

SENATE COMMITTEE ON

WATER AND LAND USE

Hearing Room
1:00 p.m. Tapes - 141

MEMBERS PRESENT:

Sen. Rod Johnson, Chair
Sen. Bob Kintigh, Vice-Chair
Sen. Neil Bryant
Sen. Ron Cease
Sen. Bill Dwyer

STAFF PRESENT:

Karen Quigley, Committee Counsel
Sarah A. Myers, Committee Assistant

MEASURES HEARD:

HB 3183 Public Hearing and Work Session
SB 791 Work Session
SB 1086 Work Session
HB 2376 Work Session
HB 2471 Work Session
HB 2707 Reconsideration and Work Session

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , SIDE A

005 CHAIR JOHNSON: Convenes the meeting at 1:17 p.m..
Opens the Work Session on HB 2707

** Recording device malfunction this portion of hearing was not recorded.**

011 MOTION: CHAIR JOHNSON moves to ADOPT the (-2) amendments to HB 2707.

VOTE: Hearing no objection the MOTION CARRIES.

015 MOTION: CHAIR JOHNSON moves HB 2707 AS AMENDED to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote the motion CARRIES. Members excused: Bryant

Opens the Public Hearing on 3183
Witnesses:

Kevin Hanway, Tualatin Valley Water District
Jeff Berry, Ch2m Hill
Fred Lissner, Water Resources Department
Joni T. Low, League Of Oregon Cities

026 KEVIN HANWAY, TUALATIN VALLEY WATER DISTRICT: Testifies in support of HB 3183 [EXHIBITS A & B].
(Discusses the concept of Aquifer Storage Recovery and the permit process.

077 CHAIR JOHNSON: If these underground water storage repositories are going to be as safe as our drinking water, will they have to be fluoridated?

SEN. DWYER: Where will this water come from?

082 HANWAY: Explains where the source water will come from. In July and August when the flow is relatively low, the water can be recovered out of the Aquifer Storage Recovery (ASR) project.

(Responds to question from Sen. Dwyer regarding the Clean Water Act in terms of surfacing ground water.

(Explains importance of Section three and ground water quality and standards.

(There is potential there to have to monitor the water so that there is no inadvertent contamination.

(Responds to Sen. Kintigh regarding the pilot project in the city of Salem and as to the economic feasibility of the idea of injecting ground water into an aquifer storage space. Refers to Exhibit B for explanation.

(Explains the amount of the volume in gallons being handled and placed into the aquifers.

136 SEN. DWYER: There is an aquifer by the town of Umatilla where they have recharged the aquifer. In some aquifers you can control the river flow by recharging the water.

HANWAY: This bill is introduced to create a different procedure than the aquifer recharge issue to help the flow of the water and the storage of the water. The agricultural people are very interested in this and some have been involved in the drafting of the bill.

(Responds to Sen. Dwyer as to who the water belongs to; injected water remains in the possession of the original appropriator.

172 SEN. DWYER: In terms of the testing, how do we charge the migration and control this so that we get an objective finding rather than having to fund a specialist?.

183 JEFF BERRY, CH2M HILL: We do the testing and then submit the report to the Department for review.

(There are a number of entities who are interested this technology; initial studies determine feasibility.

(Responds to Sen. Dwyer regarding injection of the water during the initial phase of testing.

(Describes the value in testing.

(Discusses the concept of using natural tracers which are already in the water in order to trace the flow of the aquifer.

231 FRED LISSNER, WATER RESOURCES DEPARTMENT: Testifies in support of HB 3183 [EXHIBIT C].

(Discusses limited licenses for feasibility testing.

280 JONI T. LOW, LEAGUE OF OREGON CITIES: Testifies in support of HB 3183. [EXHIBIT D]. Summarizes her written testimony.

SEN. DWYER: The water is going to be treated before it is injected into the aquifer; will the water have to be treated when it comes out?

316 BERRY: No. The water will not have to be retreated.

There are some areas which we have studied which have shown elevated nitrate concentrations, but we see this as an improvement to the water quality.

356 BERRY: Responds to Sen. Dwyer regarding the kind of filtration system and the processes of treating the water. We would be utilizing existing facilities for these functions.

Opens the Work Session on HB 3183

Witness: Kevin Hanway, Tualatin Valley Water District

369 HANWAY: Page one, line nine of the bill. Proposes changes to be made.

391 MOTION: SEN. CEASE moves to ADOPT the conceptual amendments to HB 3183.

CHAIR JOHNSON: This bill is all about storing water for reuse, not just for recharging empty aquifers.

