

Senate Committee on Water Policy
May 9, 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

May 9, 1991Hearing Room 137
3:15 p.m. Tapes 60 - 64

MEMBERS PRESENT:Sen. Larry Hill, Chair
Sen. Bob Kintigh
Sen. Eugene Timms
Sen. Dick Springer

MEMBER EXCUSED: Sen. Wayne Fawbush

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

MEASURES

CONSIDERED:SB 906 - Columbia River Bicentennial Commission, WRK
SB 1183 - Local Watershed Planning and Management Act, PUB
SB 969 - Municipal Watershed Protection, PUB
SB 1147 - Safe Drinking Water Funding Program, WRK
SB 1163 - Streamflow Restoration and Water Conservation Act, PUB
& WRK

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.

TAPE 60, SIDE A

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

(Tape 60, Side A)
SB 906 - Public Hearing
Witnesses: Senator Joan Dukes, District 1

005 HILL: Opens work session on SB 906.

007 SENATOR DUKES, DISTRICT 1:
Submits and summarizes SB 906-2 amendments. (EXHIBIT A) The original SB 906 made the Bicentennial Commission a state agency; we don't want to be a state agency. The revised SB 906 makes us a mini-agency; there is a sunset clause attached.

032 MOTION: SEN. HILL moved to adopt the SB 906-2 amendments dated 5/9/91 to SB 906.

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

034 MOTION: SEN. SPRINGER moved SB 906 as amended to the floor with a "do pass" recommendation.

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

(Tape 60, Side A)
SB 1193 - Public Hearing
Witnesses: Olivia Clark, City of Salem

040 HILL: Opens public hearing on SB 1183.

044 OLIVIA CLARK, CITY OF SALEM:
Submits and summarizes written testimony in support of SB
118 3. (EXHIBIT B)

068 HILL: Does the City Council like the red, yellow and green
light approach?

069 CLARK: They share the goal and general concept of the SB
118 3, which is to enhance watershed protection. This may not
be exactly the way it should be done.

075 HILL: Closes public hearing on SB 1183.

(Tape 60, Side A)
SB 969 - Public Hearing

Witnesses: Clare Donison, Citizens Interested in Bull Run
Douglas W. Larson, Citizens Interested in Bull Run
Phil Dreyer, Portland Fair Share
Thurman Smith, Oregon State Grange
Bob Hall, Portland General Electric

Susan Schneider, City of Portland
Joe Glicker, City of Portland

076 HILL: Opens public hearing on SB 969.

089 CLARE DONISON, CITIZEN'S INTERESTED IN BULL RUN, INC.:
Submits and summarizes written testimony in support of SB 969.
(EXHIBIT C). Submits articles in favor of SB 969. (EXHIBIT
D and E)

188 HILL: The immediate concern is Bull Run?

189 DONISON: That is correct.

193 DOUGLAS W. LARSON, CITIZEN'S INTERESTED IN BULL RUN, INC.:
Testifying in support of SB 969.

198 PHIL DREYER, PORTLAND FAIR SHARE:
Testifies in support of SB 969. There are 300,000 more people
coming into the Portland area and they will all be eligible to
get Bull Run water; Bull Run doesn't provide enough water for
the existing population. We are interested in getting the
Little Sandy as part of the Bull Run watershed.

226 KINTIGH: Asks Mr. Dreyer if he understands how much of Oregon
SB 969 will affect; it won't just affect Bull Run.

231 DREYER: This will affect any watershed.

233 KINTIGH: If Eugene passes ordinances called for in Section 1
of SB 969, everybody in East Springfield and up the McKenzie
would have to move out; there would be no activity in the
McKenzie Valley at all. It says "no activity".

240 DREYER: That would be up to local control.

242 KINTIGH: That is not what SB 969 says nor the drafter of the
SB 969 says.

245 DRYER: It says a city by ordinance "may" prohibit or restrict
access; this would be local control.

264 HILL: SB 969 is very broad and it could result in that
ordinance. If your interest is in Bull Run, this bill goes

beyond that. We can adopt amendments to narrow it down to focus in to the boundaries of a Bull Run reserve.

