

SENATE COMMITTEE ON WATER AND LAND USE

February 20, 1997 Hearing Room C

9:00 A.M. Tapes 19 - 21

MEMBERS PRESENT:

Sen. Veral Tarno, Chair

Sen. Bob Kintigh, Vice-Chair

Sen. Ginny Burdick

Sen. Ted Ferrioli

Sen. Bill Fisher

Sen. David Nelson

Sen. Thomas Wilde

MEMBER EXCUSED:

STAFF PRESENT:

Mark Volmert, Administrator

Nancy Massee, Administrative Support

MEASURE/ISSUES HEARD:

Introduction of LCs 1118, 1119, 1121

SB 208 Public Hearing and Work Session

Natural Resources Agencies Budget Presentation

on Healthy Streams Partnership

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 19,A		
005	Chair Tarno	Calls meeting to order at 9:05 a.m.

<u>INTRODUCTION OF LC 1118, LC 1119, LC 1121</u>		
006	Chair Tarno	Asks committee to introduce LC 1118,.LC 1119, and LC 1121.
007	Sen. Kintigh	MOTION: Moves LC 1118. dated February 6, 1997; LC 1119, dated February 6, 1997; LC 1121, dated February 6, 1997, BE INTRODUCED as committee bills.
008	Chair Tarno	Hearing no objection, declares the motion CARRIED. (LC 1118 introduced as SB 641, LC 1119 introduced as SB 640, LC 1121 introduced as SB 642.)

SB 208 PUBLIC HEARING

014	Chair Tarno	Opens public hearing on SB 208.
015	Paul Cleary	Director, State Land Division, gives background on SB 208. To increase responsiveness to applicants, the Division proposes this measure to more closely align the scenic waterway permit process with removal fill law. (EXHIBIT A)
043	Sen. Kintigh	Asks about yardage in this issue.
048	Cleary	Responds about any kind of removal fill has to be approved.
050	Sen. Ferrioli	Asks about a 50-yard exemption for removal of materials.
051	Cleary	Responds that in scenic waterways the exemption does not apply.
063	Chair Tarno	Asks for additional comments from the audience. Closes public hearing on SB 208.

SB 208 WORK SESSION

064	Chair Tarno	Opens work session on SB 208.
065	Sen. Kintigh	MOTION: Moves SB 208 to the floor with a DO PASS recommendation.
066		VOTE: 6-0
067	Chair Tarno	EXCUSED: 1 - Wilde Hearing no objection, declares the motion CARRIED. SEN. FERRIOLI will lead discussion on the floor.
068	Chair Tarno	Closes work session on SB 208.

NATURAL RESOURCES

AGENCIES BUDGET PRESENTATION

081	Chair Tarno	Introduces Ken Rocco, Legislative Fiscal Office and Laurie Warner, Department of Administrative Services (DAS), to introduce budget for healthy streams partnership and salmon initiative. Gives background on budget relating to the governor's plan and agencies' packages (EXHIBIT B)
095	Ken Rocco	* proposed bottle tax funding * general funding
114	Rocco	Reviews budget summary.
116	Laurie Warner	DAS, summarizes budgets for agencies. SB 5544 funding with bottle tax and agencies
155	Sen. Burdick	Asks about investment budget as the bottle tax portion of the budget.
157	Warner	Explains three-cent bottle tax proposed by the governor.
166	Sen. Fisher	Responds that this will need a lot of money over a long period
172	Warner	Responds that this is the beginning proposal of the plan
189	Warner	Continues presentation on proposed positions.
202	Chair Tarno	Asks about Department of Agriculture (ODA) positions and Department of Environmental Quality(DEQ) positions and costs of these.
208	Warner	Explains the ODA funds in their package provisions. There are differences in funding that require going through each agency individually. Continues presentation on the Oregon Department of Fish and Wildlife (ODFW) positions and descriptions. Forestry Department positions are described. Water Resources Department involvement explained in positions.
235	Warner	* Governor's Water Enhancement Board (GWEB) grants explained * Soil & Water Conservation Districts * Extension Service
258	Warner	Continues presentation on position by Division of Land Conservation and Development (DLCD). Concludes presentation on investment budget funding by bottle tax. Refers to budget in other appropriation; 11 positions, Ways and Means Committee did not include this package in the budget.
306	Rocco	ODFW two packages related 201, Sake of Salmon, multi-state effort, providing \$200,000 general fund. Package 300 uses \$1.1 million to fund ten habitat biologists

