

SENATE COMMITTEE ON
WATER & LAND USE

Hearing Room
Tapes - 60

MEMBERS PRESENT:

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

STAFF PRESENT:

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

MEASURES HEARD:

SB 674
SB 812
SB 830

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: Calls the hearing to order. (1:12 p.m.)
Announces schedule.

PUBLIC HEARING ON SB 674

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

045 GAIL ACHTERMAN, ATTORNEY, OREGON WATER RESOURCES CONGRESS: Introduces herself.

MARTHA PAGEL, DIRECTOR, WATER RESOURCES DEPARTMENT: Introduces herself.

060 ACHTERMAN: We don't have the timelines figured out, but we will set a time frame in the consensus amendments; describes.

CHAIR JOHNSON: I assume there would be a shorter time period for those without contested cases?

ACHTERMAN: Yes.

080 ACHTERMAN: (-1) amendments, see Exhibit A from March 15, 1995.

(Lines twenty five, twenty six and twenty seven of page nine relate to the public interest standard and how it is applied to water rights applications.

096 PAGEL: The Commission adopted rules that give further instructions to us in weighing the factors.

(We look at several specific factors up front and if they are met, then we conclude that it wouldn't be detrimental to the public.

(Continues describing process.

ACHTERMAN: As drafted the presumption is established if the applicant can demonstrate that the use is classified in the basin plan.

(You should also add water availability, that it complies with rules and that there be no injury to other water right holders.

SEN. DWYER: What if they don't know there will be injury?

PAGEL: We go through an evaluation; we would indicate that in our technical review.

ACHTERMAN: Under this model the decision would be reflected in the draft order; the discussion of injury would be available to the public and other affected land owners.

195 PAGEL: In the event that we are wrong we can go in and regulate to stop the injury.

ACHTERMAN: On line twenty seven, page nine, of the (-1) amendments, we need language to reflect rules of the department; those amendments are being drafted by legislative counsel.

(There are three standards of evidence; proof beyond a reasonable doubt, (criminal cases); proof by preponderance of the evidence, which requires showing the facts are more probably true than false; and proof by clear and

convincing evidence.

315 PAGEL: The Department advocates for the preponderance of the evidence; describes why.

(This would say that if a person meets the four preliminary tests they are entitled to that presumption.

CHAIR JOHNSON: What would stop a future director from passing an administrative rule that makes it easy to say no to water rights applications?

ACHTERMAN: That has been a concern.

440 SEN. DWYER: Administrative rules aren't passed in secret.

TAPE 58, SIDE A

060 ACHTERMAN: Referring to SB 674; page sixteen, section twenty seven; line thirty one, subsection three; the mandamus provision is included.

(We have concluded that the last sentence doesn't need to be there.

SEN. DWYER: Why shouldn't we give direction to the court?

ACHTERMAN: You direct the local government agency to identify the substantive provisions.

(The committee has two choices as I see it; you can have the court order the Director or Commission to make the final decision, or you could direct the court to order the issuance of the permit, but OWRC isn't advocating that.

125 PAGEL: We have no problem with the mandamus, but if the direction is that the court must issue the permit, that could cause injury.

SEN. DWYER: What kind of a hammer do we have; should a citizen have to go to court to get you to do something you should do anyway?

PAGEL: I go to jail, if the court tells us to make a final decision and we don't, so there is a hammer; it gets my attention.

ACHTERMAN: This is a decision that the committee will have to make, we will supply the language.

(My guess it that it costs a minimum of \$5000 to process a writ of mandamus.

255 ACHTERMAN: On raise it or waive it, we understood your comments yesterday.

(We are prepared to adjust the language that requires issued to be raised.

(Page seven, line fourteen - nineteen of the (-1) amendments).

(We will bring language.

CHAIR JOHNSON: Recess.

PUBLIC HEARING ON SB 812

Witnesses: Richard Berman, Attorney, Medford
Dick Benner, Director, Department of Land Conservation & Development
John Shafer, Dallas Oregon
Blair Batson, 1000 Friends of Oregon
Marion Millard, Redmond
Art Schlack, Land Use Specialist, Association of Oregon Counties

CHAIR JOHNSON: Some of the elements of this bill will be dealt with in the House; section five, the lot of record provision, and section seven provisions on modifying the monetary standards.

345 RICHARD BERMAN, ATTORNEY, MEDFORD: Submits written testimony describing the bill, section by section, (EXHIBIT B).

SEN. BRYANT: Dude ranch is defined by the Department of Agriculture?

BERMAN: Yes; we felt we would be comfortable with them defining that.