275 DREYER: Yes, but there are other places that would want local control; they would be better able to control it.

279 KINTIGH: The Bull Run watershed is one of just two or three in the United States that has this special authorization with the Forest Service; there is no other one like it in Oregon. It is not feasible to blanket every watershed in the state.

303 THURMAN SMITH, OREGON STATE GRANGE:
Oregon State Grange opposes SB 969 as it is currently written. Our policy is to back the protection of the Bull Run area only. Ninety nine percent of the Bull Run area is on federal lands and doesn't cover the vast areas that SB 969 covers.

318 HILL: Would the Grange be neutral or support a bill that is limited to the Bull Run?

320 SMITH: We will support a bill limited to Bull Run.

328 BOB HALL, PORTLAND GENERAL ELECTRIC:
PGE operates under contract with the City of Portland two hydroelectric facilities on the Bull Run. This would ostensibly allow them to say that we cannot go in and operate the facilities. Submits and summarizes amendments and hand grossed version of SB 969. (EXHIBIT F and G)

364 SUSAN SCHNEIDER, CITY OF PORTLAND:
The City of Portland generally favors efforts to increase its control over local issues, including goals of SB 969. However, we don't think the bill does exactly what the sponsors think it does.

372 JOE GLICKER, CITY OF PORTLAND:
Submits and summarizes testimony on SB 969. (EXHIBIT H)

415 HILL: We can't do anything to regulate logging practices in Bull Run unless the federal government agrees?

417 GLICKER: That is our analysis.

433 FAWBUSH: When was the research study on status of the watershed done?

435 GLICKER: 1989.

436 FAWBUSH: Chemically it is very close to rainfall; what about turbidity and particle content?

440 GLICKER: The Environmental Protection Agency recently issued regulations that govern turbidity for drinking water systems and those regulations differentiate those systems that can operate with and without filtration. Under regulations, Portland is allowed to remain an unfiltered source. The two main criteria looked at is turbidity and the amount of bacteria that are in the water.

453 FAWBUSH: How close are they to the line on that?

454 GLICKER: Our average turbidity year round averages about 0.5 turbidity units; the line is at 5 turbidity units.

465 FAWBUSH: What is the projection for the continued logging in Bull Run? How many acres are in the Bull Run and how many have been logged?

472 GLICKER: The size of the Bull Run watershed is about 60,000 acres. Over the last hundred years, less than 20 percent of that has been logged. The projection of what will happen in

the next ten years is zero acres. This is due to the owl and old growth preservation issue; also, the administrative controls that have been placed on the Bull Run.

Public law 95200 allows the City of Portland to take the Forest Service to arbitration over any action they may propose to do in the watershed. That has allowed us to change the management direction.

TAPE 61, SIDE A

(Due to mechanical and recording difficulties, the audio portion of this testimony is unavailable. The following is a summarization.)

025 FAWBUSH: Asks for an example of arbitration.

027 GLICKER: The only significant logging done is those trees blown down due to storms. There is potential for water quality degradation.

043 FAWBUSH: Asks if they are still logging today due to the storm.

045 GLICKER: Yes.

047 FAWBUSH: Asks how long they anticipate this logging will go on.

049 GLICKER: It was a four year program, but it is currently on hold due to the spotted owl issue. Between 600 and 1400 trees remain to be logged.

053 FAWBUSH: Most of those trees are down. What is the proximity?

053 GLICKER: There is currently construction and road maintenance being done.

The committee and witnesses continued to discuss the water quality issues, logging practices and sustainability of the Bull Run watershed.

HILL: Closes hearing on SB 969. Opens work session on SB 1147.

(Tape 61, Side A)

SB 1147 - Work Session

Witnesses: Dave Leland, Oregon Health Division
Yvonne Addington, Economic Development Department
Bill Young, Water Resources Department
Roellin Smith, Water Resources Department
Jane Jensen-Davis, Economic Development Department
Tom Fuller, Economic Development Department
Steven West, Cross Connection Inspectors Committee
Kevin Wickman, Cross Connection Inspectors Committee
Tom O'Connor, League of Oregon Cities

383 DAVE LELAND, SECTION MANAGER, DRINKING WATER SYSTEMS, OREGON HEALTH DIVISION:
Supports 1147-3 amendments. Submits and summarizes amendments. (EXHIBIT I).

