

SENATE COMMITTEE ON WATER POLICY

February 2, 1993 Hearing Room 137 3:00 p.m. Tapes 4 - 5

MEMBERS PRESENT: Sen. Bill Dwyer, Chair Sen. Bob Kintigh,  
Vice-Chair Sen. Wes Cooley

MEMBERS EXCUSED: Sen. Frank Roberts Sen. Tricia Smith (until 4:00 pm)

STAFF PRESENT: Lisa Zavala, Administrator Pamella Andersen,  
Committee Clerk

MEASURES CONSIDERED: SB 89 - Public Hearing SB 90 - Public  
Hearing SB 91 - Public Hearing

[--- Unable To Translate Graphic ---] 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. [--- Unable To Translate Graphic ---]

TAPE 4, SIDE A

006 CHAIR DWYER: Calls the meeting to order at 3:05 p.m., noting  
Senator Roberts is excused and Senator Smith is excused until 4:00 p.m.  
Opens

the hearing on SB 89.

PUBLIC HEARING ON SB 89 - EXHIBITS A, D AND E

WITNESSES: Martha Pagel, Director, Department of Water Resources  
Jerry Schmidt, OWC Inc., Oregon Association of Realtors Scott  
Ashcom, Oregon Association of Nurserymen, Oregon  
Strawberry Commission, Oregon Caneberry Commission, Oregon Blueberry  
Commission, Port of Coquille River Doug Myers, Water Watch Audrey  
Simmons, Water Watch

021 MARTHA PAGEL: (introduces EXHIBIT A) The bill was introduced at  
their request to deal with procedural ambiguity relative to the process  
by which areas are withdrawn from appropriation. It would clarify that  
such action may be taken through rulemaking, as opposed to contested  
case proceedings. - Provides history of the issue, noting the  
definition of the word

"order" has changed, impacting their proceedings.

063 CHAIR DWYER: There has never been a contested case process until  
199 1?

PAGEL: Since we received Attorney General advice, the process has been  
by rulemaking.

CHAIR DWYER: The rulemaking process would not be site specific in terms  
of those affected.

PAGEL: The rulemaking process would be site specific as to a geographic region.

CHAIR DWYER: If I was an affected party and I weren't paying attention to the rules, I would be out. Under contested case proceedings I have another process. What right do the citizens have in objecting a withdrawal by rule versus a withdrawal by order?

088 PAGEL: By order there would be a different kind of notice; so individualized notice and joining of parties would occur.

CHAIR DWYER: Whose interest does this serve?

PAGEL: We believe it serves the interest of the State and the public. It does provide less individualized opportunity for notice and to appeal. But the broader concern is when the water resources in an area are jeopardized, the alternative creates an overwhelming administrative responsibility that sometimes can't be met.

109 CHAIR DWYER: This is a money and convenience issue?

PAGEL: Money and convenience are issues but also certainty of the process. In a contested case hearing with a large number of clients, it is difficult to achieve closure.

140 CHAIR DWYER: Invites questions by other members.

SEN. KINTIGH: Could you provide a case example? You would use this when you would withdraw water to protect the resource.

146 PAGEL: You would use this in areas where surface waters had already been appropriated and should be closed for new uses.

160 CHAIR DWYER: Describes a situation where the aquifer is depleted, and a deep well is drilled. Isn't there provision for reservation of water

for agricultural uses?

168 PAGEL: There is a statutory provision that allows reservations. - Describes specific instance on Parrett Mountain of too many uses draining out an aquifer. A temporary hold was placed on new well drilling until the situation was more thoroughly understood.

200 SEN. COOLEY: This appears to circumvent the public hearing process on any contested case.

PAGEL: It eliminates the contested case and provides a public hearing through the rulemaking process.

213 SEN. COOLEY: It changes the appeal process from the circuit court to the Court of Appeals? PAGEL: Yes. We don't see this as a change. Contested cases go to the Court of Appeals, others go to the circuit court and rulemaking goes to the circuit court.

227 SEN. COOLEY: Explain the different philosophies between the two courts.

232 PAGEL: There are two basic differences. In a rulemaking you have a generalized public hearing. A contested case hearing is an evidentiary hearing.

250 SEN. KINTIGH: Withdrawal is done based on the best judgement of your department? What opportunity is there for persons to present opposing

evidence?

PAGEL: There is opportunity at the public hearing for which general public notice would be provided.

282 JERRY SCHMIDT: (introduces EXHIBITS D and E) Addresses Withdrawal Order in Northern Parrett Mountain, noting the parties felt they had been denied the right of a contested case hearing.

352 SCOTT ASHCOM: There are significant legal protections for users of water because of the large investment risk. Banks can be approached for financing for incremental irrigation development. If after the loan is made, the irrigator is faced with withdrawal of an area, there is significant financial damage. He believes it essential that current language be retained that persons be allowed due process.

480 CHAIR DWYER: A bank will loan money when there are no water rights?

ASHCOM: They may no longer do so, but there was a time when the bank had a certain amount of confidence the water right would be issued and the economic plans of the user would be achievable.

