

HOUSE COMMITTEE ON WATER POLICY

April 1, 1997 Hearing Room D

3:00 PM Tape 55 -56

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

MEMBER EXCUSED:

VISITING MEMBER: Rep. Bob Jenson

STAFF PRESENT: Pat Zwick, Policy Analyst

Rebecca M. Scott, Administrative Support

MEASURE/ISSUES HEARD: HB 2409 - Work Session

HB 2607 - 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 55, A		
002	Chair Messerle	Calls meeting to order at 3:10 p.m.
<u>HB 2409</u> <u>WORK</u> <u>SESSION</u>		
005	Chair Messerle	Opens work session for HB 2409.

006	Pat Zwick	Policy Analyst, summarizes HB 2409 and the proposed -2 amendments. (EXHIBIT A)
013	Rep. Welsh	MOTION: Moves to ADOPT HB 2409-2 amendments dated 4/1/97.
	Chair	Hearing no objection, declares the motion CARRIED.
016	Rep. Welsh	MOTION: Moves HB 2409 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-1 AYE: 6 - Corcoran, Harper, Josi, Kruse, Welsh, Messerle NAY: 1 - Bowman
	Chair	The motion CARRIES. REP. WELSH will lead discussion on the floor.
026	Chair Messerle	Closes work session on HB 2409.
<u>HB 2607</u> <u>PUBLIC</u> <u>HEARING</u>		
027	Chair Messerle	Opens public hearing on HB 2607.
028	Zwick	Summarizes HB 2607 and proposed -1 amendments. (EXHIBIT B)
047	Rep. Harper	Asks if the amendments make the measure site specific.
048	Mike Lehman	State Representative, District 47. The amendments do make the measure site specific. There are two main structures, one on Upper Pony Creek and one on Joe Ney Slough, included in the amendments. A bill was passed in the 1993 Session which allowed the structure to be raised on Joe Ney Slough. Since then, an Attorney General opinion was issued that stated that these could not be improved or constructed without installing fish passages. There are no, or virtually no, fish which utilize the passages or use the waters behind them on these two waterbodies. Therefore, it is nonsensical to build a fish passage when there are no fish to use it. Now faced with the potential expenditure of millions of dollars for the construction of fish passages on these two dams.
098	Rep. Lehman	The -2 amendments grant Oregon Department of Fish and Wildlife (ODFW) the authority to waive fish passage requirement if a mitigation plan can be met. It is understood that a mitigation plan may not be possible because of National Marine Fisheries Service (NMFS) requirements. The -2 amendments will at least allow discussion to continue regarding this. "It seems silly to spend a million dollars to build a fish passage that does nothing for Coho or any other anadromous fish, or you can take that money

		and spend it someplace else and have a direct impact on the species or the habitat."
102	Rob Shaw	Representing the Coos Bay/North Bend Water Board. The 1993 Coos County Water Supply Plan identified the Upper Pony Creek and the Joe Ney as the most viable sites for augmenting the water supply for the Coos Bay/North Bend area. In 1994, the Board began the process of permitting for the raising of those two structures. During that time, numerous meeting were held with various agencies, and finally a decision was reached to move forward with the Corps to prepare a draft environmental impact statement. There were agency meetings where fishery issues were discussed with state and federal agencies stating that mitigation was a viable option to fish ways. That was prior to the Attorney General opinion requiring construction of fish ways, rather than mitigation. Providing for fish passage would require spilling of water when it should be stored for municipal use.
134	Rep. Lehman	Comments on politics behind this measure regarding ODFW and the Governor's office.
147	Rep. Bowman	Comments on the possibility of multiple requests for waivers. Asks if there would be a time limit for mitigation.
153	Rep. Lehman	Currently there is no time limit, but there would be no serious objection to a deadline. Agrees that there is a possibility for multiple requests for waivers.
167	Chair Messerle	Asks for identification of the costs for this requirement.
172	Shaw	No hard numbers available, but the critical issue is the spillage of water from the reservoirs. If fish passage was required, these projects would fall short of supplying water out to 2030.
180	Chair Messerle	Asks for further discussion on the use of fish passages.
184	Shaw	There is no fish passage on Upper Pony Creek. In 1993, a ladder was installed on Joe Ney. Since that time, there has been no observed usage of that structure.
195	Roy Elicker	Legislative Liaison, Oregon Department of Fish and Wildlife (ODFW), presents and reviews testimony in opposition to HB 2607 and the -1 amendments. (EXHIBIT C)
245	Elicker	Continues presentation.
254	Rep. Josi	Asks what condition the existing fish ladders are in.
260	Jill Zarnowitz	Assistant Director, Habitat Conservation Division. The structure was designed by NMFS, and is good for adult fish.
271	Rep. Josi	Asks if structure is considered for planting fish for future Coho restoration.
280	Zarnowitz	Yes.
284	Chair Messerle	Asks for additional discussion on the Milltown Hill mitigation.

