

SENATE COMMITTEE ON  
WATER & LAND USE

Hearing Room  
1:00 p.m. Tapes - 56

MEMBERS PRESENT:

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

STAFF PRESENT:

Karen Quigley, Committee Counsel  
Kimberly Shadley, Committee Assistant  
Mitch Hack, Senate Floor Staff

MEASURES HEARD:

SB 674

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 , A

CHAIR JOHNSON: Calls hearing to order. (1:10 p.m.)

PUBLIC HEARING ON SB 674

Witnesses: Martha Pagel, Director, Water Resources Department  
Gail Achterman, Attorney, Oregon Water Resources Congress

015 MARTHA PAGEL, DIRECTOR, WATER RESOURCES DEPARTMENT: We have had an informal work group meet a couple of times to come up with ideas for cleaning and tightening as well as pointing out policy differences you'll have to decide.

( I was encouraged by the involvement and consensus.

040 CHAIR JOHNSON: There is another bill, that speaks to the back log; why isn't that workable?

PAGEL: SB 297 was heard weeks ago; our feelings are that that approach wouldn't be helpful and we would strongly resist that.

( We have been working on ideas for revamping our basin plans; describes.  
( That will happen over the next several years; we have eighteen basins.

100 GAIL ACHTERMAN, ATTORNEY, OREGON WATER RESOURCES CONGRESS: Testifies in support of the (-1) amendments, submits written testimony, (EXHIBIT B).

( I will speak to the original bill, where the written testimony refers to the consensus amendments it is referring to the (-1) amendments.

( I will go through the bill section by section.  
( Rick Bastash from the Department has the overhead description, (EXHIBIT  
C).

165 ACHTERMAN: Section one, following Exhibit B.

CHAIR JOHNSON: What perimeters may the appropriate fee fall under?

PAGEL: Currently it is \$200; but we don't see the protest fee as being  
intended for cost recovery; we thought \$25 - \$100.

195 ACHTERMAN: Describes section two, see Exhibit B.

245 ACHTERMAN: Section three, see Exhibit B.

270 ACHTERMAN: Section four.  
( Section five starts to make adjustments to the flow chart, see Exhibit C.

300 ACHTERMAN: Section five, see Exhibit B.

340 SEN. DWYER: Why get rid of the mapping and why get rid of the nearest  
quarter-quarter section township and range?

ACHTERMAN: We put that back in.

390 PAGEL: We are agreeable to deleting the requirement to using a  
certified water rights examiner to draw the original map.

ACHTERMAN: We need a red flag there; I'm not sure we did put it back in.

SEN. DWYER: I agree, it is expensive for the initial stage.

415 ACHTERMAN: Sections six and seven.  
( Section eight; see Exhibit B.  
( Describes flow chart, see Exhibit C.

450 ACHTERMAN: Section nine, see Exhibit B.

TAPE 56, SIDE A

040 ACHTERMAN: Continues with section nine.

CHAIR JOHNSON: Page two, (-1); line 22 says "all fees"?

ACHTERMAN: If the application is incomplete.

055 ACHTERMAN: There is a new subsection six dealing with public notice.

070 ACHTERMAN: Sections ten through fourteen; see Exhibit B.

PAGEL: Describes current process of issuing a technical review.

ACHTERMAN: Line 28, page 4 of the (-1) amendments deals with notice  
requirements.  
( Continues describing flow chart, see Exhibit C.

205 ACHTERMAN: There might be an unfairness here in that the Director,  
between the draft and final order, could change his/her mind on a matter.

PAGEL: Describes fish screen requirements.

270 ACHTERMAN: Discusses the time frame.

CHAIR JOHNSON: I'm not sure that the (-1) allow you any flexibility.

ACHTERMAN: The clock for the 45 days runs from when the weekly public notice goes out.

PAGEL: Our intention was to allow some slack.

