

HOUSE COMMITTEE ON WATER POLICY

February 18, 1997 Hearing Room D

3:00 P.M. Tapes 26 -28

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 MEMBERS: Rep. Bob Jenson

Sen. Veral Tarno

STAFF PRESENT: Pat Zwick, Policy Analyst

Rebecca M. Nickel, Administrative Support

MEASURE/ISSUES HEARD: Governor's Salmon Recovery Plan

and Healthy Streams Partnership Investment Budget

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 26, A		
000	Chair Messerle	Calls meeting to order at 3:12 p.m.
004	Chair Messerle	Discusses the agenda and upcoming joint meetings regarding the Salmon Recovery Initiative and the Healthy Streams Partnership.
<u>GOVERNOR'S SALMON RECOVERY PLAN AND HEALTHY</u>		

<u>STREAMS PARTNERSHIP INVESTMENT BUDGET</u>		
027	Ken Rocco	Legislative Fiscal Office, presents and reviews budget summary of Governor's proposed Healthy Streams Partnership and Salmon Plan Investment budget. (EXHIBIT A)
057	Rocco	Information is available in all the different agencies' budgets, but is not in any one single place. Very confusing part of this process. As an introduction to this, it is a difficult thing to impose a plan of this magnitude on top of an existing government structure. Agencies currently have in their base budgets, things that are critical to the Salmon Plan and the Healthy Streams Initiative. In most cases, these agencies will continue to do these things as part of their base budgets. The Salmon Plan represents a larger, enhanced effort that requires more than what agencies are currently providing.
059	Rocco	The Governor's Investment Budget pulled pieces from all the different natural resource agencies and put them into a separate budget and funded them with a new funding source (the bottle tax). In addition to this, agencies have brought forth packages in their individual budgets which are primarily funded through existing revenues.
070	Laurie Warner	Department of Administrative Services, Budget and Management, reviews sections of the written testimony regarding the Healthy Streams Partnership.
088	Rep. Josi	Asks if all the positions are new.
091	Warner	Not necessarily, some were of limited duration or fee supported. There will discussion on this during the presentation.
096	Warner	Continuation of overview of written testimony.
105	Chair Messerle	Asks for clarification on Agriculture full-time employee (FTE).
108	Warner	There is an existing part-time employee.
111	Warner	Review - Department of Agriculture
123	Warner	Review - Department of Environmental Quality
124	Rep. Josi	Asks what type of work the 16 FTE for water quality will be performing.
129	Warner	Can only give a general opinion. Comments that the department heads are here and will be able to offer further discussion.
138	Warner	Review - Department of Environmental Quality
143	Warner	Review - Oregon Department of Fish and Wildlife

154	Warner	Review - Department of Forestry
159	Warner	Review - Water Resource Department
171	Warner	Review - Land Development and Conservation Department
177	Warner	Review - Grant Funds
184	Warner	Review - Bottle Bill
187	Rocco	Reviews written testimony which is relative to Salmon Recovery.
193	Rocco	Review - Water Resources Department
207	Rocco	Review - Oregon Department of Fish and Wildlife * Package 300 * Package 201
224	Rocco	Review - Department of Forestry * Package 113
237	Rep. Kruse	Asks for clarification on Package 201.
245	Warner	It was General Fund, funded in one of the last bills of 1993 Session.
247	Rocco	Review - Division of State Lands
255	Rocco	Review - Other Packages * Oregon State Police * Department of Environmental Quality

* Package 103 - Water Quality Program Responsiveness

* Package 105 - Major Rivers Package

300	Rep. Josi	Asks why the 14 FTE with DEQ were deleted.
304	Rocco	Insufficient fee revenues generated to support those positions.
305	Rep. Josi	Asks what the fees were.
306	Rocco	Water quality permitting fees.
317	Rocco	Closes review of budget packages and offers to answer questions on details of the packages.
323	Chair Messerle	Comments on the format for the remainder of the meeting.
341	Bruce Andrews	Director, Department of Agriculture.
348	Phil Ward	Deputy Director, Department of Agriculture.