350	Sen. Kintigh	Asks about consultants to federal agencies.
364	Rocco	Responds in his opinion that these positions would be to give their own expertise from the agency.
378	Rocco	Oregon Department of Forestry (ODF) funds are explained for positions to staff forest land information and technical assistance. 25,000 board feet subject to harvest task
<i>TAPE 20, A</i>		
008	Rocco	Continues presentation of agencies' budgets. State Police budget positions to be included for protection of the program, and DEQ programs which would restore 14 positions
032	Chair Tarno	Asks about total positions being talked about.
039	Rocco	Explains not all are new positions.
040	Warner	Explains page 11 chart to display positions.
047	Sen. Ferrioli	Asks about reference in notebook, page 11.
058	Chair Tarno	Calls the Department of Agriculture (ODA) to testify.
061	Phil Ward	Department of Agriculture, gives background on their position in the salmon restoration initiative and the healthy streams partnership. (EXHIBIT C). Continues presentation on positions requested in the plan.
081	Ward	* Increase in number of basins requires increase of positions * Water quality technicians increased * State and federal mandates to be met
114	Sen. Kintigh	Asks how duplication of effort will be avoided.
119	Ward	Responds that they have a set clientele in the agriculture community and that municipal issues will not be addressed, and that authority and expertise will remain under Agriculture Department.
133	Chair Tarno	Comments on SB 1010 time line and the 303(d) listings relating to total maximum daily loads (TMDL)
141	Ward	Responds that DEQ's responsibility is to get agriculture components, forestry components, municipal components and any other components to package in the final TMDL.
149	Chair Tarno	Asks about sub-basins
		Anywhere there is an agriculture component their department will address the pollution. DEQ addresses other sources. Describes 3 tiered scheme in identifying sources of investigation for agriculture.

* Basins with coastal salmon issues

157	Ward	* DEQ priority list TMDL short list
		* Tier 2
190	Ward	Describes Tillamook, Umpqua, Rogue basins as the top listings. Remaining list will follow the TMDL short list by DEQ.
196	Chair Tarno	Asks about the 19 positions to address these three areas.
199	Ward	Not all 19 positions are in those areas, Grande Ronde in eastern Oregon, Bear Creek in Medford and Tualatin basin.
218	Sen. Nelson	Asks how the department will meet the quality needed in their staff
229	Ward	ODA has to put the legal framework together to cover the legal water quality management for agriculture.
255	Ward	Continues presentation on how ODA implements plan.
271	Ward	Continues presentation on plan's implementation in 91 sub-basins
277	Sen. Ferrioli	Comments on interfaces of SB 1010 and its implementation. Asks about recalcitrant land owner or noncooperative land owner and how they will deal with this issue.
318	Ward	SB 1010 does not override U. S. Constitutional rights. Gives example of a dairy emitting animal waste polluting a stream. Legal means had to be used to deal with the owner.
351	Ward	Comments that in Tualatin they identified prohibitive conditions like erosion beyond a certain extent, animal waste discharge in waters, specific things to tell land owners who were to figure out the solution. As yet they have not taken enforcement actions in the Tualatin basin.
385	Sen. Kintigh	Asks about manure on the land that leaks into the stream inadvertently.
393	Ward	Responds that the law requires that manure be put on the land at the rate plants can take it up. Over-application could be harmful to the pastures.

