

SENATE COMMITTEE ON WATER AND LAND USE

May 6, 1997 Hearing Room C

8:30 AM Tapes 81 - 82

MEMBERS PRESENT:

Sen. Veral Tarno, Chair

Sen. Bob Kintigh, Vice-Chair

Sen. Ginny Burdick

Sen. Bill Fisher

Sen. David Nelson

Sen. Thomas Wilde

MEMBER EXCUSED: Sen. Ted Ferrioli

STAFF PRESENT:

Mark Volmert, Administrator

Nancy Masee, Administrative Support

MEASURE/ISSUES HEARD:

SB 417 Work Session

HB 2502 Public Hearing and Work Session

HB 2768 Public Hearing and Work Session

HB 3184 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.

Tape/#	Speaker	Comments
TAPE 81,A		
005	Chair Tarno	Opens meeting at 8:35 AM, and opens work session on SB 417.
<u>SB 417</u> <u>WORK</u> <u>SESSION</u>		

017	Mark Volmert	Committee Administrator, gives background on SB 417. (EXHIBIT A)
025	Sen. Nelson	MOTION: Moves to ADOPT the -3 amendments to SB 417.
027	Chair Tarno	Asks for discussion.
030	Chair Tarno	Hearing no objections, the motion CARRIES.
032	Sen. Nelson	MOTION: Moves SB 417 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 2 - Burdick, Ferrioli
035	Chair Tarno	The motion CARRIES. SEN. NELSON will lead discussion on the floor.
038	Chair Tarno	Closes work session on SB 417; opens public hearing HB 2502.
<u>HB 2502</u> <u>PUBLIC</u> <u>HEARING</u>		
043	Rep. Bryan Johnston	District 31, gives background on HB 2502, says this is a good bill; expedites mediation process.
047	Sen. Fisher	Asks about mediation process and a deadline.
049	Rep. Johnston	Says it does not have a deadline.
054	Rep. Johnston	Discusses appellate rights.
059	Sen. Fisher	Asks if this limits the number of people mediating.
062	Rep. Johnston	Responds if you want to maintain your rights to appeal, you have to join the mediation within 21 days; if you choose not to join the mediation, you waive your right to appeal.
075	Christine Cook	1000 Friends, supports HB 2502; no firm deadline for intervention presently. Without a specific deadline, a late intervenor could act as a spoiler to the mediation proceedings. (EXHIBIT B)
128	Sen. Fisher	Asks if this would affect 1000 Friends' ability to intervene.
137	Cook	The law says that participation at the local level must take place before intervention can take place.
166	Chair Tarno	Closes public hearing on HB 2502; opens work session on HB 2502.
<u>HB 2502</u> <u>WORK</u> <u>SESSION</u>		
		MOTION: Moves HB 2502A to the floor with a DO PASS

169	Sen. Kintigh	recommendation.
		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Ferrioli
175	Chair Tarno	The motion CARRIES. SEN. KINTIGH will lead discussion on the floor.
177	Chair Tarno	Closes work session on HB 2502, and opens public hearing on HB 2768.
<u>HB 2768</u> <u>PUBLIC</u> <u>HEARING</u>		
190	Todd Heidgerken	Water for Life, gives background on HB 2768, supports HB 2768. Clarifies existing statutes for existing surface water diverted for stock purposes.
225	Martha Pagel	Water Resources Department, agrees with Heidgerken's testimony; HB 2768-A clarifies other sources than natural streams such as springs, lakes, and stored water. Supports HB 2768-A. (EXHIBIT C)
232	Jim Myron	Oregon Trout, supports HB 2768-A.
241	Chair Tarno	Closes public hearing on HB 2768, and opens work session on HB 2768.
<u>HB 2768</u> <u>WORK</u> <u>SESSION</u>		
	Sen. Nelson	MOTION: Moves HB 2768 to the floor with a DO PASS recommendation.
		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Ferrioli
249	Chair Tarno	The motion CARRIES. SEN. BURDICK will lead discussion on the floor.
250	Chair Tarno	Closes work session on HB 2768, and opens public hearing on HB 3184.
<u>HB 3184</u> <u>PUBLIC</u> <u>HEARING</u>		
		Division of State Lands (DSL), gives background on HB 3184-A

