

**From:** Paul Garrahan  
**To:** Elaine Stewart  
**Date:** Mon, Nov 6, 2000 11:28 AM  
**Subject:** Re: Revised resolution re: water control structure

I reiterate that this resolution may not be needed to permit work to be done on a new water control structure, provided no money from the Trust Fund will be spent on the project. The Council clearly must approve appropriations from the Trust Fund. The Plan, however, gives Metro the responsibility and authority to manage and maintain environmental enhancement projects called for by the Plan (Policy 10). The Plan calls for a new water control structure to be built (see ENV 2, p. 27). Since the Management Committee is clearly on the record supporting a new structure, I think Parks could pursue that course without further confirmation by the Metro Council.

If, however, Parks believes that this resolution is desirable from a political or public policy standpoint (to confirm the water control option selected by the Management Committee), then I offer the attached draft of the resolution (redlined w/ my suggested edits). In particular, I do not think we need to include a recital regarding public opposition to this activity. Instead, I would add some additional recitals to more precisely explain what has and will be done. For example, additional recitals might (1) state that hydrolic studies have been done and multiple water control options have been considered, (2) provide a description of the specific option chosen and why, and (3) provide a more direct reference to the funding source for the project (which is the real reason this resolution may be needed, right? because money may be spent from another source to begin construction).

I understand that some of this information may be in the staff report that will accompany the resolution (which I have not seen), but I think the resolution needs to say more about what effect it will have if passed (e.g. Ducks Unlimited will be spending either grant money or Jones settlement money on (1) additional studies, and/or (2) building the structure).

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>>> Elaine Stewart 11/03 9:30 AM >>>

See attached - let me know what you think. I don't like the way the last recital fits in, but I don't have a better idea of how/where to place it...

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**From:** "Middaugh, James" <jmiddaugh@ci.portland.or.us>  
**To:** 'Elaine Stewart' <stewarte@metro.dst.or.us>  
**Date:** Wed, Nov 15, 2000 11:27 AM  
**Subject:** RE: Water control structure at Smith and Bybee lakes

I know this is cancelled, but I am very excited about providing supportive testimony. Please keep me in the loop and thanks for thinking of me initially. All of us at the Portland ESA Program appreciate and support your work.

Jim Middaugh

-----Original Message-----

**From:** Elaine Stewart [mailto:stewarte@metro.dst.or.us]  
**Sent:** Monday, November 13, 2000 3:36 PM  
**To:** jmiddaugh@ci.portland.or.us  
**Cc:** moskowitzd@metro.dst.or.us  
**Subject:** Water control structure at Smith and Bybee lakes

I am hoping to take a resolution to the Metro Council for its endorsement of the project to replace the dam at Smith and Bybee lakes with a more versatile water control structure. This project will include fish passage for downstream migrants and will provide additional off-channel refugia in the lower Willamette River that is sorely needed. I am hoping that you will be able to attend the Metro Council's Operations Committee meeting and testify in favor of it. I do not have a firm date yet; but this is short notice and there may be even less notice by the time I know if I'm on the agenda. The meeting date that I am trying to get is:

Tuesday, November 21st  
10:00 a.m.  
Metro Regional Center

Can you (or someone from your staff) testify on behalf of the project?

Thanks for your help. Please call me if you need to discuss this.

-Elaine

=====  
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=====

Date: November 20, 2001  
To: Metro Natural Resources Committee  
From: Al Smith  
Subject: Smith-Bybee Lakes water management structure

I am a retired biologist who supports restoration of wetlands to more natural conditions. I am also a largemouth bass angler who enjoys fishing and wildlife viewing at Smith-Bybee Lakes. I am in favor of replacing the water management structure at the lakes for the following reasons.

Even though Smith-Bybee can never be restored to its original condition, the ability to manage the water level will move the lakes closer to natural conditions. I think the key is the flexibility a new water management structure would provide. The enhanced water management capability would enable the water level to follow a regimen that native plants and animals at the lakes evolved with. Hopefully carp and reed canary grass would be discouraged and native plants encouraged with more natural water level fluctuations. If a chosen annual water level regimen caused problems, it could be modified.

Smith-Bybee Lakes provide a lot of opportunity for angling, especially in the spring. That would continue if the water level is managed more naturally. There would probably be a loss of angling opportunity in the fall with very low water levels in the lakes. However, overall water quality and aquatic productivity should be enhanced if carp numbers are reduced. On balance, I feel the benefits that a new water management structure could bring far outweigh the detriments.

Al Smith  
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M E M O R A N D U M

*Elaine/Jff EVE/ File*

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METRO

Date: November 28, 2001

To: Councilor Carl Hosticka, Chair, Natural Resources Committee

From: Dan Cooper, General Counsel *[Signature]*  
Paul Garrahan, Assistant Counsel *[Signature]*

Regarding: Resolution No. 01-3125; Metro's Authority to Install a Water Control Structure in Place of the Dam between Bybee Lake and the North Slough, Pursuant to the Smith and Bybee Lakes Natural Resources Management Plan

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**I. Introduction**

The Smith and Bybee Lakes Management Committee has recommended that the dam between Bybee Lake and the North Slough be replaced with a water control structure to allow for the return of tidal and seasonal water level fluctuations such as existed in the lakes' original natural condition, and which will thereby restore wildlife habitat in the area. Objections to the Management Committee's recommendation have been made by Mikey Jones, a citizen that has taken an active interest in management of the lakes. Mr. Jones asserted that the Smith and Bybee Lakes Natural Resources Management Plan (the "Lakes Plan") would require amendment in order to permit construction of the water control structure.

