

JACK SMITH

TAPE 5, Side 1

January 25, 1996

M.O'R.: This is a continuation of the interview with Jack Smith on January 25th, 1996.

So this is a prime example, then, of this limited institutional memory.

J.S.: Well, it just - everything is short term. Everybody - there doesn't seem to be any, or very little, accountability in people's careers and so forth, other than very short term. You do something and you move on to something better or different based on your record of very short-term performance at some other place, and that's just kind of a universal condition that we find ourselves in.

But the main observable result in this case is that people say and do things, not evidently with any sense of longer-term accountability or responsibility, but simply to get through, you know, to the end of this meeting, or to the end of the week, or till the next commission meeting or the next meeting of the County Commission. I mean, it's crazy. Or it seems crazy to me. It has its own logic; I mean, that's unfortunate, but all the messages are that that kind of behavior is rewarded and longer-term thinking is penalized.

M.O'R.: What was your impression of the federal courts in all of this? You just mentioned this conference in Eugene in front of Hogan, and I've heard a couple of other people mention this, and it

sounds like it was quite an intensive effort to resolve things. You say it took three days; is that right?

J.S.: Yeah. Judge Michael Hogan is a very interesting person. I don't know how - he's sort of - it's one of those things you kind of have to be there. Like you go in his office, he must have - I don't know, it seems like he must have 300 eagles: pictures of eagles, eagles on flags, and stuffed eagles. Interesting.

I personally find him sort of scary. I wouldn't like to - I'd be afraid to go to divorce court with Michael Hogan. But at any rate, he does get things done. I mean, he was a magistrate at the time; now he's a federal district judge. But his principal forte was settling, getting lawsuits settled, and he was quite good at that. Whether you agree with his views of things or not, and depending upon which view it is, I'm sure neither party would disagree that he's a strange person.

But no, I mean, I don't know - three days in Eugene of kind intensive, you know, sort of one-on-one and trading around, got something settled that would have consumed, shoot, ten times more resources of going to trial and so forth.

M.O'R.: Now, this was the suit that you brought against USA, then?

J.S.: Yes.

M.O'R.: Why was that in his district?

J.S.: It wasn't. The federal court was - gee, I can't remember the judge. Helen ...

M.O'R.: Oh, Helen Frye?

J.S.: Helen Frye, yeah, was the judge, and she simply - I think both parties, attorneys for both parties, said they were

amenable to - she either asked or they said they were amenable to negotiation, and so she simply assigned Judge Hogan to be the mediator in a settlement negotiation. And if we hadn't settled, then we would have gone back to court. We were in court; I mean, the suit was filed and we were in court. She simply as an alternative to going to trial and her rendering an opinion and so forth, making a federal case out of it, as it were, she simply assigned the settlement negotiations to Hogan, because both parties, you know, sounded - agreed to do that.

If either party hadn't, then we would have gone to trial, and if the negotiations had failed to come to an agreement in Eugene, that would have meant going back to trial. And there was no - we didn't have to agree, just that here is a facilitator to negotiations that did not - you know, that wouldn't ordinarily exist; instead of just the lawyers talking to each other, you actually have a judge participating and trying to move the process along and giving you the benefit of his advice about possible outcomes if you did go to trial and so forth. So it's clearly helpful. And I don't - I believe the settlement was agreeable to both parties.

M.O'R.: The persons that were in this negotiation, then, were yourself, Hogan, presumably Gary Krahmer ...

J.S.: Gary, Stan Leseur. DEQ were Mary Haleburton, who was head of the municipal permits section at the time, and John - a guy that worked for her. There were a couple of people from DEQ. Could have been Larry Knudsen. Somewhere Larry Knudsen had a role. I can't remember whether he was in Eugene. He's with the Attorney General's Office for the State. I can't remember Larry being

there. Seems like he was from time to time. Yeah, and then attorneys for everybody.

M.O'R.: So apart from the fact that it was intense, what was it like?