292	Elicker	The way bill is currently written, it gives ODFW some power to make decisions regarding mitigation. From the stand of ODFW, the way the bill is currently written, there is implied pressure to define mitigation.
302	Chair Messerle	Asks if changing language of the amendment would make it more palatable for ODFW.
305	Elicker	Spoke with Rep. Lehman regarding additional amendments. Comments that any changes would need to be approved by the Fish and Wildlife Commission. Willing to work with Rep. Lehman's office to work out different language.
316	Rep. Kruse	Asks who else should be making mitigation determinations.
324	Elicker	Would like to say that ODFW or the Fish and Wildlife Commission should have the final word. However, there are so many factors involved in mitigation, and there needs to be other agencies involved. Because of possible Coho benefits in the Joe Ney, mitigation at this point may not be enough to make up for the loss.
348	Rep. Kruse	Comments that in the -1 amendment it states that mitigation needs to be acceptable to the Commission. Asks if that gives the latitude needed.
370	Elicker	Because of the proposed Coho listing, this is a very sensitive issue. Joe Ney is a Coho issue, whether fish are being seen or not.
375	Rep. Corcoran	Comments on the Coho situation.
TAPE 56, A		
002	Jim Myron	Representing Oregon Trout, presents and reviews testimony in opposition to HB 2607 and the -1 amendments. (EXHIBIT D)
032	Rep. Harper	Asks how fish could be put back in those areas.
034	Myron	If fish passage is provided, they should naturally recolonize those areas.
035	Rep. Harper	Comments that there currently are fish passages that are not being used.
037	Myron	Unknown if there is a particular problem with the passage, or just no fish in the vicinity that can recolonize that area.
042	Rep. Harper	Directs same question to Ms. Zarnowitz.
046	Zarnowitz	If there was no dam to go up, the design of the fishway would be looked at to ensure that it was designed adequately. Joe Ney is likely to be a rearing area for Coho, there is not much spawning habitat. Another option would be breaching the dam, but that is not probable, so the main option would be to improve fish passage.
057	Rep. Josi	Asks for clarification on the design of fish ladders.
060	Zarnowitz	For that particular structure on the Joe Ney, it was designed for adult fish.

