

SENATE COMMITTEE ON WATER AND LAND USE

February 25, 1997 Hearing Room C

9:00 A.M. Tapes 25 - 26

**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

**STAFF PRESENT:**

Mark Volmert, Administrator

Nancy Masee, Administrative Support

**MEASURE/ISSUES HEARD:**

SB 207 Public Hearing

SB 395 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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 25, A</b>		
003	Chair Tarno	Calls meeting to order at 9:00 a.m. Opens public hearing on SB 207.
<b><u>SB 207 PUBLIC HEARING</u></b>		
009	Paul Cleary	Director, Division of State Lands (DSL) introduces Eric Metz, Wetlands Analyst, DSL, and gives background on SB 207 ( <b>EXHIBIT A</b> )
		Continues presentation on efforts to streamline program and eliminate

031	Cleary	<p>duplication of effort. Refers to the "friendly" amendment to the measure, which would direct DSL to pursue external and internal streamlining operations.</p> <p>In January, the U. S. District Court decision overruled a 1993 ruling that initially got the Corps of Engineers involved in the regulation of removals, and directed the Corps not to exercise jurisdiction over removals.</p>
171	Sen. Ferrioli	Asks about exemption for removal of less than 50 yards of fill material of landowners without a permit
080	Cleary	Responds that if the federal Clean Water Act 404 program was not adopted, then all current law went back in place
092	Sen. Ferrioli	Asks if there is no change under either situation for the landowner to remove 50 cubic yards
100	Cleary	Responds that if the 404 program is assumed, they would have to eliminate the 50 cubic yard threshold because the Federal Clean Water Act does not recognize that threshold
109	Sen. Ferrioli	Responds that people may be asked to give up a right to landowners from this measure in rising waters, diverting water appropriate to their water rights, and using resources they are entitled to.
111	Chair Tarno	Asks if the Corps of Engineers has responsibility under 404
112	Cleary	Responds that the Corps is responsible and they administer a program using a nation-wide permit; under certain conditions, you can proceed without an application. If the exemption was removed, DSL would mirror that provision with expanded use of general authorizations.
128	Sen. Ferrioli	Asks about the change of "shall" to "may" language, for instance in section 3, line 30, page 3. There is nothing that compels the director to issue a permit here.
140	Cleary	Responds to that this moves the presumption of the division to issue a permit; which is the way it works under the Corps program
146	Sen. Ferrioli	Responds that there is a shift in the logic in the agency having more discretion. An administrator could refuse to issue permits. Asks what recourse would there be for an applicant.
154	Cleary	Responds that an applicant has an administrative appeal recourse. The burden would be on the agency to substantiate their decision .
165	Sen. Ferrioli	Responds that he objects to the language and the shift in logic.
171	Sen. Wilde	Comments on how the amendments will affect the measure.
179	Cleary	Responds it is true that there is a dilemma that needs to be addressed in the amendments .
195	Mel Stewart	Corvallis, Oregon, gives his concern of the current SB 207 regulatory authority

264	Stewart	Continues presentation on concerns for SB 207, definition of wetlands, "shall" to "may" language change, application for permit under the rules, the "shall" language gives the court power to allow the permit.
340	Stewart	Continues presentation on SB 207. Director has the option to not deny a permit; director can find the application incomplete; but not denied; for example, in case the director wishes a concession of property rights, an "incomplete" rendering of an application can be issued instead of a denial which allows an appeal.