VOTE: Hearing no objection the MOTION CARRIES.

436 MOTION: SEN. CEASE moves HB 3183 AS CONCEPTUALLY AMENDED to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote the motion CARRIES. Members excused: Bryant
CARRIER: Cease

Opens the WORK SESSION on HB 1086

Witnesses: BOB RINDY, DEPARTMENT OF LAND CONSERVATION DEVELOPMENT, (DLDC)
DELL HUNTINGTON, ACCESS MANAGEMENT COORDINATOR, OREGON DEPARTMENT OF
TRANSPORTATION

TAPE 139, SIDE A

CHAIR JOHNSON: Briefly explains the bill.

041 BOB RINDY, DEPARTMENT OF LAND CONSERVATION DEVELOPMENT: Discusses the impact of local land use decisions based on various plans.

(Explains how House Bill 3124 effects land use and the concepts of periodic review and state agency coordination.

(Discusses the need for periodic review, as a forum to solve this problem.

082 CHAIR JOHNSON: Refers to the (-1) amendments to HB 3124 and asks whether or not they had been adopted in the House Natural Resources Committee.

089 RINDY: We have notice of all plan amendments. They come into LCDC because we are a clearing house for all of those amendments. ODOT watches our list of those amendments and does participate in the local hearings to clarify the transportation impact.

105 DELL HUNTINGTON, ACCESS MANAGEMENT COORDINATOR, OREGON DEPARTMENT OF TRANSPORTATION, (ODOT): Identifies himself for the record [EXHIBIT E].

CHAIR JOHNSON: The legislature has a responsibility to guide growth because of the varying possibilities.

140 HUNTINGTON: ODOT has a concern because of limited resources. We participate as local land reform and changes occur.

CHAIR JOHNSON: I hear in your comments that the growth of the state has to match the existing facilities and so we build more facilities?

(By limiting the number of trips which a transportation system can handle, essentially you are freezing that area of Oregon for possible growth and we

will have ODOT doing the land use planning by tying up the land. If ODOT is managing this then what is LCDC needed for?

191 HUNTINGTON: Engineering is going to come into play and therefore we do not want to lose our ability to play a part in the permit process.

CHAIR JOHNSON: I would like to see some changes with the last line of the bill that could give us a start because the language is too strong. Suggests what the language might be changed to and asks Mr. Huntington how he feels about the change.

216 HUNTINGTON: I would encourage the committee to include some language that does refer to ODOT and Its ability to participate in the permitting

process.

RINDY: ODOT does take part in local permit processing. We are trying to encourage that participation by ODOT. I am not clear as to where the break down occurs. Maybe it is in the access permit process.

239 VICE CHAIR KINTIGH: Are either of you familiar with the Cottage Grove Walmart case? Explains the case and ODOT's involvement in that particular case.

248 RINDY: I was not involved, however, the local comprehensive plan was developed so that the land uses that are accessing the interchange, are all figured out on a plan map. This is an example of where a local government was going to approve something that was more intensive than the plan had envisioned.

263 CHAIR JOHNSON: In light of the "relating to clause" in HB 3124, we will add the parts of SB 1086 into HB 3124 when it arrives in this committee.

Opens the Work Session on HB 2471

CHAIR JOHNSON: Discusses the technical changes and the proposed (-A2) amendments to HB 2471 [EXHIBIT F].

315 DOUG PARROW, WATER RESOURCES DEPARTMENT: Testifies as to what the bill will accomplish and adds his support of the amendments even though he does not know who has drafted them.

VICE CHAIR KINTIGH: Questions the percentage of water allocated to the state system in regard to in stream water rights.

330 PARROW: At least 25% of the water would go to the state. If the water is needed for an in stream water right, then we establish an in stream water right for it.

(This bill would allow the Bureau of Reclamation to essentially agree on behalf of the state to a percentage of 33% instead of the 50% which the allocation suggests. The amendments put a lower floor, which the Bureau can't agree to.

402 MOTION: CHAIR JOHNSON moves to ADOPT the (-A2) amendments to HB 2471.

VOTE: Hearing no objection the MOTION CARRIES.

448 SEN. DWYER: What this is intended to fix, is to try to encourage people to conserve by allowing them to keep a percentage of what they conserve. Also, like irrigation districts, if they can provide a more efficient way to deliver the water and they can recover some of that water then that gives them some water that they can use elsewhere. This guarantees that at least 25% of the water will go in stream.

