# HOUSE COMMITTEE ON WATER POLICY

**February 27, 1997 Hearing Room D**

**3:00 P.M. Tape 34 - 35**

**MEMBERS PRESENT: Rep. Ken Messerle, Chair**

**Rep. Tim Josi, Vice-Chair**

**Rep. Jo Ann Bowman**

**Rep. Steve Harper**

**Rep. Jeff Kruse**

**Rep. Jim Welsh**

**MEMBER EXCUSED: Rep. Tony Corcoran**

**VISITING MEMBER: Rep. Bob Jenson**

**STAFF PRESENT: Pat Zwick, Policy Analyst**

**Rebecca M. Nickel, Administrative Support**

**MEASURE/ISSUES HEARD: Clean Water Act - 303(d) Listing Process**

**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 34, A** | | |
| 003 | Chair Messerle | Calls meeting to order at 3:13 p.m. |
| 004 | Chair Messerle | Comments regarding evening meetings. |
| **CLEAN WATER ACT - 303(D) LISTING PROCESS** | | |
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| 016 | Langdon Marsh | Director, Department of Environmental Quality (DEQ), submits written testimony. **(EXHIBIT A)** |
| 029 | Chair | Comments on the importance of this issue. |

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| | Messerle | |
| 037 | Rep. Josi | Asks if the court decision made in Idaho refer to water temperature standards. |
| 041 | Marsh | In part involved temperature standards. EPA was directed to take over some portions of the water program in Idaho that deal with the setting of standards. The state had also not completed classifications of waterbodies for highest and best uses, including salmonid protection. For those streams which had temperature standards for Bull Trout, it was decided by the courts that the standards were inadequate. |
| 058 | Andy Schaedel | Manager, Science and Data Section, Department of Environmental Quality, submits and reviews written testimony. **(EXHIBIT B)** |
| 108 | Schaedel | Continues presentation. |
| 112 | Marsh | Points out to the Committee that there is an error in the page order of testimony. (Corrections are made to testimony.) |
| 122 | Schaedel | Continues presentation. |
| 143 | Chair Messerle | Asks how declining fish populations can be attributed to excessive sedimentation. |
| 144 | Schaedel | Professional judgment of fisheries biologist. |
| 148 | Chair Messerle | Comments that there is not enough information on why the stocks are depleting. Asks where the science source is coming from. |
| 154 | Schaedel | Look for some level of documentation of sedimentation, that would indicate use impairment. There have been fish habitat surveys where scientists look at sedimentation, percent of fines in the gravel, and other evidence, coupled with the decline of population. May not be the only factor, but EPA considers this important, and thus should be included in the list. |
| 168 | Chair Messerle | Asks if it would make sense that the percentage of fines in the stream would be affected by flood and low stream flow. |
| 174 | Schaedel | Typically, yes. There are other surveys done that indicate sedimentation be a problem. In 1988, DEQ conducted a non-point source assessment trying to identify where there may be water quality problems, including impact from sediments on fisheries. Tried to look at a variety of years to ensure that variation would be included. |
| 190 | Schaedel | Continues presentation. |
| 209 | Schaedel | Continues presentation. (Corrected copies are received and distributed to committee members.) |
| 219 | Schaedel | Continues presentation. |
| 232 | Chair | Asks for discussion on the listing process. |
| 238 | Schaedel | Overall intent of the Act was to identify waters which required additional management. Those identified to be in need of attention, were placed on the list. The list will then be prioritized. Problems are addressed in priority order. |
| | Rep. | |

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| 256 | Welsh | Comments on the listing process. |
| 272 | Schaedel | Continues presentation. |
| 331 | Schaedel | Continues presentation. |
| 380 | Rep. Kruse | Asks if monitoring devices were placed in stream, then checked periodically. |
| 386 | Schaedel | Correct |
| 387 | Rep. Kruse | Asks how it was determined where monitoring devices would be placed. |
| **TAPE 35, A** | | |
| 003 | Schaedel | There is a variety of data collection being used. Some sites were selected as being representative of the stream. Ideally, sites would be where the fish are located. Typically well mixed locations. |
| 014 | Rep. Kruse | Comments that he would not know if these collections were done properly. |
| 018 | Schaedel | Agrees, did not personally examine every site. But the people collecting data were interviewed and there were quality assurances. |
| 026 | Rep. Harper | Asks if data was collected during the summer. |
| 028 | Schaedel | Most of the data used was from summer collection, some sites were year round. Initial screening was principally the 64( standard. |
| 032 | Rep. Harper | Asks if the summer peak temperature is critical for fish. |
| 034 | Schaedel | Critical for a certain life stage of fish. |
| 042 | Rep. Harper | Comments. |
| 044 | Chair Messerle | Asks if there actual data and check points on each of the 890 streams. |
| 048 | Schaedel | Yes, based decisions on data, looking for supporting information rather then relying on judgment. |
| 050 | Chair Messerle | Asks about use of computer modeling. |
| 051 | Schaedel | Computer modeling was used to supplement information. One was used in the case of dioxin discharges to provide calculations of the level of concern. Also used modeling to determine nutrient standards. |
| 059 | Chair Messerle | Asks if modeling was used in determining temperature standards. |
| 060 | Schaedel | No. |
| 061 | Chair Messerle | Voices concerns about the five year database collection. |
| | | In the last five years the numbers have been more accurate. Previously, thermometers were used. These were not reliable when trying to calculate |