- 350 Chair Messerle Asks for the number of FTE in the Confined Animal Feeding Operations Program (CAFO).
- 353 Andrews There are currently 1.5 FTE in the CAFO program. The original SB 1010 (1993 Session) bill came with 2 FTE and \$200,000. The original thought was that department would be dealing with one basin per year.
- 367 Chair Messerle Asks if the 1.5 FTE current positions includes support staff.
- 369 Andrews There are no support staff in the CAFO Program. The current program provides staffing as needed. This year, the department is asking for one position to provide support services.
- 378 Chair Messerle Asks if the proposed budget is for 4.5 FTE.
- 381 Andrews Yes, one of those FTE would be a consultant providing information regarding changes which may be required.
- 390 Chair Messerle Asks for the number of operations listed under CAFO, and if the number is increasing or decreasing.
- 394 Andrews Approximately 700 operations and decreasing as smaller facilities (dairies) go out of business. The total number of cows is probably the same.
- 401 Rep. Josi Asks for discussion on the locations and duties of the water quality FTE.

**TAPE
27, A**

- 014 Andrews When the program was first started, it was thought that one basin per year would be looked at. The plan was constructed to respond to the increased pressure under the Clean Water Act through a number of court mandates. Also the number of basins which need to be dealt with expanded to over 91. The six basin coordinators would deal with three basins at a time with the hope that they could complete their mission on a per basin plan in about nine months.
- 025 Rep. Josi Asks for definition of "basin."
- 026 Andrews From the standpoint of the Department of Agriculture, a basin is any drainage or sub-drainage, or the sub units thereof.
- 031 Andrews These FTE would be located out of the back of a car. Will be working in the field wherever there is need.
- 042 Rep. Josi Asks for an example of a typical management plan.
- 044 Andrews The basin coordinators will not write the plan. But, they will bring together affected landowners. To assist in understanding why basin is listed, and to provide suggestions for avoiding further degradation and for improvements toward the end of removing it from the list. There would be seven experts with technical expertise in various water and agricultural interactions, such as riparian, range, confined animal, or hydrology. These technical staff would add technical efficiency to whatever the local management group or watershed needs to construct an acceptable plan for submission to the Environmental Protection Agency (EPA) or to the courts.
- 065 Chair Messerle Asks for priority list of basins.

This budget is overall interaction of salmon restoration, healthy streams, and SB

1010 implementation. In light of the Governor's coho initiative, the first three would be coastal basins. The basins which feed the Tillamook area, the Umpqua basin and the Rogue River basin are the first three on the list. Then in cooperation with DEQ, there would be coordination to do basin-by-basin collaboratively. Intent is to complete coastal basins first, then move in to the Grande Ronde and Umatilla.

066 Andrews

081 Chair
Messerle Asks the time frame foreseen for the coastal basins.

083 Andrews Hope to have plans up and in place within a nine month period for those three basins.

084 Chair
Messerle Asks about the other coastal basins.

087 Andrews Depending on resources, will concentrate first on the coastal streams, therefore it is conceivable that within the first year and one half, that all coastal basins would be under active review process, or the plans completed.

090 Chair
Messerle Asks for clarification on the major focus of the first year and one-half.

094 Andrews That is possible, but it is unsure if one of the FTE would be starting in Eastern Oregon at the same time as the coastal basins. Essentially, if not all, most of it would be centered on the coast.

100 Chair
Messerle Comments on his concerns regarding a lack of support for the soil and water districts. Successful watershed associations have had a strong tie with local soil and water districts. Voices concerns that, as a result of Measure 47, there will be reduced funding for soil and water districts. Asks if the department is in a position to provide some funding for soil and water districts.

111 Andrews There is about \$1 million for the districts in the budget, consisting of matching funds and 319 grant funds available that are earmarked for the soil and water districts. Under the Governor's Investment package, there is money which will go to the districts and to extension services.

125 Chair
Messerle Asks if the \$1 million in the base budget is an increase, and if so, how much.

127 Andrews A substantial increase of approximately \$500,000.

130 Ward In the original SB 1010 there was a small package of special payments money which went to conservation districts. Comments on past funding and use of funds by conservation districts.

142 Chair
Messerle Comments on the role of Department of Agriculture, and asks if that will be increased.

147 Andrews There is a policy coordinator who will assist in the continuation of the role of the Department of Agriculture in assisting at the local level.

