

Senate Committee on Water Policy
April 30, 1991 - Page

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 30, 1991Hearing Room 137
3:15 p.m. Tapes 52 - 53

MEMBERS PRESENT:Sen. Larry Hill, Chair
Sen. Wayne Fawbush (Arrived 3:50 p.m.)
Sen. Bob Kintigh
Sen. Eugene Timms

MEMBER EXCUSED:Sen. John Kitzhaber, Vice-Chair

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

MEASURES

CONSIDERED:SB 906 - Establishes Columbia River Bicentennial Commission,
Public

Columbia River Compact Commission - INFORMATIONAL
MEETING

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TAPE 52, SIDE A

007 CHAIR HILL: Calls meeting to order at 3:30 p.m..

(Tape 52, Side A)
SB 906 - PUBLIC HEARING AND WORK SESSION
Witnesses: Senator Joan Dukes, District 1
Representative Jacqueline Taylor, District 2
Garry Breckon, Columbia River Bicentennial Commission
Marguerite Wright, Columbia River Bicentennial Commission

012 HILL: Opens Public hearing on SB 906.

017 SENATOR DUKES, DISTRICT 1:
Summarizes history of the Columbia River Bicentennial Commission.

Last interim we were granted funding by the Emergency Board. The Executive Department raised the question of how to deal with a Commission created by resolution and not statute. They felt we needed statutory existence in order to adequately fulfill our obligations. SB 906 allows us to do that (i.e. collect and spend money, enter into contracts, use of the state seal, etc.)

Submits and summarizes amendments for SB 906. (EXHIBIT A) They were drafted by the Attorney General's office and reviewed by Legislative Counsel.

SB 906 is a housekeeping bill. We are not asking for anything new, we just want to exist legally.

055 HILL: Would the amendments provide boiler plate language to the Commission?

057 DUKES: I am not sure. I am under the assumption that other groups had been formed like this (i.e. Lewis and Clark Trail).

063 REPRESENTATIVE JACKIE TAYLOR, DISTRICT 2:
Testifies in support of SB 906.

069 GARRY BRECKON, COLUMBIA RIVER BICENTENNIAL COMMISSION PROJECT DIRECTOR:
Submits written testimony describing programs the Commission will be involved in. (EXHIBIT B) SB 906 will expedite the conduct of the Commission's business in accomplishing those programs.

076 MARGUERITE WRIGHT, COLUMBIA RIVER BICENTENNIAL COMMISSION STAFF:
SB 906 is a housekeeping measure, which will enable us to operate more efficiently and economically. Urges the Committee's support.

079 HILL: Suggests inquiring with the A.G.'s office about whether this is consistent with other similar Commissions.

083 TIMMS: Is the Oregon Trail the same type of Commission? It doesn't have the same authorization of state vehicles, etc., which a state agency would have.

088 DUKES: Basically yes. I made some assumptions earlier about the Oregon Trail, which might not be accurate. They could be private, non-profit.

094 TIMMS: I think they are, but they don't have a stipulation which allows them use of state vehicles or offices. What is the reason this Commission needs to do it?

096 DUKES: We want to be able to rent state office space because it is less expensive than other office space in Portland. We also want to be able to lease a phone, enter into contracts with

people, and to use the state seal.

We are also part of the International Bicentennial Commission, which includes Washington, Oregon and British Columbia. There is an international seal which we generally use, but there are times when we would like to use the state seal.

109 TIMMS: Do you want to go through the state to save money because you don't have the money through the private sector? Do you have any private sector money?

112 DUKES: Yes, we will have shortly. Depending on the passage of SB 906, we will also have considerable federal funding. We probably won't use the state vehicle, but we will need the ability to enter into contracts, to collect and expend funds, to use the state seal, and lease an office space. Jeannette Holman and I thought the original language did that, but the A.G.'s office differed.

123 HILL: Are these standard boiler plate powers of Commissions?

126 JEANNETTE HOLMAN, LEGISLATIVE COUNSEL:
We thought the original version of SB 906 accomplished that purpose, but after talking with Kathleen Beaufait of L.C., she suggested we follow the A.G.'s opinion. They will make the final decision.

The Commission doesn't want to be considered a state agency for purposes of hiring personnel; they want to do that contractually.

142 TIMMS: I know there are problems in hiring and contracting in the Commodity Commissions, why is the language so stated to explicitly ask for these things?