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| 062 | Schaedel | a seven year average. The new monitors provide reliable measurements. Data from the past is not being overlooked, as it provides important information on variations. |
| 091 | Chair Messerle | Asks if there is continual data collection in the streams which are listed. |
| 092 | Schaedel | Some streams are listed on one season's data. One-third of the sites were one season, two-thirds had multiple site and season data. There were also other factors utilized in the matrix. |
| 116 | Chair Messerle | Asks for further discussion on data collection. |
| 122 | Schaedel | 224 waterbodies had continuous monitoring for one year at one site. The remaining had either multiple sites for one year, or multiple sites for multiple years. |
| 128 | Chair Messerle | Asks for a breakdown of the two-thirds that had data from only one year. |
| 130 | Schaedel | Approximately 43% had data from one year. A number of those sites had other data available which was not used. |
| 137 | Chair Messerle | Asks if the data not used was showing higher or lower levels than the data collected in the one year. |
| 139 | Schaedel | It was fairly consistent. In some cases, there were additional grab sample data that would correlate that the temperature standard was being exceeded. As the assessments are completed, the additional data can be assembled. If the data used for the listing is found to be non-representative or erroneous, it can be corrected at that time. |
| 152 | Chair Messerle | Asks the average time of collection for the remaining 57%. |
| 159 | Schaedel | Doesn't have those statistics. The matrix shows that about 5% of the sites had greater than five years' worth of data. |
| 167 | Chair Messerle | Comments on the statistics of the database. |
| 170 | Rep. Welsh | Asks how many datum sites were used per stream. |
| 175 | Schaedel | Typically, about 60% of the sites had one site that exceeded standards, 17% had two sites, and 13% had greater than two sites per segment. |
| 181 | Rep. Welsh | Asks the length of a segment. |
| 183 | Schaedel | It varies, the segment of a large river is based on different characteristics of the river. Segments can be determined by dams, water quality changes, and combining of tributaries. |
| 192 | Rep. Welsh | Comments on the accuracy of the data collection. |
| 213 | Rep. Kruse | Comments on the accuracy of the data collection. |

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| 222 | Rep. Jenson | Asks if there were any areas where collection was done on a random basis. |
| 233 | Schaedel | No, most surveys were conducted for a variety of purposes. Discusses site selection. |
| 245 | Rep. Jenson | Comments that random samplings may have been able to substantiate other studies. |
| 253 | Schaedel | Random surveys are good, especially for generation of statistics. It is difficult to get funding for that sort of research. Many of these streams have had other assessments done over a number of years indicating that there are temperature problems. |
| 270 | Rep. Harper | Comments on discussion from previous meeting. Asks if there was a repeal or rebuttal process. |
| 281 | Marsh | Public hearings were not held, but there were three opportunities for public comment. |
| 290 | Rep. Harper | Clarifies his comments. |
| 293 | Marsh | There were some comments on the methodology. But there was no public comment process on methodology, as EPA methodology was being used. Comments on the dilemma faced by Idaho. DEQ tried to use the matrix to divide the streams into categories. The 870 streams had enough evidence to justify listing them on the 303(d) List. Tried to fend off the potential of EPA or litigants questioning judgment. These 870 represent the "tip of the iceberg," the rest of the effort was put into justifying why other streams should not be listed. |
| 339 | Rep. Harper | Asks what a citizen who has a complaint or concern can do. |
| 349 | Marsh | November 1, 1996, was the end of the comment period. Sixty comments were received. Each stream will be assessed and if it is within the standard, the stream will be de-listed. Also, DEQ is obliged to redo the list in 1998. |
| 378 | Rep. Harper | Asks about the assessment process. |
| 382 | Marsh | The purpose of the assessment process is to ensure that the stream was rightly listed prior to any work being started. |
| 386 | Rep. Harper | Comments. |
| **TAPE 34, B** | | |
| 003 | Chair Messerle | Asks for discussion on SB 1010 (1993 Session) and the timeline for implementation. |
| 007 | Phil Ward | Deputy Director, Department of Agriculture. An integral part of SB 1010 process is to do a detailed assessment on agricultural lands. This is called the Problem Identification Phase. The very first step would be to do detailed assessment to verify that there are problems, prior to creating implementation plans. |