CHAIR JOHNSON: On the issue of the water allocation, it goes into the state for in stream use, is that correct?

478 SEN. DWYER: That is only if the in stream water flow's aren't being met in that particular reach of water then that 25% will be applied to that minimum stream flow.

TAPE 140, SIDE A

016 PARROW: It's not needed for the in-stream flow. It is not necessarily whether or not it is needed to meet an existing in stream water right or a existing minimum stream flow but rather of whether or not during the course of the review, the department in consultation with the ODFW concludes that

the water is unnecessary to meet in-stream needs.

MOTION: CHAIR JOHNSON moves HB 2471 AS AMENDED to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote the MOTION CARRIES. Members excused: Cease and Bryant. CARRIER: Dwyer

Opens the Work Session on HB 2376

050 CHAIR JOHNSON: Discusses the (-A3) amendments and the specifics of page three, line seven of the amendments [EXHIBIT G].

076 MOTION: CHAIR JOHNSON moves to ADOPT the (-A3) amendments.

VOTE: Hearing no objection the MOTION CARRIES.

085 CHAIR JOHNSON: Explains the (-A4) and (-A5) amendments [EXHIBITS H & I].

102 MOTION: SEN. DWYER moves to ADOPT the (-A5) amendments to HB 2376.

VOTE: Hearing no objection the MOTION CARRIES.

109 MOTION: SEN. DWYER: Moves HB 2376 AS AMENDED to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote the motion CARRIES. Members excused: Bryant and Cease. CARRIER: JOHNSON

Opens the WORK SESSION on SB 791

Witnesses:

DELIGHT STONE, North Santiam Water Council (NSWC)
JAMES CONLEY, Resident of Salem
FRANK GEARHART, Citizens Interested in Bull Run Inc.
TOM CROPPER, Cable Access Producer
SUSAN SHEETS
LOREN COLLINS, President, Salem City Council
SALLY CROSS, ONRC
MICHAEL CARRIGAN, Director, Oregon Peace Works
JIM KESEY, Resident of Salem
RICHARD SMITH, Land owner in the Little North Fork area
LOUISA SILVA, MD, Family medicine
SENATOR MARYLIN SHANNON, Senate District 15
JONI T. LOW, League of Oregon Cities
CHUCK BENNETT, Kinross Mining Company
LYDIA TAYLOR, Department of Environmental Quality
AL WHITE, North Santiam Water Council
LIZ FRENKEL, Oregon Chapter, Sierra Club

147 DELIGHT STONE, North Santiam Water Council, (NSWC): Testifies in opposition of SB 791 [EXHIBIT J].

(The final Kinross environmental impact statement was found to be insufficient by Oregon's Environmental Quality Council less than one month ago.

(Federal Standards do not protect the river from industrial discharge.

201 ALLEN WHITE, PRESIDENT, North Santiam Water Council, (NSWC): Testifies in opposition of SB 791 [EXHIBIT K].

(Discusses the effect of mining.

(Discusses the damages likely from the Kinross mine.

270 JAMES CONLEY, Resident of Salem: Testifies in opposition to SB 791.

(Reads highlights from his written testimony. [EXHIBIT L]

335 FRANK GEARHART, PRESIDENT, CITIZENS INTERESTED IN BULL RUN, INC.: Testifies in opposition to SB 791 [EXHIBIT M].

(Urges a no vote from the committee.

384 SENATOR MARYLIN SHANNON, SENATE DISTRICT 15: Testifies in support of SB
791.

(People in Salem are worried about the discharge into drinking water when
there are heavy rains. Yet every time that it rains, the City of Salem is
dumping raw sewage into the Willamette River.

TAPE 139, SIDE B

008 SEN. SHANNON: People in Salem should take care of the facts before they
worry about the maybes of the Kinross mines.

014 CHAIR JOHNSON: Notes receiving of opposition in the form of green post
cards. All of the addresses are from Gresham and of Portland.

028 CHUCK BENNETT, KINROSS GOLD USA, and KINROSS COPPER: Testifies in
support of SB 791 [EXHIBIT Z].
(Testifies in regard to the (-3) amendments; delineates the limitations of
the (-3) amendments.

(Requests that in the employment mandate reference be made to the sub
basin rather than the North Santiam; change language on page three, line
five; deleting the word "little".

