

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.

SENATE COMMITTEE ON  
WATER POLICY

April 25, 1991 Hearing Room 50  
3:15 p.m. Tapes 50 - 51

MEMBERS PRESENT: Sen. Larry Hill, Chair  
Sen. Wayne Fawbush

Sen. Bob Kintigh (Arrived at 4:00 p.m.)  
Sen. Eugene Timms  
Sen. Dick Springer, Vice-Chair (Departed at 3:40 p.m.)

STAFF PRESENT: Lisa Zavala, Committee Administrator  
Bernadette Williams, Committee Assistant

MEASURES

CONSIDERED: SB 1149 - Requires license for commercial harvest of aquatic plants issued by Division of State Lands, PPW

SB 1023 - Allows income tax credit for installation of drip irrigation, PPW

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TAPE 50, SIDE A

004 CHAIR HILL: Calls meeting to order at 3:35 p.m..

(Tape 50, Side A)  
SB 1149 - PUBLIC HEARING  
Witnesses: Onno Husing, Wetland Beach and Dune Consultants  
Wilbur Turnyik, Wetland Beach and Dune Consultants  
Janet Neuman, Division of State Lands  
Ken Bierly, Division of State Lands

010 HILL: Opens public hearing on SB 1149.

033 ONNO HUSING, WETLAND BEACH AND DUNE CONSULTANTS:  
Submits and summarizes written testimony supporting SB 1149. (EXHIBIT A)

118 WILBUR TERNYIK, WETLAND BEACH AND DUNE CONSULTANTS:  
Describes the degradation of a marshlands due to people pulling out plants for profit. For 50

acres of wetland, 20,000 plants per acre are needed for transplant, which equals 2 million plants.

We cannot destroy marshes to create other marshes.

We are possibly dealing with 120 different species with different characteristics. No one has addressed which plants can be dug, which will come back, which are total removal or which ones are rare.

There needs to be some control of exports. People don't know anything about disease, which could impact other areas they are transported to. There is also concern about the organisms within the mud, which are being transplanted all over and could lead to an ecological disaster.

Importing causes the same problems. There is some inspection, however, they don't do it properly. A person collecting plants won't necessarily call an inspector every time they export a plant. There should be a network between the states to control this.

90 percent of the plants going out are esturine plantings and belong to the DSL.

A person should be assigned and be responsible for an area and required to not dig over a certain percentage of the plants in that area. There should also be a charge, which would make things more responsible. There is a potential market that is unlimited, but there is also a potential for an ecological disaster unless somebody controls it.

247 JANET NEUMAN, DIVISION OF STATE LANDS:

Submits and summarizes written testimony on SB 149. (EXHIBIT B)

344 KEN BIERLY, DIVISION OF STATE LANDS:

There may be an opportunity to address this issue in rule making. DSL is currently under a rule making process for both the removal/fill programs and the wetlands program.

352 HILL: To what extent have you seen private parties coming in and removing aquatic plants off of DSL's property?

357 BIERLY: I have not seen many examples. I have seen areas where the plants came from other areas, not the originating area. Only in one circumstance has DSL specified in a permit condition where the material would come from and under what conditions.

374 HILL: Are most of the available stock located on DSL lands? If a mitigation project proceeds, would it take stock from other DSL lands?

379 BIERLY: The bulk of mitigation projects are occurring in a fresh water environment. In fact, the mitigation requirement would be applied to areas where DSL does not have ownership, since the state doesn't own many fresh water wetlands.

389 NEUMAN: Even in some of the estuary areas, there are quite a few tidelands that have been

passed into private ownership. That varies from estuary to estuary. We have some authority through permit conditions to specify how people conduct their mitigation projects. Each mitigation project is often negotiated on a case-by-case process. We also have our general proprietary authority for state owned lands, including submersible lands. It is then a question of finding out that someone is taking from state lands what they shouldn't and doing something about it.

404 HILL: Do people currently take plant material from state lands without a permit? Is it something that is addressed at all in current rule?

