

SENATE COMMITTEE ON WATER AND LAND USE

January 30, 1997 Hearing Room C

9:00 A.M. Tapes 12 - 13

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:

U. S. Army Corps of Engineers

Oregon Department of Fish and wildlife

Division of State Lands

Water for Life

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 11, A		
001	Chair Tarno	Calls meeting to order at 9:00 a.m.
<u>Division of State</u>		

Lands		
003	Paul Cleary	Director, Division of State Lands gives presentation on that agency's roles that are water related (EXHIBIT A).
014	Cleary	Continues presentation on flood recovery efforts: <ul style="list-style-type: none"> * Minimized red tape * Encourage public contacting * Emergency authority to protect property * Exemptions under removal fill law allowing reconstruction of levies, dams, banks, bridges, roads
040	Cleary	Continues presentation on mitigation banking and compensation
044	Cleary	Describes process leading to mitigation banking in wetlands.
050	Sen. Kintigh	Asks about approximate size of area eligible for mitigation transfer.
054	Cleary	Responds that it should be located in the same drainage area and within a 40 mile radius
059	Cleary	Gives an example of mitigation banking, restoration Monitory incentive to land owner
064	Chair Tarno	Asks about highway going through wetland area owned privately.
094	Cleary	Continues on mitigation banking <ul style="list-style-type: none"> * Creating a bank and points * Project by project
100	Cleary	Protection in lieu of compensatory mitigation of existing wetlands Preservation of areas
129	Cleary	Continues on wetlands definition Uses same definition as U. S. Corps of Engineers (Corps), Division of State Lands (DSL), Natural Resources Conservation Service (NRCS), Environmental Protection Agency (EPA) <ul style="list-style-type: none"> * Scientific definition * Hydric soils, hydrology, dominance of hydrophytic vegetation
153	Chair Tarno	Asks about aquatic vegetation.
200	Cleary	Continues presentation on Coastal Salmon Restoration Initiative.
252	Cleary	Continues presentation on salmon spawning areas
		Asks about 303(d) list and relationship between DLS map and

279	Chair Tarno	Department of Environmental Quality (DEQ) map
289	Cleary	Responds that they can work with DEQ to provide information
290	Sen. Kintigh	Asks about Lower Umpqua on map.
298	Cleary	Responds that that is an area of contention with the Corps and NMFS, regarding the fish passage area rather than a spawning area.
303	Chair Tarno	Asks about Oregon Department of Fish and Wildlife (ODFW)
314	Sen. Kintigh	Asks if trees planted in wetland areas can later be harvested.
319	Cleary	Responds and introduces Larry Deveroy.
320	Larry Deveroy	Mitigation Specialist, relates his personal opinion that one would be subject to Forest Practices Act, and that DSL would not be involved.
352	Chair Tarno	Asks about review of these areas as salmon habitat between state agencies for protecting, primarily temperature, any standards being reached from all these different agencies.
400	Cleary	Responds that the Coastal Salmon Initiative and ODFW; 303(d) list coordinated with DEQ and DSL. Enhancing natural conditions options are limited.
TAPE 13, A		
024	Cleary	Continues on threatened areas.
027	Cleary	Continues on the 404 assumption bill (SB 207). * Eliminate duplication with federal government * Emphasize protection
047	Sen. Burdick	Comments on industrial permit program, asks if federal law did not allow.
052	Cleary	Responds that with the Corps of Engineers and Division of Lands working towards * Greater protection of the resource * Reducing steps for persons * Want to keep federal funding
070	Sen. Burdick	Asks how many states have taken over the 404 program.
074	Cleary	EPA identifies deficiencies.
079	Sen. Wilde	Asks if Washington chose not to use 404. Asks why other states have not chosen 404.
087	Cleary	New Jersey and Michigan to date have chosen 404; responds they have a report on Washington's findings; other states have looked at

