plan. Governor's Office is prepared to argue with National Marine Fisheries Service (NMFS) for leniency if there is not a funded plan. |
| 106 | Rep. Josi | Asks about consequences of not making the deadline. |
| 109 | Burgess | NMFS will have "an impressive plan" and as long as "we" are involved in discussions regarding funding, there is a fair possibility of them making a favorable decision. Refers to the bull trout listing decision in Idaho and possibility of lawsuits. If there is no funded plan on April 25 and NMFS decides to allow Oregon's recovery plan, there is a possibility that NMFS may be sued by environmental groups, however the plan may be funded by the time those lawsuits went to court. "A risk worth taking." |
| 129 | Chair Messerle | Comments on the accomplishments of the State of Oregon. |
| 135 | Burgess | Oregon's current plan sets very high standards and would be a good model for other states to follow. |
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| 140 | Rep. Jenson | Requests clarification of the April 25 deadline and points out to the committee that the bull trout listing decision was made in Montana, not Idaho. |
| 151 | Burgess | The State is at the end of the last extension of the original deadline which was granted due to scientific disagreement. |
| 159 | Rep. Corcoran | Asks what would happen if there was another disagreement with NMFS or if there was no budget available. Cites the Montana decision and asks if there are any avenues of appeal. |
| 171 | Burgess | The courts would serve as the avenue of appeal. |
| 172 | Rep. Corcoran | Asks if Montana has made any attempts at such an appeal. |
| 173 | Burgess | There is no final decision at this time as the plan was returned to the Dept. of Fish and Wildlife Service for redrafting. |
| 178 | Rep. Corcoran | Asks why was court involved in the first place with the Montana situation. |
| 179 | Burgess | Does not know. |
| 180 | Rep. Corcoran | Comments regarding this situation and his questions regarding the judicial oversight. |
| 182 | Burgess | The case was read solely because of the fact that it was an unfunded plan and the Governor's Office was interested in the possible outcome if Oregon had to submit an unfunded plan. The Governor's Office is working with Governor Wilson of California as the most likely place for a listing is the Southern Coast. Oregon has a shared ecological interest with Northern California, and if a listing is made there, they hope to work with NMFS on implementing a plan on the Oregon side of the border. |
| 202 | Rep. Bowman | Asks if Oregon is listed, will Oregon be eligible for federal funding to assist in salmon recovery. |
| 205 | Burgess | We are currently eligible for federal funding and are working with the Clinton Administration to obtain funding. The Office of Management and Budget has not yet sent out the '98 budget so it is unknown if or to what degree help has been granted from the federal government. Does not know if there would be additional help because of a listing. Vice President Al Gore has been invited to Oregon for a Northwest Salmon Conference. |
| 222 | Rep. Jenson | Asks if the listing will be endangered or threatened. |
| 224 | Burgess | Fairly certain that it would be as a threatened species. |
| 228 | Burgess | Review - Funding |
| | | Review - Revenue Sources |

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| 247 | Burgess | * "The Bottle Bill" |
| 256 | Rep. Josi | Asks who would collect the tax. |
| 258 | Burgess | The tax would be collected at the distributor level. Points out that the bill are still in the process of being drafted. |
| 268 | Burgess | Review - Proposed Bills |
| 284 | Rep. Josi | Ask if there is a chance that the proposed bills would be referred to the House Water Policy Committee. |
| 286 | Chair Messerle | Not sure. |
| 287 | Burgess | Not sure. |
| 296 | Rep. Corcoran | Asks funding mechanism and assessment of the amount of funds needed for the salmon recovery plan. |
| 313 | Burgess | There are differing opinions regarding how much should be funded for the plan. |
| 338 | Rep. Corcoran | Stresses the need for discussion and additional information on these funding issues. |
| 349 | Chair Messerle | Comments on this need. |
| 353 | Rep. Josi | Concerns about the implementation of funding and lack of information available to any committees that will be working with this issue. |
| 369 | Chair Messerle | Comments on this situation. |
| 373 | Burgess | Review - Proposed Bills |
| 394 | Rep. Corcoran | Comments |
| 398 | Burgess | Review - Proposed Bills |
| 405 | Chair Messerle | Asks for significance of urban runoff and how it fits with the salmon issue. |
| 418 | Burgess | Depends on the size of the city and the type of treatment used. |
| TAPE 8, A | | |
| 014 | Chair Messerle | Asks if Portland raw sewage in the river during storms. |
| 016 | Burgess | Affirms that this happens not only in Portland, but also in Salem. |
| 017 | Chair Messerle | Asks if that puts a limit on growth in those areas. |
| 018 | Burgess | Not sure. |

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| 019 | Chair Messerle | Comments on this situation. |
| 020 | Rep. Jenson | Asks for clarification on the funding sources for additional full-time employees (FTE) required to implement these plans. |
| 030 | Burgess | The Governor's Office is looking toward other programs to assist in the funding of these positions. |
| 044 | Chair Messerle | Comments on the lack of clarification and reiterates his concerns regarding the lack of data available. |
| 054 | Burgess | Are gathering and will have more advanced package which will help answer these questions. Recommends having directors of other agencies appear before the committee to provide additional information regarding specific parts of these issues. Identifies Langdon Marsh, Director of the Department of Environmental Quality as the person most likely to have more complete information. |
| 077 | Chair Messerle | Wants more information about and comments about time limitations. |
| 085 | Burgess | There will be additional contact with NMFS regarding the "political realities" of getting a budget approved. |
| 092 | Rep. Jenson | Comments regarding NMFS and the April 25 deadline and the possibility of not being able to get additional extensions. |
| 104 | Burgess | Comments regarding a possible meeting with NMFS and the need for the attention of the White House. |
| 115 | Josi | Asks when the bills will be dropped. |
| 116 | Burgess | Monday, but they are in Legislative Counsel |
| 118 | Corcoran | Asks if there is any assistance from either Congressman or Senator Smith. |
| 120 | Burgess | Both are supportive; but political strategy has not been planned, planning has been on the biological side of the equation. |
| 128 | Chair Messerle | Asks if there is any more information about federal funding. |
| 130 | Burgess | There is no information at this time from the Federal Office of Management and Budget; Governor Kitzhaber has asked for assistance from President Clinton, also looking to other federal agencies for assistance. |
| 142 | Chair Messerle | Asks if any of these other federal agencies could help with technical staffing. |
| 144 | Burgess | Hoping they will, however Bob Graham, Director, Natural Resources Conservation Service was not optimistic about the budget of his agency. |
| 149 | Chair Messerle | Ask if there are any other questions; comments on the agenda for next meeting. |
| | Chair | |

Submitted By, Reviewed By,

Rebecca M. Nickel, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - Oregon Department of Land Conservation and Development Agency Overview, Written Testimony, Bob Rindy, 47 pp.

B - Division of State Lands Agency Overview, Written Testimony, Paul Cleary, 23 pp.

C - Governor's Office Agency Overview, Pamphlet, Paula Burgess, 4 pp.