TAPE 5 SIDE A

023 DOUG MYERS: We have ambivalent feelings about this bill.

AUDREY SIMMONS: Our staff indicated we should support this bill. A simpler process would have been helpful for the Department. We reluctantly support this. Rulemaking doesn't always uncover all the needed information.

040 CHAIR DWYER: I am ambivalent also. Anyone offering a constructive way to address and offer the citizen the right to an evidentiary hearing

would be appreciated.

054 PAGEL: The department is not requesting to abolish the right to an evidentiary hearing for individuals. Such was not previously provided. Only this year was it discovered that an evidentiary hearing was required as the result of changes in other laws. We are not trying to limit a right the public has had.

CHAIR DWYER: Closes hearing on SB 89.

PUBLIC HEARING ON SB 90 - EXHIBITS B AND F

WITNESSES: Martha Pagel, Director, Department of Water Resources  
Jerry Schmidt, OWC Inc., Oregon Association of Realtors Doug Myers,  
Water Watch Audrey Simmons, Water Watch Don Miller, Groundwater  
Geologist, Department of Water Resources Ron Yockim, Oregon  
Cranberry Farmers John Borden, Department of Water Resources

070 CHAIR DWYER: Opens hearing on SB 90.

MARTHA PAGEL: (introduces EXHIBIT B) The purpose of the bill is to clarify uses of groundwater that require water rights and strengthen the commission's authority to address specific problems relative to exemptions.

110 JERRY SCHMIDT: (introduces EXHIBIT F) Opposes this bill as it limits property owner rights. The department doesn't need this power.

138 CHAIR DWYER: These exempt uses still apply in critical groundwater areas. How does the state regulate development? Property owners do not

have the right to deplete resources.

SCHMIDT: If it can be determined that even de minimus use will affect groundwater then those areas ought to be withdrawn. Those are rare circumstances.

CHAIR DWYER: What is the provision we have to protect critical groundwater areas and not allow these de minimus uses?

163 SCHMIDT: That provision remains.

CHAIR DWYER: Asks Martha Pagel to confirm that statement. (She nods, yes.)

SCHMIDT: The question is, "How far in the rulemaking process do we go?"

CHAIR DWYER: (to Martha Pagel) How does the Department presently protect groundwater from de minimus uses under current law?

190 DON MILLER: This depends upon the nature of the order or rule creating the critical groundwater area.

CHAIR DWYER: You can't stop people from drilling 500 wells on 500 parcels?

209 MILLER: It depends upon the nature of the order. Such may make provisions for new uses.

CHAIR DWYER: How many people would this change in statute affect?

225 MILLER: Automatically, it would affect none. There is little domestic development in critical groundwater areas. A few persons per

year might be impacted.

CHAIR DWYER: What primary area?

254 PAGEL: This bill would allow our commission to take action in areas other than critical groundwater areas. This is a substantial broadening of current authority.

CHAIR DWYER: How many people would this affect?

PAGEL: An unknown amount of people who are planning exempt uses in problem areas would be affected.

280 DOUG MYERS: Introduces himself and Ms. Simmons.

AUDREY SIMMONS: This hits on an area of water management that has been of great concern since 1977. We are continuing to exploit groundwater without knowing our inventory level.

CHAIR DWYER: It is easier to do this than to identify what the resource is.

SIMMONS: We have used our surface water and are now turning to groundwater. Groundwater is difficult to inventory. We don't know how many wells we have because they haven't been permitted.

315 CHAIR DWYER: We could design a system to determine that without this bill. We ought to know what the uses are and what is withdrawn. This

bill seems to withdraw the possibility of de minimus uses.

SIMMONS: Notes requests for wells for golf courses that are impacted even though they are not de minimus use.

345 RON YOCKIM: There is continuous erosion of the agricultural environment due to small residential developments that are drilling their own domestic wells. They support this bill to allow the Department to require permits of these people, otherwise they could be severely impacted financially.

376 CHAIR DWYER: How do we respond to the person who has expectations of drilling a well on their property in the future?

YOCKIM: There is no guarantee any person will have water. Options include a rural service district or a centralized provider of water. Other alternatives could be explored.

398 CHAIR DWYER: Closes hearing on SB 90.

PUBLIC HEARING ON SB 91 - EXHIBITS C, G, H AND I

400 CHAIR DWYER: Opens hearing on SB 91.

WITNESSES: Martha Pagel, Director, Department of Water Resources  
Jerry Schmidt, OWC Inc., Oregon Association of Realtors  
Doug Myers, Water Watch  
Audrey Simmons, Water Watch  
Kip Lombard, Water Resources Congress

MARTHA PAGEL: (introduces EXHIBIT C) This bill is intended to create a mechanism for obtaining water use data where essential. It offers the Department broader authority for obtaining information about water use.

SEN. SMITH joins the meeting. (4:00 pm)

455 SEN. KINTIGH: What is the fiscal impact of this bill?

PAGEL: The bill does have a fiscal impact which covers enough staff to receive and process reports. It was included in the Governor's budget for the department.