TAPE 19, B

021	Chair Tarno	Asks if ODA has asked for an opinion concerning a conflict with Measure 30.
028	Ward	Responds that he does not recall any conflict with Measure 30.
033	Sen. Ferrioli	Comments that so far there are no combative issues, but the access and entry issue will be confrontational. Asks if there is provision for potential litigation by the agency.
050	Ward	Responds that their goal is to avoid litigation; if a situation arises, the legal steps will have to be followed.
062	Sen. Fisher	Asks about river front property of small landowners and the affect of SB 1010.
064	Ward	Responds that SB 1010 relates to agricultural land and practices.

072	Chair Tarno	Asks Captain Ball to speak about enforcement. Captain, Oregon State Police (OSP), Fish and Wildlife, gives presentation on Illinois Valley irrigation issues, an area where the landowners cooperate in identifying issues with salmon restoration
073	Lindsey Ball	* Watershed council there * Compliance of 15-percent of owners with push-up dams * No citations issued this year Continues presentation on enforcement policies * No strict enforcement up until now
126	Ball	* Most want to comply according to water rights * Fish screening Funding through Bureau of Reclamation and others available
145	Chair Tarno	Asks how long the OSP has been assisting in enforcement issues in this area of Oregon Department of Fish and Wildlife (ODFW). Comments that they have always been available, not always called upon; it is not the emphasis of the OSP; additional 13 officers are needed according to the governor's plan to implement clean streams.
156	Ball	
163	Chair Tarno	Asks about environmental crimes.
166	Ball	Responds those crimes that are typically point source pollution by an industry or an individual that pollutes a waterway, or contaminate air quality or the landscape.
170	Chair Tarno	Asks about overturning an oil truck near a stream.
180	Sen. Fisher	Asks about 15-percent compliance by owners of push-up dams
197	Ball	Responds that in the Illinois River Valley there are 26 dams and 3 or 4 are in compliance; 22 or 23 in non-compliance
237	Chair Tarno	Asks about other tributaries in the state with this issue.
239	Ball	Explains that push-up or diversion dams are a very common practice throughout Oregon for irrigation in conjunction with water rights.
256	Ball	Continues presentation on Columbia River above Bonneville Dam when in 1992 an inventory of landowners showed there was a 17-percent compliance of screening regulations; however, the landowners were ready and willing to comply and compliance has

		increased to 98 percent. Predicts the Illinois Valley will have the same results.
293	Sen. Fisher	Asks how long screening laws have been in place.
297	Ball	Last revisions of the screening laws were in 1987 or 1989; but it goes back much longer.
305	Sen. Fisher	Comments that the laws have been there, but not enforced.
309	Ball	Responds that the laws have not been stringently enforced because of the cooperativeness with natural resource agencies by landowners. But the time has come to ensure existing laws are complied with.
334	Martha Pagel	Director, Water Resources Department; gives background on the agency's effort in implementing their role concerning the coastal salmon issue. Comments that the healthy streams partnership and salmon initiative plan endeavors to avoid duplication of agencies' effort and to work efficiently in its implementation by prescribed means. (EXHIBIT D)
382	Pagel	Continues presentation on technical assistance provided by agencies. Water Resources provides technical assistance specifically concerning information about water rights and diversions, stream flows, and transfers in their specific programs. A water master, or someone who is trained in hydrology would know technical information that a fish biologist would not know, for example. However, technical information from all of these sources may be needed to make decisions on impact on fish.
TAPE 20, B		
010	Pagel	Continues presentation on technical assistance.
013	Chair Tarno	Asks about enforcement authority by water masters.
024	Chair Tarno	Asks about push-up dams
027	Pagel	Responds about water rights based on seniority; water masters have enforcement authority. It is a voluntary-based process based on notification; other laws and other permits come into play to conduct operations in push-up dams.
030	Chair Tarno	Asks about positions being asked for in the proposal.
056	Pagel	Continues presentation on positions needed to carry out the salmon recovery plan; this is not all new staff.
073	Chair Tarno	Asks about needs for the program.
129	Pagel	Continues presentation on the Water Resource's package relative to the governor's plan. Program Package #113 shows \$1.8 million supplying 11 FTE from the general fund, spread throughout the state but concentrated in coastal basins and Klamath.

