

SENATE COMMITTEE ON WATER POLICY

April 13, 1993 Hearing Room 137 3:00 p.m. Tapes 32 - 33

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

MEMBERS EXCUSED: Sen. Frank Roberts

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

MEASURES CONSIDERED: SB 960

[--- 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 32, SIDE A

004 CHAIR DWYER: Calls the meeting to order at 3:14 p.m. - Opens the public hearing on SB 960.

PUBLIC HEARING ON SB 960 - EXHIBITS A through G

WITNESSES: Jeff Curtis, WaterWatch Audrey Simmons, WaterWatch Bob Hunter, WaterWatch George Twining, Federation of Flyfishers Andy Kerr, Oregon Natural Resources Council Louise Bilheimer, Pacific Rivers Council Jim Myron, Oregon Trout Craig Lacy Quincy Sugarman, OSPIRG Larry Hill, Oregon Guides and Packers, Northwest Sports Fishing Industry

015 JEFF CURTIS: (introduces EXHIBITS A and B) Offers testimony in support of SB 960. - Most streams are over appropriated during peak demand. - Notes amount of consumptive permits issued. 036 - We are creating an increasing water deficit.

053 BOB HUNTER: Offers testimony in support of SB 960. - Reviews provisions of the bill. - In the past, water has been appropriated on a first-come-first-served basis. - SB 960 seeks to promote streamflow restoration while preserving the

integrity of the existing water right system. - Notes the 1953 study on streamflows. - Reviews further history of the issuance of water rights.

080 - (introduces EXHIBIT C) Reviews "public and private rights to water" statistics. - Even if protection were put in place in 1993, we would be too late. - Notes impact of the doctrine of prior appropriation. - A process must be developed to address the problems of past

allocations.

117 SEN. KINTIGH joins the meeting.

HUNTER: Notes results of a study of the Grants Pass Irrigation

District. - The district's conveyance system inefficiencies are so high only 16.5 percent of diverted water reaches the crop. - Reads portions of the bill noting definitions in sections 2(10) and

2(1).

136 CHAIR DWYER: Who makes that determination?

HUNTER: The Department of Water Resources makes the determination. - Continues review of the provisions of the bill. - Notes priority dates to be used and the related reasons. 152 - An effort was made to create incentives for voluntary conservation. - Notes new definitions of "conservation" and "conserved water." - A process has been created to protect junior in-stream water right

holders. - Section 9 creates additional incentive to conserve by establishing

fees based upon use. 203 - Voluntary transfer of water rights to in-stream use is already allowed, but section 24 simplifies that process. - SB 960 lays the foundation for a shift from pure allocation to water

management, conservation and restoration. - Requires rejection of further applications for streams already

over-appropriated. - Requires measurement of reported water use. 248 - Cancels abandoned water rights.

359 CHAIR DWYER: We have a provision requiring diversions to be screened. - People are not complying because there is no enforcement.

HUNTER: Much illegal use exists. - Section 11 includes provision for citizen enforcement through suit

for injunctive relief.

385 CHAIR DWYER: Can you use the Writ of Mandamus under current law to force an appropriator to screen diversions?

HUNTER: I don't know how successful that would be.

392 SEN. SMITH: Could you sue the department to require them to enforce the law?

HUNTER: I would have to review the statute to answer that.

CURTIS: For diversions under 30 cfs there is a program for enforcement of screening by the Department of Fish and Wildlife.

- For diversions over 30 cfs no such program exists. - Courts generally don't force agencies to enforce the statute under

prosecutorial discretion.

434 CHAIR DWYER: \$118 million of anticipated screening costs relate to diversions larger than 30 cfs.

CURTIS: The agencies may be hesitant to enforce as they determine

priorities.

TAPE 33, SIDE A

CHAIR DWYER: The federal government will come and manage our waters.

CURTIS: I agree. - Under the Endangered Species Act, the sufficiency of existing

regulatory mechanisms to protect the species is examined before a

species is listed. - If we don't have provisions in place to protect streamflows for fish, we are hurting ourselves because we will end up with more listings

and federal involvement in our waters.

CHAIR DWYER: We already have legislation in place.

HUNTER: Legislation is not in place that will advance an in-stream flow protection, stream restoration or conservation program. - SB 960 will lay a foundation for such a program.

SEN. SMITH: On page 3, section 4(2) cogeneration of electricity is said to take precedence over in-stream water rights. Why is that the case?

037 SEN. COOLEY: There are eleven pumps sitting in the Columbia River pumping water to the upper valley for irrigation.

SEN. SMITH: Why?

HUNTER: That is there because plans exist for cogeneration in the Hermiston area which parties did not want impacted by this bill.

SEN. SMITH: Why would cogeneration take precedence over protecting fish?

050 CURTIS: The problem on the Columbia River is the timing of the flows which is governed a lot by how the power system works.

HUNTER: Sections 11 and 22 amend existing statutes relative to civil penalties. 075 - Notes portions repealed under section 34 and what provision those made before their repeal.

140 SEN. SMITH: What does this bill do to municipalities in terms of conservation requirements and how they deal with their own water rights?

HUNTER: We have exempted municipalities from the provisions of the conversion of wasted water to in-stream. - There is an exception in transfers to municipalities.

171 AUDREY SIMMONS: Supports her associates' reports.

CURTIS: Closing statements on the impact of the bill.

185 GEORGE TWINING: Offers testimony in support of SB 960. - Notes the membership of the Federation of Flyfishers. - The Federation is concerned with fish conservation issues and

declining runs. - Reads article from the Eugene Register Guard relative to the

curtailed ocean fishery. - Expects Coho salmon to be listed under the Endangered Species Act

with the federal government taking subsequent court action. 248 - Section 11 includes an important provision for injunctive relief by any party for violation of the provisions involved. - Another vital provision prohibits a water right holder from diverting water without a fish screening device.