TAPE 60, SIDE B

SEN HILL: Asks for detailed discussion on the 1147-3 amendments.

425 YVONNE ADDINGTON, MANAGER, COMMUNITY DEVELOPMENT, DEPARTMENT OF ECONOMIC DEVELOPMENT:

The definition of "municipality" is same as it is in special

public works law.

HILL: Does it include all water and sanitary districts?

ADDINGTON: All public water and sewer districts. Some sanitary districts do operate water districts.

025 HILL: Do all of these entities currently deliver domestic water?

ADDINGTON: Not all do, some do. We have allowed water purveyors to be eligible.

033 KINTIGH: Would small districts apply?

ADDINGTON: If they are public.

HILL: The goal is to be consistent with special public works language so there is no problem with administering the money.

047 ADDINGTON: Section 2 has been removed from the bill and the language is placed in Section 10 which creates a separate fund that allows municipalities that do have economic activity to qualify for these funds. Section 10 is the replacement for that.

054 HILL: This creates a separate safe drinking water fund that would be administered separately from the special public works fund?

ADDINGTON: Yes.

HILL: Why do we need to be consistent with the special public works definition?

059 ADDINGTON: It is our hope to use some of the SPW funds to buy down the issuance costs on the General Obligation Bonds through Water Resources Department.

070 HILL: (Referring to EXHIBIT I, Page 3, line 8a), should I be alarmed that there will be a "bleeding" of the fund for administrative expenses?

ADDINGTON: The SPWF has a maximum of 4 percent of the fund for administration. We also have to receive appropriation approval prior to "violating" that.

HILL: Four percent is the cap?

ADDINGTON: Correct.

HILL: Does this change in definition have any collateral impact on any other SPWF activities besides the water program?

080 ADDINGTON: We are not allowed to include certain types of administrative expenses in the bonds we sell. This clarifies that we are talking about administrative expenses in the fund.

091 HILL: (Referring to Exhibit I, page 4) clarifies changes on this page. This permits joint projects?

LELAND: Yes it will allow us to fund that part that is below the \$30,000.

HILL: Why do we have the \$30,000 cap?

ADDINGTON: That is a constitutional limitation.

HILL: Continues reviewing the amendments in SB 1147-3.

ADDINGTON: On page 5, line 30 should read "improvement of a

"safe" drinking water project".

HILL: That needs to be corrected.

150 HILL: (Referring to page 6). The application will be made to the Water Resources Department for the proceeds of the bonds from the Safe Drinking Water Account, or will the application be made to Economic Development?

ADDINGTON: The application will be to Economic Development, we will process it, and we will apply to the Water Resources Commission for approval to sell the bonds. The EDD will handle the applications.

188 HILL: Will the EDD Be the applicant to the Water resources Commission?

ADDINGTON: The eligible municipality will be the applicant. EDD intends to act as technical assistants in packaging the bond.

HILL: Water Resources has this same understanding?

200 BILL YOUNG, DIRECTOR, WATER RESOURCES DEPARTMENT: Yes.

HILL: Is it the intent to make a public or private organization operated on a not-for-profit basis eligible?

209 ADDINGTON: It must be public or eligible to the special public works fund.

YOUNG: (Referring to page 6, line 5) The intention is not to limit the Department's ability to make loans solely to those that would be meeting a drinking water quality standard, but that is the case if it goes through the program here.

HILL: Then we need to put this clause in a place where it clearly refers to applications coming through the WRD program.

254 HILL: What is a coordination agreement?

ADDINGTON: There are times when municipalities join together in providing water. We want to encourage coordinated solutions. Agreements are required.

296 (Referring to page 6, Section 5) What is the intent in Section 5?