061	Rep. Josi	Asks if Joe Ney would be for juvenile Coho, even if the fish passage facilities were not designed for juvenile Coho.
065	Zarnowitz	The fishway was designed for adults and for cutthroat. There are cutthroat and steelhead in the area. There is a tide gate which has been allowing some fish to get up naturally, but very, very few get by.
075	Rep. Josi	Asks if the tide gate impedes passage more than the fish ladders.
077	Zarnowitz	The tide gate has been there for some time, the fish ladder was installed in 1994, to allow adult Coho and cutthroat passage.
083	Rep. Josi	Asks if the tide gate is below the fish passage.
084	Zarnowitz	They are on the same structure.
086	Rep. Josi	Asks which structure comes first in the stream.
087	Zarnowitz	They are built on the same level of the dam.
089	Rep. Josi	Asks for further clarification.
092	Zarnowitz	They are parallel.
095	Chair Messerle	Asks if there is any passage through the tide gate.
097	Zarnowitz	Very little.
099	Chair Messerle	Asks why.
100	Zarnowitz	Because it was not always open at the right time for the fish to get in. It is water flow controlled.
101	Chair Messerle	Asks if tide gate opens every time the tide goes out.
103	Shaw	The tide gates were refurbished in 1985. Depending on the flows into the reservoir, the tide gates may be loosened or tightened to ensure that the dike does not overflow. There is a spillway, a fish ladder, and then tide gates. If the spillway and the fish ladder do not spill enough water, then the tide gates are allowed to open up further. If water needs to be stored, then the tide gates will be closed.
112	Chair Messerle	Asks if this is the normal type of coastal tide gate, where whenever the tide goes out, it opens up to some degree.
115	Shaw	To preserve water in the reservoir, the tide gates can be locked shut.
116	Chair Messerle	Asks if this is a normal tide gate.
116	Shaw	No, there is a control valve.
118	Chair Messerle	Comments on report regarding tide gates and Coho restoration.
125	Zarnowitz	Agrees with Chairs comments regarding the benefit of tide gates.

127	Chair Messerle	Comments that mitigation could take any form. In the Coos Bay area, there has been a great deal of mitigation which has provided many benefits.
140	Myron	The statutes as written now are clear regarding providing passage for fish. That is not to say that mitigation could provide as many benefits for fish as passage in some situations. But, clearly, providing passage is a benefit to fish.
147	Rep. Corcoran	Comments on earlier testimony that even though there is a fish ladder, there has been no fish.
162	Myron	From 1993 to now, there has been a low abundance of Coho, and even if they haven't been using the Joe Ney, it doesn't mean that they wouldn't use it in the future.
168	Rep. Josi	Comments that the primary objective of ODFW is the protection of fish and habitat. Further comments that HB 2607 would provide ODFW with authority to make decisions regarding mitigation.
179	Myron	One of the other issues is that if it is clear that proponents in the future can negotiate with ODFW over mitigation in lieu of passage, it seems that this would be the first alternative.
189	Chair Messerle	Asks if the value of the storage areas is for rearing or spawning.
193	Zarnowitz	The Joe Ney area is principally a rearing area. Upper Pony Creek is not really a Coho issue.
195	Chair Messerle	Asks why the fish passage was constructed for adults.
197	Zarnowitz	Unsure of the reason. The passage was designed by NMFS to meet their standards. ODFW was concerned about getting adult Coho, cutthroat, and steelhead up, but the design of the habitat in the area would be best for rearing.
217	Chair Messerle	Asks Rep. Lehman to comment.
219	Rep. Lehman	Would prefer this bill to move on. Will be working with ODFW and the Governor's office, and would be willing to try to get changes done in the Senate.
229	Chair Messerle	Asks if would be better to get the language straightened out before sending it out.
232	Rep. Lehman	Would have no objections to that. Sen. Tarno has indicated interest in this bill.
236	Rep. Josi	Asks what kind of language would be required.
237	Rep. Lehman	The language needed would strengthen the negatives. Would make it clear that ODFW has final say in approval.
244	Chair Messerle	Comments on working on HB 2607 in House Water Policy Committee. Asks that the interested parties meet to consider possible language changes to be submitted to the committee at a later date.

252	Chair Messerle	Closes the public hearing on HB 2607.
253	Chair Messerle	Adjourns meeting at 3:58 p.m.

Submitted By, Reviewed By,

Rebecca M. Scott, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - HB 2409, -2 Amendments dated 4/1/97, Staff, 4 pp.

B - HB 2607, -1 Amendments dated 3/5/97, Staff, 1 p.

C - HB 2607, Written Testimony, Roy Elicker, 2 pp.

D - HB 2607, Written Testimony, Jim Myron, 1 p.