**TAPE 26, A**

		Continues presentation on the effects allowing DSL regulatory authority to sunset:
019	Stewart	* Streamlining more quickly and inexpensively
		* Duplication with Corps of Engineers procedures cut
035	Rick Angstrom	Oregon Aggregate Concrete Association, gives background on cases on removal activities; Environmental Protection Agency (EPA) and Corps of Engineers no longer had jurisdiction; permit through the Corps necessary
078	Angstrom	Continues on amending SB 207, timeliness, enhancement of resources, bringing everything to one-permit process ( <b>EXHIBIT B</b> )
094	Sen. Burdick	Asks who has regulation over removal.
095	Angstrom	Responds that DSL has
102	Sen. Burdick	Asks if they have a single permit system in waterways not navigable.
112	Chair Tarno	Asks if they have a draft in legislative counsel (LC) form.
117	Steve Schell	Attorney, gives his concern for the permit process on federal, state, and local levels as cumbersome and time consuming to applicants. ( <b>EXHIBIT C</b> )
		Continues presentation on streamlining the fill and removal laws; there are three levels of permit processes under way for wetlands:
134	Schell	* Federal
		* State
		* Local
164	Schell	Comments that <u>Tulloch</u> takes out a part of the federal process, the removal process, leaves in place the fill processes; Asks for good government; Wetland Conservation Program in Oregon by local governments allows broad look at fill and removal appropriateness. Asks for a reconciliation in this area on the state and local level rather than on the federal level which cannot do as good a job for Oregon. Has no objection to the amendment; more government does not mean better government; his opinion is that Oregon does a better job than the federal government does; urges thinking broader than the amendment offered; questions 207 in its current form

166 Chair Tarno Asks if in review of SB 207 he has any suggestions

171 Sen. Burdick Comments that Mr. Schell is a former Vice Chair of LCDC; asks is he is saying DSL should go forward in assumption of program.

177 Schell Responds, yes, Tulloch solves the problem for the ones dredging but not others.

182 Jill Zarnowitz Oregon Department of Fish and Wildlife (ODFW), supports measure with amendments. **(EXHIBIT D)**

190 Liz Frankel Corvallis, stakeholder in this process of removal fill laws; guarded support for SB 207. Amendments will provide flexibility.

215 Frankel Endorses amendments.

221 Pete Test Oregon Farm Bureau (OFB), relating to assuming federal 404 responsibilities by the state. DSL cooperative in working this out; Amendment is acceptable. **(EXHIBIT E)**  
Northwest Environmental Center, on behalf of Lynn Mate, a stakeholder, supports the extension for reasons of  
  
\* funding

264 Robert Pierce \* loss of federal protections, Endangered Species Act (ESA) and  
  
401 water quality certification  
  
Extension would enable stakeholders and DSL to work together to draft a solution for these problems.  
Asks for any other comments. Closes public hearing SB 207

287 Chair Tarno Works session will follow when amendments are received.

287 Chair Tarno Opens public hearing on SB 395.

**SB 395**  
**PUBLIC**  
**HEARING**

327 Douglas Port Marion County, Model Airplane Club, gives his support for SB 395.

388 Port Continues presentation on support for SB 395.

**TAPE 25, B**

006 Port Continues on problems encountered by the airplane clubs by Marion County. The clubs applying for conditional use permits were denied because they did not own the land.

035 Sen. Burdick Asks about the model airplane accouterments available for this activity.

045 Port Responds to the preference for turf rather than pavement.

062 Sen. Burdick Asks if deleting pavement would be acceptable.

070 Sen. Wilde Asks how large these hobby airplanes can get.

073 Port Responds up to 10 foot wing span. Usually about 5 foot average.

084 Van Moore Salem, gives presentation on his support of SB 395.

106 Moore Continues presentation that environmental impact is not negative.  
Comments that the birds are not threatened by this activity.

154 Sen. Burdick Asks about how the farming operations are affected.

155 Moore Responds that site selection is chosen to be clear and open, such as grass  
seed, mint, and sod farms with their permission.

189 Sen. Burdick Asks how much land is needed to land the planes.

186 Moore Responds about 75 feet by 200 or 300 feet is needed.

208 Sen. Nelson Asks if counties would have to amend their land use plans and comments  
that Ballot Measure 30 may affect this.

230 Moore Responds that he does not know what the costs would be

240 Sen. Wilde Comments that \$5,000 fiscal impact sounds excessive.

249 Sen. Fisher Comments on page 2, line 43 of measure after the word lines, "or by  
design" Proposed language was the model airplanes would be controlled  
"by radio, by lines, or by design"

301 Chair Tarno Asks if there is anyone hurt by these airplanes.

309 Moore Responds that there probably have been. They weigh typically about five  
or six pounds traveling from 20 to 70 miles per hour. They have propellers.  
That is why an unpopulated area to fly in is best. **(EXHIBIT F)**

324 Sen. Wilde Asks about free flight planes being blown off course and causing damage.

327 Sen. Fisher Comments that generally it is a very safe hobby. At big meets and  
competitions, they put up safety nets and special precautions.

