

HOUSE COMMITTEE ON WATER POLICY

April 3, 1997 Hearing Room D

3:00 PM Tape 57 - 58

**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 2094 Work Session**

HB 3184 Public Hearing and Work Session

HCR 13 Public Hearing

SB 207-A Public Hearing and Work Session

**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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 57, A</b>		
002	Chair Messerle	Calls meeting to order at 3:14 p.m.
<b>HB 2094 WORK SESSION</b>		

004	Chair Messerle	Opens work session on HB 2094.
005	Pat Zwick	Policy Analyst, summarizes HB 2094 and the -3 amendments. <b>(EXHIBIT A)</b>
012	Rep. Bowman	<b>MOTION: Moves to ADOPT HB 2094-3 amendments dated 4/2/97.</b>
	Chair	<b>Hearing no objection, declares the motion CARRIED.</b>
016	Rep. Bowman	<b>MOTION: Moves HB 2094 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 6-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>  <b>EXCUSED: 1 - Welsh</b>
	Chair	<b>The motion CARRIES.</b>  <b>REP. BOWMAN will lead discussion on the floor.</b>
025	Chair Messerle	Closes work session on HB 2094.
<b><u>HB 3184</u></b> <b><u>PUBLIC</u></b> <b><u>HEARING</u></b>		
026	Chair Messerle	Opens public hearing on HB 3184.
027	Zwick	Summarizes HB 3184 and -1 amendments. <b>(EXHIBIT B)</b>
041	Michael Cape	Intern with Rep. VanLeeuwen's Office. Comments on the compromises made by both sides of this issue.
046	Rep. Bowman	Asks if there would be a permit issued or an authorization.
048	Cape	In an emergency situation, authorization is as acceptable as a permit.
055	Earl Johnson	Western Region Manager, Division of State Lands (DSL). Prompt action is required in an emergency situation, which is why the difference between permit and authorization is distinguished in statute.
067	Rep. Bowman	Asks the time required to complete repairs.
070	Johnson	In DSL Administrative Rule, 60 days are allowed for completion of emergency action.
074	Chair Messerle	Asks for additional discussion on the time frame for the authorization process.
081	Johnson	In current rules, "emergency" is defined as an unforeseen action. With recurrent floods, rules are being developed to allow a two part emergency response. In the first part, DSL would actually be dealing with emergency actions during the flood fight. The second part would allow response to a foreseen or imminent recurrence.
110	Chair Messerle	Comments that this discussion needs to be on the record.
		Occasionally after the water recedes, it is found that heavy sediment is

118	Johnson	left behind on city water intakes. There needs to be immediate intervention.
123	Chair Messerle	Asks if intention is to have a mechanism through administrative rule to deal with established facilities which may be affected by an emergency situation
131	Johnson	That is accurate.
133	Rep. Kruse	Comments on applicability to rivers and streams.
144	Mike Dewey	Representing Oregon Wheat Growers League. Comments on the situation of wheat growers, particularly in Eastern Oregon. Suggests amendment which would allow DSL to issue a five year permit to allow an individual access to a waterway at certain times of the year, or an emergency based upon a plan. The plan would be something which would be worked out by DSL and the individual farmer. Would allow future amendment if there were changing needs.
189	Chair Messerle	Asks if he heard Mr. Johnson's testimony.
190	Dewey	No.
191	Chair Messerle	Recalls Mr. Johnson. Comments on Mr. Dewey's testimony
206	Dewey	Year to year is better than nothing, but if there is no statutory authority, they should get it. Seems that DSL cannot provide for a five year permit because the statute will not allow it.
216	Chair	Asks Mr. Johnson for clarification on general permits.
219	Johnson	There are a number of circumstances under the emergency authorization where, by rule, DSL could address a number of situations both during and between flood situations. General authorization authority in the Removal Fill Law allows a 15 day turn around for a certain category of activity. There is general authorization for erosion flood/repair. There are other means for reaching agreement regarding stream bank management. Agreements can be reached in advance on general operating procedures. It may be possible to do a general authorization on this type of situation. There is a statutory exemption in the Removal Fill Law for maintenance and repair of structures. This may be applicable to some emergency situations.
264	Dewey	Comments that the various approaches are very bureaucratic. Having a five year permit would be advantageous for DSL.
273	Chair	Asks if DSL has the authority to cover Mr. Dewey's concerns.
277	Johnson	Not sure what circumstances Mr. Dewey is describing. DSL has statutory authority to carry out what needs to be done for a large portion of activities. DSL would not support a five year permit which would allow someone to use whatever means to reach a stream.
289	Rep. Josi	Asks how the five year permit relates to emergency authorization.
295	Dewey	It depends on what is likely to happen and what actions one would be likely to take. That would be discussed so that one could or could not complete those actions based upon the agreement with DSL.

