

Senate Committee on Water Policy  
May 21, 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 21, 1991Hearing Room 137  
3:15 p.m. Tapes 73 - 75

MEMBERS PRESENT:Sen. Larry Hill, Chair  
Sen. John Kitzhaber, Vice-Chair  
Sen. Wayne Fawbush (Arrived 3:45 p.m.)  
Sen. Bob Kintigh  
Sen. Eugene Timms  
Sen. Dick Springer

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

MEASURES  
CONSIDERED:SB 204  
SB 1163

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TAPE 73, SIDE A

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

WORK SESSION ON SB 204  
Witnesses:Brad Higby, Oregon Sewer Agencies  
Tom O'Conner, League of Oregon Cities  
Jill Zarnowitz, Oregon Department of Fish and Wildlife

030 BRAD HIGBY, OREGON SEWER AGENCIES: We agree with the amendments; they will take care of the concerns raised at the last meeting.

036 TOM O'CONNOR, LEAGUE OF OREGON CITIES: The amendments provide a method to work with and improve the quality of the streams.

We are supportive of the amendments and the bill.

044 JILL ZARNOWITZ, OREGON DEPARTMENT OF FISH AND WILDLIFE: The amendments will allow for protection of the fish and wildlife resources in stream as well as allow the waters of the state to be cleaned up.

SENATOR TIMMS: We are taking out water and putting it back in cleaner and better than before?

054 HIGBY: Not in all cases; we are talking about effluent that is currently being discharged in the receiving water way, some of which have difficulty assimilating the amounts of nutrients contained in the effluent.

SENATOR TIMMS: You are putting water back; can't cities use the water?

065 HIGBY: That is the issue; ceasing the discharge of effluent could potentially have an impact on fish and wildlife values.

It is intended that everyone know that no one would try to abuse this process to apply water in a frivolous manner.

SENATOR TIMMS: If you can cut down on water use in the first place you could use this water for other uses.

088 O'CONNOR: This would allow a municipality to use some of the water for uses approved by DEQ for certain watering or land treatment for municipal facilities where approved by DEQ.

SENATOR TIMMS: Expresses concerned with the 50 percent reduction.

093 CHAIR HILL: The primary use of the effluent will be for farmers, being transferred for irrigation purposes or similar purposes.

SENATOR TIMMS: If used for a farmer is it the farmers water right or your water right?

110 O'CONNOR: The provisions of the bill are such that it depends on a contractual agreement; if the municipality has effluent under this process approved for land treatment for crops and there is a willing farmer, they can enter into a contract to do so.

During the period of time the contract is enforced the farmer does not lose any existing water right; they are protected during that period of time of effluent use.

151 MOTION: CHAIR HILL MOVES THE (-1) AMENDMENTS AS HAND ENGROSSED DATED 5/21/91.

156 VOTE: HEARING NO OBJECTION THE MOTION CARRIES. MEMBERS EXCUSED: SENATOR FAWBUSH

158 MOTION: SENATOR SPRINGER MOVES SB 204 AS AMENDED TO THE

FLOOR WITH A DO PASS RECOMMENDATION.

VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES UNANIMOUSLY.  
MEMBERS EXCUSED: SENATOR FAWBUSH CARRIER: SENATOR HILL

WORK SESSION ON SB 1163

Witnesses: Bill Young, Water Resources Department  
Lorna Stickell, Chair, Water Resources Commission  
Larry Trosi, Director, Government Affairs, Oregon Farm Bureau

Richard Cossi, Oregon Cattlemens Association, Oregon Sheep Growers  
Association  
and Water For Life  
Mark Nelson, Public Affairs Council, Water for Life  
Terence Thatcher, Deputy City Attorney, City of Portland

CHAIR HILL: Refers to hand engrossed SB 1163 submitted by staff, see  
(EXHIBIT B).