407 NEUMAN: We have generic statutory authority that prohibits removal of any material from state lands. We do get complaints about that kind of activity in different places, but we haven't had that kind of report on estuary or wetland areas.

Public education efforts, permit conditions and scrutiny of our own lands are all important. We agree with the proposers of this legislation that we ought not let this situation get out of hand because there will be more mitigation projects as time goes on.

441 HILL: What are you going to do to prevent it from getting out of hand?

441 NEUMAN: The above listed are three things that we intend to do over the next couple of years; we are working on those in our general programs.

Many times a permittee may have the ability to salvage plants from a wetland fill and transplant them to the created wetland.

462 HILL: Can you make salvage a condition of the permit?

464 BIERLY: Yes, it could be a condition of the permit.

467 NEUMAN: Most of our mitigation plans are negotiated in some detail and that would be an aspect that could be worked out.

TAPE 51, SIDE A

028 HILL: Highway 126 was straightened out and they went through a fresh water marsh in the process. They bulldozed the marshes over to the sides and stocked them. Do you know where they got the plants from; commercial or from the filled marshes?

035 BIERLY: I don't know on that specific project. But that is a clear articulation of the problem. We need to find out where that material is coming from and make sure that we specify that source of material.

037 HILL: There are several things to do short of a statute to start to sort out the problem.

1) Keep track of where the replenishing vegetation comes from as part of

your permitting  
procedure.

2) Require the filler and remover to salvage the stock in the wetland  
being destroyed in order  
to replenish the wetland that they are going to have to build.

3) Address in rule how you will deal with people harvesting on DSL land.  
If the rules are  
silent, it is open for all. Get language that would direct people who want  
to harvest from DSL  
lands to let you know their intent and get your approval.

055 NEUMAN: We have authority under our proprietary responsibility to  
license that if we think  
it is appropriate or we could recoup the cost.

056 HILL: We need to control the harvesting.

4) Get together with Mr. Ternyik and Mr. Husing and figure out any other  
problems they have  
encountered and whatever anecdotal information you can gather. I feel this  
will be a bigger  
problem before it gets smaller; we should start thinking ahead.

072 NEUMAN: Wetland restoration/enhancement and the mitigation effort is  
fairly new; there is a  
lot of trial and error going on. The more flexibility we have with  
pilot/experimentation projects  
with planting, the better off we are.

085 JIM MYRON, OREGON TROUT:  
Submits and summarizes written testimony supporting SB 1149. (EXHIBIT C)

101 TERNYIK: Sends around a variety of plant species with a brief  
explanation.

A recent publication stated that 80 - 90 percent of all mitigation projects  
fail. One of the reasons  
they fail is because we have people not familiar with wetland plants and  
not able to care for them;  
they are only in it for profit.

123 HILL: Are these plants currently considered nursery stock under Oregon  
law?

124 TERNYIK: You get a nursery license that says you are a nursery  
collector. You may grow  
some of them, but you also collect.

127 HILL: Do all the people who do this on a contractual basis have a  
nursery collectors license?

128 TERNYIK: They are required to have one, but there is no control over  
what is going on.

142 HILL: These are professional/commercial people who are digging up the  
plants?

144 TERNYIK: These are people who want to make a quick profit.

144 HILL: But they are supposed to be licensed nursery people.

146 TERNYIK: Anybody can get a nursery license tomorrow to do the same

thing. There are no qualifications involved.

150 KINTIGH: A nursery is subject to inspection to see if the plants are disease free.

152 HILL: But these wouldn't be, they would be uninspected.

154 HUSING: If DSL is satisfied that they have the existing authority to promulgate rules regarding this issue, we are also satisfied to let it rest at that. We would be happy to work with them in the next year or two. We are trying to create a record so that if there were a problem in the next couple of years and we need to come back, we've already started the process and identified the problem. We are confident that we can work with DSL to come up with a regulatory scheme.