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| 018 | Chair Messerle | Asks what is included in the assessment. |
| 019 | Ward | The department would determine the sources and causes of agricultural non-point source pollution in the basins. |
| 028 | Chair Messerle | Comments on the concerns of agricultural community. |
| 042 | Ward | Our intent is to truly identify sources of non-point sources of pollution from agriculture in those water bodies. It can be done. |
| 054 | Rep. Josi | Asks who collected the data for the listing matrix. |
| 058 | Schaedel | There was a variety of collectors. For those parameters dealing with water quality (pH, bacteria, etc.), most of the data was collected by DEQ, US Geological Survey, or US Bureau of Reclamation. For temperature, data from a variety of sources, such as DEQ, US Forest Service, Oregon Department of Forestry, or US Bureau of Land Management, was used. |
| 077 | Rep. Josi | Asks if reassessment will be done prior to working on a stream, and how long the reassessment process will take before affirmation of findings. |
| 083 | Schaedel | In regards to temperature, yes. Additional discussion on reassessment data. |
| 108 | Chair Messerle | Asks how a stream can be de-listed. |
| 113 | Schaedel | There are off ramps, such as the development of a management plan. |
| 120 | Rep. Josi | Asks if the stream would then be in compliance |
| 122 | Marsh | The listing process is subtle. If it can be determined that existing controls, or an adopted plan, will achieve the standard over time, then the stream is removed from the water quality limited list and placed on a waiting list. A stream can be on the waiting list until water quality standards are achieved. |
| 134 | Schaedel | Explains that the stream would no longer be on the 303(d) list, but would still be water quality limited. |
| 136 | Chair Messerle | Asks if a stream is on the 303(d) list and a 1010 plan is developed and administered, when would Department of Agriculture be able to stop 1010 administration. Asks if the stream is on the list forever, once listed. |
| 140 | Marsh | The measures that are in the 1010 plan would have to be implemented until the time water quality standards were met. If the plan included on-going activities, those activities would continue until standards are met. |
| 149 | Chair Messerle | Asks about the standard. |
| 152 | Schaedel | The standard is the seven day average of the daily maximum for that year. |
| 154 | Chair Messerle | Asks for clarification of only needing to meet standard for one year to be removed from the list. |
| 155 | Marsh | The water quality management plan would include monitoring requirements that would be determined for that segment and what the appropriate trigger level would be. Could be one year, or more, depending |

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| | | on what was deemed an appropriate representation. |
| 160 | Chair Messerle | Comments that it seems like too short a time span. |
| 165 | Rep. Kruse | Asks how habitat modification is measured. |
| 167 | Schaedel | There are a number of indicators used for habitat modification:<br><br>* amount of woody debris<br><br>* channel width-to-depth ratio<br><br>* pools and pool frequency |
| 173 | Rep. Kruse | Asks if this is based on value judgment or fish counts. |
| 176 | Schaedel | Tries to look for both use impairment and decline of fisheries in a stream. |
| 183 | Rep. Kruse | Asks if each of the 138 streams listed for habitat modification have been thoroughly surveyed. |
| 186 | Schaedel | A number of studies that could be relied on were drawn from. There has been ample water shed analysis. |
| 199 | Rep. Kruse | Asks if each was surveyed thoroughly. |
| 201 | Schaedel | Yes. |
| 204 | Chair Messerle | Asks for copies of spreadsheets showing breakdown of listings. |
| 209 | Schaedel | Discusses the spreadsheets. **(EXHIBIT C)** |
| 219 | Schaedel | Briefly discusses the collection of data by high schools. There have been some successes. |
| 231 | Rep. Harper | Asks for discussion on the setting of priorities. |
| 236 | Schaedel | As part of the Clean Water Act, the first thing done is the identification of the listed water. Then those streams are prioritized for additional assessment. It is up to the state to set the prioritization. In Oregon, those prioritizations were set by the court. Currently, the list is being reevaluated to take into account threatened or endangered species. |
| 250 | Rep. Harper | Asks if the list is in rank order. |
| 252 | Schaedel | Started out listing all the streams in the State Clean Water Strategy, now want to shift approach to watershed basis. Suggesting reprioritizating the list by basin. |
| | | Assistant to the Director, Department of Environmental Quality. There has to be prioritization and then targeting. The work plan is being submitted to EPA, and the priorities are: |