		it but due to question of federal funding have delayed decision
092	Sen. Wilde	Asks about Department of Administrative Services.
095	Cleary	Responds they are hopeful for federal funding to go with the state commitment. The land board is skeptical about federal funding.
103	Chair Tarno	Asks about funding from federal sources.
106	Cleary	Responds the state will not assume the program if the federal government does not fund it.
113	Sen. Burdick	Asks what happens if the federal government initially funds, then backs off.
117	Chair Tarno	Indicates SB 207 will be heard by the committee and the issue of returning authority will be discussed .
122	Cleary	Continues on navigability ownership claims.
134	Cleary	Continues on navigability determination. * 1995 session passed measure on navigability * John Day navigability determination suspended * Sandy River navigability study currently being reviewed
155	Cleary	Conflict between landowners and navigability
<u>U. S. Army Corps of Engineers</u>		
177	Burt Paynter	U. S. Army Corps of Engineers, (EXHIBIT B) * River & Harbor Act of 1899 * Clean Water Act Section 404 * Marine Protection, Research and Sanctuaries Act of 1972, Sect 103
220	Paynter	Continues on regulation of navigable waters
227	Chair Tarno	Asks about Corps role in finding contamination in water.
246	Sen. Burdick	Asks about sediment testing
251	Paynter	Responds release in sediments is most likely included
259	Paynter	Continues on coordination of State Lands and Corps relationships
278	Paynter	Trying to minimize ways to issue permits with overlapping regulations.
287	Paynter	State permits on more minor activities which is the majority of permits.
300	Paynter	Regulation of navigable waters adjacent to wetlands is regulated by the Corps by law.

321	Paynter	Continues on mitigation banking and the Corps policy Compatible with Division of Lands
350	Chair Tarno	Asks about other federal agencies using mitigation banking.
351	Paynter	Responds about other federal agencies filling wetlands.
360	Sen. Kintigh	Asks about bank stabilization and other programs
369	Paynter	Protecting against bank erosion on public facilities.
375	Sen. Nelson	Asks about Columbia River flow at different times of the year.
385	Paynter	Can provide information on flows, storage capacity of dams
390	Sen. Nelson	Asks about 1996 flood at the confluence of the Willamette and Columbia.
393	Paynter	Responds that he thought that they said about 5' more of water would have resulted without the controls.
TAPE 12, B		
<u>Oregon</u> <u>Department of</u> <u>Fish and Wildlife</u>		
013	Rod Ingram	Oregon Department of Fish and Wildlife (ODFW) introduces Jill Zarnowitz. Relates a change in directorship taking place (EXHIBIT C).
033	Jill Zarnowitz	Gives presentation on water and stream habitat. * Wildlife policy * State and federal statutes required * Technical assistance to other agencies * Water rights, fill removal, forest practices
070	Zarnowitz	Continues on water quality, water rights * Hydro-electric dam licensing and relicensing * Forestry and lands issues
077	Chair Tarno	Asks if the appropriations of water rights was more than the flow available.
089	Zarnowitz	Explains how they determined flow as compared to Water Resources Department.
094	Sen. Kintigh	Asks about minimum stream flows related to other animals than fish.
		Responds that other wildlife such as amphibians, do not have a