ROELLIN SMITH, MANAGER OF THE WATER DEVELOPMENT LOAN PROGRAM: Under current existing statutes if Department bond funds were issued and used for another purpose and received financing elsewhere for the project, the issuer must pay immediately. This amendment is so that we don't have a problem by using special public works funds or federal dollars from that safe drinking water fund and have to accelerate the loan because of that.

318 HILL: What does the change in Section 6 do? (bottom of page 6).

SMITH: The limiting language applies to federal projects. If we had a regional federal project and additional money was needed for matching funds, the existing statute would limit us to just providing funds to pay for easements and right-of-ways. This allows us to participate in larger parts of the project.

YOUNG: (Referring to the bottom of page 6) If there were a project being built through the Bureau of Reclamation for municipal purposes, the only participation the department could have if that language remained in there would be for the

purchasing of easements and rights of way and could only participate in the project to the extent of \$5 million. Removal of the language gives us broader latitude.

363 HILL: This would apply to the full range of projects and probably not to the safe drinking water projects?

YOUNG: It would apply to the full range of projects but could apply to a project under the safe drinking water program.

TAPE 61, SIDE B

(Due to mechanical and recording difficulties, the audio portion of this testimony is unavailable. The following is a summarization.)

HILL: continues reviewing amendments (Sections 9 & 10) Does the four percent limitation on costs apply to all costs?

ADDINGTON: It would apply to all of them..

JANE JENSEN DAVIS: ASSISTANT MANAGER, COMMUNITY DEVELOPMENT, DEPARTMENT OF ECONOMIC DEVELOPMENT):

The committee and witnesses discuss funding for additional FTE's, federal funding, and additional administrative functions for the fund.)

TOM FULLER, DEPARTMENT OF ECONOMIC DEVELOPMENT:

STEVEN WEST, CROSS CONNECTION INSPECTORS COMMITTEE: Submits and summarizes written testimony on SB 1147. (EXHIBIT J) Submits and summarizes amendments to SB 1147. (EXHIBIT K)

(Committee and WEST discuss issue which initiates amendments)

DAVE LELAND, HEALTH DIVISION: participates in discussion.

KEVIN WICKMAN, CROSS CONNECTION INSPECTORS COMMITTEE: participates in the discussion -- also supportive of amendments.

TAPE 62, SIDE A

(Due to mechanical and recording difficulties, the audio portion of this testimony is unavailable. The following is a summarization.)

042 LELAND and HILL discuss the amendments.

048 LELAND: The two items are not necessarily related. The cross connection program is carried out by local utility.

078 TOM O'CONNOR, LEAGUE OF OREGON CITIES: Express concern that this amendment doesn't establish a fee program that would require the bill go to Ways and Means where it potentially could be held up.

085 HILL: Adjourns until 6:00 p.m. and reconvenes hearing at 6:15 p.m..

(Tape 62, Side A)

SB 1163 - Public Hearing and Work Session
Witnesses: Senator Bob Kintigh, District 14
Louise Bilheimer, Oregon Rivers Council
Glen Ardt, Wildlife Society
Tom Simmons, Waterwatch of Oregon
Kip Lombard, Water Resources Congress
Stephen Sanders, Attorney General's Office
Anne Perroult, Oregon Environmental Council
Jim Myron, Oregon Trout
Tom O'Connor, League of Oregon Cities

085 HILL: Opens public hearing on SB 1163.

124 SENATOR KINTIGH, DISTRICT 14:
Submits and summarizes written testimony in opposition to SB 116 3. (EXHIBIT L)

179 LOUISE BILHEIMER, OREGON RIVERS COUNCIL:
Supports SB 1163.

200 GLEN ARDT, WILDLIFE SOCIETY:
Submits and summarizes written testimony in support of SB 116 3. (EXHIBIT M)

246 TOM SIMMONS, WATERWATCH:
Submits and summarizes amendments to SB 1163. (EXHIBIT N)

TAPE 63, SIDE A

025 SPRINGER: On page 2, line 27 of Exhibit N, what is meant by "sufficient continuous streamflow"?

027 KIP LOMBARD, WATER RESOURCES CONGRESS: If there was a stream for which an instream water right had not been identified or quantified, the administrative rules would require that some determination be made up front whether the stream is an appropriate stream or some preliminary determination ought to be made. Ultimately all of the instream needs will be represented by instream water rights.