151 Chair
Messerle Asks what the total number of FTE will be.

154 Andrews 19.38

155 Rep. Kruse Asks for clarification on the CAFO program.

There were specific agreements with soil and water districts to do the investigative work. Two years ago, discussions with the districts and the Dairy

158 Andrews Association were held because of the fact that neighbors were uncomfortable with doing regulatory work against each other. Understanding this conflict, the department removed the conservation district from doing the investigative work and moved them toward technical assistance. The regulatory side was left mainly to the department.

178 Rep. Kruse Asks if these changes were implemented statewide, or just in problem areas.

179 Andrews Statewide.

185 Rep. Josi Comments on SB 1010.

193 Rep. Kruse Comments. Asks if the 19 FTE would be necessary if the state wasn't under pressure, and if they would be required if the time line was 10 years, rather than four.

204 Andrews The numbers are time sensitive. If there were no time line, there would still have been requests for assistance in the CAFO program and in water quality.

225 Chair Messerle Asks about the involvement of the Natural Resources Conservation Service (NRCS) with the local conservation districts, and how could the NRCS technical staff be involved in the regulatory process.

235 Andrews The NRCS does not want to be involved in regulatory oversight. The NRCS people will be used in whatever capacity is needed to ensure that farmers meet whatever plan they choose. The seven technical staff will ensure that whatever is proposed is technically sufficient and does meet the standards for the Clean Water Act, and that the plan will be defensible in court. Will also be doing the baseline monitoring

258 Chair Messerle Asks if they will be initially helping to develop the plans, but not involved in writing the plan, and then if they will be the monitoring or enforcement arm of the department. Asks how they will do the enforcement.

264 Andrews For the first part of the question, yes. Under SB 1010, there are civil procedures, but the department looks at this as an opportunity to research a potential problem to ensure that it actually is a problem. Then work with the landowner to see if an understanding can be reached for correction of the problem. Takes a staff that has technical competence to ensure they can offer solutions.

278 Chair Messerle Asks how the infractions are found.

282 Andrews It will probably be complaint driven. There will not be an active search for infractions or violations. They will look at water and water quality, but other than that they will be invited in.

292 Chair Messerle Asks if there will be monitoring points to look for problems.

304 Andrews Under SB 1010 process, there is a provision on how to deal with problems. There are criteria to be met and fees for filing to ensure that the complaints are valid.

316 Rep. Bowman Asks how the new FTE will be able to fit into community processes that are already in place.

326 Andrews That is the real problem. The department already has a relationship with the agricultural community. The people hired will need to be schooled in letter and spirit. Need landowner cooperation more than anything. Will need to work in a cooperative spirit instead of enforcement and cookie-cutter approach.

- 357 Rep. Corcoran Asks if the new FTE will be discontinued after completion of planning, or if their emphasis will shift overtime.
- 369 Andrews If the positions are not needed any longer, they will most likely be discontinued. The more technical positions will most likely be kept.
- 384 Chair
Messerle Comments on the absence of landowners at the committee meetings, and the number of agency personnel that attend meetings.

**TAPE
26, B**

- 014 Andrews Agrees with Chair's comments regarding the need for more landowner involvement.
- 024 Rod Ingram Deputy Director, Oregon Department of Fish and Wildlife (ODFW).
- 029 Chair
Messerle Asks about possible duplication of efforts among the departments.
- 037 Ingram ODFW serves as the biological arm of the departments with biologists in the field. Programs for monitoring specifically target fish. Don't believe there is any overlap with other packages. Provide biological impact data to DEQ, DSL, and Forestry.
- 050 Chair
Messerle Asks for clarification of fish presence surveys in forest habitat.
- 054 Ingram ODFW surveys are based on spawning surveys and are not based on habitat of the stream. Forestry would be interested in fish presence in forest habitat, whereas ODFW is looking at the number of fish returning for spawning to be used in determining harvest regulations. There are three biologists working with other departments to determine the best habitat, and how to manipulate the habitat to provide essential core needs as part of the recovery plan.
- 073 Chair
Messerle Asks for discussion on ODFW priorities and other programs.
- 079 Ingram ODFW provides information to regulatory agencies in management plans. Salmon is a very high priority for the department. There are several people working with the Governor's Office on the development of the recovery plan. Have provided biologists to other agencies for habitat studies and other projects. There is a package in the base budget for habitat biologists to assist throughout the state for permits. There is a strong commitment in international salmon harvest management.
- 128 Chair
Messerle Comments that there may be a doubling up of staff and absence of landowners in this process.
- 147 Ingram There is opportunity for people working on the ground with the landowners to utilize technical expertise of the biologists. The district biologists are currently overloaded and more people are needed to address all the additional requests for technical assistance.
- 169 Chair
Messerle Asks regarding survey results, particularly along south coast.
- 177 Ingram Don't have technical information yet, but there has been an increase in the fisheries on the south coast. These increased fisheries are generated mainly by hatcheries. These counts have been almost 100% hatchery fish, wild fish are not doing that well. There has been a total restriction on any kind of recreational