J.S.: I don't know that it was all that intense. It was just - it was interesting because this judge is an interesting person. Kind of a situation where you'd much rather be watching this in a movie than participating in it. It's not clear where he's going to come down or whatever.

And because it was - I mean, it's just a screwy process, you know. I mean, you're talking to your lawyers, and USA people are talking to their lawyers, who are not USA lawyers; they're lawyers that have been retained. And everybody's got ideas, you know, and so - I mean, at one point it got to be - gee, there was this screwy-looking settlement agreement that had this whole laundry list of things that USA was going to do; that they were going to create parks, and they were going to create grade school educational programs - I mean, this whole bunch of stuff. I mean, I can't even remember it all, but it was just what the hell does this have to do with anything, you know? I mean, they must be all good things to do, I suppose, but what do they have to do with anything?

And so I finally called either Gary or Stan and said, "Could we go -" it was after dinner one night, and I said, "Why don't you meet me down in this bar, and we'll have a drink and talk about some stuff." And they came down and I said, "Do you know where this stuff came from?" It turned out that all kinds of stuff was all coming from the lawyers, who were kind of deciding - you know, thinking up stuff they thought would be nifty to do, I guess. But

then we said - they said, "Gee, I don't know what any of that stuff is."

So it turned out that, well, actually what they thought would be reasonable and would be helpful, you know, in terms of - what do you call it? - a schedule for getting all this excessive infiltration and inflow and getting the leaky sewer system repaired, and getting, you know, technically the things done that were causing the violations which theoretically the lawsuit was supposed to be about - I mean, we were amenable to having it expanded, you know, but really only kind of within the confines of something having to do with water quality, and so all this other parks and stuff -.

Anyway, so it turned out that, well, that wasn't their idea. Which is always a danger when you send, you know, two teams of opposing lawyers off to argue in a court someplace, and the actual principals - you know, again it's like you have these steps of communication and like the old thing where you sit around in a circle and whisper something in somebody's ear, and it goes around the circle ...

M.O'R.: Right.

J.S.: ... and you see what it looks like when it comes back to you. It's the same kind of thing, and that's just one of the perils of the legal system. And it usually precludes the principals from talking to each other or ex-parte contacts and so forth. At least in this case, because we were in an actual settlement negotiation, there wasn't any difficulty at all with doing that, and so as long as we could kind of, you know, separate out the attorneys, it turned out it wasn't all that difficult.

M.O'R.: So you say you sort of, you know, were able to focus on the important points as a result of this meeting in the bar that evening and get rid of some of the ...

J.S.: Well, at least the - you know, kind of the idea of what we ought to be talking about. It's not that we sat down and worked out every little step; it was just kind of what ought to be our objectives here?

And one thing NEDC wanted to have [was] a large monetary settlement - and didn't do too bad. You know, a million dollars - I think they probably wanted five or ten or something like that, and again, the intent - I mean, the money wasn't going to NEDC in any event. It was going to go somewhere else. It would just - it was simply to try to get established precedentially the idea of what a permit violation is worth, and so it needed in their view to be a large sum of money so that a violation should be worth \$1,000 or some - it shouldn't be cheap to have a violation. And since there were so many, that needed to be a large number. And USA, of course, didn't want to pay a lot of money because it was their money.

So it wasn't all that disagreeable to either side, and actually as it turns out USA sort of gets it all back, anyway, one way or another since it funds things that they either are using directly, or if they aren't, they would be paying for themselves anyway since they, you know, pay for lots of similar things and support similar things.

But that was the only - the actual compliance schedule of things to fix the problem, I don't remember that being an argument. I mean, the money was an argument, kind of. But that was more just

a kind of discussion about, well, what's reasonable to do, what's possible, what's the logical way to go about doing this? And in that regard, you know, we had the benefit of, you know, the two people at DEQ, engineering people, that knew something, and USA's, you know, top people. So there was more expertise and talent put into producing a compliance schedule. Some kind of compliance schedule would have resulted either through the normal DEQ permitting process or a stipulated final order from DEQ or something in any event; it's just that this had the benefit of being a federal court order, so that it would be more difficult for people to whimsically change it. And then the second one was, well, gee, there actually was some kind of dedicated thought by all of the most interested parties at that time went into it, so that was actually kind of a really good thing.