445 BERMAN: Continues, see Exhibit B.

TAPE 57, SIDE B

040 CHAIR JOHNSON: Describes what the House is doing.

SEN. CEASE: I'd like to see the specifics of lot of record.

CHAIR JOHNSON: That is a highly controversial area; the point for this

bill is that section five will be deleted.

080 SEN. DWYER: Who wants this?

BERMAN: Some are land owners.

(This was designed to help people around Medford; describes situation.

165 BERMAN: Section six, see Exhibit B.

SEN. KINTIGH: That is the only test?

BERMAN: Yes.

SEN. DWYER: How do you determine, under this language, who can do a stocking survey?

SEN. KINTIGH: That is loose.

240 DICK BENNER, DIRECTOR, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT:

I will talk about urban reserves, dude ranches and soils.

(Gives background on urban reserves.

(The intent of the Commission was that if a local government looked to rural residential areas then they could expand while not going onto the farm land and we adopted a rule to that effect.

(This language would take Medford off the list; Medford is working on urban reserves in their periodic review.

365 BENNER: On dude ranch, we don't know what that is; if they are talking about something modest, the law already allows that.

((In response to Sen. Kintigh) Bed and Breakfasts are in the home occupation statutes.

410 BENNER: With respect to soil, there is history you should know; describes.

SEN. KINTIGH: Are there private soil consultants?

BENNER: Yes; we would recommend that attention be paid to the skills and training of those going to do this.

(I don't see much of a difference between clear and convincing and preponderance of the evidence.

TAPE 58, SIDE B

050 BENNER: We will work on language

CHAIR JOHNSON: We do need a way to distinguish who knows what they are talking about.

BENNER: Portland, Sandy, Newberg, and Medford are the four cities I know are working on urban reserves, probably others.

080 CHAIR JOHNSON: How does the urban reserve help farm land?

BENNER: Describes process.

140 SEN. DWYER: How did Sony get permission to build in Springfield?

BENNER: They were inside the boundary.

155 JOHN SHAFER, DALLAS OREGON : Testifies in opposition; submits written testimony, (EXHIBIT C).

188 BLAIR BATSON, 1000 FRIENDS OF OREGON: My testimony addresses the provisions of the bill that you've decided to eliminate, see (EXHIBIT K).

CHAIR JOHNSON: The soil issue may get into a controversial bill and so I may leave that clause in this bill.

BATSON: There is another approach for the soil issue; describes what Marion County did.

(When counties do the mapping, there is a one time call.

235 MARION MILLARD, REDMOND OREGON: Testifies in opposition, submits written testimony, (EXHIBIT D).

(Describes wetlands being filled in.

315 MILLARD: Speaks to dude ranches and her concerns.

370 ART SCHLACK, LAND USE SPECIALIST, THE ASSOCIATION OF OREGON COUNTIES: The association would be interested in working on the definition of "dude ranch".

(Refers to HB 3353.

(We would support clarification of who will do the stocking requirements.

430 CHAIR JOHNSON: Describes his intent, "professional forester".

CHAIR JOHNSON: We will take a break.

467 CHAIR JOHNSON: Calls the hearing to order.

(We will operate as a subcommittee.

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PUBLIC HEARING ON SB 830

Witnesses: Mel Stewart
Jennifer Robison, Division of State Lands.
Ken Bierly, Wet Lands Program Leader, Division of State Lands

065 MEL STEWART Testifies in support, submits written testimony, (EXHIBIT E).

CHAIR JOHNSON: What is the soil type?

STEWART: Dayton Class Four.
Continues with written testimony.

196 STEWART: Continues reading written testimony, see Exhibit E.
Section two.

249 STEWART: Section four; these are the amendments I'd like to submit, see Exhibit E.

348 JENNIFER ROBISON, DIVISION OF STATE LANDS: Submits written testimony from Gary Gustafson, (EXHIBIT F).

430 CHAIR JOHNSON: Explains that there is a pending court case so questions and/or answers will be limited.

KEN BIERLY, WET LANDS PROGRAM LEADER, DIVISION OF STATE LANDS: Describes difference types of soils.

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040 BIERLY: Continues:
((In response to Johnson) DEQ has a substantive role in federal permitting.

CHAIR JOHNSON: Please talk about federal vs. state permit activities.

BIERLY: They are similar, there is a lot of overlap.
(In response to Chair Johnson) The program as administered by the federal government at one time had three methods for determining what was a wet land.

250 SEN. DWYER: I can see why you have this law suit.

BIERLY: It is important to look at the issue broadly; describes.

SEN. KINTIGH: With the Stewart property, did the city have to get permits?

ROBISON: I don't have the facts.