082 TOM CROPPER, CABLE ACCESS PRODUCER: Testifies in opposition of SB 791
[EXHIBIT N].
(Discusses the impacts on the water sheds and the ground water.

133 SUSAN SHEETS: Testifies in opposition to SB 791 [EXHIBIT O].
(Provides facts regarding acid rain mining.
(Reads a letter to the Governor as part of her written testimony.
(Responds to Sen. Kintigh regarding alternative sources for copper mining.

Sen. Kintigh suggests that she is testifying with a "not in my backyard"
attitude. Ms. Sheets responds by rebutting his question and stating that
water sheds cannot be alternatively located.

227 LOREN COLLINS, PRESIDENT, SALEM CITY COUNCIL: Testifies in opposition
to SB 791 [EXHIBIT P].
(Discusses the three basin rule and its prohibition.
(Some of the amendments may be in violation to portions of the Oregon
Constitution.
(Responds to question from Sen. Dwyer regarding the legality of other
siting issues if what is being done currently is unconstitutional.

298 SALLY CROSS, OREGON NATURAL RESOURCES COUNCIL, STATE GOVERNMENT AFFAIRS
DIRECTOR: Testifies in opposition to SB 791 [EXHIBIT Q].
(Summarizes issue surrounding acid producing potentials from the mines.
(Characterizes acid mine drainage through the mine tunnels and through the
waste rock.

359 MICHAEL CARRIGAN, DIRECTOR of OREGON PEACE WORKS: Testifies in
opposition to SB 791 [EXHIBITS R & S].
(Reads written testimony of Andy Harris, MD; Salem, OR.

CHAIR JOHNSON: My perception is that the degree of scrutiny control
applied to Kinross mine would be light years difference than that which
were applied to the Riddle situation.

TAPE 140, SIDE B

017 JIM KESEY, SALEM, OR RESIDENT: Testifies in opposition to SB 791.
(Discusses the probability of the damages and risks Oregon would be taking
if Kinross mine is allowed to establish itself with sub-standard
limitations regarding their drainage.

058 RICHARD SMITH, RESIDENT of the LITTLE NORTH FORK AREA: Testifies in opposition of SB 791.

(Summarizes his written testimony. [EXHIBIT X]

098 LIZ FRENKEL, OREGON CHAPTER, SIERRA CLUB: Testifies in opposition to SB 791 [EXHIBIT T].

(Discusses the impacts on the environment and of the species of fish in the streams and rivers in the area.

(This should be framed as a question on mining in a municipal water shed in one of the three basin's protected by the rule.

143 DR. LOUISA SILVA, FAMILY MD in SALEM: Testifies in opposition to SB 791

and expresses her concerns regarding the contamination by the mines with mercury.

(Dangers of accumulation of mercury in fish because of water contamination.

(Discusses the damages to the human body due to mercury poisoning.

(Responds to a question from Sen. Dwyer regarding identification of mercury in the water, and degradation of fish species.

(Comparing mercury to sewage is an unfair comparison. Mercury cannot be removed or treated while sewage can.

200 JONI T. LOW, LEAGUE OF OREGON CITIES: Testifies in opposition to SB 791

[EXHIBIT U].

(Comments on the (-2) and (-3) amendments and makes some suggestions

[EXHIBIT AA & BB

(Section 1, subsection 3(A); amount should be increased to \$100,000 per year and increase the monitoring aspect.

(Adoption of spillage program should this bill pass.

249 CHAIR JOHNSON: These amendments were proposed in the House Bill also?

LOW: Yes, but with the exception of the first amendment that I identified dealing with ground water, the other two were added to the House Bill. Mr.

Bennett indicates that he has no problem with the language dealing with the ground water requirements

261 LYDIA TAYLOR, DEPARTMENT OF ENVIRONMENTAL QUALITY, INTERIM DIRECTOR: Testifies in opposition of SB 791 [EXHIBIT V].

(Discusses the three basin rule and the issue of super siting.

(Presents the Commissions view of the bill.

(Responds to a question from Sen. Kintigh who references a letter from Fred Hanson and asks a clarification of a position of the DEQ.

(Notes that the Commission recognizes that one mine may not endanger a persons health, but many mines and their accumulation would.

350 CHAIR JOHNSON: Discusses the proposed (-3) amendments.

SEN. DWYER: Discusses Kinross and their hiring practices; they should hire people who are highly qualified to work in this mine. Responsibility is very important.

378 MOTION: CHAIR JOHNSON moves to ADOPT the (-3) amendments to SB 791.

VOTE: Hearing no objection the MOTION CARRIES.