100	Zarnowitz	minimum.
115	Sen. Kintigh	Asks about map and the gaps in the streams.
120	Zarnowitz	Responds that the stretches are to save spawning habitat or a particular species.
143	Chair Tarno	Asks about the 303(d) list as a comparison with other studies on the habitats.
155	Zarnowitz	Responds that mapping with DEQ, DSL, the 303(d) the stream water rights list and Coastal Salmon Initiative maps.
170	Chair Tarno	Asks how they determine temperature gauges in streams.
177	Zarnowitz	Responds about their part in temperatures determination. Generally, they are not the agency that does that.
181	Zarnowitz	Comments on the Rogue River fry incident of emerging too soon.
212	Zarnowitz	DEQ is doing a temperature forum in the spring.
213	Sen. Kintigh	Asks about the temperature being too cold coming out of Cougar Dam for the fish to spawn.
230	Zarnowitz	Responds on cooling towers.
235	Sen. Kintigh	Asks if the temperature gets too low for the salmonids to spawn.
264	Sen. Nelson	Asks about what has the greatest affect on water temperature.
275	Zarnowitz	Responds to different causes of water temperature change.
284	Sen. Nelson	Asks about air temperature.
292	Zarnowitz	Responds as to different conditions.
330	Sen. Nelson	Asks if it has the greatest effect. Comments on shading.
335	Zarnowitz	Solar radiation on the water has the greatest effect.
340	Zarnowitz	Comments on hydro-electric projects by ODFW.
353	Sen. Nelson	Asks if ODFW perceived a shift in public opinion.
368	Zarnowitz	Does not recall what the strategic planning process response; a broad based survey selected
387	Sen. Nelson	Comments on public opinion influence on ODFW.
393	Ingram	Explains the plan has not been adopted
395	Ingram	Bill being introduced regarding removing the sunset from the fish habitat improvement tax credit and are asking for a five year extension; gives land owners a break, Oregon Heritage Foundation, programs on north and mid coast and south coast.
TAPE 13, B		
017	Sen. Fisher	Raises a question about the earth temperature related to water temperature.
Water for Life		
	Todd	

037	Heidgerken	Executive Director, Water for Life, Inc. introduces himself.
040	Richard Koesan	Water for Life, explains their organization as a producer driven, agriculture organization founded in 1990 dealing with water issues.
043	Koesan	Discusses their interests in proposed legislation. * Offstream livestock watering * Forfeiture of water
050	Sen. Kintigh	Asks about springs being exemptions if not leaving property
	Koesan	Talks on forfeiture * Rate and duty of water use in an attorney general opinion codified * Minimum perennial stream flows * In-stream water rights * Storage legislation allowing enhanced storage during flood and heavy rainfall * Fish screening program supported
080	Heidgerken	Responds on minimum perennial stream flows that need to be converted to instream water rights pursuant to the 1987 Instream Water Act; Water for Life does not intend to impact those.
100	Sen. Nelson	Responds on forfeiture as pertaining to conservation
103	Koesan	Responds that conservation programs are not utilized.
	Sen. Nelson	Asks about incentives to conserve.
110	Koesan	Relates that statutes on conservation have programs in place; there is a reluctance on the part of citizens to participate in the programs.
116	Sen. Tarno	Asks if fear of forfeiture is one cause for conservation lack of participation
127	Koesan	Comments continue on * Healthy Streams Partnership * Coastal Salmon Restoration Initiative * 303(d) program under the Clean Water Act by DEQ
145	Koesan	Explains general fund should be the source obligation on Healthy Streams Partnership and Coastal Salmon Restoration Initiative.
147	Koesan	Healthy Streams Partnership positions, DSL, Water Resources, and other programs trying to be fit into the big picture.

		* National Resources Investment Account, \$20 million fund
190	Koesan	303(d) listing of over 800 streams * By variations in temperature * Change in temperature standards allowed by EPA, DEQ
209	Sen. Fisher	Asks about checking streams in Oregon, how many more will be added to the list.
212	Heidgerken	Comments that the list will grow * More information and data available * Issues other than temperature, such as sediment, will be made evident
220	Chair Tarno	Adjourns at 10:40 a.m.

Submitted By, Reviewed By,

Nancy Masee, Mark Volmert,

Administrative Support Administrator

EXHIBIT SUMMARY

A - Testimony, Division of State Lands, Paul Cleary, 32 pp.

B - Testimony, U. S. Army Corps of Engineers, Burt Paynter, 1 p.

C - Testimony, Oregon Department of Fish and Wildlife, Jill Zarnowitz, 10 pp.