143	Chair Tarno	Asks about positions on page 43 in fiscal exhibit.
148	Pagel	Responds this is GWEB budget. Four positions for GWEB and about \$20 million in grants for GWEB budget.
153	Sen. Nelson	Asks about \$170,000 figure for a FTE.
164	Pagel	Responds that of the \$1.8 million, \$800,000 is for the ground water study and \$98,500 is for stream walkers leaving \$870,000 for the 11 FTE.
168	Chair Tarno	Calls Department of Environmental Quality (DEQ). Assistant to Director of DEQ. Presents role of DEQ. (EXHIBIT E)
176	Carolyn Young	* Federal Clean Water Act requirements * TMDL Total Maximum Daily Loads
196	Sen. Kintigh	Asks about litigation.
199	Young	Responds the environmental issues in Oregon are the first to be challenged legally.
205	Chair Tarno	Asks about validity of water temperature issue.
220	Young	Responds to the controversy about this issue and how the number was arrived at by a technical advisory committee of experts in the area of fish biology from Oregon State University and others. It is reviewed periodically by federal law.
235	Chair Tarno	Asks about the 91 sub-basins, 75 percent containing non-point sources of pollution and half are on federal land.
251	Young	Responds that the 19 positions will be obtained from Environmental Protection Agency (EPA); 2 full-time positions and grant funds from EPA will go to solve non-point source problems
275	Chair Tarno	Asks about point sources and non-point sources.
279	Young	Responds to point and non-point sources concerns. Relates temperature standard to total maximum daily load (TMDL)
333	Young	Continues presentation on TMDL which is determined from many complex sources; Forest Practices Act, Bureau of Land Management (BLM) and other federal government are mechanisms to deal with.
342	Chair Tarno	Asks about Mr. Stelle's claim that the Forest Practices Act as is inadequate.
343	Young	Responds that Mr. Stelle's response was in terms of what his agency looks at. DEQ believes Forest Practices Act is adequate. Comments that the Forest Practices Act is a TMDL; a non-source TMDL on

		areas covered by the Forest Practices Act is the same as implementing the Forest Practices Act.
348	Young	Responds that the coast is a priority. Their obligation is to update the 303(d) list every two years and with their priorities updated. Coastal salmon is a top priority.
380	Chair Tarno	Asks about coordination of agencies in gaining the data for this salmon plan.
386	Young	Responds with the example of the Umpqua Basin to point out cooperative efforts to non-duplicate services. DEQ looks at point sources and see if permits need to be revised. Agriculture and Forestry respond in their respective areas, and DEQ responds to the urban plans; DEQ to provide the technical expertise to monitor; sends to EPA for approval;
029	Young	Continues on presentation saying the federal government develops management plan, state DEQ reviews it, the plan becomes the TMDL.
TAPE 21,A		
030	Young	Continues presentation on how state DEQ must meet standards set by the federal government; state DEQ provides a technical and monitoring package to the federal government.
033	Sen. Ferrioli	Asks about temperature standards concerning the upper limit of standard held by Oregon. Asks if there is flexibility in definition or application of the temperature standard. Responds that some flexibility is available in the temperature standard.
		* Protecting the use in an area
045	Young	* Timing must be adequate to show improvements * If studies show the use has been obtained, standard can be changed * If standard cannot be met, the use may be changed
069	Chair Tarno	Adjourns meeting at 11:00 a.m.

Submitted By, Reviewed By,

Nancy Masee, Mark Volmert,

Administrative Support Administrator

EXHIBIT SUMMARY

A - SB 208, written Testimony, Paul Cleary, 1 p.

B - Written Testimony, Laurie Warner, 95 pp.

C - Written Testimony, Phil Ward, 9 pp.

D - Written Testimony, Martha Pagel, 1 p.

E - Written Testimony, Carolyn Young, 3 pp.