385 John Shafer Dallas, supports the activity, however, opposes SB 395 because there is  
sufficient flexibility in the land use laws.

**TAPE 26, B**

008 Sen. Wilde Asks what is available in land use law without this law.

011 Shafer Zone changes; private parks and playgrounds section, through the  
exception process.

024 Sen. Wilde Comments that the number of uses allowed in farm land is already a long  
list.

070 Don Oregon Farm Bureau, gives presentation in opposition to this measure.  
Schellenberg While they support the activity, they do not believe it falls under farm use.  
Once a non-farm use is established, branching out to activities that may  
have negative impacts is more easily done. Suggests this as a conditional  
use.

104 Schellenberg Farm Bureau urges an amendment to the measure to define as a conditional  
use. Another option would be to remove the words "owned and" from the  
conditional use section of ORS 215.283 and 213. This would allow parks,  
playground, or community centers operated by a non-profit community  
organization to exist by leasing the land instead of having to own it.

116 Chair Tarno Asks for written form of amendments

Refers to an international meet in Roseburg where steps were taken to

118	Sen. Fisher	utilize safety precautions with nets; this does not usually happen at small local flying activities.
146	Chair Tarno	Comments on ultra-lite flights in Junction City.
159	Schellenberg	Responds that they do not want to regulate people's activities, but in setting aside property they are interested in what the impact on surrounding farm land is.
176	Sen. Burdick	Asks about concerns for buildings and pavement associated with flying these planes.
190	Sen. Fisher	Responds that pavement is not mentioned, nor is it a part. Department of Land Conservation and Development (DLCD), gives background on Marion County's stand on this issue. The county feels there are other alternatives: <b>(EXHIBIT G)</b>
197	Bob Rindy	* Lease land or use a park  * Farm Bureau's concerns also upheld
235	Rindy	Continues presentation and supports the county and Farm Bureau's position. Amendments to zoning ordinances in counties would occur to authorize these kind of private parks.
280	Chair Tarno	Asks if they have a language to come up with.
287	Sen. Burdick	Asks for language to change the measure to allow leasing of land
304	Sen. Fisher	Asks about leasing a private park, asks what the process is
314	Rindy	Responds it would be through the county to attain a permit.
323	Chair Tarno	Closes public hearing on SB 395 and adjourns meeting at 10:55 a.m.

Submitted By, Reviewed By,

Nancy Masee, Mark Volmert,

Administrative Support Administrator

### **EXHIBIT SUMMARY**

**A - SB 207, written testimony, Paul Cleary, 3 pp**

**B - SB 207, written testimony, Rick Angstrom, 1 p**

**C - SB 207, written testimony, Steve Schell, 4 pp**

**D - SB 207, written testimony, Pete Test, 1 p**

**E - SB 207, written testimony, Jill Zarnowitz, 1 p**

**F - SB 395, 2 photos, Van Moore, 1 p**

**G - SB 395, written testimony, Bob Rindy, 1 p**

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**SENATE COMMITTEE ON WATER AND LAND USE**

