

SENATE COMMITTEE ON WATER POLICY

June 3, 1993 Hearing Room 137 3:00 p.m. Tapes 52 - 53

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

Sen. Frank Roberts Sen. Tricia Smith

MEMBERS EXCUSED: None

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

MEASURES CONSIDERED: HB 3295

[--- 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 52, SIDE A

004 CHAIR DWYER: Calls the meeting to order at 3:15 p.m. - Opens the public hearing on HB 3295.

PUBLIC HEARING ON HB 3295 - EXHIBIT A

WITNESSES: Representative Dave Mc Teague, District 25 Dale Pearson,
Legislative Aide to Representative Mc Teague Dave Nichols, Department of
Fish and Wildlife

008 REP. DAVE MC TEAGUE: Offers testimony in support of HB 3295. - The bill is basically policy and cleanup legislation as a result of the work by the Fish Screening Task Force.

016 DALE PEARSON: (introduces EXHIBIT A) Offers testimony in support of HB 3295. - Reviews the intent of and need for the bill. - Relates the provisions of the A-engrossed bill. - Explains why the existing fish screening standards are inadequate. - Notes the major fish migration path through the Salem Ditch which

cannot be cut off. - The standard only requires fish be kept out of the diversion and does not require they be unharmed. 067 - Notes the necessity of removing obstacles to the use of behavior barriers. - Section 3(1)(e) allows use of alternative fish screen designs. 086 - Section 3(2) requires that all non-hydro screening activities be managed together in the agency.

SEN. SMITH: How was the budget constructed in this regard? - Have those operations been consolidated?

PEARSON: The budget doesn't stipulate to the extent the individual programs are mandated.

SEN. SMITH: Are they still arranged as six individual programs, with the ability to move things around?

PEARSON: Yes. - Explains the personnel movement within the agency. - The budget has yet to be heard in the House. - Reviews section 3(3) which emphasized cooperation and understanding.

127 SEN. KINTIGH: Commends the last two items under section 3.

PEARSON: Notes what was removed from section 4 and continues with general overview of the bill. 148 - On page 4, lines 17 through 34 modify to definitions intended to recognize behavioral barriers. - Describes possible behavioral barriers. - Relates past bad experiences the agency has had with behavioral barriers.

SEN. SMITH: What happens when an ineffective barrier is installed?

165 PEARSON: It should be immediately replaced. - Notes the procedure they would use in replacing a barrier.

SEN. KINTIGH: Do you expect behavioral barriers to be less expensive?

PEARSON: There are two reasons for use of behavioral barriers: cost in a larger diversion, and because they are maintenance free.

197 SEN. COOLEY: This does not circumvent the present process mandating cleaning procedures?

PEARSON: That is correct. - The maintenance problem and financing such is our biggest challenge. - Continues his review with section 6.

214 ADMIN. ZAVALA: Section 12 of chapter 858 sunsets the current cost-sharing program. - Does it affect the cost-sharing program that is referred to in

section 8 of the bill, or is that a totally different program?

PEARSON: In section 8, it does sunset July, 1995.

SEN. SMITH: This sunsets the cost-sharing program for under 30 cfs?

PEARSON: Currently, we only have cost-sharing for under 30 cfs. - All the language added last session will sunset at the end of the next biennium unless the Legislature takes specific action. - Nothing here affects that.

SEN. SMITH: So this will sunset at the same time?

PEARSON: That is correct. - In section 6, the words "gravity-fed" are eliminated. 256 - Describes an infiltration chamber. - Continues with overview of the bill at section 8.

CHAIR DWYER: Where is the money coming from?

282 PEARSON: We get an allocation through the fish screening sub-account.

CHAIR DWYER: What about the surcharge on the fishing licenses?

PEARSON: That goes to an administrative account to pay for staff.

294 SEN. SMITH: Is it true every diverter is required to screen under the law? (Pearson responds, "True.") - Is it true they must bear the cost? (Pearson responds, "True.") - Is this section really about paying them to get them to comply with

existing law?

PEARSON: There is no change in the law requiring diverters over 30 cfs

to screen or pay for it. - Such diverters, after installing screens, may submit an application

for reimbursement. - Gives specific situation of four diverters sharing a common point of

diversion.

SEN. SMITH: Have you written this section for that specific situation? - This lets anybody apply for reimbursement.

PEARSON: This allows anyone to apply, but does not mean more money will be spent than is budgeted.

330 SEN. SMITH: It puts them in competition with the smaller diverters.

PEARSON: The fish screening task force requested this because they felt it would help them implement the program. - The task force won't allow this to go beyond one or two specific

instances. - We are asking you to say the task force is your overseer of this

program. - It is our intent to cover that specific instance and any other

instance.

CHAIR DWYER: How much money is in the account?

PEARSON: Approximately \$230,000.

CHAIR DWYER: How many screens have we built in the last biennium?

362 PEARSON: We expect to have 20 to 25 installed by the end of the biennium. - There are currently 17 installed and working.

CHAIR DWYER: What affect will this \$10,000 limit have on smaller diverters? - What is the ratio of large to small diverters? - Do you have criteria to determine which is the most critical? - We want to target those basin drainages that have the most problems.

PEARSON: A priority list has been developed with specific numeric criteria for ranking all the unscreened diversions.

SEN. COOLEY: Does this order specifically designate those areas with endangered species to ensure we protect that resource rather than shutting everything down?

PEARSON: The most important factor in assigning priority is whether there are threatened and endangered species present.

CHAIR DWYER: Why should the fishermen pay for screening diversions over 30 cfs?

412 PEARSON: They pay for staffing, not for screening.

CHAIR DWYER: If the staff spends its time administering diversions, the fishermen are paying for it.

PEARSON: There is no other money to implement this program.