256	Paul Cleary	which amends Oregon's removal-fill law to streamline the process for obtaining emergency authorizations for projects related to floods. (EXHIBIT D)
293	Cleary	Explains amendment which would change from line 20, page 2, "shall" to "whenever practicable."
325	Michael Cape	Intern for Rep. VanLeeuwen, says this is a good bill supported by Rep. VanLeeuwen. (EXHIBIT E)
330	Todd Heidgerken	Water for Life, supports HB 3184-A and the conceptual amendment.
323	Sen. Kintigh	Asks what the emergency scenario is in this situation.
343	Cleary	Says current law requires 24 hour notification to approve or deny work that occurred, and allows authorization over the phone.
362	Sen. Nelson	Asks about foreseen and unforeseen situations.
371	Cleary	Says under their rules, foreseen emergency circumstances action can be carried out.
373	Sen. Nelson	Asks if rules will be different with other agencies.
392	Cleary	Says DSL works with ODFW, and DSL rules and statutes control the removal-fill program. Forest Practices Act deals with activities associated with commercial forest; DSL is trying to develop a handout for landowners to help direct them to the right agency and process.
402	Chair Tarno	Closes public hearing on HB 3184, and opens work session on HB 3184.
HB 3184 WORK SESSION		
442	Sen. Kintigh	MOTION: Moves to AMEND HB 3184 on page 2, in line 20, after "shall," insert "whenever practicable".
444	Chair Tarno	Asks for discussion. VOTE: Hearing no objection, declares the motion CARRIED.
451	Sen. Kintigh	MOTION: Moves HB 3184 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 - Ferrioli
456	Chair Tarno	The motion CARRIES. SEN. NELSON will lead discussion on the floor.
458	Chair Tarno	Adjourns meeting at 9:05 AM.

Submitted By, Reviewed By,

Nancy Masee, Mark Volmert,

Administrative Support Administrator

EXHIBIT SUMMARY

A - SB 417, -3 amendments, staff, 2 pp

B - HB 2502, written testimony, Christine Cook, 2 pp

C - HB 2768, written testimony, Martha Pagel, 3 pp

D - HB 3184, written testimony, Paul Cleary, 4 pp

E - HB 3184, written testimony, Michael Cape, 1 p

SENATE COMMITTEE ON WATER AND LAND USE

May 6, 1997 Hearing Room A

5:00 PM Tapes 83 - 85

MEMBERS PRESENT:

Sen. Veral Tarno, Chair

Sen. Bob Kintigh, Vice-Chair

Sen. Ted Ferrioli

Sen. Bill Fisher

Sen. David Nelson

MEMBER EXCUSED:

Sen. Ginny Burdick

Sen. Thomas Wilde

STAFF PRESENT:

Mark Volmert, Administrator

Nancy Masee, Administrative Support

MEASURE/ISSUES HEARD:

SB 1140 Public Hearing

SB 1160 Public Hearing

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Tape/#	Speaker	Comments
TAPE 83, A		
005	Chair Tarno	Opens meeting at 5:05 PM.
007	Mark Volmert	Committee Administrator, gives background on SB 1040 and SB 1060. (EXHIBIT A)
<u>SB 1140 and SB</u>		