465 CHAIR DWYER: Does this have a subsequent referral?

PAGEL: I don't know.

ADMIN. ZAVALA: There is no subsequent referral.

470 SEN. COOLEY: I find a problem with this bill under Section 4(2). Better terminology for "measuring devices" is needed. - Water reporting scheduling should be delineated more fully so as not

to be prohibitive.

TAPE 4, SIDE B

CHAIR DWYER: I am concerned about water right owners who may be ignorant of the fact they may be losing their water rights. A safeguard is needed to ensure their notification prior to loss.

PAGEL: The bill provides that failure to report creates a presumption of nonuse upon which the department could initiate cancellation proceedings. - We want to ensure the reporting requirement has teeth. 055 - In many cases, water rights have been forfeited and this would result in accurate maintenance of records.

068 CHAIR DWYER: There should be notice far in advance of the loss. This will not pass as it is.

SEN. KINTIGH: In what percentage of the State's area do you envision putting this into practice? How will you determine the areas?

083 PAGEL: We desire to move into this incrementally. The intention is to move into areas of particular concern.

CHAIR DWYER: Name examples or criteria you would use.

095 JOHN BORDEN: There are 10 or 12 designated areas in the Willamette Basin area some of which might be considered candidate areas due to their evidence of declining water.

106 SEN. SMITH: In Section 4(2), how do you propose to require those measurement devices, since they will no longer be required by rule?

PAGEL: The reporting areas are established by rule. Once done, the watermasters have authority to require devices based upon particular

experiences in the field.

119 BORDEN: Two types of authority are addressed here, that of creating an area for reporting processes and that of isolating singular users to require reporting.

SEN. SMITH: How do you eliminate the perception that some areas are being singled out?

131 BORDEN: Designation of districts is determined in cooperation with user groups. Groups meet together to determine a program to include reporting frequency and means.

147 SEN. SMITH: How much do devices cost, and does the user pay?

BORDEN: Under current law the user pays. Costs range from \$30-40 to \$6500.

164 PAGEL: The issue of fairness can be reworked in the bill.

SEN. SMITH: I would not like to establish a program whereby some users would feel singled out.

176 SEN. KINTIGH: Would reporting the hours pumped at a certain capacity be an acceptable method of reporting?

BORDEN: It can be, but current experience indicates we can't require that information be reported.

SEN. SMITH: Is there a fiscal impact?

PAGEL: This bill does have a fiscal impact and was included as part of the budget process.

CHAIR DWYER: The committee would like to see the fiscal impact statement.

196 PAGEL: Our Department bills either have no fiscal impact, or were included in the budget.

CHAIR DWYER: In the future, ensure we have a fiscal impact statement.

208 JONI LOW: (introduces EXHIBIT G) We are concerned with Section 6 of the bill and offer a proposed amendment.

230 CHAIR DWYER: Why should a city be treated any differently?

LOW: This could also be extended to other water users.

CHAIR DWYER: If a city does anything inadvertently it should suffer the same consequences.

242 SEN. SMITH: An individual water user has only himself to rely upon, why should results be different for a municipality?

LOW: We were envisioning small municipalities with limited staff.

CHAIR DWYER: There is no limit on size of municipality in the

testimony.

278 KIP LOMBARD: (introduces EXHIBIT H) Presents major concerns of the Water Resources Congress. These relate to cost of measuring devices; the value of retaining Section 2(b); and the exaggerated severity of Section 6.

432 CHAIR DWYER: Is there a better way to do this?

LOMBARD: Improved enforcement of existing sanctions which allow the Department to urge people to file reports may help.

TAPE 5, SIDE B

CHAIR DWYER: Maybe a water use fee is needed to cover the costs of the services provided by the Department.

LOMBARD: We have consistently supported increased field staff. Requiring a watermaster to verify use or non use would not be that onerous. They are very knowledgeable about who is using the water.

040 JERRY SCHMIDT: (introduces EXHIBIT I) Believes there is room for compromise. Wishes to change rebuttable presumption.

061 DOUG MYERS: Agrees with the Chair. - You have to measure water to manage it. We support this law and

agree with its penalty provisions. - Notice to the legal owner and occupant of the land would be

necessary. - Measuring, reporting and proper penalty provisions are necessary.

SEN. SMITH: Notice after the fact is insufficient; it is necessary to notify persons before the fact.

086 SEN DWYER: Adjourns the hearing at 4:45 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Lisa Zavala Clerk  
Administrator

#### EXHIBIT LOG:

A Testimony on SB 89, Martha Pagel, 2 pages B Testimony on SB 90, Martha Pagel, 2 pages C Testimony on SB 91, Martha Pagel, 6 pages D Testimony on SB 89, Jerry Schmidt, 5 pages E Criteria for Determining WRD Land Use Programs, Jerry Schmidt, 1 page F Testimony on SB 90, Jerry Schmidt, 1 page G Testimony on SB 91, Joni Low, 1 page H Testimony on SB 91, Ben Lombard, 3 pages I Testimony on SB 91, Jerry Schmidt, 1 page