And like I say, the money amount - it was still a big settlement. I mean, everybody that gets into lawsuits has some kind of ego thing, and so NEDC needed to have a sizable settlement, and it was still the largest settlement in the state of Oregon.

M.O'R.: But none of the money came to NEDC to help them with ongoing activities?

J.S.: Oh, no. No, no, no. I mean, that ...

M.O'R.: That was never the objective?

J.S.: Well, I mean, it's just not a consideration. It's just not. The old Rivers and Harbors Act used to have a bounty provision, where if you sued somebody for permit violations under the old Rivers and Harbors Act and got the money, you got to keep it. The 505 provision of the Clean Water Act says no, no - I mean, the

Act says you clearly can't do that. I mean, it's not a bounty hunter's thing.

There can be - in fact, the arguments that we used to have with EPA was that they wanted the money to come to them, and this is no, no, no, you can't -. They actually - someplace they appeared - oh, I know. They have to - the Justice Department has to approve the settlement, I guess, in these kinds of suits. I mean, the citizens' suit provision precludes any money or - you can recover lawyers' fees, your court costs and recover costs, but you can't make money or make a profit. Settlement doesn't come to you. I mean, there can be penalties and fines and monetary settlements; they don't go to the complaining party. I mean, you can negotiate where they go. In this case we, you know, created this Tualatin River endowment idea.

M.O'R.: So this is the money that the Oregon Community Foundation is administering, then?

J.S.: Right. Right. And members of NEDC, I believe, and USA and DEQ were kind of the board of trustees of this initial foundation, and it was they who then decided to put the money into Oregon Community Foundation. The original idea it should go to some combination of universities or something like that. But the point is that the monies going to NEDC or anybody involved was never the question. I mean, that's just not - it's illegal, let's put it that way.

However, the Justice Department then has to - just so it's not a sweetheart - so somebody doesn't come in - like you're U.S. Steel, and you're polluting for 50 years and somebody files a suit and sues you, and then says, "Okay, we'll negotiate a settlement of

a dollar." That's what's called a sweetheart suit or something. So once you're sued for doing something, you can't be sued for the same thing again.

M.O'R.: I see.

J.S.: So Justice has to come in and oversee any settlement, as opposed to what a court would do, to make sure this isn't some scam, legal scam thing, to get the polluter off the hook.

And so they had the idea that, well, gee, that money shouldn't stay in Oregon. This money should come to us, should go to the federal treasury. So at any rate, so we had to go through that interesting argument for which both parties were ...

M.O'R.: On the same side, eh?

J.S.: ... playing on the same side, and the judge threw the Justice Department once again out of court.

But at any rate, the legal process is a perilous one. You actually can do some good and actually do some good faster than through a recalcitrant administrative process, but it's definitely risky.

M.O'R.: You made a couple references to just what a strange person Michael Hogan was. Can you characterize that at all, despite your comment saying, you know, that you had to be there?

J.S.: Well, he just has - I mean, seriously, he's got this eagle fetish, kind of - or thing, I guess. But seriously, he must have hundreds of eagles in his office.

M.O'R.: And do you think it's the patriotic or the predatory part of the eagle that he's drawn to?

J.S.: Oh, I would say clearly the patriotic. It's just that it's kind of like he takes being a judge exceptionally seriously.

You know, his desk is sort of like a bench, and he takes being a judge very seriously. And at that time he was a magistrate. He'd been a magistrate for a long time, and it was - seemed pretty clear his ambition was to be a judge, and not only that, but he should have been a judge a long time before the other judges were judges. It's good he finally is a judge.