156 HOLMAN: I'm not familiar with how things work with the commodity commissions. The problem here is that they are trying to cover that they are a quasi state agency.

162 TIMMS: The main thing they don't want to get into is paying for state salaries and PERS; they want to be able to contract out.

169 HOLMAN: One correction I would make is that the AG's office has deleted, in essence, lines 26 and 27 on page 1. This is the general authority of the Commission to purchase materials and supplies. Although some of it can be done through the General Services, I think it would be wise to leave that general authority in.

182 HILL: That general authority on lines 26 and 27 are fairly typical. I can't remember specific authorities as proposed in the amendments for other agencies or commissions; why is it necessary

and why doesn't the general authority provide you with the ability to use the state seal, etc.

197 HOLMAN: I have not talked directly with the A.G.'s office, but I think that it is because of this quasi-agency status that the Commission has.

192 HILL: When it says "..may utilize state-owned vehicles in the same manner as state agencies..", does that mean drawing from the motor pool?

193 HOLMAN: Yes.

193 HILL: But you need a budget in order to do that?

194 HOLMAN: That is correct. But the Bicentennial Commission's budget is run through the Executive Department. They do not have a separate appropriation directly to them; it is to the Executive Department who pays their expenses for them.

205 TIMMS: Does SB 906 have a fiscal impact?

206 HILL: No it doesn't.

207 HOLMAN: Their budget is included in HB 5055.

211 DUKES: We have a budget and have been operating on it for some time. The E-Board granted us some funding and there is additional money in a budget that passed the Senate.

We are requesting lottery funds for a specific exhibit project this session and we are presently in the Federal Parks budget for \$300,000, should that be successful. We are recruiting private funding as well.

228 HILL: Refers to a fiscal impact statement submitted by staff for SB 906 . (EXHIBIT C)

229 DUKES: The \$40,000 from the General Fund is not a result of SB 906.

232 HILL: Other funds would be gifts and grants equalling \$424,200 and one FTE and these are in the Executive Department's budget.

Closes public hearing on SB 906.

253 MOTION: SEN. TIMMS moved to adopt the amendments presented by Senator Dukes to SB 906 (EXHIBIT A), subject to review by Legislative Counsel.

VOTE: Hearing no objection, the motion carried. President Kitzhaber and Senator Fawbush were excused.

255 MOTION: SEN. TIMMS moved SB 906, as amended, to the floor with a "do pass" recommendation.

VOTE: Hearing no objection, the motion carried. President Kitzhaber and Senator Fawbush were excused.

(Tape 52, Side A)
Columbia River Compact Commission - INFORMATIONAL MEETING
Witnesses: Steve Marks, Senate President Kitzhaber's Office
Jeannette Holman, Legislative Counsel
Bill Young, Water Resources Department
Angus Duncan, Northwest Power Planning Council

259 HILL: Opens the informational meeting on the Columbia River Compact Commission.

288 STEVE MARKS, SENATE PRESIDENT KITZHABER'S OFFICE:
Gives a brief history of the Columbia River Compact. Submits Senate Bill 1 (EXHIBIT D), which directed the Governor's office to initiate discussions on whether we needed to revive the Columbia River Compact.

The Compact is authority and has been approved by Congress. It exists for several Columbia River Basin states to come together to pursue and agree on management issues or any other issues they might initiate in a negotiation.

We have had massive environmental impacts occurring in the Columbia River system, as well as an endangered species issue. The revival of Los Angeles' proposal to divert waters of the Columbia River to California is also a cause for alarm.

335 HOLMAN: Submits and summarizes the laws regarding interstate compacts. (EXHIBIT E)

441 HILL: Does the Columbia River Compact fall into the classification of a federal agency? Can it bind federal decisions?

444 HOLMAN: To some extent. Depending on the language, they could do it. They have given pre-approval and I don't know how broad that language is.

Continues summary of Exhibit E.

TAPE 53, SIDE A

044 HILL: Would it be possible to form a compact that includes a province of Canada; British Columbia?

045 HOLMAN: The compact on oil spills contemplates including British Columbia at some point. British Columbia is included right at the start if they wish to be included as a non-voting member. But, in order for British Columbia to be involved, they need to have their federal government authorize it, just as we need Congress to authorize it. It has been done.