coho harvest. There should be an increase in the streams. The information from commercial fishermen regarding ocean conditions indicates that the ocean may be entering a better cycle, but we are at a definite ebb on coho right now.

- 194 Chair
Messerle Asks for an update on these fish surveys.
- 197 Rep. Harper Comments on the duplication of efforts, especially the number of agencies which provide education outreach.
- 217 Ingram The positions in the package are there to bring knowledge in terms of the biological needs of fish.
- 239 Rep. Harper Asks how it would be known that duplication of efforts would not occur.
- 245 Ingram Clarifies comments and reiterates that ODFW is looking at biological needs of fish and the technical support in the realm of fish biology.
- 257 Rep. Kruse Asks about awareness of current educational programs on the subjects of environment and habitat.
- 264 Ingram There are a variety of programs aimed at educating youths on habitat and biology.
- 274 Rep. Kruse Comments that there are other sources for education than ODFW program available.
- 283 Chair
Messerle Comments that questions regarding multi-departmental budget and positions need to be asked of Paula Burgess, or other representatives of the Governor's Office.
- 289 Rep. Welsh Asks if they are planning to use extension service for education.
- 298 Chair
Messerle Comments on the effectiveness of extension services and the lack of information in the budget analysis. Should be a separate budget item.
- 306 Ingram The department has thought that it is important that the dollars get on the ground. The department was very active in watershed health program development.
- 322 Rep. Welsh Asks that agencies identify those programs which are very successful, and then place resources in those areas that are less successful.
- 355 Jim Brown State Forester, Department of Forestry, introduces Anne Hanus, Assistant State Forester, Resource Policy. Presents and reviews written testimony. **(EXHIBIT B)**

**TAPE
27, B**

- 008 Brown Review of written testimony - Road maintenance
- 040 Brown Review - Forest Protective Associations
- 070 Brown Review - General Woodland Owners
- 087 Chair
Messerle Asks for clarification on farm forests.
- 091 Brown If landowner had mixed ownership, than Department of Agriculture and soil conservation service would prepare farm plan, and Forestry would do the forestry plan. Either party looks at the land use pattern.
- 099 Chair
Messerle Asks if there is a breakdown between hybrid poplars and Christmas trees.

102	Brown	Considered agriculture.
104	Brown	Review - Budget Connection
132	Chair Messerle	Comments on William Stelle's (National Marine Fisheries Service[NMFS]) concerns regarding the Forest Practices Act. Asks if there will be any changes in this approach.
141	Brown	There is a large gap in professional opinion between NMFS and Oregon Department of Forestry. There are serious differences of technical opinion. The difference are from the standpoint of accepting risk. NMFS wants zero risk. The department has tried to revise forest practices stream side management rules, and voluntary measures in Governor's plan to accept some level of risk
167	Chair Messerle	Comments on concerns about gaps in this area, and asks if the Governor will try to renegotiate at the last minute, or if NMFS will use the gap as an excuse to list anyway.
172	Brown	The Governor has been very firm that he would use the forest practices regulatory baseline in addition to voluntary measures.
185	Roy Hemmingway	Governor's Salmon Policy Advisor. Agrees with Mr. Brown's statement of Governor's position.
192	Rep. Josi	Asks if the listing is made, would the state protest this listing in court.
198	Hemmingway	No decision has been made. There will be litigation from other sources at the time of the listing. Currently, all resources are going into assuring that the plan will meet requirements of the law, so that the federal government does not have to list.
204	Chair Messerle	Asks if the October draft of plan is accurate with regards to forestry.
210	Hemmingway	There has been quite a number of adjustments in regards to Forestry. Closure has not been reached in several areas, but there is hope. The areas of scientific disagreement have been identified and new information has been taken to NMFS to show them why state measures are superior to theirs.
226	Brown	Our goal is to bring a technically competent document to NMFS.
230	Rep. Kruse	Asks for comparison of federal and state standards and practices.
238	Brown	United States Forest Services (USFS) and Bureau of Land Management (BLM) standards are more conservative.