He's just somebody who seems determined to be a judge, as opposed - a lot of judges you can sort of recognize that they're also - you can imagine them going home to a wife and children or something. Hogan consciously or unconsciously created the impression that he did not exist outside of being a judge, and it was a very sacred mission. I don't know, just sort of like a super-patriot kind of veteran.

M.O'R.: Which I guess that kind of zeal would be all right as long as it was going your way?

J.S.: Yeah, and it was - I mean, clearly he was - in view of this particular case, he appeared to our side - I'd be curious what - I don't think I've ever talked to Gary or any of the USA people about their views, but from the plaintiffs' side, he appeared to have great difficulty finding - his instincts were to lean very hard to the government agency as opposed to the plaintiff, and he seemed to have difficulty with reconciling all these thousands of violations that were not only documented, but I mean the reason permit violations are sort of a slam dunk case is that, you know, your evidence is the certified submissions of the person you're suing. We didn't go out and do any analyses; I mean, it's USA's data that they've certified under penalties of perjury, and they have to have signed this certification to each one, so it's not

like there's any question of doubt. I mean, it's not like you have to resolve questions of fact.

M.O'R.: It was right there, yeah.

J.S.: So my impression was, you know, given the opportunity, Hogan would have found some reason why these weren't really violations because this was an agency of our government, although not the glorious federal government, but a government, at least, and therefore they couldn't possibly by definition have done this.

M.O'R.: So if you'd gone in with any less strong a case, it might not have been ...

J.S.: Well, again, he wasn't there to render an opinion, either. I mean, his job was the settlement. I'm just saying that in the process we would debate things, and it was interesting and fun, and he was an establishmentarian judge. I mean, I've been in other judge's offices, I'd just never been in anybody's office that was just sort of filled with flags and eagles. I've seen a flag or a couple of flags and an eagle or two, but this was just - I mean, you'd just kind of think, "This is odd," you know.

[end of side one]

JACK SMITH

TAPE 5, Side 2

February 2, 1996

M.O'R.: This is Michael O'Rourke for the Washington County Historical Society. Today I guess is the 2nd of February, 1996, and this is a continuation of the oral history with Jack Smith. Today's interview is taking place at the Oregon Historical Society.

We were talking last time when we stopped about the lawsuit and settling it in the eagle-filled courtroom of Judge Michael Hogan. Just to follow up a little on that, one of the things I wanted to ask you was who else from NEDC was really actively involved in the lawsuit besides yourself?

J.S.: Jack Churchill was a principal participant, who I believe was an individual plaintiff, but was also a board member of NEDC and was a principal participant - I don't think Jack went to - I guess I don't remember whether he was at Eugene at this point or not, but certainly until that time he was quite active.

M.O'R.: So Jack was involved at least up to that settlement conference?

J.S.: Yeah, and he may have been - I think he was there. I just can't remember all the players. I do know Thane Tienson and Mary Kyle McCurdy were the attorneys, and I think Jack Churchill and I were there representing the plaintiffs.

M.O'R.: Well, let's talk for just a little bit about Jack. Can you tell me when you first met him?

J.S.: Oh, golly. Not too long after I moved back here from the East Coast. Would have been probably around 1980 or something like that.

Jack used to work for EPA quite some time ago, and then he worked for Oregon DEQ I think sort of on a temporary assignment from EPA. I think he was responsible for setting up the first non-point source control program for Oregon DEQ. He has a long history of involvement as a legislative aide - I forget which senator that he at one time worked for, federal, state government, and then he taught for a number of years a public policy, basically a water policy course at Portland State School of Public Policy.

M.O'R.: So he comes at it from a legal-political angle, or is he also a scientist like yourself?

J.S.: No, I think his background is more government and political science. So yeah, I think we both ended up being concerned about policy, but he had been there as a government policy person for quite a long time.

M.O'R.: And you came across him as a result of involvement with water quality issues?

J.S.: Yeah, it was actually sort of a mutual friend at DEQ who introduced us a long, long time ago.

M.O'R.: What sorts of things did Jack do to - in what ways did you work with Jack, I guess is the way to frame the question, to bring this lawsuit along? Did the two of you strategize together in terms of what the best moves would be, this kind of thing?