350 ACHTERMAN: (-1) amendments, page 6; line 2; see Exhibit A & B.

SEN. BRYANT: Could you give me an example of "detrimental to the public interest"?

PAGEL: We tried to maintain current statutory language and standards.  
( This is one area where you will see other amendments from the Department.  
( We would add that whenever two or more commission members request it, the

case would proceed to contested case hearing.

468 ACHTERMAN: OWRC would object to that amendment.  
( Line 12, page six; describes.

TAPE 55, SIDE B

040 ACHTERMAN: Discussion of protest fees.  
( Page seven, (-1) amendments, see Exhibit A.  
( Discussion of time frames.

ACHTERMAN: As drafted we aren't putting the contested case on a timeline; there may be groups that would like to see a statutory timeline.

SEN. DWYER: What is reasonable?

150 PAGEL: It is our intention and our desire to move these through quickly.

CHAIR JOHNSON: I think we do need a time certain.

PAGEL: We aren't opposed to setting the timeline; we will work on recommendations.

SEN. BRYANT: After the contested case there should be a 30 day timeline for the decision.

200 PAGEL: Section 5, page 7; we need to clarify the time and also that there are two different tracks.

ACHTERMAN: Pages 8 & 9 of the (-1) describe what the Director does on the two tracks.

235 ACHTERMAN: The critical provision is at the bottom of page nine, (-1) amendments, subsection 9 G; my testimony refers to 8G per the original bill.

( Discusses evidentiary standards.

295 ACHTERMAN: Section 14; see Exhibit B.  
( Gives example for Bryant.

320 SEN. BRYANT: The burden should be that there was no substantial evidence; we need another time frame so that its promptly scheduled.

ACHTERMAN: Section 14 says 20 days to file, decision within 45 days.

350 ACHTERMAN: Sections 15 - 16, see Exhibit B.  
( Section 17.  
( We are having discussions regarding the last sentence on page ten.

PAGEL: We are still looking into the writ of mandamus.

ACHTERMAN: We do agree with the Commission as to issuing the proposed final order.

( At line 26 of the (-1) it says at line 39 delete "or the" and insert "to issue proposed final order or schedule a contested case hearing on an application for a water right"; OWRC agrees with that.

465 ACHTERMAN: There is a new 17A; in Exhibit B it is referred to as 18 A; describes.

TAPE 56, SIDE B

050 ACHTERMAN: We are discussing consolidating the ground water and surface water so that one section deals with both.

075 ACHTERMAN: Sections 36 & 37; see Exhibit B.

PAGEL: We have drafted an option that says that the process will apply immediately to any applications on file now or filed from this point forward, but that the specific timelines don't apply until "October 31, 1996".

100 SEN. DWYER: How do you expect to be able to act on 5000 applications within 120 days?

ACHTERMAN: We are no longer talking about 120 days; the Department is proposing that they would work through the backlog in the next eighteen months.

PAGEL: We are recommending phasing in the timelines; we would propose adding staff to get through the backlog.

165 ACHTERMAN: There is experience with other agencies meeting these types of timelines all the time.

PAGEL: If we are able to get the funding and staff we need, we should be able to do this.

250 CHAIR JOHNSON: Will this new system adequately preclude the delay tactics used by the public interest objectors?

ACHTERMAN: OWRC tried to do that; people do have a right to participate, this structure allows those affected to participate, but they will have to meet strict timelines.

PAGEL: We've suffered from a process that has delays built in and a lack of staff.

285 CHAIR JOHNSON: We are adjourned. (2:55 p.m.)

Submitted by, Reviewed by,

Kimberly Shadley  
Committee Assistant

Karen Quigley  
Committee Counsel

EXHIBIT SUMMARY:

A - SB 674: Revenue impact statement, (-1) amendments submitted by staff,  
pp 24

B - SB 674: Written testimony in support of the (-1) amendments submitted  
by Achterman, pp 7

C - SB 674: Informative material submitted by Bastash, pp 1