

HOUSE COMMITTEE ON WATER AND ENVIRONMENT

February 01, 1999 Hearing Room D

1:00 pm Tapes 17 - 18

MEMBERS PRESENT: Rep. Jim Welsh, Chair

Rep. Jackie Taylor, Vice-Chair

Rep. Jason Atkinson

Rep. Juley Gianella

Rep. Deborah Kafoury

Rep. Jeff Kruse

Rep. Jeff Merkley

Rep. Susan Morgan

MEMBER EXCUSED: Rep. Richard Devlin

STAFF PRESENT: Kristina McNitt, Administrator

Gene Newton, Administrative Support

MEASURE/ISSUES HEARD: HB 2188 Public Hearing

HB 2448 Public Hearing and Work Session

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 17, A		

005	Chair Welsh	Calls meeting to order at 1:04 pm.
<u>HB 2188 PUBLIC HEARING</u>		
006	Chair Welsh	Opens Public Hearing on HB 2188.
007	Kristina McNitt	Administrator, explains HB 2188.
008	Gary Lynch	Supervisor, Mine Land Reclamation Program, Department of Geology and Mineral Industries (DOGAMI). Distributes written testimony (EXHIBIT A). Testifies in support of HB 2188. Explains that HB 2188 will modify the Mine Land Reclamation Act in five key areas. Defines the constituents of DOGAMI has worked with to define the terms and language of the bill. Identifies the five changes.
036	Lynch	First, modifies the Limited Exemption provision in section 1. Defines "Limited Exemptions". States that only those Limited Exemptions on file with the department at the time the bill takes effect would have the exempt status. States that if the provision has been exercised then an individual would no longer have a "grandfathered claim". Second, clarifies confidentiality provision. States that at this time DOGAMI's confidentiality provision is confusing. Explains that HB 2188 will keep production figures and trade secrets confidential but the draft reclamation plan is no longer confidential.
064	Lynch	Explains that he has highlighted the written testimony, by use of parenthesis, the specific sections of HB 2188 where the language is changed for each of the modifications. Third, clarifies the appeal provision. States that they will follow the rules set forth by the Administrative Procedures Act. Explains that this would allow the Governing Board of the Department of Geology to broaden contested case provisions. Fourth, modifies the financial security provision. Explains the current interpretation of the law and states that it contradicts the national mine regulatory model and common sense practice. States that it seems punitive that an individual is required to bond for the ultimate disturbance of the site. Explains and cites example. Fifth, and most important, strengthens the department's ability to modify permits. States that the current act gives authority to modify existing permits only if the current permit holder gives permission and that this limits the ability of DOGAMI to force change on permits where a mistake has been made and modifications need to occur. Explains that DOGAMI can enforce criminal and civil penalties.
115	Lynch	Emphasizes that the provision clearly defines the circumstances that DOGAMI can change the provisions of a permit. States that HB 2188 would give them the authority to change the provisions on any permit. Explains that DOGAMI would be supportive of both retroactive and prospective authority to change provisions of permits. States that either case is a win/win situation. Emphasizes that DOGAMI has worked extensively with the mining industry on HB 2188.
135	Jan Lee	Executive Director, Oregon Water Resources Congress. Distributes written testimony (EXHIBIT B). States that they would like to propose an amendment to ORS 517.750 section 15. Explains that the mining reclamation statute as currently written would require persons constructing a small reservoir to file a