315 CHAIR JOHNSON: Is there anything in the wetlands system you can see that could be improved?

ROBISON: The bill that requires us to assume the 404 process will help us figure this out.

WORK SESSION ON SB 674

Witnesses: Gail Achterman, Oregon Water Resources Congress
Martha Pagel, Director, Water Resources Department
John Frewing, Water Resources Commission
Jill Zarnowitz, Oregon Department of Fish and Wildlife
Jeff Curtis, Water Watch
Karen Russsell

400 GAIL ACHTERMAN, OREGON WATER RESOURCES CONGRESS: We would need additional amendments to 674.

(There needs to be an opportunity for someone who commented in support of a draft order so that if the Director changes the condition to come back in; LC is working on language for that.

466 ACHTERMAN: Refers to (-2) and (-3) amendments.

TAPE 59, SIDE B

ACHTERMAN: We are using the (-3), (EXHIBIT G),
(OWRC supports those.

055 MARTHA PAGEL, DIRECTOR, WATER RESOURCES DEPARTMENT: We do support the (-3) amendments.

PAGEL: (In response to Dwyer) About 1000 are in-stream.

100 PAGEL: (In response to Johnson) We do keep a tally of how much water is in the system.
(The quantity will have to looked at.

CHAIR JOHNSON: We don't have meters on most diversion points?

PAGEL: Our technical division has developed a complex but reliable method for stream flow data; describes.

150 PAGEL: We are at a point where we have issued so many water rights already, we are running out.

(We don't want to issue more than 100% of the stream flow.

175 SEN. KINTIGH: Do you give municipalities as much water as they want, or do they justify what they use?

PAGEL: The municipal right, the same as all other rights, goes through the process of being subject to objections and comments and challenges as to if they need all that water.

(For irrigation type uses we have data about what is needed; for municipal uses it is more difficult, but we have methods.

200 ACHTERMAN: There is one area of disagreement in the (-1) amendments on page six, line eleven, adding another basis for contested cases, which is two or more members requesting that and OWRC opposes that, believing it should be the Director who decides.

PAGEL: We requested those amendments and do support them.

(Describes relationship between the Commission and the Department.

255 ACHTERMAN: Gives history.

(The final issue starts with section eighteen; we recommend that one through seventeen and eighteen through thirty five be consolidated.

320 CHAIR JOHNSON: The Ways and Means Committee is anxious to get this out; my intent is to get this bill out and let them decide.

355 JOHN FREWING, WATER RESOURCES COMMISSION: Submits written testimony, (EXHIBIT H).

(In my opinion and experience, the Commission isn't the problem with the back log.

TAPE 60, SIDE B

080 FREWING: (In response to Johnson) It is my feeling that water is a very valuable asset of the state and in the case of water, the state gives it away for infinity years and to me that is not proper management of state owned resources.

SEN. KINTIGH: We have to look at the value the state receives from the use of the water, such as crops.

186 JILL ZARNOWITZ, OREGON DEPARTMENT OF FISH AND WILDLIFE: Testifies in support.

230 CHAIR JOHNSON: Describes work group that worked on this bill.

250 JEFF CURTIS, WATER WATCH: With me is Karen Russell.

(Submits written testimony, (EXHIBIT I).

(We applied three principles in looking at this bill, that it not restrict

public participation, not weaken standards and apply to in-stream as well
as out of stream rights.

(Discusses the burden of proof issue.

320 CURTIS: The fee issue; we support fees, but would suggest something
like \$40.

350 CHAIR JOHNSON: Of the 5000 applications in the back log, how many have
you been involved in?

KAREN RUSSELL: Twenty; we've filed 1500 objections.

CHAIR JOHNSON: We are adjourned. (5:06 p.m.)

Submitted by, Reviewed by,

Kimberly Shadley
Committee Assistant

Karen Quigley
Committee Counsel

EXHIBIT SUMMARY:

- A -SB 674: (-3) and (-4) amendments submitted by staff, pp 3
- B - SB 812: Written testimony in support submitted by Berman, pp 3
- C -SB 812: Written testimony in opposition submitted by Shafter, pp 2
- D - SB 812: Written testimony in opposition submitted by Millard, pp 2
- E - SB 830: Written testimony in support submitted by Stewart, pp 8
- F - SB 830: Written testimony submitted by Robison, pp 6
- G - SB 674: Written testimony submitted by Frewing, pp 3
- H - SB 674: Written testimony submitted by Curtis, pp 9
- I - SB 812: Preliminary Staff Measure Summary & testimony submitted for
the record, by staff, pp 8
- J - SB 830: Preliminary Staff Measure Summary submitted by staff, pp 1
- K - SB 812: Written testimony in opposition submitted by Batson, pp 9