319	Rep. Kruse	Comments that this measure is emergency based. A five year plan would be a separate set of activities.
336	Rep. Josi	Asks if Mr. Dewey has spoken with Rep. VanLeeuwen.
339	Dewey	No. Comments on SB 207.
347	Rep. Josi	Comments on deadlines.
357	Dewey	Cannot understand why there would be any problem.
363	Chair Messerle	Comments that this process is too complicated and HB 3184 simplifies part of this process.
<b>TAPE 58, A</b>		
010	Johnson	Comments that Director Paul Cleary is willing to discuss this issue and explore other alternatives.
014	Rep. Josi	Asks why the rules couldn't be set up on a five year contingency basis.
018	Dewey	Don't know if it can be done. Didn't hear if DSL had the authority to provide for five year permits.
022	Rep. Harper	Comments that "five year permits" and "emergency" are conflicting terms.
030	Chair Messerle	Closes public hearing on HB 3184.
<b>HB 3184 WORK SESSION</b>		
031	Chair Messerle	Opens work session on HB 3184.
032	Rep. Kruse	<b>MOTION: Moves to ADOPT HB 3184-1 amendments dated 3/27/97.</b>
	Chair	<b>Hearing no objection, declares the motion CARRIED.</b>
037	Rep. Kruse	<b>MOTION: Moves HB 3184 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 7-0</b>
		<b>AYE: In a roll call vote, all members present vote Aye.</b>
	Chair	<b>The motion CARRIES.</b> <b>REP. JOSI will lead discussion on the floor.</b>
044	Chair Messerle	Closes work session on HB 3184.
<b>HCR 13 PUBLIC HEARING</b>		
045	Chair Messerle	Opens public hearing on HCR 13.
051	Zwick	Summarizes HCR 13 and -1 amendments. <b>(EXHIBIT C)</b>

057	Pete Test	Representing Oregon Farm Bureau, submits and reviews testimony in support of HCR 13 with -1 amendments. <b>(EXHIBIT D)</b>
107	Test	Continues presentation.
132	Rep. Josi	Asks if there will be discussion on the 401 certification process.
134	Test	Yes. Continues presentation.
180	Chair Messerle	Asks if this would also apply to other types of permits besides grazing.
184	Test	It does affect other activities. Explains different possible non-point sources such as rafting and jet boat activities.
198	Chair Messerle	Asks if this system will require the state to go through the same process in conjunction with what the federal government does.
201	Test	Yes, and this would be a check on the federal system.
205	Test	Continues testimony.
244	Rep. Corcoran	Asks for copy of court case in question.
247	Test	Will provide this for the committee.
253	Rep. Corcoran	Comments on the case.
257	Test	Will also provide actual statutory reference.
267	Jean Underhill-Wilkenson	Representing Oregon Cattleman's Association (OCA). Testifies in support of HCR 13. In addition to Mr. Test's comments, OCA is also fearful that ranchers will be subject to citizens' suits provision of the Clean Water Act. It is difficult to prove violation of the Act when dealing with non-point source pollution. Under Environmental Protection Agency (EPA) rules, when ranchers get 401 certification, the State of Oregon is required to notify other states which may be affected. Those affected states have the right to impose their own requirements.
332	Underhill-Wilkenson	Separate permit programs would be detrimental to the voluntary compliance and assistance of ranchers and other natural resource users. Ranchers depend on the use of federal lands.
351	Chair Messerle	Recalls Mr. Test. Asks if HB 2003 and HCR 13 could be combined.
361	Test	HCR 13 is a resolution. HB 2003 sets state policy. Not sure if it would be possible to incorporate these two, would have to check rules. In regards to HB 2003, it sets state policy on how certification would be handled by the State of Oregon, and asks that the state Attorney General assist in the appeal on the side of the Oregon Agriculture Foundation.
<b>TAPE 57, B</b>		
004	Chair Messerle	Comments that these two bills are parallel.
008	Rep. Corcoran	Asks if there has been any discussion with the Governor's office.
010	Test	Trying to set up a meeting with the Governor. Have been working with Governor to help push involvement in this lawsuit.
017	Rep. Corcoran	Comments that it is necessary to be very careful when working on anything that may be contradictory to the Salmon Plan. Controls did