044 HILL: Regarding Section 3(6) (EXHIBIT N), asks how the federal definition and navigable waterways relates to it.

048 LOMBARD: Navigation can be part of the public use.

049 HILL: Why do we need a public use waterway definition?

050 LOMBARD: Because in the immediate preceding definition on overappropriation, we are talking about public uses and public use waterways. The reason for the "historically" qualifier is that there is probably some streams for which there has never been a public use as presently defined in statute.

063 HILL: What if it doesn't have any traditional public use but is the home of rare and endangered species?

064 LOMBARD: Under the public uses you have the support of aquatic life, fish enhancement, etc.

068 HILL: Do we have a definition of public use?

068 LOMBARD: It is already in the statute; we have not taken it out.

070 HILL: Is that the one you want to use?

070 LOMBARD: It is in the statute and we have no complaints. (ORS 537.332)

080 LOMBARD: In Section 4 (7) (a) (EXHIBIT N), the municipalities asked for a provision that if they are complying with an adopted and approved water conservation plan, they will be deemed as in compliance with efficient water practices.

085 BILHEIMER: That was supposed to be two sentences and we inadvertently left the second one out. The municipalities should bring that to your attention later.

088 HILL: We need to talk about a municipalities adopted and approved water conservatin plan; what is it and how does it get there?

090 LOMBARD: With the conservation policy adopted by the Commission, it is contemplated that water entities will adopt and implement conservation plans. These will be developed according to Commission and will be approved by them.

100 HILL: We need to be informed about these.

101 LOMBARD: Continues summary of Exhibit N.

267 KINTIGH: How much of a breakdown do you envision relating to the creation of river basin and sub-basin authorities? (See Section 5 (1) of Exhibit N).

272 LOMBARD: Doesn't know; it would be up to the judgement of the Commission.

Continues summary of Exhibit N.

356 HILL: Clarifies that the intent of the basin authority is not to arbitrate disputes along water right holders or to deal with transfers or other changes with water rights. It is to manage the restoration and conservation activities according to a plan approved by the Commission to be consistent with the state plan. (See Section 6 of Exhibit N)

363 LOMBARD: That is correct. It is a much broader charge; water management will still be the responsibility of WRD.

368 HILL: Asks about the concerns of other agencies being integrated into the plan.

374 LOMBARD: Under Section (7) (EXHIBIT N), we direct that these basin authorities coordinate their activities of federal, state and local interests.

392 BOETCHER: There are a number of these groups in existence now as volunteer groups (Deschutes River Basin, John Day and Rogue Valley).

Continues summary of Exhibit N.

TAPE 62, SIDE B

002 LOMBARD: Continues summary of Exhibit N. (Section 8)

012 HILL: There is no language that speaks to frivolous suits or suits that have no foundation in fact. Do you feel that the prevailing parry attorney fees and costs will be successful in discouraging frivolous or harrassment suits? (See Section 8 of Exhibit N).

017 LOMBARD: Yes, I think so. There is currently in the law a provision in the law relating to the bringing of actions and administrative proceedings that are entirely frivolous.

Continues summary of Exhibit N.

177 HILL: Are the domestic and livestock water rights in Section 10A (1) issued whether or not it impacts the instream water right?

186 LOMBARD: You can assume that there will be a minimal impact onthe instream water right, but there may or may not be.

189 HILL: Regarding Section 10A (2), if the instream water right is the reasonable minimum required for those public uses, does this mean that any diminishment of that instream water right would harm those public uses or are you asking for an additional finding of potential harm to those uses?

197 LOMBARD: We are putting up within the purview of the requesting agency to make that determination. The letter of understanding that ODFW has allows certain of these additional de minimus applications, but they do reserve the right to say that in any given case even the de minimus shouldn't be allowed because there is little there. Continues summary of Exhibit N.

310 KINTIGH: Regarding Section 13, could this open the possibility of an opportunity to use the water if someone was using it off the peak season?