053 HILL: We passed a bill that required the Governor to participate in the Columbia River Compact, correct?

055 HOLMAN: That is correct.

055 HILL: Was that statutory or was it a resolution or memorial?

056 MARKS: Statutory.

058 TIMMS: Was there a bill passed and did we have trouble getting the other states to ratify the compact?

060 HOLMAN: My understanding is that there has never been any language actually drafted.

063 HILL: Where would that statute be?

064 HOLMAN: In Chapter 542 as a note.

066 HILL: Why as a note?

066 HOLMAN: Because it is a temporary provision.

067 HILL: As a repeal?

068 HOLMAN: I think so.

060 BILL YOUNG, WATER RESOURCES DEPARTMENT (WRD):
Submits and summarizes written testimony. (EXHIBIT F)

There is no rationale for Oregon's failure to ratify the agreement.

Joel Haggart continues to be the authorized representative of the federal government for any negotiations that would occur in pursuit of a Columbia River Compact.

139 HILL: What is the level of interest of the various states? Who is taking the lead? Is it Oregon?

140 YOUNG: The meeting was clearly conducted at Oregon's behest and at our invitation, although people attended willingly.

145 HILL: Who is the current chairperson of the Commission?

146 YOUNG: I don't know. At one time there was a negotiating team from each state with compact commissioners designated to negotiate this compact. The Director of the Idaho Water Resources Department tells us they were the keepers of the record when the compact discussion disbanded.

158 HILL: We found negotiations for interstate compact on the Columbia River Basin and it is dated 1989, which must be SB 1. It says that "the Governor shall request the chairperson of the Columbia River Compact Commission created pursuant to Public Law 82-572".

There is a federal law out there that must create something called the "commission" and it apparently has a chairperson.

Was this Sen. Kitzhaber's bill last session?

166 MARKS: Yes it was. The federal appointee does serve as the chairperson of the Columbia River Compact (cites a letter from Joel Haggart dated March 14, 1989 indicating such).

170 HILL: Is there an agenda bill for the next meeting later this year? How solid is this meeting?

172 YOUNG: The next meeting would not explore further specifics of a compact, but would look more specifically at the question between the water resources and fishery agencies of the three states to identify some agreed upon flow or velocities in the border rivers. It is an adjunct to, but not in direct pursuit of, the idea of the creation of a compact.

In some respects, with the existence of the Northwest Power Planning Council, one has a compact of a sort on the Columbia system that is already charged with some responsibilities over two fairly major elements of river management: fish and power. We ought to be bringing that activity together rather than creating a separate entity that would function parallel to the N.W. Power Planning Council.

194 ANGUS DUNCAN, NORTHWEST POWER PLANNING COUNCIL: Gives a brief history of the Northwest Power Planning Council. The Council is a federal interstate compact set up by way of statute. It is peculiar in that it gives a state agency limited authority over the disposal of federal assets. There is language in the Act stating that if it is challenged on Constitutional grounds and pieces of the statute have to be thrown out, other elements of the Act will be preserved none-the-less.

It has a longer reach than other compacts, even though its authority over Bonneville is largely limited to our ability to disapprove of any Bonneville decision to acquire a new power resource over 50 average megawatts.

260 HILL: What authority does the Council have besides that?

261 DUNCAN: If you want "real" authority, that is it.

264 HILL: Can the N.W. Power Planning Council make recommendations or reach agreement on export of Columbia River water to California?

267 DUNCAN: We can offer a commanding opinion to Bonneville, for example, on what they ought to do with that power or non-treaty storage water or how they otherwise

operate their system.

We have authority to opine on almost anything we want to. We strongly influence and in some ways control events by this leverage of authority.

292 HILL: Could you reach agreement among the states on maritime pilots?

295 DUNCAN: I don't think we could do that. We could, however, look at how barge traffic uses the river, how that interacts with the fish and come to some conclusions about flows and the manipulation of dams that have some specific consequences for navigation interests. That is how we operate on the power side with investor owned utilities, over whom we have no statutory authority.

As far as resurrecting the Columbia River Compact, there may be some specific and narrow purposes to which that compact could be put that the Power Council can't reach. The council members are now prepared to manage the river. In the states of Idaho and Washington, the members have received unambiguous instructions from their Governors that they have these responsibilities and that they carry them out.

It doesn't make sense to further fragment the management and planning of the Columbia River if you have already got an instrument that encompasses the watershed basin.