**AND**

**HOUSE COMMITTEE AND WATER POLICY**

**February 25, 1997 Hearing Room C**

**5:00 P.M. Tapes 27-29**

**Senate Committee on Water and Land Use:**

**Sen. Veral Tarno, Chair**

**Sen. Bob Kintigh, Vice-Chair**

**Sen. Ginny Burdick**

**Sen. Ted Ferrioli**

**Sen. Bill Fisher**

**Sen. David Nelson**

**Sen. Thomas Wilde**

**House Committee on Water Policy:**

**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**

**STAFF PRESENT:**

**Pat Zwick, Administrator**

**Mark Volmert, Administrator**

**Nancy Masee, Administrative Support**



**MEASURE/ISSUES HEARD:**

**Oregon Salmon Restoration Initiative and Healthy Streams**

**Partnership**

**Invited Testimony**

**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 27, A		
004	Chair Messerle	Calls meeting to order at 5:00 p.m.

**OREGON SALMON  
RESTORATION  
INITIATIVE AND  
HEALTHY  
STREAMS  
PARTNERSHIP**

- 011 Chair Asks for anyone who did not get to speak last night to come  
Messerle forward; calls Andy Anderson, Department of Agriculture
- 018 Andy Oregon Farm Bureau, gives background on changes in rules;  
Anderson funding portion dealt with the healthy streams partnership not just  
coastal part (**EXHIBIT A**)  
Presents the issues facing Oregon in the Clean Water Act and  
Endangered Species Act; Healthy Streams Partnership and salmon  
restoration initiative proposals called the Oregon Plan
- 055 Anderson \* Clean Water Act  
\* 303(d) list  
\* TMDLs (Total Maximum Daily Load) for each stream  
\* In Oregon, TMDLs needed for 900 streams & segments
- 070 Anderson Continues presentation saying that Idaho and Georgia have had  
their streams taken over by the courts which then ordered the  
federal Environmental Protection Agency (EPA) to take charge.  
Timber has the Forest Practices Act and Agriculture has Water  
Quality Management Plans under SB 1010. Urban areas and  
counties need to address their problems. State funding and industry  
funding needed.  
Continues on water quality in urban areas. Oversight responsibility

095 Anderson is needed to ensure plan's success. Proposes that this is the responsibility of all citizens and that the general fund is a fair source of funding.

110 Sen. Tarno Asks about the Oregon Farm Bureau's effort relative to the development of TMDL

114 Anderson Believes that healthy streams partnership, establishing the water quality management plans under SB 1010, will establish the TMDL for agriculture according to Department of Environmental Quality(DEQ) and Department of Agriculture(DOA); Farm Bureau is working with members in educating them to the process, and to work with their water shed councils, soil and conservation districts, and to begin to put in place the practices that will correct problems

129 Sen. Tarno Asks if there is a duplication between DOA and DEQ in SB 1010 and the 303(d) listing, and whether a conflict may be resolved so there is not duplication of services

165 Anderson Responds that DOA and DEQ functions on the healthy streams partnership are different; DOA's work with farmers and ranchers with soil and water conservation districts, with watershed councils and evaluating what good practices are already in place and what further action needs to be taken, formulating the water quality plans; DEQ personnel are technical people who analyze in the lab, doing load allocations; 25 percent of the streams are "complex" streams where a host of contributors to a problem require analysis of the water to figure the TMDL and a load allocation which involves DEQ technicians; DOA people work on the ground with the farmers and ranchers to formulate a water quality management plan.

170 Rep. Kruse Asks if the TMDL planning can be done with resources and personnel already in place

187 Anderson Responds that there is some expertise in place already. The challenge is that state agencies not duplicate efforts, but they must have enough personnel to put the state of Oregon in a position to defend legal suits.

200 Rep. Harper Comments that there appears to be education and training duplication among the agencies in the plan.

210 Anderson Responds that education efforts are directed to different people; different segments of the population look to different agencies, but if the same people are targeted, there could be duplication.

245 Scott Boley Pacific Fisheries, former chair of the Oregon Salmon Commission, gives comments on the coastal salmon restoration initiative that they support, and the \$30 million figure; concerned with duplication;

\* Accountability concern - legislature and agency responsibility

\* Adequate monitoring of process

\* Federal government should match state dollars

\* Harvest has to remain a part of heritage - hatchery production and natural production

338 Boley Concludes his presentation saying responsible harvest is our goal  
343 Rep. Josi Asks about hatchery coho that you cannot catch  
363 Boley Says some hatchery coho can be used within restoration context; primary mission should be for conservation  
380 Sen. Tarno Asks about hatchbox programs, how close are we to a native stock released from a hatchbox  
397 Boley The offspring of the hatchbox fish that are released are considered native fish.  
404 Sen. Nelson Comments that the Umatilla Native Americans have increased spring salmon runs by a hatchery program