391 CHAIR JOHNSON: We have some other amendments proposed by the League of Oregon Cities [EXHIBIT CC].

LOW: They increase the amount of \$50,000 to \$100,000.

403 SEN. DWYER: How much is it going to cost to monitor the program? I want it to be enough to do the job.

SHEETS: It costs a million dollars per year to monitor Bull Run.

417 TAYLOR: We estimated that it would cost \$50,000 to monitor, \$25,000
dollars per year to have an inspector on site to assure proper operation of
equipment and of chemicals. The figure of \$100,000 is adequate.

TAPE 141, SIDE A

010 MOTION: SEN. DWYER moves to ADOPT the conceptual amendments which
inserts into Section 1 (2), (f) "Violate the groundwater quality protection
requirements of OAR 340 40-030" and amends section 1 (3), (a) and (d).

VOTE: Hearing no objection the MOTION CARRIES.

MOTION: SEN. DWYER moves SB 791 AS AMENDED to the Floor with a DO
PASS recommendation.

015 SEN. CEASE: I will be voting no. I am not opposed to mining, but there
are a number of communities who are concerned about their drinking water; I
believe we are acting against what the majority wants.

SEN. DWYER: If we allow mining as a state policy, if it is an allowable
action, then we ought to make it work. If we can make restraints that can
protect the environment, reasonable constraints to protect the environment
with testing, bonding, monitoring and other requirements then I don't
believe that we should prohibit this company from operating.

042 SEN. CEASE: All we need is one act of potentially dangerous activity
and I don't support this very unwise public policy.

SEN. KINTIGH: Agrees with Sen. Dwyer.

058 CHAIR JOHNSON: This policy of the three basin rule was developed by
agencies and not by the legislature.

VOTE: In a roll call vote the motion CARRIES. Members excused: Bryant

093 CHAIR JOHNSON: Adjourns the meeting at 3:48 PM.

Submitted by,

Reviewed by,

Sarah A. Myers,
Committee Assistant

Karen Quigley,
Committee Counsel

EXHIBIT LOG

A -- Testimony on HB 3183 -- Kevin Hanway -- 3 pages.
B -- Testimony on HB 3183 -- Cable, Huston, Benedict and Haagensen -- 13
pages.
C -- Testimony on HB 3183 -- Fred G. Lissner -- 3 pages.
D -- Testimony on HB 3183 -- Joni T. Low -- 1 page.
E -- Testimony on SB 1086 -- Mr. Huntington -- 2 pages.
F -- Dash 2 amendments to HB 2471 -- Staff -- 1 page.
G -- Dash 3 amendments to HB 2376 -- Staff -- 1 page.
H -- Dash 4 amendments to HB 2376 -- Staff -- 1 page.
I -- Dash 5 amendments to HB 2376 -- Staff -- 2 pages.
J -- Testimony on SB 791 -- Delight Stone -- 13 pages.
K -- Testimony on SB 791 -- Allan F. White -- 18 pages.
L -- Testimony on SB 791 -- Jim Conley -- 13 pages.
M -- Testimony on SB 791 -- Frank Gearhart -- 1 page.
N -- Testimony on SB 791 -- Tom Cropper -- 1 page.
O -- Testimony on SB 791 -- Susan Sheets -- 10 pages.

P -- Testimony on SB 791 -- Loren Collins -- 5 pages.
Q -- Testimony on SB 791 -- Sally Cross -- 2 pages.
R -- Testimony on SB 791 -- Dr. Andy Harris, MD -- 1 page.
S -- Testimony on SB 791 -- Michael Carrigan -- 2 pages.
T -- Testimony on SB 791 -- Liz Frenkel -- 2 pages.
U -- Testimony on SB 791 -- Joni T. Low -- 2 pages.
V -- Testimony on SB 791 -- Lydia Taylor -- 2 pages.
W -- Testimony on SB 791 -- Mike Gotterba -- 2 pages.
X -- Testimony on SB 791 -- Richard Smith -- 1 page.
Y -- Testimony on SB 791 -- Patricia Smith -- 3 pages.
Z -- Testimony on SB 791 -- Kinross Mining Co. -- 55 pages.
AA Dash 2 amendments on SB 791 -- Staff -- 3 pages.
BB Dash 3 amendments on SB 791 -- Staff -- 3 pages.
CC Conceptual amendments on SB 791 -- League of Oregon Cities -- 1 page.