374 HILL: Has the Power Council received direction to look at the range of issues that affect the River?

377 DUNCAN: Yes, from the Governor.

379 HILL: What have you done in regards to the proposal to divert the Columbia River to Los Angeles?

382 DUNCAN: I regard that as a frivolous gesture by one City Council member down in Los Angeles. The Los Angeles Department of Water and Power doesn't entertain that notion as a possible project.

One other consideration with the existing compact is that it also includes the states of Utah and Wyoming and Nevada. We have had to manage a river that has different significance for Oregon and Washington on one hand and Idaho and Montana on the other. It makes for difficulties in trying to work out a regional consensus to deal with the fish. If you were to add to that other states, which have peripheral interest, it invites additional difficulties as well.

460 HILL: Lisa Zavala points out that in 1989 the Nevada Legislature passed

a resolution requesting
the Western States Water Council to undertake a study of western water
resources and any
opportunities for interregional transfers to meet the needs of the
Southwestern states. There is
active interest in obtaining water from outside their region.

477 HILL: Who is our representative on the Western States Water Council?

478 YOUNG: There are three representatives. Steve Sanders from the A.G.'s
office, Lorna Stickell
and myself. I currently serve as chair of the Western States Water
Council.

485 HILL: What is the Western States Water Council doing in response to
Nevada's resolution?

TAPE 52, SIDE B

029 YOUNG: There is a document in preparation that characterizes the kind
of changes that have
occurred in state law. It will be available to all Council States as they
wish to see it. It attempts
to characterize what the nature of the circumstance is out there now. It
neither advocates for or
against that kind of a transfer.

The Western States Water Council was created by Governor Hatfield and
Governor Brown Sr.
in California. The very issue that brought the council together was inner
basin transfers of water.

046 HILL: When is the report due?

047 YOUNG: Sometime in May of 1991 and we can send you a copy as soon as
they are available.

051 TIMMS: Do we have authority on Nevada building a dam on the east fork
of the Owyhee River?

054 YOUNG: No we do not. As Idaho completes their general adjudication of
the Snake plains, the
Duck Valley Indian Reservation is involved and are liable to be awarded
some volume of water.
That is of interest to us as a downstream state on the Owyhee River due to
the reservoir. We
have advised the state of Idaho and the Indian reservation that we are
interested in being
observers as they go through the adjudication to understand what our
interests are. There is
nothing that would prevent the State of Nevada from electing to store water
to the extent that they
have enough territory there that they generate very much water.

073 TIMMS: They have some of our water that they could put dams on
currently.

079 YOUNG: Those are the issues that the previous interstate compacts on a
variety of rivers in the
west were based on. The interest in the Columbia system is in the

integrity of the river as a
flowing system.

090 HILL: The major players with downstream interest would be Idaho,
Washington and Oregon
with the biggest stake.

096 DUNCAN: Although both Montana and British Columbia have storage
reservoirs that are
integral parts of the management of the river.

098 HILL: What discussions have you had with Washington and Idaho related to
the instream flows?
How are direct discussions different from what can be accomplished at the
N.W. Power Planning
Council? What do you feel the Power Planning Council can't or doesn't do
that ought to be
done?

104 YOUNG: I'm not sure that the reasons for our discussions with our
counterparts in Washington
or Idaho is any reflection that the Council could or couldn't do these
things.

129 HILL: Calls for five minute recess at 4:35 p.m.. Reconvenes at 4:40
p.m..

140 MARKS: Mr. Duncan's assessments about the Power Council and not having
a duplicative entity
are constructive. That would not be a conflicting role, but could
structure a compact agreement
to assist the Council in achieving some of the objectives of the region.

In terms of out-of-region diversions, the compact does offer us a greater
legal authority to prevent
it. With the growth and reapportionment of California's congressional
delegation, Senator
Kitzhaber believes that there will be more serious proposals unless we
clearly place the Columbia
system off limits.

The other issue with respect to commerce, reclamation and the Army Corps of
Engineers, water
allocation and instream flow needs are issues that the Power Council
doesn't yet possess all the
authority it would need to control them. The question is whether a compact
on the Columbia
River is an instrument or whether we need to look at the Power Council's
compact too.