1160 PUBLIC HEARING		
033	Chair Tarno	Opens public hearing on SB 1140 and SB 1160, and gives audience instructions in testifying.
046	Gary Benson	President, Northwest Steelheaders, says quit claiming as presented in SB 1140 and SB 1160 will not stand up in courts; public access is the question.
097	John Garren	Portland, Director, National Organization for Rivers, says they believe the beds and banks of rivers belong to the public, and the courts have upheld that (EXHIBIT B) .
123	Sen. Kintigh	Asks definition of navigable stream.
127	Garren	Says the Supreme Court's definition is that if a river is floatable in fact, it is navigable by law.
138	Sen. Kintigh	Asks about obstructions of dams, rapids, rocks are in all rivers; what do they consider portage by obstructions.
148	Sen. Kintigh	Asks about high water versus low water issues.
154	Garren	Says that portage is a right that goes along with navigability, and the mean high water line is determined by engineers. This is not always practical, but reasonable people can determine the mean high water line.
168	Sen. Fisher	Asks how much portage to floatage distance is in a navigable river.
184	Garren	Says the floater determines the portage and floatage distances.
187	Sen. Ferrioli	Asks why the Steelheaders brought the action to declare navigability.
194	Gary Benson	Responds to protect the public rights; landowners have acted against the interests of the Steelheaders.
210	Sen. Ferrioli	Asks if access to the beds and banks will increase fishing.
214	Benson	Says they are trying to preserve their rights.
218	Sen. Ferrioli	The bill is not to increase angling access.
225	Benson	Says law enforcement and landowners challenge the Steelheaders.
232	Sen. Ferrioli	Says constitutional rights are the issue. Asks if property rights are an issue.
242	Benson	Ownership is not the issue, the easement right is the issue. The beach issue was solved by saying the public has a reasonable issue.
256	Sen. Fisher	Says that landowners have rights.
262	Benson	Responds the landowners have problems, but public has rights too on the waterways.
	Rep. Tim	

275	Josi	Asks about reasonable easement rights.
282	Benson	Says the public has rights to be on the bed and bank to the mean high water mark.
291	Josi	Asks about duck hunting in flood times into pastures on private land.
317	Benson	Replies they do not condone trespassing on private property.
349	Chapin Milbank	Attorney, Salem, North Santiam River Guides member, opposes SB 1140 and SB 1160. Resolution says public rights are to float, to anchor, to angle, to scout, to portage, to wade and walk on banks to line of high water (EXHIBIT C) .
TAPE 84, A		
013	Milbank	Continues presentation on public rights in law.
022	Mike Huddleston	Director, Salem Chapter, Salem, Coalition of River Users, summarizes Larry Beaver's written testimony. Opposes SB 1140 and SB 1160; quit claiming is not the answer (EXHIBIT D) .
071	John Colburn	Gives testimony on Montana Stream Access Law (EXHIBIT E) .
131	Sen. Nelson	Asks about experience with trespassing in Montana.
148	Paul Donheffner	Marine Board, boating agency for the state of Oregon; regulates boats and waters. Division of State Lands work group did not find a solution (EXHIBIT F) .
187	Donheffner	Issue not who owns bed and banks but activities conducted; Board believes in * providing better public access * user management * law enforcement increased * financing of programs through fees and management
230	Sen. Nelson	Asks what kinds of fees are needed.
236	Donheffner	Responds that in the 1980's an attempt was made to implement fees.
241	Sen. Fisher	Asks about charging kayaks and floaters.
256	Donheffner	Says that's what he was suggesting.
276	Sen. Ferrioli	Asks about permit system on Deschutes River.
284	Donheffner	Responds describing fee system.
306	John	Camp Fire Boys and Girls, Sandy River Camp; supports SB 1140. The safety of the Camp Fire Boys and Girls is at risk (EXHIBIT

	Campbell	G).
353	Jon Justesen	Rancher, says respect for private ownership of property is needed. Feels that recreational use of the river devastates the river (EXHIBIT H).
TAPE 83, B		
004	Justesen	Continues on rights of private property owners. Need less access to wildlife, not more.
032	Frank Conte	Oxbow Orchard, Corvallis, former zoology professor; gives background on his experience in creating a wildlife management policy on his acreage (EXHIBIT I).
055	Conte	Continues with his experience. Says the opportunity of recreation involves * management of floaters needed during flood times * rights and responsibilities are in conflict * SB 1160 and SB 1140 have problems
109	Glen Seidler	Salem, North Santiam River Guides, says that landowners are locking out recreationists. Low and high water marks discussed; explains needs of river users.
173	Sen. Nelson	Says that newcomers have created problems.
201	Sen. Ferrioli	Asks about the sand bar and private property use.
223	Sen. Fisher	Comments on high water and driftwood during excessively high water. Relates his experience living on the river with additional floaters.
293	Kathy Amundson	Sandy River property owner, says asking permission to come on property is a courtesy; floaters are not a problem; coming ashore is the problem (EXHIBIT J). Says Oregon Department of Fish and Wildlife (ODFW) owns property which is near their home which could be used by the public.