		not come around because of bureaucratic whim of environmentalists.
032	Chair Messerle	Agrees with Rep. Corcoran. Makes additional comments.
035	Underhill-Wilkenson	The state has been forced to set up a temporary 401 certification program because ranchers needed to get their stock out this Spring. Working with Department of Agriculture to determine what the temporary 401 certification should include.
043	Rep. Corcoran	Asks if this would be a burdensome federal overlay on a process that is already occurring.
045	Test	Yes. With NEPA protection and the other federal land management protections and the law requirement that the federal government manage waters such that they meet state standards, it is already covered. There is opportunity for groups to challenge this in court without having another agency add to this.
053	Underhill-Wilkenson	When rancher receives a permit, there are requirements in the operating plan and permits. These are monitored and altered regularly to ensure compliance with the Clean Water Act. This would be an additional permit process in addition to this.
062	Rep. Kruse	Comments that there is nothing arbitrary in the 401 process or any of the permitting structures. All of these processes and structure were set up for a specific purpose. If there is anything arbitrary in this, it was the legal decision that suddenly decided that 401 applied to non-point. This is a legal interpretation that went against fact.
070	Rep. Corcoran	Asks if this dispute has been carried to a higher court.
071	Test	It has been appealed to the 9th Circuit, and if necessary, it will be appealed beyond that. There is a decision which is directly opposite in Idaho.
074	Underhill-Wilkenson	We are preparing appeal briefs now and it is due this month. There has been a great deal of attention to this issue.
081	Chair Messerle	Comments that this issue will be rescheduled
084	Chair Messerle	Closes public hearing on HCR 13.
<b><u>SB 207-A</u></b> <b><u>PUBLIC</u></b> <b><u>HEARING</u></b>		
085	Chair Messerle	Opens public hearing on SB 207-A.
087	Zwick	Summarizes SB 207-A.
108	John Lilly	Assistant Director, Division of State Lands (DSL), submits and reviews testimony in regards to SB 207-A. <b>(EXHIBIT E)</b>
158	Lilly	Continues testimony.
192	Rep. Corcoran	Comments on SB 207-A.
197	Chair Messerle	Asks if SB 207-A addresses the issues brought up in HB 3184.
200	Lilly	The work on HB 3184 and streamlining the process while enhancing

		resource protection, is what this legislation is all about.
208	Rich Angstrom	Managing Director, Oregon Concrete Aggregate Producers Association (OCAPA), testifies in support of SB 207-A. The bill represents "good government."
223	Chair Messerle	Asks Mr. Angstrom about possible impact of HCR 13 on OCAPA.
227	Angstrom	Will be discussed further with colleagues. There are issues regarding non-point which may affect producers.
244	Test	Submits and reviews testimony in support of SB 207-A. <b>(EXHIBIT F)</b>
274	Chair Messerle	Recalls Mr. Lilly. Asks at what point DSL would pass authority on to EPA or U.S. Fish and Wildlife.
279	Lilly	Under the state programmatic general permit, if there was a situation where an endangered species were at risk, the issue would be passed on to the Corps of Engineers for permitting. There would then be a dual permit in that situation. Assuming the entire 404 program would take the Corps entirely out of permitting. There are some obstacles in this option. In this situation, if there was an endangered species involved, DSL would have to work out the issues of mitigation or caring for that species. If EPA didn't think the state was doing an adequate job of permitting under a 404 assumed program, they could take the permit from the state and elevate it to themselves. In the two states where assumption has taken place, none of the permits has been elevated.
325	Chair Messerle	Closes public hearing on SB 207-A.
<b><u>SB 207-A</u></b> <b><u>WORK</u></b> <b><u>SESSION</u></b>		
327	Chair Messerle	Opens work session on SB 207-A.
329	<b>Rep. CORCORAN:</b>	<b>MOTION: Moves SB 207A be sent to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 6-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>  <b>EXCUSED: 1 - Josi</b>
	<b>Chair</b>	<b>The motion CARRIES.</b>  <b>REP. CORCORAN will lead discussion on the floor.</b>
343	Chair Messerle	Closes work session on SB 207-A.
344	Chair Messerle	Adjourns meeting at 4:30 p.m.

Submitted By, Reviewed By,

Rebecca M. Scott, Pat Zwick,

Administrative Support Policy Analyst

**EXHIBIT SUMMARY**

**A - HB 2094, -3 Amendments dated 4/2/97, Staff, 8 pp.**

**B - HB 3184, -1 Amendments dated 3/27/97, Staff, 1 p.**

**C - HCR 13, -1 Amendments dated 4/3/97, Staff, 1 p.**

**D - HCR 13, Written Testimony, Pete Test, 3 pp.**

**E - SB 207-A, Written Testimony, John Lilly, 2 pp.**

**F - SB 207-A, Written Testimony, Pete Test, 1 p.**