		mining reclamation plan. Explains that the proposed amendment would exempt these projects from the mining reclamation statutes.
171	Marc Thalacker	Manager, Squaw Creek Irrigation District. Distributes written testimony (EXHIBIT C) . Explains the need and importance of storage reservoirs. Explains that storage reservoirs are very expensive to build and suggests that the aggregate, sand, gravel and dirt, produced from the construction of the reservoir could be used to finance the costs of it. Explains the public benefit of storage reservoirs. States that these projects are already regulated by the Water Resource Department and should be exempt from the mining reclamation statute.
196	Kristina McNitt	Explains and defines the updated proposed amendments.
204	Rep. Gianella	Asks what the cost of filing a permit would be.
209	Thalacker	Explains that it is a two part process. First, an individual must apply for a Water Storage Right from Water Resource Department and a Reservoir Construction Permit. Secondly, DOGAMI requires a mining permit and the County requires an individual to go through the Goal Five process. Permit costs in Deschutes County are in excess of \$5,000, the DOGAMI permit is \$675, and the Water Resource Department is approximately \$200.
222	Rep. Gianella	Asks what the Goal 5 Process is.
225	Thalacker	Explains that it is a waiting period of six months to one year. Explains that due to the removal of top soil that is not considered "high value aggregate" the county must move slowly in its' interpretation of the mining rules.
244	Lee	Explains that the small ponds have a fee of \$200, but many ponds that will be provided by other districts will have a larger fee of \$2,000 to \$3,000. Suggests that the best language for the law is one that would provide the most process to ensure stability.
256	Rich Angstrom	Managing Director, Oregon Concrete Aggregate Producers Association. Provides further explanation of the Goal Five process. States that it is a very lengthy process that aggregate miners must go through to have a site protected as a significant aggregate site. States that it can be an expensive and lengthy process. Testifies in opposition to HB 2188. Explains that it is meant to strengthen the mining reclamation act and bring into alignment with national standard.
288	Angstrom	Explains that mining is a very visible industry. Explains that there are several provisions within HB 2188 that is of concern to the mining industry. Emphasizes that the largest concern is with modifications of permits. Explains "life of mine permit" and stresses the investments required to gain that permit. Emphasizes that the life of mine permit is essential to avoid the costs of annual changes being made to a mining permit. Recognizes unforeseen things such as The Endangered Species Act, ground water and slope stability as issues coming to bear on existing permits. States that the current language in HB 2188 is not acceptable to the industry. States that they have agreed to work with DOGAMI to arrive at a

		consensus regarding the language issue.
331	Angstrom	States that the concern of the industry is whether or not HB 2188 is applied to "old" mines or "new" mines and explains the mining industries resistance to including "old" mines.
341	Rep. Taylor	Asks why the mining industry opposes retroactivity in HB 2188 but favors it in HB 2419.
350	Angstrom	Explains that HB 2188 and HB 2419 address two separate issues. Explains that "abandonment" by its nature is retroactive while modification to a permit is prospective. Emphasizes that the question of expense to the operator is of primary concern regarding modifications in permits. States that in most circumstances there is conversation between DOGAMI and the operator regarding problems. Stresses the advantage HB 2188 has by placing DOGAMI in a position of being an intermediary between local and federal agencies. States that the mining industry would not support expanding the supervision of mining.
392	Angstrom	Explains the intent of the law. States that it was not designed to expand the governing board by bringing other parties into the administrative suit process. States that there has been good discussions regarding these issues between the mining industry and DOGAMI.
Tape 18, A		
003	Angstrom	States that mining and DOGAMI will be in front of the Legislative Committee in February.
008	Rep. Gianella	Asks what ESA is.
009	Angstrom	States that it is the Endangered Species Act and explains why this is an important issue to the industry. States that the National Marine Fisheries has an entire policy relating to aggregate to ensure that mining does not harm the endangered species in the course of their operations.
023	Rep. Atkinson	Asks for clarification on a previous statement by Angstrom.
025	Angstrom	Explains that there no longer are sites that gravel is being harvested where fish are spawning. States that the industry recognizes there are changes needed to improve water quality. Explains that the industry has been working with other agencies to address the concerns with water quality issues.
040	Rep. Kafoury	Asks for an explanation of the "life of mine" permit.
042	Angstrom	Explains that there are annual permits in addition to the "life of mine" permit. Explains that the industry would allow the modification of permits if the impact