319 LOMBARD: Yes. Overappropriation has to be determined in relation to the time and place of requested use, because many streams have plenty of water in the off-season and there is water available for appropriation for those times.

330 SPRINGER: How will this work from year to year? Dry years and wet years?

333 LOMBARD: Senior rights have priority over junior rights.

352 HILL: In Section 13 (6) (EXHIBIT N), what is meant by "80 percent frequency basis"?

354 LOMBARD: The water would meet 80 percent of the time period dealt with and the water would be there. It is currently in the rules.

362 SIMMONS: It means that the water is there four out of five years.

365 HILL: The beneficial use and periods may be seasonal and not correspond to months. Suggest "the water right permit may be granted for that period of the year that the water has been shown to be available for the proposed beneficial use." This would cover a variety of times.

376 SIMMONS: Out concern is what "period" means. Will it come down to a day-to-day basis; we must think of practicality.

389 SRPINGER: How would this affect a person opening up land or would like to irrigate but may develop over the years a crop rotation?

395 LOMBARD: They will have to make application on their best guess of what their maximum utilization is going to be.

435 HILL: Would like a discussion of the 80 percent language with WRD and where it came from. This would diminish other people's rights no more than 20 percent of the time.

448 LOMBARD: With the priority system, if you come in under this, you are at the bottom.

Continues summary of Exhibit N.

458 SIMMONS: Continues summary of Exhibit N. Sections 14, 15 and 16.

TAPE 63, SIDE B

019 SIMMONS: Continues summary of Exhibit N. Sections 14, 15 and 16.

057 HILL: How do these conservation measures interact with Section 4? Section 14 allows a person who conserves to make application for allocation of that conserved water. Section 4 provides that the Commission shall require water rights holders to reduce wastes and water recovered through reduction of waste shall be converted to an instream water

right. Are we defining some water as water obtained through reduction of waste and some water as water obtained through conservation implementation?

065 SIMMONS: They are the same; Section 4 says that if you don't eliminate waste, it will be eliminated for you. It says you have to do it and Section 14, 15 and 16 sets up a process where one can do it on their own.

078 HILL: Doesn't understand the difference; seems to be an inconsistency.

081 KINTIGH: Asks for an example of conservation measure causing damage to downstream user.

085 SIMMONS: It is primarily through return flows. Continues summary of Exhibit N.

133 KINTIGH: Asks about the date of adaption. (See Section 16 of Exhibit N)

135 SIMMONS: SB 1163 tries to restore streamflows by helping people do conservation measures on the old water right; this will keep that water right date in the transfer process.

140 HILL: The determination of how much returns to the conserver and how much goes to the state is made by the Commission? Is it a case by case decision.

114 SIMMONS: Summarizes Section 17, which answers previous question.

155 LOMBARD: Continues summary of Exhibit N; Section 18, 19 and 20.

273 KINTIGH: Does the transfer of water apply to individuals as well as districts? (See Section 19 of Exhibit N)

275 LOMBARD: No. There are three types of changes: 1) Change in point of diversion; there is no change in current law. 2) Change in place of use within a district; no change in current law. 3) Change by an individual in place of use to contiguous acreage; no change in current law.

But if a district wants to move it outside of a district boundary or if an individual wants to transfer it from one property to another, then the 50/50 applies. And if you want to change the use, the 50/50 applies with the safety valve of a protest.

302 SIMMONS: These same processes will be used for the purchase, lease or however one obtains a water right; one must still go through the due process.

327 LOMBARD: Continues summary of Exhibit N; Section 21. On page 23, line 21 of Exhibit N, the word "shall" should be bolded because the current language is "may".

355 SIMMONS: Continues summary of Exhibit N; Sections 22 and 23.

372 LOMBARD: See page 19, line 12 of Exhibit N, which deals with transfers. A new section had been prepared to cover these concepts and it was melded into the statute in the current draft. A significant Subsection was left out that the parties agreed to.

