

HOUSE COMMITTEE ON WATER POLICY

April 17, 1997 Hearing Room E

3:00 P.M. Tapes 66 - 67

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. Scott, Administrative Support

MEASURE/ISSUES HEARD: HB 2095 Work Session

HCR 13 Public Hearing and Work Session

HB 3522 Public Hearing

HB 2003 Public Hearing

HCR 27 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 66, A		
001	Chair Messerle	Calls meeting to order at 3:25 p.m.
<u>HB 2095</u> <u>WORK</u> <u>SESSION</u>		

003	Chair Messerle	Opens work session on HB 2095.
004	Pat Zwick	Policy Analyst, summarizes amendment to HB 2095. (EXHIBIT A)
013	Rep. Josi	MOTION: Moves to ADOPT HB 2095-1 amendments dated 4/16/97.
	Chair	Hearing no objection, declares the motion CARRIED.
015	Rep. Josi	MOTION: Moves HB 2095 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Corcoran
	Chair	The motion CARRIES. REP. JOSI will lead discussion on the floor.
021	Chair Messerle	Closes work session on HB 2095.
<u>HCR 13</u> <u>PUBLIC</u> <u>HEARING</u>		
022	Chair Messerle	Opens public hearing on HCR 13.
023	Zwick	Summarizes HCR 13.
035	Jim Myron	Submits and reviews testimony in opposition to HCR 13. (EXHIBIT B)
057	Pete Test	Representing Oregon Farm Bureau, testifies in support of HCR 13 and the -1 amendments.
079	Chair Messerle	Closes public hearing on HCR 13.
<u>HCR 13</u> <u>WORK</u> <u>SESSION</u>		
080	Chair Messerle	Opens work session on HCR 13.
081	Rep. Kruse	MOTION: Moves to ADOPT HCR 13-1 amendments dated 4/3/97.
	Chair	Hearing no objection, declares the motion CARRIED.
085	Rep. KRUSE:	MOTION: Moves HCR 13 be sent to the floor with a BE ADOPTED AS AMENDED recommendation.
		VOTE: 5-1 AYE: 5 - Harper, Josi, Kruse, Welsh, Messerle

		NAY: 1 - Bowman EXCUSED: 1 - Corcoran
	Chair	The motion CARRIES. REP. KRUSE will lead discussion on the floor.
092	Chair Messerle	Closes work session on HCR 13.
<u>HB 3522</u> <u>PUBLIC</u> <u>HEARING</u>		
103	Vice-Chair Josi	Opens public hearing on HB 3522.
106	Ken Messerle	State Representative, District 48, testifies in support of HB 3522.
138	Rep. Kruse	Asks if this bill would streamline the mitigation process.
143	Rep. Messerle	It could, but that can be dealt with more in the future.
147	Jim Welsh	State Representative, District 43, testifies in support of HB 3522.
163	Steve Purchase	Assistant Director, Division of State Lands (DSL), submits and reviews testimony in support of HB 3522. (EXHIBIT C)
191	Rep. Messerle	Asks if administrative rules were discussed.
194	Purchase	Yes. The bill, as amended, would require DSL to go to rule-making to establish criteria for a watershed project to be used as a mitigation bank.
201	Rep. Messerle	Asks about mitigation banking rules.
206	Purchase	In current mitigation banking rules, DSL allows applicant or landowner to do mitigation work and to notify DSL if they plan to use that as future mitigation bank.
210	Rep. Messerle	Asks if Governor's Watershed Enhancement Board (GWEB) projects are included.
213	Purchase	Yes.
214	Rep. Kruse	Asks about the five acre reference.
227	Purchase	The five acre area referenced is for a mitigation bank project. Currently, if an applicant wants to buy credit from Lane County's mitigation bank, more than five acres can't be bought at a time. This bill would allow them to purchase more than five acres of credit.
252	Steve Gordon	Principle Planner, Lane Council of Governments, submits and reviews testimony in support of HB 3522. (EXHIBIT D)