CHAIR DWYER: Do you think \$10,000 is enough of an incentive for someone to invest \$250,000 to install a diversion?

PEARSON: Probably not. - If we could get someone to install a \$250,000 screen with a \$10,000

incentive we would have a heck of a bargain for the state and the fishermen.

455 SEN. ROBERTS: What is the significance of making available some funding through fish screening operations that are now not funded?

TAPE 53, SIDE A

PEARSON: Relates the specific instance discussed in the task force.

SEN. ROBERTS: You say this could apply to a number of individual diverters who divert less than 30 cfs.

PEARSON: It could apply to a number of diverters, each of whom diverts less than 30 cfs, but at a whole, divert more than 30.

- For technical and cost effective reasons people sometimes choose to screen at a common point which would be greater than 30 cfs.

SEN. ROBERTS: Under present law, these diverters are now eligible for support from the state for screens. - How does this bill change this with reference to those individuals?

PEARSON: The law is written on the size of the diversion being

screened.

SEN. ROBERTS: Why can't this statute be drawn clearly to show you are facilitating cooperation among a number of diverters who divert at a single point, making them eligible for this kind of assistance?

CHAIR DWYER: He would feel more comfortable if, under those circumstances, applications for reimbursement were allowed, and not allow them for other circumstances.

SEN. ROBERTS: I wouldn't see any objection if that condition were met. - Then a diverter over 30 cfs could be permitted to participate with them. - Any project must meet the basic requirement. - I am exploring whether or not this would be restricted to where

several diverters determined to cooperate at a single point with the total diversion being more than 30 cfs. - In addition, under the same diversion project, a diverter over 30 cfs could participate with them. - If that standard were in the law to guide the task force and the division in making their determinations, I would feel more comfortable.

068 SEN. SMITH: If the intent is to allow multiple diverters using the same point of diversion access to this program, I believe section 8 can be

written in that way.

SEN. COOLEY: If section 8 were not in here, wouldn't those diverters still qualify? - One of the diverters using less than 30 cfs could qualify singly for the reimbursement, with all the diverters benefitting.

PEARSON: Notes the current law limit of \$10,000 or of the actual construction and installation cost if the state is reimbursing the diverter. - If the state buys and builds and the diverter reimburses the state,

the diverter pays \$5,000 or the cost.

SEN. SMITH: Existing law it is not geared toward the diversion but the diverter?

PEARSON: Toward the actual diversion, I believe.

SEN. SMITH: So each diversion can be no more than 30 cfs?

SEN. ROBERTS: Section 8 could be included so it would benefit equally the diverter under 30 cfs but also make it possible to let other people participate once that requirement had been met.

109 CHAIR DWYER: I have confidence in the task force. - That doesn't mean I have confidence in what this will look like

tomorrow under new people. - We ought to give you more direction in statute.

PEARSON: I believe this will give us the ability to deal with this on a case-by-case basis during the interim. - Our intent in writing this broadly was to allow us to handle all

sorts of situations. - Sunsetting was also a factor in our consideration.

CHAIR DWYER: If we can define "common diversions," I would be much happier. - What happens when this sunsets?

143 PEARSON: Everything goes away, including the board.

REP. MC TEAGUE: One thing we expect the task force to work on is some serious, long term proposals.

PEARSON: This was not the only point we discussed. - If we could get an over 30 cfs diverter at a critical spot to screen

his diversion, we would have a heck of a deal. - If somebody diverted slightly over 30 cfs, we would like to be able

to consider reimbursing them.

CHAIR DWYER: If we have persons not complying with the diversion law, I don't see why we should pay them.

PEARSON: The Bureau of Reclamation is doing this, and we had to determine how to avoid reimbursing them by the language chosen for this bill.

CHAIR DWYER: How many unscreened diversions does the Department of Fish and Wildlife have?

191 DAVE NICHOLS: The department has about 10 diversions over 30 cfs with only 1 or 2 remaining unscreened. - We have plans to complete the remainder soon.

PEARSON: We are proposing an amendment. - If we do fish screening, the agency would like to do it in the

context of the existing program. - SB 1112, which allocates \$10 million for watershed and fisheries

recovery in specific locations, would impact this. - This amendment would allow us to accept money from the lottery or any other sources to

implement up to 250 additional water diversions. - We are limited to 100 diversions under the current form of the bill.

241 ADMIN. ZAVALA: Has the task force discussed criteria an applicant would have to meet to be reimbursed?

PEARSON: Explains whom the program was intended to benefit. - This list is not in writing. - Section 8(2) states the department, by rule, shall prescribe the form and content of applications and the criteria for application

approval. - The task force was reluctant to take on rulemaking itself. - I would not foresee any more than two of these during the entire biennium. - You could restrict us by adding limiting language.

280 SEN. COOLEY: Under the rulemaking process, you will eliminate some of our anxieties. - Could you give us a list of entities that would not qualify for this? - If we are only talking about individual irrigators, I don't have a

problem with this.

SEN. SMITH: I think there was a lot of reason and intent included when the House committee passed this bill. - I don't want to invalidate that. - I can't support the language as it is.

296 SEN. ROBERTS: I think the specific thing is the provision in section 5, which wipes out the limitation on those who can be reimbursed at the 30 cfs mark. - It allows people to apply even though they exceed that amount. - We just need to include language that clarifies they can participate

if they are applying in concert with applicants using less than 30 cfs.

PEARSON: I am trying to grant the wishes of one committee against the wishes of another committee.

344 CHAIR DWYER: Closes the public hearing on HB 3295. - Adjourns the meeting at 4:08 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Lisa Zavala Clerk
Administrator

EXHIBIT LOG:

A Testimony on HB 3295 - Dale Pearson - 3 pages