175 HILL: Recesses the information hearing on the Columbia River Compact.

(Tape 52, Side B)
SJM15 - WORK SESSION
Witnesses: Jim Myron, Oregon Trout

176 HILL: Opens works session on SJM15.

Jim Myron of Oregon Trout is recognized as in favor of SJM15.

189 MOTION: SEN. FAWBUSH moved SJM15 to the floor with a "do pass" recommendation.

VOTE: Hearing no objection, the motion carried. Senator Kitzhaber was excused.

192 HILL: Reconvenes informational hearing on the Columbia River Compact. We have two different approaches: One is that we have the Power Council and since they have control over some federal monies they can do some things and it can express its opinion about things it doesn't have direct control over.

A commission that is dedicated in a broad sense to managing the Columbia River jointly with other states would have that authority if it is recognized by Congress.

The federal law that authorizes our negotiation towards a compact is one the permissive laws? What category does that fall into?

210 HOLMAN: I think it is a one line authorization to enter into negotiations to form a compact. As I recall it authorizes the states to do the negotiation and enter into a compact; a pre-authorization.

215 HILL: There is no authority granted to a compact that may emerge under the existing federal law? We would have to achieve further federal recognition?

217 HOLMAN: Yes.

218 HILL: We could also achieve that by broadening the N.W. Power Planning Council to have greater responsibilities than it currently has. We can ask Congress to recognize that the Power Council is a compact with a broader set of responsibilities; in effect, turn it into a broad Columbia River Compact.

226 HOLMAN: One way you could do that, from the state's point of view, would be to enter into a compact and designate the Power Planning Council as the administrative body to carry out the compact.

230 DUNCAN: If we go back to Congress and ask for statutory authority to cut off other states, it is a potential open invitation to the California congressional delegation to accomplish the reverse. The different users can work together by incremental turf grabbing. I think the best way of protecting our waters from other states is to make clear that it is all used up.

The Power Planning Council got into instream flows in the mid 1980's. It was an exercise of the council's implicit authority to say how the water ought to be managed.

286 HILL: We have some options available and are moving towards them. The Council can have a broader set of responsibilities originally envisioned by Congress.

292 DUNCAN: Would be willing to talk to Mr. Marks about where we think the Council can be effective and where there might be a complimentary role for a compact.

296 HILL: It should be explored because there are issues like the Maritime Pilots issue that are not directly related to energy, fish or instream flows. There are also dredging issues in which the Army Corps of Engineers are not keeping the channels dredged. Someone has to be an advocate for the federal government meeting that responsibility. Will the Power Council be an advocate for that?

309 DUNCAN: Yes. We've already put the Corps on notice that there will be consequences on draw downs of pools for both irrigators, navigators, and ports. We are expecting that there will be mitigating measures and a transition period to allow the Corps to make the appropriate adjustments.

322 HILL: Asks Mr. Young to provide a copy of the version of the compact that Oregon and Washington failed to ratify.

325 YOUNG: Don't know that is available to us. There may be some archive in the Legislature that can characterize either a bill submitted and failed.

328 HILL: Asks for assistance is retrieving some facts surrounding it. Theoretically can it still be ratified?

332 YOUNG: I couldn't tell you whether or not any of the other states may have "un-rung" the bell on their ratification.

338 HILL: Let's find out what the content was.

341 YOUNG: If we are looking at a compact drafted in the early mid-50's, and we look now at the interest we are trying to address on the river, we would view that earlier compact as incomplete.

346 HILL: We must see it before we judge. There might be a need for some amendments or adjustments. We should see where it stands in regards to the other states ratification. There might be some potential there to leverage a discussion.

Submits additional information on the Columbia River Compact Commission.
(EXHIBIT G and
H)

Adjourns the meeting at 4:55 p.m..

Submitted by: Reviewed by:

Bernadette Williams Lisa Zavala
Assistant Administrator

EXHIBIT LOG:

A - Amendments to SB 906 - Sen. Joan Dukes, District 1 - 1 page
B-Testimony on SB 906 - Garry Breckon, Columbia River Bicentennial
Commission Project
Director - 3 pages
C - Fiscal Analysis Statement - Staff - 1 page
D-Senate Bill 1 - Steve Marks, Senate President Kitzhaber's Office - 1 page
E-Testimony on Columbia River Compact Commission - Jeannette Holman,
Legislative Counsel -
4 pages
F-Testimony on Columbia River Compact Commission - Bill Young, Water
Resources Department
- 1 page