On the law of 50/50, in the event of change of place or use, we drafted an exception to that to say it wouldn't apply where the transfer application is for a change in the place of use or the change of use where both the change is to a use by a municipality of Oregon. We suggested that is because it may

be that an irrigation district may want to transfer its' water right or reach an agreement with a city that is in need of water and to transfer that water to the city. Thought there was an agreement to allow for that.

412 SIMMONS: We agreed to that but wants to see the definition of municipality defined very narrowly and that we don't allow that water to be sold to another irrigation district.

TAPE 64, SIDE A

011 STEPHEN SANDERS, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE:

The prepared testimony addresses the prior version of SB 1163; only speaking of the citizen suit provisions. Submits and summarizes written testimony on SB 1163. (EXHIBIT O)

028 HILL: Asks for Mr. Sanders advice on the possible constitutional problem of equal priveleges and immunities.

030 SANDERS: Either everyone ought to be able to sue or nobody. The APA has a requirement that if a group of ten or more persons ask for a hearing in rule making, then the agency must hold a hearing. But there is a distinction because even if there are eight people, they still have a right to submit evidence to the agency; They are not foreclosed from any remedy. This would appear to foreclose persons fewer than ten people from the remedy that is provided by the statute.

Continues summary of Exhibit O.

061 HILL: In Section 8 (1) (b) of SB 1163 (EXHIBIT N) requiring the agency to act does not prejudice the agency for it's one or another. Rather, it seems to be causing the agency to make that discretionary decision. Whether it falls one way or another wouldn't be the intent compelling the intent of compelling th agency to act.

068 SANDERS: If that is the intent, there could be clearer language to explain that. In some cases, the agency may not be required to make any decision.

Continues summary of Exhibit O.

158 ANNE PERROULT, OREGON ENVIRONMENTAL COUNCIL:

We support the general concept of SB 1163. We particularly supportive of the numerous concepts that require a closer look at how and where Oregon's water is being used.

187 JIM MYRON, OREGON TROUT:

Submits and summarizes written testimony in support of SB 1163. (EXHIBIT P) Although the written testimony is dated, we support passage of SB 1163.

206 TOM O'CONNOR, LEAGUE OF OREGON CITIES:

We support the direction that SB 1163 is going with the recent drafts.

Our review of SB 1163 to date shows that there are three ways that municipal water rights are different from other water rights: 1) The ability to hold permits and water rights for future development and growth of our communities as part of our comprehensive planning laws. 2) Municipal water rights are not subject to the abandonment statutes in water law. 3) In certain circumstances in the existing instream water right provisions, municipalities may make use of the water that has been held in certain instream water rights.

It is our understanding that the drafters of SB 1163 had no intent to change those three basic tenents of municipal water rights.

296 SPRINGER: Adjourns hearing at 8:35 p.m..

Submitted by: Reviewed by:

Bernadette Williams Lisa Zavala
Assistant Administrator

EXHIBIT LOG:

A - SB 906-2 Amendments - Sen. Joan Dukes - 2 pages
B - Testimony on SB 1183 - Olivia Clark - 1 page
C - Testimony on SB 969 - Clare Donison - 3 pages
D - Oregonian Article, April 15, 1990 - Clare Donison - 2 pages
E - Oregonian Editorial, May 7, 1991 - Clare Donison - 1 page
F - SB 969-1 Amendments - Bob Hall, PGE - 1 page
G - SB 969-1 Hand Engrossed Amendments - staff - 1 page
H - Testimony on SB 969 - Joe Glicker, City of Portland - 2 pages
I - SB 1147-3 Amendments - staff - 6 pages
I(1) - SB 1147-3 Hand Engrossed Amendments - staff - 11 pages
J - Testimony of Steve West - 3 pages
K - Amendments to SB 1147 (proposed) - Steve West - 1 page
L - Testimony on SB 1163 - Sen. Bob Kintigh - 2 pages
M - Testimony on SB 1163 - Glen Ardt, Wildlife Society - 1 page
N - SB 1163-1 Amendments - Tom Simmons - 22 pages
O - Testimony on SB 1163 - Stephen Sanders, Attorney General's
Office - 2 pages
P - Testimony on SB 1163 - Jim Myron, Oregon Trout - 2 pages