**TAPE 28, A**

017 Sen. Ferrioli Asks about commitment of human and natural resources, does the federal government need to also commit resources to a plan  
025 Boley Responds that more commitment is needed from the federal government; indicates flexibility of Mitchell Act Funds  
039 Dave Nelson Oregon Seed Council and the Oregon Dairy Farmers Association, gives their view of the healthy streams partnership and the federal role **(EXHIBIT B)**  
Continues presentation on their concept of the plan relative to federal controls  
076 Nelson \* Environmental Protection Agency (EPA)  
\* 303(d) list, Clean Water Act implementation  
\* National Marine Fisheries Service (NMFS)  
\* SB 1010, Department of Agriculture, DEQ, Governor's Office  
085 Nelson Continues discussion on program that would be acceptable to the federal government, ensuring that Oregon's plan will be substantial enough to work, and that will avoid listing the coho as endangered  
108 Rep. Josi Asks what he meant when he says Tillamook Cheese will be made in Idaho.  
114 Nelson Responds that Tillamook estuary is highly sensitive, and competes with the dairy and pasture land industry; a listing of the coho would shrink the dairy industry by placing serious restrictions on dairy farmers  
140 Sen. Nelson Asks how the counties plans will come together in one logical plan

151	Nelson	Responds that one coherent plan for EPA and NMSF will be developed by DEQ and ODA staffs. Everybody has a part that will be held together by the DEQ and ODA coordination. Does not believe these agencies now have enough qualified people to do the technical processes
189	Sen. Ferrioli	Comments that the small family agriculture producers will be displaced if there is a listing of the coho by the federal government Ph.D., Associate Dean, College of Agricultural Sciences, Associate Director OSU Agriculture Experiment Station, Leader of OSU Extension Service, gives background on OSU and research capabilities to address the salmon issue <b>(EXHIBIT C)</b>  * Marine fisheries, salmon ecology
214	Kelvin Koong	* Home stream river fry  * Salmon biology, genetics, life cycles, food change, diseases  * Salmon population dynamics  * Forest and watershed dynamics  * Social and economic analysis
309	Koong	Continues presentation of OSU research programs.
340	Koong	Continues presentation of OSU education outreach programs in schools, training for landowners
365	Koong	Gives support to the initiative effort proposed ; research and education are key factors in the initiative success; OSU is committed to play a significant role in helping with this proposal
400	Sen. Tarno	Asks how they can coordinate the programs

**TAPE  
27, B**

018	Koong	Gives example of the faculty members from several departments who cooperated in an educational workshop Comments on the executive summary of the plan from the governor's office.  * Coordinate agency programs  * Community based action
054	Koong	* Monitoring the watersheds health  * Implemented by OSU  * OSU not a regulatory agency

079	Galen Bridge	Executive Director, Oregon Association Soil and Water Conservation Districts, 45 districts in Oregon support the cooperative effort of the plan <b>(EXHIBIT D)</b>
105	Bridge	Continues presentation on local level accountability and success of SB 1010; that the state should appropriate \$4 million for the soil and conservation districts so they can direct assistance to districts
134	Bridge	Continues presentation on practices of the conservation groups, National Resources Conservation Service (NRCS) provide technical assistance, along with other state and federal agencies
161	Rep. Harper	Asks why the association did not appear more in the plan
167	Bridge	Says the capability of conservation districts has not been recognized by agencies or the governor's office to the extent needed.
177	Rep. Kruse	Comments on the association's capabilities and his first hand knowledge as a member of a soil district board, governor's Salmon Recovery Task Force, describing the involvement of conservation district; districts are used as models, but implementation is not delegated to them
187	Sen. Ferrioli	Asks how to respond to people who do not want regulators walking over their land; volunteer programs need a regulatory backup with identified timeframes
224	Bridge	Responds that timelines need to be met and that regulations have to be met; however, that is not the role of the soil and water conservation districts Farmer and Chair of the Water Committee, Oregon Wheat Growers League. Organization wants to maintain state control over Clean Water Act compliance <b>(EXHIBIT E)</b>
235	Kent Madison	* Technical expertise within the watershed districts * Broad funding base needed * General fund recommended
307	Mike Dewey	* Local control, flexibility, minimum duplication, existing expertise Oregon Wheat Growers League, speaks to the temperature standards and how they are not realistic; a plan needs to be in place and implemented; there needs to be an opportunity to delist; \$10 million to be spent but does not understand where the other \$20 million goes; the allocation needs to be made clear; needs to be accountable
373	Sen. Fisher	Comments positively on the practices of farmers to improve the environment
<b>TAPE 28, B</b>		
014	Sen. Nelson	Asks how the different groups will interact to produce the desired effects
030	Madison	Gives an example of how a farmer worked with agencies and developed a restoration project in a stream on his farm Oregon Farm Bureau, gives background on the problem and the salmon plan; indicates the water cleanup can be done without federal interference <b>(EXHIBIT F)</b>