* trying to protect other values in the riparian zone

* such as removing cows from spotted owl habitat

* opinion that there was a disagreement among federal natural resource agencies and the only way to come to an agreement, they went ultra-conservative

* made the landowner absorb all the risk associated with land management rather than federal regulatory agencies (NMFS, EPA) absorbing some risk

Explains the differences in risk taking in regards to riparian zones. The state standard is 90 - 100 feet, whereas the federal standard is 300 feet. Analysis shows that 90% of benefit of riparian zone occurs in

the first 100 feet and that the marginal gain to go from there out to 300 feet was fairly small for the amount of risk.

- 273 Rep. Kruse Asks if state can show that results are comparable to federal results.
- 277 Brown In time we can. State is going to need monitoring data that goes with that in order to demonstrate the results.
- 279 Rep. Harper Asks about duplication of efforts in the area of fish surveys.
- 289 Brown ODFW looks at adult returns then sets fish harvest limits based on those returns. They use index streams and locations to do those counts. They count spawned in addition to non-spawned. Forestry and riparian standards hinge on fish presence. Prior to timber harvest, it is important to know how far fish are migrating up a stream in order to determine safe practices for that particular area.
- 316 Chair Messerle Comments regarding fish presence and riparian zones as one moves upstream. Asks if the forest industry pays a large sum for replacement or repair of culverts.
- 328 Brown Yes.
- 330 Rep. Welsh Asks if those dollars could be tracked or documented. Comments that it is important to show the amount of work that landowners do.
- 335 Brown The Oregon Forest Industries Council has tried to document this information, but there is no organized effort within state government.
- 347 Langdon Marsh Director, Department of Environmental Quality presents and review written testimony. **(EXHIBIT C)**

**TAPE
28, A**

- 011 Rep. Josi Asks if he is referring to point or non-point source pollution.
- 013 Marsh Both, most modeling work has involved point sources, but there has been considerable effort in identifying non point sources.
- 018 Marsh Review - TMDL
- 043 Marsh Review - Role of DEQ in Agriculture
- 066 Chair Messerle Asks what role DEQ would have in enforcement.
- 072 Marsh In terms of monitoring, DEQ would continue to be involved in water quality.
- 077 Chair Messerle Asks for monitoring information on temperature standards.
- 082 Marsh In any sub-basin where there is a water quality limited stream, there would need to be a monitoring component included in the plan for that sub-basin. This would need to demonstrate the progress in terms of water quality, there would also need to be another monitoring of the effectiveness of the measures agreed to by the landowners. DEQ would have no role in any enforcement or compliance activities with the individual measures that had been agreed to and adopted as part of that plan, would only provide water quality monitoring oversight and technical assistance.
- 093 Marsh Review - Positions and Descriptions
- 102 Chair Adjourns meeting at 5:02 p.m.

Messerle

Submitted By, Reviewed By,

Rebecca M. Nickel, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A -Governor's Salmon Recovery Plan & Healthy Streams Partnership Investment Budget, Budget Analysis, Ken Rocco, 74 pp.

B -Governor's Salmon Recovery Plan & Healthy Streams Partnership Investment Budget, Written Testimony, Jim Brown, 9 pp.

C -Governor's Salmon Recovery Plan & Healthy Streams Partnership Investment Budget, Written Testimony, Langdon Marsh, 3 pp.