J.S.: Oh, sometimes together, sometimes apart. Sometimes we worked together, sometimes at cross purposes. You know, we would

have sometimes common, sometimes different views. Jack was very good at - and still is - at seeing, isolating, describing, defining policy problems. We always sort of end up arguing when we get to the point of finding an answer to them. Maybe that means I am more amenable to compromising or seeing compromises than he is, but I've been involved in a number of things with him, and when the time comes for producing the answer, we always end up - we're always in agreement right up to that point, and then we always end up arguing and fighting and so forth.

Jack's hero was always Wayne Morse. He was always citing Wayne Morse's observation that the process is more important than the product, that if you control the process, you've automatically controlled the product.

M.O'R.: And of course Morse was fairly well known for being fairly uncompromising himself.

J.S.: Yes. Yes.

M.O'R.: Jack wound up actually serving as one of the Lake Oswego City Commissioners for a while.

J.S.: Yes, he did. He was elected to one of the commissioners, and then he and another commissioner fell in love and moved away to Agnes together. I don't know whether they ever finally got married or not.

M.O'R.: I still have not contacted him.

J.S.: Oh, Jack's an interesting guy, by anybody's definition.

M.O'R.: So he helped, then, in terms of getting the lawsuit off the ground and all that?

J.S.: Oh, sure.

M.O'R.: And what about the two attorneys? Were they already involved with NEDC or were they just someone you hired out of a law office to help you bring the suit?

J.S.: They were hired by NEDC. They were not NEDC attorneys. I mean, sometimes - well, attorneys are attorneys. Sometimes it turns out that - and most of the board of NEDC is usually made up of attorneys, and sometimes one of the board members will undertake to be the attorney. It is always a board member who represents NEDC, and they may be an attorney although not in the specific case acting as the attorney for the case.

Here we hired Ed Sullivan, who was - oh, geez, he used to be I think head of staff of - Bob Straub, I think it was, one of the Oregon governors, and was a very well known land use attorney. And I had worked with Ed trying to get the siting of the regional landfill moved out of the Tualatin River Basin to somewhere else a number of years before, so I had some experience working with him.

So we hired his firm, and I for the life of me can't recall the name of that firm. None of the attorneys currently - shortly after that they all left and went their separate ways, but at that time the principal attorney was Ed Sullivan, and both Thane Tienson and Mary Kyle McCurdy worked in the same firm for Ed, and they simply ended up being the people - the three attorneys that were principally involved, and they ended up being the ones who went to Eugene to - by that time they were doing the kind of day-to-day negotiating work and contacting, and Ed was sort of the senior strategy, legal strategy fellow.

M.O'R.: Prior to the settlement conference, were there any turning points or milestones in the lawsuit where you had to make a decision that might have been critical?

J.S.: Oh, I don't know that I would call it a turning point, per se. Certainly a critical factor, consideration, through that whole process of the USA lawsuit was preventing DEQ from basically stepping in and settling it on their own, which they have a long history of doing, and do to this day: They will, say, enter a stipulated order with the person that's doing the permit violating and some small level of penalty, donating some services to some Boy Scout troop or something is a standard thing that they used to do, thereby making the case moot.

And so there were a number of times when either from USA or somebody in DEQ there would arrive at the director's office a draft Stipulated Order of Settlement, and so we would have to - I would find out about that, and we'd have to truck down to the director's office and threaten to sue him as well, in a subtle way, to head it off.

And then part of the means of countering that was to bring DEQ into the actual settlement as a critical - even though they weren't a party to the suit, we made them - both of the parties to the suit agreed to make DEQ a party to the negotiations so that we wouldn't have this - you know, everybody that had a regulatory interest would be represented in these negotiations, and so if there was a turning point it may have been when USA - when it got clear to USA that they were not going to escape via this stipulated order from DEQ that would moot the lawsuit, that they were going to have to

settle the lawsuit with the parties to the lawsuit, rather than through a side agreement with DEQ.