		of ground water, slope stability or endangered species is going to occur within the immediate year of the permit.
053	Rep. Gianella	Asks what NMFS is.
054	Angstrom	Explains that it is the National Marine Fishery Service.
055	Chair Welsh	Asks if mining has any problems with the amendment being proposed by the Oregon Water Resource Congress.
058	Angstrom	Explains that the amendment is not an issue with mining.
062	Chair Welsh	Calls forth DOGAMI to respond to the question.
063	Gary Lynch	Department of Geology and Mineral Industries, Mine Land Reclamation Program. States that the exemption of small reservoirs is a legitimate issue. Explains farm exemptions such as on-site excavations for large building sites. States that the intent is not to get around legitimate mining but, rather, to be able to get through the required paperwork quicker. States that DOGAMI would like some time to look at the amendment before commenting on it.
084	CW	Explains that the committee is not in work session so details of HB 2188 can be worked out and a new hearing can be scheduled.
087	Rep. Taylor	Asks for assurance that Columbia County, which currently does its own permitting, is not going to be overridden by HB 2188.
090	Lynch	States that it is DOGAMI's interpretation that HB 2188 does not affect Columbia County.
092	CW	Closes Public Hearing on HB 2188
<u>HB 2448 PUBLIC HEARING</u>		
101	Chair Welsh	Opens Public Hearing on HB 2448.
102	Kristina McNitt	Administrator, explains HB 2488.
108	Chair Welsh	Explains that the committee will not be hearing HB 2449 due to the inability of persons providing key testimony to be present today. States that it will be scheduled later.
106	Dave Hunnicutt	Oregonians in Action. Testifies in support of HB 2488. Explains that the bill

		<p>amends a problem that arose in Deschutes County regarding the implementation of the Guest Ranch Bill. Explains the Guest Ranch Bill. Explains that there is a group trying to site a Guest Ranch, and while the Guest Ranch is located more than 10 miles from the Urban Growth Boundary, the parcel where the Guest Ranch itself will be sited is both outside and inside the 10 mile boundary. Explains the boundary issue as it relates to the original bill and explains the intent of the original bill. States that HB 2488 would clarify the boundary issue. States that he believes there is no opposition to HB 2488.</p>
144	Rep. Morgan	<p>Asks if she is correct in assuming that HB 2488 addresses the situation of a parcel that overlaps the 10 mile boundary law.</p>
150	Hunnicut	<p>States that she is correct. Explains that the 10 mile prohibition was in statute. Explains that it was understood by all who supported the Guest Ranch Act that the Guest Ranch itself had to be outside the 10 mile area even if a portion of the lot or parcel was within the 10 mile boundary. Explains that the County interpreted the law differently.</p>
158	Rep. Morgan	<p>Asks why the 10 mile prohibition was in the original bill.</p>
160	Hunnicut	<p>Answers that he does not know.</p>
165	Rep. Taylor	<p>States that the 10 mile limit was the purpose of the original bill so asks if Oregonians In Action is asking that the 10 mile boundary is being changed.</p>
172	Hunnicut	<p>States that the issue of the 10 mile boundary was that there would be no Guest Ranch Facilities within the 10 mile boundary. Explains that HB 2448 will still require location of the Guest Ranch outside the 10 mile boundary but that a portion of the parcel can be within the 10 boundary as long as the Guest Ranch itself is outside of it.</p>
187	Ron Eber	<p>Rural Land Specialist, Department of Land Conservation and Development. Testifies in support of HB 2448. Defines the constituencies that have worked on the bill. States that HB 2148 is a clarifying bill. Explains the original bill and how the language can be interpreted to read that the entire parcel of a Guest Ranch must be outside the 10 mile boundary. Explains that HB 2448 clarifies that lodging and recreational facilities as well as food services would be beyond the 10 mile limit but that portions of the land itself could be within the 10 mile boundary. Notes that the bill would last for 4 years at which time a report would be generated to define the bills operational success. Emphasizes that it is a clarifying amendment.</p>
228	Randy Tucker	<p>Policy Advocate, 1000 Friends of Oregon. Offers testimony in opposition of HB 2448. States that they opposed the original law explaining that it did not provide adequate assurance that Guest Ranches approved under its' provisions would be accessory and subordinate to the primary use of the land. States their concern that recreational facilities will be approved as the primary use and ranching will become subordinate. States that 1000 Friends of Oregon does not see this as a proper use of land that is zoned for exclusive farm land. Explains that they do support a ranchers ability to supplement their income by on-site activities as long as they remain subordinate to the primary agricultural use of the land. Distributes</p>