**TAPE
84, B**

025	Amundson	Says the state property should have the same responsibility as private property owners.
039	Amundson	Says the youth camps should be protected at least.
064	Beverly Jones	Private property owner, Sandy River, opposes navigability studies. Says the Sandy River is not navigable, and describes the term navigability at time of statehood. Thinks certain areas should be kept open for the public, not the small rivers (EXHIBIT K).

- 122 Lynette Kerslake Landowner, along the Sandy River, supports SB 1140 and SB 1160; Sandy River is not navigable **(EXHIBIT L)**.
- 180 Kerslake Continues testimony on family's work to preserve their land on the Sandy River.
- 201 Don Eixenberger Council of Fly Fisherman, opposes SB 1140 and SB 1160 because they deny fishermen access to bed and banks **(EXHIBIT M)**.
Coordinator for landowners, supports SB 1140 and SB 1160; supports the -1 amendments **(EXHIBIT N)**
- * protects riparian rights
- 254 Greg Leo * creates recreational rights
- * local, state, federal lands are accessible by the bills
- * GIS map by DSL showing the rivers categorized to show recreational accessible areas
- 335 Edmund Duyck Property owner, Tillamook County and Washington County, lives on the river and charges recreationists to fish there; wants to manage his property **(EXHIBIT O)**.
- TAPE 85, A**
- 004 Duyck Continues presentation on problems of private ownership on waterways.
- 031 Pete Test Oregon Farm Bureau, part of stakeholder group, supports SB 1140 and SB 1160 **(EXHIBIT P)**
- 077 Sen. Nelson Asks about daily use and daily minimum load in their studies.
- 087 Pat Snow Land Use Coordinator, ODFW, opposes SB 1140 and SB 1160; does not agree with the different classes; navigability test; wants amendments to these bills **(EXHIBIT Q)**
- 123 John Lilly Division of State Lands (DSL), gives the department's views; says it takes time to take the testimony and put it together. Says DSL will help with amendments **(EXHIBIT R)**.
- 157 Sen. Fisher Asks if private landowners are to continue with the abuse by the public on their lands.
- 166 Lilly Believes that illegal behavior should be enforced by the law. Increased law enforcement should be sought for those who trespass and commit other abuses against property owners.
- 174 Sen. Nelson Asks if overuse of rivers could result from accessibility.
- 193 Snow Says that the best methods limit the use such as on the Deschutes; regulations and limitations on rivers with very high use are needed.
- 200 Chair Tarno Adjourns meeting at 7:10 PM.

Submitted By, Reviewed By,

Nancy Masee, Mark Volmert,

Administrative Support Administrator

EXHIBIT SUMMARY

A - SB 1140, -1 amendments, staff, 10 pp

B - SB 1140, SB 1160 - written testimony, John Garren, 3 pp

C - SB 1140, SB 1160 - written testimony, Chapin Milbank, 1 p

D - SB 1140, SB 1160 - written testimony, Mike Huddleston, 3 pp

E - SB 1140, SB 1160 - written testimony, John Colburn, 6 pp

F - SB 1140, SB 1160 - written testimony, Paul Donheffner, 4 pp

G - SB 1140, SB 1160 - written testimony, John Campbell, 4 pp

H - SB 1140, SB 1160 - written testimony, Jon Justesen, 2 pp

I - SB 1140, SB 1160 - written testimony, Frank Conte,

J - SB 1140, SB 1160 - written testimony, Kathy Amundson, 21 pp

K - SB 1140, SB 1160 - written testimony, Beverly Jones, 6 pp

L - SB 1140, SB 1160 - written testimony, Lynette Kerslake, 2 pp

M - SB 1140, SB 1160 - written testimony, Don Eikenberger, 1 p

N - SB 1140, SB 1160 - written testimony, Greg Leo, 5 pp

O - SB 1140, SB 1160 - written testimony, Edmund Duyck, 1 p

P - SB 1140, SB 1160 - written testimony, Peter Test, 2 pp

Q - SB 1140, SB 1160 - written testimony, Pat Snow, 2 pp

R - SB 1140, SB 1160 - written testimony, John Lilly, 8 pp