304	Rep. Messerle	Asks if there is a need to fund more mitigation sites.
210	Gordon	If water resources are going to be addressed in a watershed context, then there is a need.
320	Rep. Messerle	Comments on his hope to provide incentives to people who are not getting any grant money for projects.
331	Rep. Kruse	Asks if there is more than one site in the bank.
333	Gordon	Yes. Partnership owns about 1,260 acres in West Eugene. Land is not the limit for the bank.
341	Rep. Kruse	Asks about the area.
345	Gordon	The bank is within Amazon Creek Basin. Discusses how the City of Eugene has added more sites.
365	Chair Messerle	Closes public hearing on HB 3522.
<u>HB 2003 PUBLIC HEARING</u>		
367	Chair Messerle	Opens public hearing on HB 2003.
377	Pat Zwick	Policy Analyst, summarizes HB 2003. Submits statement from Paul Ketchum of the Audobon Society of Portland. (EXHIBIT E)
388	Scott Corwin	Staff, Rep. Lynn Lundquist, submits and reviews testimony in support of HB 2003. (EXHIBIT F)
<u>TAPE 67, A</u>		
002	Corwin	Continues review.
040	Pete Test	Representing Oregon Farm Bureau, submits and reviews testimony in support of HB 2003. (EXHIBIT G)
090	Test	Continues review.
140	Test	Continues review.
146	Rep. Bowman	Asks if Mr. Test believes in the Clean Water Act.
148	Test	Yes.
151	Rep. Bowman	Asks if waterbodies currently listed on the 303(d) list are there because of point and non-point pollution.
155	Test	Yes.
156	Rep. Bowman	Asks if there should be a partnership between point and non-point polluters to clean the waters.
159	Test	Yes.
161	Rep. Bowman	Comments on concerns. Asks how the waterbodies will be cleaned up if both sources are not considered.

170	Test	This problem is being addressed by the Healthy Streams Partnership and the implementation of SB 1010 (1995 Session). The 1010 process requires that any property owner who has a 303(d) listed stream on their property (including federal government) develop a water quality plan which must be approved by the Department of Environmental Quality (DEQ).
211	Chair Messerle	Comments on his concerns regarding additional permitting and costs.
219	Rep. Harper	Asks if the Attorney General is going to get involved in the case.
222	Chair Messerle	Comments that the Attorney General's office is represented.
230	David Schuman	Deputy Attorney General. HB 2003 requires the Attorney General to submit an amicus brief in the 9th Circuit Court of Appeals supporting the position that federal statutes require state approval for a discharge permit only if the discharge is from a point source. Requiring the Attorney General to submit an amicus brief and to take a particular position in that brief is "bad and dangerous policy." The Oregon Department of Justice is a non-partisan, non-political agency.
280	Schuman	The Department feels that it is not appropriate for the Legislature or the Governor to have the authority to dictate to the Attorney General. The Attorney General's office must be able to make the decision to file an amicus brief and on what position to take in that brief.
286	Chair Messerle	Asks if it would make a difference if it was "request" rather than "require."
289	Schuman	It would make a major difference.
290	Chair Messerle	Comments that the proponents of HB 2003 have realized that the language is too strong.
293	Rep. Harper	Asks what is required to have the State of Oregon take a position on this particular case.
298	Schuman	The state could pass a House Resolution asserting a position. It could pass a resolution or even statute directing agencies to request the Attorney General to take one or another position.
312	Chair Messerle	Asks for clarification on requiring a state agency to request an Attorney General opinion.
316	Schuman	The Legislature could also make that request.
318	Rep. Harper	Asks for order of priority for Mr. Schuman's suggestions.
321	Schuman	From the Attorney General's office, the first solution would be the passage of a House Joint Resolution asserting a position.
326	Rep. Kruse	Comments that agency heads are appointed by the Governor, legislators represent the people of Oregon.
345	Rep.	Asks if opinion could differ from that of the committee, if the committee