		written testimony (EXHIBIT D).
247	Rep. Merkley	Asks if the opposition by 1000 Friends is to the underlying nature of the current legislation as opposed to the change of language as proposed by HB 2448.
250	Tucker	Answers that that is a fair assessment.
256	Chair Welsh	Closes Public Hearing on 2448
<u>HB 2448 WORK SESSION</u>		
266	Chair Welsh	Opens Work Session on HB 2448.
270	Rep. Kruse	MOTION: Moves HB 2448 to the floor with a DO PASS recommendation.
272	Rep. Merkley	States that there is confusing language to the original bill because of the clause "any portion of a lot or parcel". Suggests amending the language to read "the guest ranch may be cited on a portion of a lot or parcel when that portion is more than 10 air miles" from the Urban Growth Boundary.
286	Rep. Kruse	Explains that when the entire language is read it is clear.
297	Rep. Atkinson	States that if the language is deleted there would be a problem with the intent of the bill.
305	Chair Welsh	Calls forth Dave Hunnicutt to comment on the choice of the language.
312	Dave Hunnicutt	Oregonians in Action. Defines the language and explains that it is clear. States that it is the "Guest Ranch" that can be sited outside of the 10 mile boundary.
319	Rep. Merkley	Withdraws the change.
323	Rep. Kafoury	Asks what the purpose of the legislation for a Guest Ranch is.
328	Hunnicutt	Explains the purpose of the legislation. States that it gives persons in the livestock industry another use of their property to supplement the income derived from it. Explains the philosophy of the "Dude Ranch". Emphasizes that it is a mix of agriculture and tourism.
350	Rep. Taylor	Asks if it is more than just a Bed and Breakfast

51	Hunnicut	Answers yes.
354	Rep. Taylor	Asks if the term could be used to mean a "Guest Resort".
356	Hunnicut	Specifies language in the bill that defines a "Guest Ranch" and states that it does not define it as a "Guest Resort".
366	Rep. Kafoury	Asks if the buildings would be used by people who were working on the ranch.
368	Hunnicut	Explains that there are separate statutes for farm worker housing.
376	Rep. Atkinson	Asks if we are actually having guests to Central Oregon pay to do the ranch owners chores.
378	Hunnicut	Answers that that is a fair assessment.
382	Chair Welsh	Explains the original purpose of the bill.
394	Rep. Kafoury	Asks if there is a tax exemption for property used for ranching purposes.
400	Hunnicut	Answers yes. Explains that the farm tax deferral is applicable to livestock operations.
408	Rep. Merkley	Asks what would happen if the Urban Growth Boundary expanded into what was previously a 10 mile boundary.
TAPE 17, B		
004	Hunnicut	Suggests that persons facing this issue should send in applications as soon as possible.
009	Rep. Kruse	Explains that Urban Growth Boundaries in eastern Oregon do not expand as fast as they do in the Willamette Valley which increases the control of the growth. States that he supports the bill.
021	Chair Welsh	Explains that Rep. Merkley has withdrawn his amendment. Calls the committee to move on Rep. Kruses' previous motion.
025		VOTE: 8-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Rep. Devlin

	Chair Welsh	The motion CARRIES. REP. GIANELLA will lead discussion on the floor.
033	Chair Welsh	Closes Work Session on HB 2448.
038	Chair Welsh	Closes meeting 2:02 PM.

Submitted By, Reviewed By,

Gene Newton, Kristina McNitt,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2188, written testimony, Gary Lynch, 2 pp

B - HB 2188, written testimony, Jan Lee, 6 pp

C - HB 2188, written testimony, Marc Thalacker, 3 pp

D - HB 2448, written testimony, Randy Tucker, 1 pp