M.O'R.: Did everybody in your organization, NEDC, support the idea of going ahead with the lawsuit and the kinds of damages you were seeking from USA and the way it unfolded, or was there difference of opinion there?

J.S.: I don't recall any.

M.O'R.: What about other environmental groups? Were they sort of with you on this, too, in the region?

J.S.: Oh, I think the answer is yes, although we were probably the only organization that would have undertaken that particular lawsuit against USA. I mean, virtually anybody - or any environmental organization will - you know, if they have the means would not hesitate to sue an industry, a pulp and paper company or something, but to sue a municipality, which effectively means suing ratepayers and suing the general public, we were the only organization that - that's not frequently done by environmental organizations. They have some sort of philosophical difficulties with doing that that I frankly don't see, and neither did NEDC.

M.O'R.: When it came right down to the final settlement, and you said that you and Jack Churchill usually saw eye-to-eye up until that point; in this particular case was there a difference between the way that you two wanted to approach it?

J.S.: Oh, I don't think so. Just he would have - well, I don't know; you'll have to talk to Jack, but he would have - he basically would want more.

M.O'R.: Would have wanted to push it harder. Now, you also mentioned something that I found kind of interesting, and maybe

there's a story behind this, the EPA, when the amount of damages that USA would be liable for as a result of all those 6,000-plus or 12,000-plus, whatever it was, permit violations, depending on how you counted them, I guess, that they stepped in and thought that maybe they should collect the million dollar proceeds from the lawsuit.

J.S.: Yeah. And I think the key is that you've got to recognize - well, it wasn't EPA; it was the Department of Justice. And basically they - any settlement under - the suit proceeded under a federal statute, Section 505 of the Clean Water Act that basically gives citizens the right to act as private attorneys general to sue over environmental violations. But the settlement of such suits needs to be signed off on, or needs to be approved by the actual federal Attorney General to assure presumably that this is not some sort of sweetheart suit, that some friend of the defendant didn't actually file a suit and then want to settle it cheap just to eliminate the exposure from any future - the double liability exposure to some suit by somebody who is serious. So they need to approve this as an effective settlement. It needs to be, for example, consistent with the kind of a settlement that EPA would have accepted, and they have their guidelines for what's acceptable to - you know, which kinds of violations are more serious than others and how much they're worth in terms of penalties and so forth.

Nevertheless, the settlement of this suit did not involve penalties. It was a settlement, and penalties - the subtle point being that penalties typically are assessed by the federal government and go to the federal treasury, and so the Justice Department

decided that, well, this settlement was okay, except for this part about where the monies involved in the settlement get to stay within the state of Oregon, or even within the Tualatin River Basin, and they thought, well, these are effectively penalties that USA is paying, and they should therefore go to the federal treasury.

Anyway, they thought they couldn't approve it until it was modified so that they got the money, and both parties immediately disagreed with that, and then ultimately so did the judge. Told them to bug off.

M.O'R.: I had the impression from talking to you last time that the Justice Department was often standing by itself in the proceedings of this lawsuit - maybe it was just around this issue of where the money would go, but it seemed to me you said something about how your side and USA and all the other organizations were really together on this, but the Justice Department was ...

J.S.: It was on this issue. The Justice Department had no involvement to that point.

M.O'R.: Okay.

J.S.: Yeah. The previous lawsuit about general water quality management in the Tualatin River, I mean, that was a suit against the federal government, and so the Justice Department was, you know, clearly involved. They were representing the defendant, the federal government.

This was a case against the Unified Sewerage Agency of Washington County; even though it was a suit under the federal Clean Water Act, the defendant was Washington County and the plaintiffs were NEDC and others, so the Justice Department's only

role was to approve or disapprove the final settlement. So they didn't appear until that point. It was a matter of some combination of amusement and irritation to all parties when they did that.

M.O'R.: One of the things you said, I think, last time that came out of this was that the DEQ went ahead and established, with your help, the - I've forgotten the acronym now ...