CHAIR DWYER: Does section 11 cut both ways? - Suppose you file for injunctive relief and the appropriator wins.

Does the one filing the suit pay the fees?

TWINING: That's the way I read the bill.

284 ANDY KERR: Offers testimony in support of SB 960. - Lists fish species and others being considered for inclusion as

endangered species. - Because of the complexity of the water issue, it is preferred that

determinations be made at the legislative level; however, an

initiative petition would be considered if necessary. - Due to their nature, a petition would have to be less complex than a

bill, and therefore, less effective.

370 LOUISE BILHEIMER: (introduces EXHIBIT D) Offers testimony in support of SB 960. - References her list of state scenic waterways and the accompanying

threatened or endangered species existing there.

415 SEN. SMITH: In some correspondence we have received, water rights are referred to as property rights. - I don't know that the courts have ever determined that a water right

is a property right.

429 KERR: There have been recent Supreme Court cases relative to this question and the issue of "what is a taking?" - Government has broad discretion as water is given under certain terms and government may ensure waste does not occur. - The other side of "taking" is "giving," and government may need to

determine where it is subsidizing the misuse of water.

TAPE 32, SIDE B 020 CHAIR DWYER: There is case law in California, in the City of Los Angeles versus Mono Lake which sets a broad

precedence with respect to

the responsibility of government on the resource.

KERR: The Public Trust Doctrine says certain public values cannot be given away by government.

039 SEN. SMITH: I would like to have this issue addressed as it is raised frequently.

KERR: There have been strategically chosen cases that are intended to test the "takings" issue in the Supreme Court. - Notes a specific case in South Carolina.

056 JIM MYRON: (introduces EXHIBIT E) Offers testimony in support of SB 960. - One of the principle reasons for the decline in Oregon's fish

populations is the loss of suitable habitat. - This bill provides systematic and rational methods for restoring that habitat.

086 CRAIG LACY: Offers testimony in support of SB 960. - Notes his experience as an outfitter on the Deschutes and John Day

rivers. - States his understanding of water law is that water ownership is in

the hands of the people of Oregon who allow conditional uses of the water.

SEN. COOLEY: Your reading of new law is correct. - States complications from the old laws of the 1800's. - I own water rights that are adjudicated to the land with part of the

land value locked into the water right. - 1886 and 1904 are the years from which these laws originate. - If I were to go to a lender, the value or lack of value of the

property is locked into the water to which it is connected.

130 LACY: There has been a change in public attitudes toward water. - Recreational demand has increased in eastern Oregon to the point that limited use is being contemplated by the Forest Service. - We need better accountability on the water resource. - A better understanding of the value of the product is needed. - Lists types of value. - Notes peak use months on the Deschutes and John Day. 166 - The water temperature is too high and the level too low for steelhead to come upstream.

CHAIR DWYER: Are you aware that two years ago the Bureau of Reclamation intended to build a dam on the John Day to address the steelhead needs

and environmentalists opposed it?

LACY: Dams are not beneficial to anadromous fish. - Better management of the watersheds is the solution, not dams. 177 - Reports the recreation industry in the West is worth \$40 billion. - There is no

benefit to conserve if the water is free; farmers can't

afford to conserve free water. - Water users should pay for the program that monitors the resource

they are using. - We need more accountability, improved recordkeeping and an inventory

of availability and surplus. - Incentives to conserve water and eliminate waste need to be

developed. - Notes the leakage and waste of water in canals through lava fields.

247 SEN. KINTIGH: Is that water truly lost or does it find its way back into the stream?

LACY: That is unknown because it has not been monitored accurately.

SEN. COOLEY: Should you, as a back packer and rafter pay for water use at the same value as everyone else?

273 LACY: I pay the Bureau of Land Management 3 percent of my gross for my permit and I pay the state to float on top of the water.

SEN. COOLEY: Are you paying your fair share when you talk about uses and their value?

LACY: I have no objection to paying for recreational uses. 310 - Summarizes by stating public attitudes are changing, more accountability is desired, incentives are needed to conserve and ensure water remains for future uses.

CHAIR DWYER: Notes a fee bill will be heard on Thursday.

332 QUINCY SUGARMAN: (introduces EXHIBIT F) Offers testimony in support of SB 960. - Reviews the valuable provisions of the bill.

376 LARRY HILL: Offers testimony in support of SB 960. - The average yearly income generated by sports fishing in Oregon is

about a \$1 billion. - The decrease in the salmon run has created many lost opportunities. - Notes the number of fish that could be returned to the Columbia

system. - This bill would put a time certain on when all water rights would be

reviewed. - Consumptive users should contribute to the costs they incur on the

resource. - Offers definition of consumptive uses.

SEN. COOLEY: There is no such thing as consumptive use with respect to water as it is a mineral and cannot be destroyed.

HILL: Although amendments may be needed, overall, SB 960 is an excellent effort to address a major critical problem in the state.

TAPE 33, SIDE B

SEN. KINTIGH: If you charge consumptive users it will just be added on to your grocery bill.

017 CHAIR DWYER: Closes the public hearing on SB 960. - Adjourns the meeting at 4:43 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Lisa Zavala Clerk
Administrator

EXHIBIT LOG:

A Testimony on SB 960 - Jeff Curtis - 2 pages B Summary of SB
960 - Jeff Curtis - 4 pages C Public and Private Rights to Water -
Bob Hunter - 3 pages D Testimony on SB 960 - Louise Bilheimer - 2
pages E Testimony on SB 960 - Jim Myron - 2 pages F Testimony on
SB 960 - Quincy Sugarman - 2 pages G Memorandum on SB 960 - Jon
Mangis - 1 page