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| 259 | Carolyn Young | * finish TMDLs in progress<br><br>* coastal Salmon<br><br>* start the planning process for non-point source TMDLs as 1010 plans are created<br><br>This will be done again when the 303(d) list is submitted in April of 1998. |
| 286 | Rep. Harper | Asks where impact on humans fall in the prioritization process. |
| 288 | Young | Rather than look at list in stream priority order, the list is being done by sub-basin. |
| 295 | Rep. Harper | Asks if priority list will be by sub-basin. |
| 299 | Young | Correct, there are 91 sub-basins in the state and 84 are currently on the list. Each sub-basin will be placed in one of four categories. The following concerns will give a basin a top priority listing of one:<br><br>* threatened or endangered species; or proposed threatened or endangered species<br><br>* drinking water<br><br>* fish consumption advisory |
| 318 | Rep. Harper | Asks if a human health priority has the same priority as an endangered species. Comments on the list. |
| 321 | Young | Has provided the work plan that DEQ plans to submit to EPA and the four priority listings. |
| 327 | Rep. Harper | Asks how endangered species can equate to a human being in a priority listing. |
| 329 | Young | Tried to identify things that would have an immediate effect on human health. Those things were drinking water and eating contaminated fish. |
| 340 | Rep. Harper | Comments. |
| 344 | Rep. Jenson | Comments on the protection of beneficial uses of water. Asks if DEQ ignored a directive of the Clean Water Act when designating the beneficial uses of water. |
| 366 | Marsh | The basic scheme of the Clean Water Act is to protect all beneficial uses. This is done by assuring that the most sensitive beneficial use will be protected. The assumption being that if you protect the most sensitive uses, all other uses will be protected. |
| 388 | Rep. Jenson | Asks if DEQ can substantiate the conclusion that the most beneficial use of each stream is the protection of aquatic life. |
| | | When the most sensitive use can be identified, and plan developed for the |

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| 397 | Marsh | protection of that most sensitive use, then there is not a choice of which use is the most important. It is not an exclusion of other uses, it will ensure that the other uses are adequately protected. |
| **TAPE 35, B** | | |
| 008 | Rep. Jenson | Comments. |
| 010 | Rep. Welsh | Asks how many streams were listed due to missing a segment determination. |
| 020 | Schaedel | When a segment was listed for temperature, then the entire stream would be listed. |
| 025 | Rep. Welsh | Asks how many streams fell into that category. |
| 027 | Schaedel | Does not have this information. |
| 030 | Rep. Welsh | Clarification of question. |
| 034 | Schaedel | The segment was defined more broadly, if there was insufficient data in a segment, to take a more watershed approach. |
| 046 | Chair Messerle | Adjourns meeting at 4:36 p.m. |

Submitted By, Reviewed By,

Rebecca M. Nickel, Pat Zwick,

Administrative Support Policy Analyst

**EXHIBIT SUMMARY**

**A - Clean Water Act - 303(d) List, Written Testimony, Langdon Marsh, 4 pp.**

**B - Clean Water Act - 303(d) List, Written Testimony, Andy Schaedel, 31 pp.**

**C - Clean Water Act - 303(d) List, Written Testimony, Andy Schaedel, 6 pp.**

# HOUSE COMMITTEE ON WATER POLICY

**February 27, 1997 Hearing Room A**

**5:00 P.M.**

**MEMBERS PRESENT: Rep. Ken Messerle, Chair**

**Rep. Tim Josi, Vice-Chair**

**Rep. Steve Harper**

**Rep. Jeff Kruse**

**Rep. Jim Welsh**

**MEMBER EXCUSED: Rep. Tony Corcoran**

**Rep. Jo Ann Bowman**

**VISITING MEMBER: Rep. Bob Jenson**

**Rep. Larry Sowa**

**Rep. Terry Thompson**

**STAFF PRESENT: Pat Zwick, Policy Analyst**

**MEASURE/ISSUES HEARD: Oregon Salmon Restoration Initiative and**

**Healthy Streams Partnership**

**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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| Joint meeting with Senate Committee on Water and Land Use. Please see minutes from Senate Committee on Water and Land Use dated February 27, 1997. | | |
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