162 HILL: DSL can regulate activity on this property and can regulate on a contractual basis the mitigation activities, but they can't regulate harvest without specific authorization. Between regulating harvest on DSL property and putting conditions on the contracts as to the source, it would be a good starting point. They can do that under rule.

Although this appears to be a problem, it is hard to tell how extensive it is and without more support we will probably not get a statute through this session. Asks DSL to come before the Interim Water Policy Committee to report what rules they have adopted and what they learned about the problem. Start to build an understanding and record of the extent of the problem. That may lead us to an opportunity in the next session to pass a statute if it is necessary.

194 KINTIGH: Is there an increase in demand in this area?

196 TERNYIK: I'm not sure there is yet. Nurseries haven't gone into the market yet.

208 HILL: Harvest from the wild is going to be necessary, but it shouldn't do damage to the area the plants are taken from.

211 TERNYIK: Harvest versus grown plants can mean the difference of ten times the cost.

214 KINTIGH: Have there been any jobs that you've used White Ash?

216 TERNYIK: There will be a market for that. Wooded wetlands are going to be mitigated a lot and there is no White Ash available. For trees, nursery grown stock is more preferred.

222 HILL: Do you know about the mitigation on the Highway 126 improvement by Veneta? What is your experience with that project?

226 TERNYIK: They are rectangular and not natural looking, but the geese love it. It was probably the best technology at that time, but things are evolving and will improve

rapidly.

243 HILL: Did the plants come from outside the project or salvaged?

247 TERNYIK: It went for a couple of years and ODOT admitted that they didn't have success there. But it eventually grew up well.

255 HILL: Closes public hearing on SB 1149.

(Tape 51, Side A)  
SB 1023 - PUBLIC HEARING  
Witnesses: Senator Bob Kintigh, District 14  
Kip Lombard, Oregon Water Resources Congress  
Jim Myron, Oregon Trout  
Ed Weber, Oregon Department of Agriculture

264 HILL: Opens public hearing on SB 1023.

272 SENATOR BOB KINTIGH, DISTRICT 14:  
Submits and summarizes written testimony supporting SB 1023. (EXHIBIT D and E)

At a recent meeting with the Department of Agriculture, the problem of runoff from container nurseries was discussed. This runoff contains fertilizers which go into streams. Discussed were ways to handle this problem either by recycling the water or other methods, including drip irrigation. With drip irrigation, there would be no surplus water running away. The Department encourages people to use this method whenever possible.

399 TIMMS: How widely is it currently used?

404 KINTIGH: I don't have an answer. But people who are in the business say sales have been increasing.

TAPE 50, SIDE B

009 HILL: You feel a tax credit wouldn't work?

010 KINTIGH: Realistically speaking, at this time it wouldn't work due to the revenue picture in the state. Maybe that coupled with other things it would work.

016 KIP LOMBARD, OREGON WATER RESOURCES CONGRESS:  
Thanks and commends Sen. Kintigh in terms of the concept proposed by the bill; it is one that we support.

Suggests that any change or achieving of efficiencies in delivering application be tied into some measurable standard so that the state is paying for it. There should be some tie in of demonstrated results/improvements in conservation or efficiency. The mere conversion from one system to another may not increase efficiencies. As suggested, drip irrigation wouldn't be appropriate for every situation. The broader goal is to achieve conservation.

In the conservation policy recently adopted by the Water Resources

Commission, we think we are achieving that goal. The attitude is there to look not only at measures to bring about improvements in conservation and efficiency, but also to provide financial incentives to achieve that.

048 HILL: Has the Water Resources policy been finalized and adopted?

051 LOMBARD: Yes it has been.

052 KINTIGH: Is drip irrigation mentioned as one of the alternatives?

054 LOMBARD: It doesn't mention any specific type of irrigation. We are trying to develop conservation plans by large water users, districts, and municipalities. We contemplate that one will look at the technologies available and other factors to determine what is appropriate.

069 KINTIGH: Would it be appropriate, in a water district setting, that a given land owner might be allowed to water more acreage if they switched to another system which used less water? They use the same amount of water, but would be able to grow a larger crop area?