	Bowman	requested an opinion from the Attorney General.
351	Schuman	That is a possibility.
353	Chair Messerle	Comments.
357	Schuman	Any legislator who gets appropriate legislative permission can ask for an Attorney General opinion.
372	Langdon Marsh	Director, Department of Environmental Quality (DEQ), submits and reviews testimony in opposition to HB 2003. (EXHIBIT H)
TAPE 66, B		
002	Marsh	Continues review.
009	Rep. Messerle	Asks if this could go beyond federal land permits.
011	Marsh	The way HB 2003 is drafted, Section 1 would exclude any discharge from a non-point source of pollution, which would go far beyond the particular issue addressed by Judge Haggerty's decision.
016	Chair Messerle	Comments that the intent was to only include federal lands.
019	Marsh	The second subdivision refers to federal lands, but the first subdivision appears to cover everything DEQ issues 401's for.
025	Marsh	Continues review.
036	Rep. Kruse	Asks if memorandums of understanding are reviewed on an annual basis.
037	Marsh	Some of them are five or more years old. Some of them may be reviewed on a periodic basis, but many of them have not been revised.
044	Rep. Kruse	Asks if review and revision would be difficult.
045	Marsh	DEQ hopes to come to agreement with U.S. Forest Service and other federal agencies on plans to ensure that water quality management plans are put in place on federal lands that would comply with requirements of the Clean Water Act and be, in effect, TMDLs (total maximum daily loads) that would meet requirements of 303(d) and 303(e) of the Clean Water Act.
054	Rep. Harper	Asks if that would deal with the duplication of efforts.
056	Marsh	Would like to develop a general certification for grazing activities on a forest-by-forest basis.
074	Rep. Harper	Comments.
078	Marsh	If a general 401 certification could be done for a particular forest, it may have the effect of the rancher only having to get one piece of paper.
083	Chair Messerle	Asks if DEQ has the authority to do that now.
084	Marsh	May have that authority through emergency regulations. Going to final rule-making and may amend it, if necessary, to make it clear that DEQ

		has the authority.
090'	Chair Messerle	Asks if there has been a cost analysis of the outcome of the court case.
094	Marsh	The initial cost analysis was premised on having to do individual processing of each application. If a generic certification can be done, it would cost significantly less than case by case processing.
112	Chair Messerle	Asks if there are other checks and balances within the system.
119	Marsh	Discusses a possible scenario.
143	Chair Messerle	Asks if DEQ is concerned that there would be other activities, such as aggregate removal, etc., which would be required to go through the same certification process.
152	Marsh	Can't predict, but there are other activities that may fall under 401 authority based on Judge Haggerty's decision.
169	Rep. Kruse	Asks regarding testimony regarding subsections (1) and (2).
178	Marsh	Was addressing the first phrase in subsection (2).
187	Rep. Bowman	Asks for clarification on the 401 permitting process.
195	Marsh	The 401 is not strictly a permit, it is a certification by the state that federal activity complies with state water quality standards or other applicable requirements of state law. It is something that exists in addition to any state permit that might be in force. In the case of grazing, there is no state permit, therefore, there is no duplication in this case.
209	Rep. Bowman	Asks about duplication and layers of permitting processes.
222	Marsh	There isn't a state permit process at all. What there is, is the requirement that the federal agency comply with state water quality standards and laws. They can do that through a water quality management plan that is accepted by DEQ and ultimately the Environmental Protection Agency (EPA). The 401 ensures that compliance will take place immediately, and also provides an enforcement mechanism.
252	Rep. Bowman	Asks how much this will add to DEQ's workload.
257	Marsh	Workload expectation for this year is 50 applications. If this was done on a case-by-case basis, the workload would be significant.
277	Marsh	Continues review.
289	Rep. Messerle	Asks when administrative rules will be adopted.
292	Marsh	Emergency rules were adopted in January.
297	Rep. Messerle	Asks what hearing dates are set.
299	Marsh	Have not set dates yet.