J.S.: Oh, the TMDL's?

M.O'R.: TMDL's, right.

J.S.: Well, that was not a part of the USA suit. That was the previous suit, the original one.

M.O'R.: And what was your experience like working with them in the wake of the lawsuit?

J.S.: Well, I don't think there was any - the lawsuit was simply not a factor. I was hired or retained to do this job, which I did, with the same relationship then as we do now, as we had before the lawsuit.

M.O'R.: In that capacity you work more or less on your own, then, you don't work with DEQ personnel? Or how was your contract structured?

J.S.: Oh, well, you know, it's a purely technical task ...

M.O'R.: And you're the one with that expertise, so they hire you for that reason?

J.S.: Right.

M.O'R.: And the other thing that was of interest to me was that this suit presumably was much more far-reaching than just enforcing the TMDL's on the Tualatin. I think you said it really touched on every major body of water in the state, because there's

also a requirement to establish the same thing on these other waters.

J.S.: Sure.

M.O'R.: Is that going ahead as planned, then?

J.S.: Well, it's going ahead. It's going ahead much more slowly and much less - I don't know, thoroughly or usefully than was originally planned, but nevertheless there are - in fact DEQ just within the last couple of weeks promulgated their current list of water quality limited waters that require a TMDL process, and there are something like 700-odd bodies of water in the state of Oregon. They just sent them out for public comment and discussion. It's going more slowly - the determination of which waters need this process, that happens pretty routinely now. The actual implementing of the process, that goes very slowly, much more slowly than what anybody had hoped. That's the way of bureaucracies: Things go slowly.

M.O'R.: So you think that's at the core of it rather than just the magnitude of the job?

J.S.: Oh, it's not, in my view, the magnitude of the job of doing it, it's the requirement that the way of doing things, the way of making water quality regulatory decisions be changed. I mean, that's where the resistance is and the slowness of doing this technical task that took me something like 30 days to do on the Tualatin, that's simply a manifestation of the reluctance of the State of Oregon to put the - well, it's the reluctance to make decisions as a result of this process - to put it a different way, to make this process the central or the core decision-making process. And until it is that, then it's simply a peripheral

effort that somebody will do in their spare time when they have leftover resources to do it, because other than the Tualatin River Basin, it does not appear to be anywhere close to the central process by which discharge permit limitations, for example, are determined, and non-point source control program performance criteria, for example, are developed.

It's just a different way of - you know, it requires some reorganization of the department. It requires some communication links. It's just simply a different way of doing business, and they have never made that policy change or that administrative change to make that happen. That's why it all goes slow.

M.O'R.: I see. Is there the possibility of future lawsuits, do you think, to force more rapid cleaning up of other streams?

J.S.: Oh, I would say it's not a possibility, it's - well, perhaps it's not a guarantee, but certainly I think there will be further lawsuits. There have been further lawsuits. There was one just a year ago to - this currently-promulgated list of water quality limited TMDL waters is the result of a lawsuit that said that these are supposed to be produced every two years, and they're not being, and where is this one.

And there will be other lawsuits. Basically it will be the same lawsuit; it's simply going back to the court under the same lawsuit with a petition for contempt citation or contempt of court proceedings because the State of Oregon has not complied with the original settlement, and since they haven't complied and EPA hasn't stepped in to enforce the same kind of condition that the original lawsuit was about where the State is obligated under the original Clean Water Act to do a specific thing, and EPA is obligated if the

State didn't to do something else, and neither one of them did zip. In this case, it's the settlement agreement or the consent decree under the original NEDC lawsuit that neither the State nor EPA has performed.

The question is why there's a concern - or why there wasn't immediately a lawsuit is the question of, well, what is the court going to do? What are you going to get out of a court? I mean, a court has ordered - the consent decree becomes the order of the court, and since neither party has complied with the order of the court, you know, what do you ask the court to do? Give them another order that they don't pay any attention to?

[end of tape]