075 LOMBARD: Oregon Water Resources Congress did draft a measure, the "spreading bill", that would say that if you achieved significant conservation efficiencies and you can measure and show that, you can take the saved water and spread them out over larger plots. Ultimately the best use of the water would be to put some of the water back into the stream.

098 KINTIGH: Is the Agriculture Research Center working on how much is the optimum amount of water for crops?

101 LOMBARD: Yes, many people are working on that issue. Many districts are trying to get more efficient utilization of the water and as they take in new patrons, they attach conditions to how they will irrigate.

Unfortunately, some of the people that you want to reach and help the most and who have the greatest difficulty investing in another system are the ones for whom a tax credit won't help.

151 HILL: As we move towards more efficient systems, we need to look for some state assistance. There may be some operations that aren't cost effective; that is the down side of moving to more efficient systems.

156 LOMBARD: Keep in mind as long as our state land use policy is one that puts the primacy on the retention of the agricultural lands, we need to do all we can to assist those people who are told to farm the land and nothing else.

165 HILL: There are many things to do with that land; a range of choices

between farming, grazing,  
etc. As we move towards a more efficient system, there will be some  
dislocation around the  
edges. But most people will be able to become more efficient with this  
kind of technology.

174 LOMBARD: We in Southern Oregon are forced into it in our irrigation  
districts because of the  
lack of water.

193 TIMMS: What is going to happen in those situations where drought has  
put California in a  
situation where they are going to get rid of rice and cotton? Will we pick  
them up in Oregon?

213 LOMBARD: We can't do that here due to shortness of growing season and  
the type of growing  
season to support that kind of crop.

247 JIM MYRON, OREGON TROUT:  
Submits and summarizes written testimony supporting the bill. (EXHIBIT F)

266 ED WEBER, DEPARTMENT OF AGRICULTURE:  
This bill expresses the desires of water policy on water conservation and  
the implementing  
strategies, which is to increase efficiencies through incentives. On a  
voluntary basis, the greatest  
tools that can be used are incentives and information aides.

When working for the Soil Conservation Service, I conducted inventories of  
systems checking  
their efficiencies and preparing for the owners ways in which they can  
change their management  
to improve things. Many times a reduction in water equals an increase in  
production and product  
quality.

315 HILL: How is that?

316 WEBER: The soil is approximately 50 percent mineral and organic  
material and 50 percent pore  
space. In that pore space is air and too much water takes the air away and  
lessens activity.

354 HILL: Is there a best management approach on any particular crop on a  
given field?

358 WEBER: Yes there is. Simply, it is to satisfy the needs of that crop  
and it can be done in many  
ways through modern technology (e.g. infrared monitors, evaporation pans,  
in-soil monitoring  
devices, etc.)

375 TIMMS: What is the satellite program that they have in N.E. Oregon?  
How do they pick up  
the amounts of water and transfer it to computers?

380 WEBER: It relays some weather information into their on-ground  
computers and it ties in with  
it. They correct the crop requirements daily.

382 TIMMS: Daily as determined by the satellite?

385 WEBER: A combination of factors go into it. The information given by



the satellite and the  
ground, plus the computer programs developed for a certain grower.

416 HILL: Adjourns meeting at 5:00 p.m..

Submitted by:      Reviewed by:

Bernadette Williams      Lisa Zavala  
Assistant                   Administrator

EXHIBIT LOG:

A            -            Testimony on SB 1149 - Onno Husing, Wetland Beach and Dune Consultants -  
4 pages  
B            -            Testimony on SB 1149 - Janet Neuman, Division of State Lands - 2 pages  
C            -            Testimony on SB 1149 - Jim Myron, Oregon Trout - 1 page  
D-Testimony on SB 1023 - Sen. Bob Kintigh, District 14 - 1 page  
E-Article Relating to SB 1023 - Sen. Bob Kintigh, District 14 - 2 pages  
F-Testimony on SB 1023 - Jim Myron, Oregon Trout - 1 page