313	Jean Underhill-Wilkenson	Representing Oregon Cattlemen's Association. Testifies in support of HB 2003.
363	Underhill-Wilkenson	Continues testimony.
TAPE 67, B		
002	Underhill-Wilkenson	Continues testimony.
020	Joe Hopson	General Counsel, Oregon Farm Bureau, testifies in support of HB 2003. Discusses issues and questions brought up in previous testimony. Will work with DEQ regarding concerns brought up by Mr. Marsh. Addresses concerns brought up by Mr. Schuman regarding language.
070	Hopson	The problem with the 401 certification process is that it is another process. 401 certification has the potential to impact an incredible number of activities, which may not be what the U.S. Congress had in mind.
097	Jim Myron	Representing Oregon Trout, submits and reviews testimony in opposition to HB 2003. (EXHIBIT I) Also submits a statement from Bill Marlett of the Oregon Natural Desert Association. (EXHIBIT J)
113	Doug Myers	Representing Oregon Environmental Council, submits and reviews testimony in opposition to HB 2003. (EXHIBIT K)
131	Chair Messerle	Closes public hearing on HB 2003.
132	Chair Messerle	Puts committee at ease at 4:59 p.m.
134	Chair Messerle	Calls meeting back to order at 5:01 p.m.
HCR 27 PUBLIC HEARING		
135	Chair Messerle	Opens public hearing on HCR 27.
136	Pat Zwick	Policy Analyst, summarizes HCR 27.
145	Mark Simmons	State Representative, District, 58 testifies in support of HCR 27.
185	Rep. Josi	Asks if the intent is to continue to have the salmon listed.
187	Rep. Simmons	Correct.
190	Rep. Josi	Asks if recovery efforts that are underway are projects that would bring back steelhead.
195	Rep. Simmons	Yes. There is a tremendous amount of suitable habitat already, and work is being done to improve the remainder.

203	Chair Messerle	Asks if there has been any change in the water temperature.
210	Rep. Simmons	Does not have that information.
223	Rep. Kruse	Comments on involvement with Grande Ronde Model Watershed since conception.
234	Chair Messerle	Comments on the Department of Commerce. Asks if there has been any discussion about other approaches which will accomplish the same thing.
250	Rep. Simmons	This is targeted to the Department of Commerce because the National Marine Fisheries Services (NMFS) is contained within that department. It is a huge undertaking and challenge to move federal government. Many efforts have been to acquire recognition of the Willowa County Salmon Plan as the recognized recovery plan. Open to discussion of other avenues in this issue.
269	Jim Myron	Representing Oregon Trout, submits and reviews testimony in opposition to HCR 27. (EXHIBIT L)
305	Rep. Josi	Asks if he believes NMFS will have a recovery plan.
308	Myron	NMFS is legally bound to do that. There has been a draft plan which has never been adopted.
313	Rep. Josi	Asks if the NMFS recovery plan will be the Oregon Plan.
315	Myron	The situation in Northeast Oregon is different because there already is a listed fish stock. Unsure if the Oregon Plan can be "stretched" to accommodate that area of the state. Eventually, it may be.
329	Chair Messerle	Closes public hearing on HCR 27.
330	Chair Messerle	Adjourns meeting at 5:15 p.m.

Submitted By, Reviewed By,

Rebecca M. Scott, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - HB 2095, -1 Amendments dated 4/16/97, Staff, 1 p.

B - HCR 13, Written Testimony, Jim Myron, 1 p.

C - HB 3522, Written Testimony, Steve Purchase, 8 pp.

D - HB 3522, Written Testimony, Steve Gordon, 1 p.

E - HB 2003, Written Testimony, Paul Ketchum, 1 p.

F - HB 2003, Written Testimony, Scott Corwin, 1 p.

G - HB 2003, Written Testimony, Pete Test, 3 pp.

H - HB 2003, Written Testimony, Langdon Marsh, 3 pp.

I - HB 2003, Written Testimony, Jim Myron, 1 p.

J - HB 2003, Written Testimony, Bill Marlett, 1 p.

K - HB 2003, Written Testimony, Doug Myers, 2 pp.

L - HCR 27, Written Testimony, Jim Myron, 1 p.