\* Gives background on Farm Bureau, locally and internationally

049 Pete Test \* Supports the Oregon Plan (Salmon Restoration Initiative and Healthy Streams Partnership)

Continues discussion on concerns of TMDL standards

\* Temperature standards not realistic

\* Monitoring system of habitat conditions

096 Test

\* Expresses concern on funding to carry out programs

\* Soil and water districts and extension service cuts are a concern

\* Flexibility in roles in management necessary

169 Test Continues presentation on Farm Bureau's stand in support of Oregon Plan; funds needed for the university extension and experiment station

199 Ray Wilkeson Oregon Forest Industries Council (OFIC), introduces Greg Miller, Weyerhaeuser, and Dee Bridges, Boise Cascade

242 Wilkeson Continues presentation on their role in identifying old forest roads that cause slides; clear cut rules in leaving trees followed; Oregon Department of Forestry to provide funding for 7 biologists and habitat specialists; no grant money goes for construction on lands; stream buffers; placing logs in stream. Riparian management areas along small, non-fish bearing streams

364 Wilkeson Continues presentation on the commitment of these organizations. Supports the forestry portion of the Oregon Plan.

**TAPE  
29, A**

007 Dee Bridges Boise Cascade, owns about 600,000 acres timberland in Oregon, half in the east and half in the west, gives examples of his company's handling of timber management in response to forest practices management. Supports the Oregon Plan.

023 Greg Miller Weyerhaeuser, owns about 600,000 acres in western Oregon; works with Oregon Forestry Industries Council to develop a viable healthy streams plan. Support the Oregon Plan. Specifically Upper Siuslaw enhancement action with Oregon Wildlife Heritage and with ODFW; fish passage surveys with the Coos Watershed Association (**EXHIBIT G**)

055 Chair Messerle Asks for questions.

056 Rep. Josi Commends the industries' willingness to cooperate in Oregon's problems.

079 Rep. Welsh Commends the industries' lengths to achieve a plan; asks if we have a clear definition of restoration, has the goal been defined.

091 Wilkeson Responds that monitoring and accountability are necessary, and adequate funding necessary to reach the goals of the Oregon Plan.

104 Sen. Tarno Asks about financial impact to companies

111 Bridges Responds they are now spending \$1 million a year  
127 Chair  
Messerle Adjourns meeting at 7:01 p.m.

Submitted By, Reviewed By,

Nancy Masee, Mark Volmert,

Administrative Support Administrator

**EXHIBIT SUMMARY**

**A - Coastal Salmon Restoration Initiative, witten testimony, Andy Anderson, 3 pp**

**B - Coastal Salmon Restoration Initiative, written testimony, Dave Nelson, 1 p**

**C - Coastal Salmon Restoration Initiative, written testimony, L. J. Koong, 3 pp**

**D - Coastal Salmon Restoration Initiative, written testimony, Galen Bridge, 12 pp**

**E - Coastal Salmon Restoration Initiative, written testimony, Kent Madison, 3 pp**

**F - Coastal Salmon Restoration Initiative, written testimony, Pete Test, 4 pp**

**G - Coastal Salmon Restoration Initiative, written testimony, Greg Miller, 3 pp**

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