

SENATE COMMITTEE ON WATER POLICY

February 16, 1993 Hearing Room 137 3:00 p.m. Tapes 9 - 10

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

Sen. Frank Roberts

MEMBERS EXCUSED: Sen. Tricia Smith

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

MEASURES CONSIDERED: SB 48

[--- 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 9, SIDE A

004 CHAIR DWYER: Calls the meeting to order at 3:08 p.m. - Opens the public hearing on SB 48.

PUBLIC HEARING ON SB 48 - EXHIBIT A

WITNESSES: Martha Pagel, Director, Department of Water Resources  
Barry Norris, Administrator Technical Services Division,  
Department of Water Resources Steve Applegate,  
Enforcement Program, Department of Water Resources Doug  
Myers, WaterWatch Richard Koesan, Water for Life,  
Oregon Cattlemen's Association Larry Troisi, Oregon Farm Bureau John  
Charles, Oregon Environmental Council

025 MARTHA PAGEL: (introduces EXHIBIT A) Offers testimony in support of SB 48. - The bill would expand Department civil penalty authority in three

specific areas. - This is not a dam safety bill similar to those submitted in past

sessions. - This bill would align with other programs of the Department with

respect to pump tests and water use reporting.

033 CHAIR DWYER: How does levying a civil penalty help the people downstream from the dam?

042 BARRY NORRIS: Presently, to achieve compliance, first and second orders are issued, after which the case is forwarded to the District Attorney. Those are not acted upon right away due to the work load of that office. - Notes one case in Grants Pass took three years to

resolve. - Civil penalties tend to get the attention of owners quickly.

CHAIR DWYER: How many cases have you sent the District Attorney and what was the final disposition of those? Are any of those pending?

050 NORRIS: In ten years we have only gone to the District Attorney in about two cases. They were eventually resolved after a long period of time.

059 CHAIR DWYER: How many civil penalties have you levied? Do most people comply?

NORRIS: We have situations monthly where we have to issue orders to seek compliance. In ten years about 12-15 orders have been issued.

CHAIR DWYER: How do you anticipate using this authority? Why do you need it?

079 STEVE APPELLEGATE: We might have had more of these cases if we had thought compliance could be achieved. We might have more now because of an improved ability to quickly gain their attention, requiring less

staff time. The legal process is so cumbersome.

090 CHAIR DWYER: What about failure to comply with existing pump test and water use reporting requirements? How many municipalities are not in

compliance? Against how many of these have you taken action?

097 APPELLEGATE: We have not taken action on water use reporting or pump test requirements as there is no penalty provision in statute, although there is failure to comply. Pump test requirements apply to all wells. We

send about 4000 to 5000 notices of pump test requirements per year.

104 CHAIR DWYER: What about water use reporting requirements?

APPELLEGATE: Figures on compliance are unavailable. - There is an increased pattern of noncompliance. - All noncomplying parties are public entities.

113 SEN. KINTIGH: What is the purpose of the pump test?

APPELLEGATE: It allows the Department to collect data about the ground water resources. We gain information in terms of how the ground water reservoir reacts and recovers.

133 SEN. KINTIGH: What does a person have to do to collect the data?

APPELLEGATE: Notes specifics of the collection of data.

148 SEN. KINTIGH: Does the average person have the means to take these measurements?

APPLEGATE: Probably not. The majority would hire someone with the appropriate equipment to perform the test. The pump in the well would probably be adequate to conduct the test. 165 SEN. KINTIGH: What would that cost?

APPLEGATE: Perhaps \$100 to several thousand dollars. Many variables would affect that figure.

CHAIR DWYER: Remember this is required every ten years.

176 SEN. COOLEY: Is it a fact that those pump tests average \$600 to \$1000?

APPLEGATE: I don't have information to that effect.

SEN. COOLEY: Do you know what exceptions there are to pump test requirements?

APPLEGATE: Those are for pumps used for exempt purposes (i.e. domestic use, livestock, lawn and garden watering).

194 SEN. COOLEY: What part of the bill refers to water use reporting requirements?

APPLEGATE: Sub paragraph (f) includes ORS 537.099 which requires water use reporting from government entities. Only those entities listed in this statute are required to report water use.

225 CHAIR DWYER: Directs everyone wishing to testify on this bill to do so today, rather than undermine the process later.

230 DOUG MYERS: Offered testimony on SB 48. - Strongly support provisions of the bill particularly with respect to pump tests. - The largest users should be made to respond without the government

needing to take drastic measures.

244 SEN. COOLEY: We should make clear for the record only six percent of the water in Oregon is running down a creek or diversion. - We are using 80 or 90 percent of that six percent. - We don't need to spend money to check all the water in Oregon. Is it

rational to address the unused 94 percent?

272 CHAIR DWYER: How do you know what is about to become a critical ground water area if you don't require measurements?

280 SEN. COOLEY: We know where the critical areas are. In some parts of the State this does not apply.

274 MYERS: Of the amount diverted, irrigation districts and municipalities are among the biggest users. - There are areas in Oregon where you wouldn't expect water shortages,

yet they exist. - We need to determine statewide where the water is being used.

309 CHAIR DWYER: Notes a salted aquifer in Linn County. It is not possible to learn about these by any other means. - Case of a municipality that drills a deep well, and those around with shallow wells have to buy water from the municipality because they no longer have water.

328 SEN. ROBERTS: The issue is not the propriety of securing this information but the ability of the Commission through civil penalties to encourage everyone to report. That seems reasonable. 356

RICHARD KOSESAN: The primary concern with the bill is in Section 1(d). - Notes the size requirements of impoundment structures in statute. - If the bill is applicable to structures that size and over, it would

be acceptable. - If the bill is applicable to other smaller sizes it would be

objectionable. - Dam safety rules currently deal with 9.2 acre feet and 10 feet in

height.

391 LARRY TROSI: Addresses inclusion of pump test requirements. - Many persons in agriculture have used pump tests. - Problems arise due to the vagueness of what is required for pump

tests. - Uniformity is needed before civil penalties are applied.

420 CHAIR DWYER: (To Martha Pagel) Why doesn't the statute strictly leave violations to dams that are not exempt?

PAGEL: The intent of statute is to apply to violations of the requirements that apply to those dams identified in rule as 9.2 acre

feet and 10 feet in height. - Exempt uses are not regulated and therefore would not be in

violation.

437 CHAIR DWYER: Can we make the intent more obvious?

PAGEL: Yes. We can clarify that these apply to dams, reservoirs and impoundment structures that are subject to state dam safety regulation.

CHAIR DWYER: How consistent are the administrative rules in defining what is expected in a test? How can this be remedied?

452 APPLGATE: I am unfamiliar with the inconsistency stated by Mr.

Trosi. I would like to discuss this with the lead staff person for the pump

test program.

469 PAGEL: If the current rules are unclear, we will address that. It has not been brought to our attention before. Staff are seeking to make

this workable.

CHAIR DWYER: Directs staff to meet with Mr. Trosi to determine inconsistencies and return the issue to the committee.

TAPE 10, SIDE A

020 JOHN CHARLES: We support the decisions for increased civil penalty authority. - If the Legislature has already authorized the Department to regulate

these items, it should also be a priority to provide them with enforcement authority. - We support this bill.

CHAIR DWYER: Closes the hearing. 041 - Adjourns the meeting at 3:40 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Lisa Zavala Clerk  
Administrator

EXHIBIT LOG:

A Testimony on SB 48, Martha Pagel, 2 pages