**II. Question Presented**

Does the Lakes Plan currently provide sufficient authority for the construction of the water control structure between Bybee Lake and the North Slough?

**III. Short Answer**

Yes, although the Lakes Plan's implementation procedures require development projects that are in conformance with the Lakes Plan to undergo land use review by the City of Portland using a Type II procedure. In addition, the Lakes Plan also provides that, for any development project such as this, archaeological resources be researched and protected, and that the Bonneville Power Administration ("BPA") be consulted regarding how fluctuating water levels might affect the BPA's rights-of-way across the lakes.

#### **IV. Discussion**

The Metro Council and the Portland City Council met in a joint session on November 8, 1990. The purpose of the session was for both councils to approve the sale of the St. Johns Landfill from the City to Metro, and to approve the Lakes Plan. Metro approved the Lakes Plan by adopting Metro Ordinance No. 90-367, and the City approved it by adopting City Ordinance No. 163610. Metro's purchase of the landfill was implemented by the signing of an intergovernmental agreement signed by Metro and the City (the "Landfill Purchase IGA"). Metro approved the Landfill Purchase IGA by adopting Metro Resolution No. 90-1314, and the City approved it by adopting City Ordinance No. 163644.

##### **A. No Amendment to the Lakes Plan Is Necessary to Construct a New Water Control Structure Between Bybee Lake and the North Slough**

Development of a new water control structure is clearly anticipated throughout the Lakes Plan. Reference is made to such a project in the Lakes Plan's objectives, a list of potential environmental projects, issues identified for further work and resolution, and in the Lake Plan's policies and actions:

- The first listed objective of the plan is to, "Control water level in order to manage the lakes' environmental system." Lakes Plan at 9.
- Potential Environmental Project ENV2 is entitled, "Flood Gate in the Existing Water Control Structure." Lakes Plan at 27. ENV2 is listed as a high priority, and directs that information be developed regarding desired water levels, the optimum floodgate size and flow capacity, and the gate's performance capabilities. *Id.* ENV2 then provides that a gate design be produced and a gate constructed. *Id.*
- The list of environmental issues in need of resolution includes both (1) the "physical mechanism for managing water levels in the lakes," and (2) "restoring an open connection between the lakes and Columbia Slough." Lakes Plan at 40.
- Policy 25 permits the construction of habitat enhancement projects. Lakes Plan at 55.
- Action 8 provides for the implementation of ENV2 (albeit by the Port of Portland, a provision that seems to have been lost over time in the Management Committee's efforts to implement the Lakes Plan). Lakes Plan at 58.

Furthermore, the Lakes Plan provides that, upon adoption, the plan's "Policies become effective and the Actions can be authorized by the . . . Management Committee," and that "[s]pecific development plans for environmental projects . . . will be developed by the Management Committee." Thus, the Lakes Plan clearly anticipates the construction of a new water control structure between Bybee Lake and the North Slough, and no amendment to the plan is necessary to proceed with that project.

**B. The Lakes Plan's Implementation Procedures Require a Type II Land Use Review Procedure by the City of Portland for This Project**

This project will be conducted within the City of Portland's environmental zone ("e-zone"), but the City has waived the generally applicable e-zone requirements of its planning and zoning code in favor of the requirements provided in the Lakes Plan. City of Portland Code § 33.430.060; Lakes Plan at 63. The Lakes Plan implementation procedures provide that "[d]evelopment in conformance with the Plan will be reviewed by the City using a Type II procedure, including projects identified in the Plan that meet applicable e-zone site development standards." Lakes Plan at 67. The City is to use two approval criteria in its evaluation. The first criteria is whether "[t]he proposed development meets the goals and objectives of the Plan," and the second criteria is that "[t]here will be no significant negative impacts on the resources covered in the Management Area." *Id.*

**C. Additional Considerations Required by the Lakes Plan**

In addition to the requirement for a Type II land use review, the Lakes Plan also provides for two other procedures for development such as this water control structure. First, Policy 28 requires that certain steps be taken to insure the protection of archaeological resources, including identifying the presence of such resources and evaluating the potential impacts of the development project on those resources. Lakes Plan at 55. Second, the Lakes Plan's implementation procedures also state as an objective that the BPA be consulted "prior to decision-making actions taken by the Management Committee regarding specific uses of the BPA rights-of-way or easements, *such as increasing [or] fluctuating water levels.*" Lakes Plan at 64 (emphasis added).

**V. Conclusion**

Proposed Resolution No. 01-3125 will authorize the Executive Officer to proceed with removal of the existing dam between Bybee Lake and the North Slough and replace it with a more effective water control structure. This proposed action was anticipated by, and is fully consistent with, the Smith and Bybee Lakes Natural Resources Management Plan. An amendment to the plan is not needed for this project to proceed. It should be noted, however, that the Metro Council's approval of the proposed resolution will not substitute for the City of Portland's land use approval, which is also required pursuant to the Lakes Plan.