220 LISA ZAVALA, COMMITTEE ADMINISTRATOR: Reads through and summarizes the  
amendments.

246 SENATOR TIMMS: Refers to amendments and letter in opposition, see  
(EXHIBIT C and D)  
regarding flood irrigation.

What are we doing with these types of issues?

CHAIR HILL: Currently it is illegal to use more water than permits allow.

275 SENATOR TIMMS: On page 2 under conservation, what impact does this have  
on farmers?

Refers to the letter (See Exhibit D).

292 BILL YOUNG, WATER RESOURCES DEPARTMENT: A water right extends only to  
the  
rate and duty allowed to the water.

Court cases show waters in excess of that is a privilege, but not one the  
party can exist on it.

YOUNG: At some point rule making must find what the process is.

We have started that with the adopted conservation policy; we have  
anticipated further work  
on agricultural and municipality interests to identify the appropriate  
conservation techniques.

325 YOUNG: The clear intent is to prompt people to look at their methods of  
water management,  
looking for more efficient ways to manage water.

CHAIR HILL: Is this water that your people divert or is it flooding that  
naturally occurs?

SENATOR TIMMS: It naturally occurs.

CHAIR HILL: The bill doesn't restrict natural occurrences; the intent of  
the bill is to address

wastage and encourage conservation.

410 CHAIR HILL: Reviewing amendments.

ZAVALA: Continues clarifying amendments.

TAPE 74, SIDE A

070 LORNA STICKELL, CHAIR, WATER RESOURCES COMMISSION: Submits and summarizes written testimony on SB 1163, see (EXHIBIT E).

124 YOUNG: Submits and summarizes proposed amendments and fiscal impact statement on SB 1163, see (EXHIBIT F).

Our commission agrees with the importance of stream restoration.

Continues with proposed amendments.

200 CHAIR HILL: That would be under what ORS site?

STICKELL: We were clear that it was not to be broadly construed as all water authorities, but water authorities formed solely for the purposes of providing municipal or industrial water.

YOUNG: We will work with committee on language; continues summary of amendments.

281 CHAIR HILL: Where does penalty money go to currently?

YOUNG: It goes to fish and wildlife screening fund; continues summary of amendments.

333 CHAIR HILL: Do you feel this would prohibit the certification of a water right resulting from conservation?

YOUNG: We hope to make it clear that even on an over appropriated stream one could issue a water right certificate for lands that hadn't been receiving water if that was part of their conservation.

343 CHAIR HILL: Your point is consistent with the intent of the bill.

YOUNG: Continues with amendments.

CHAIR HILL: The intent is to allow certification by the applicant?

YOUNG: There was a time when there was self certification; this lead to instances where we have a technical task done by someone who isn't technically oriented.

We continue to have the concern with either the cost of getting information or the loss of the information if the option was to rely on what the applicant told us.

CHAIR HILL: That would eliminate fiscal impact, but have a detrimental affect?

430 YOUNG: That is correct.

YOUNG: Continues summary of amendments; reviews fiscal impacts of SB 116 3-2 see (Exhibit F).

TAPE 73, SIDE B

036 CHAIR HILL: Question about Section 12 of the amendments; how would this read?

YOUNG: Our intent is that if there are identified inadequacies in existing water rights, we would expect to see applications for new in stream water rights set at a higher level.

The language is vague and makes clear those in stream water rights are requested by those agencies to avoid the potential of being tied into an old converted minimum flow, for instance.

Our intention is to make it more clear that the measurements used here talking the amount necessary to support public uses is the amount that has been issued in the way of an in stream water right.

067 CHAIR HILL: If the water is converted to an in stream water right, after being conserved, and that conversion allows the priority date to be earlier than an existing in stream water right, the language is attempting to allow the earlier priority date to be substituted for part or all of the later priority date.

YOUNG: We assumed that older rights would be preserved.

093 CHAIR HILL: The Strategic Water Management Group (SWMG) has two purposes: 1) to reduce the fiscal impact on water resources by spreading the activities among several agencies and 2) to provide a more top down view of determining stream flow restoration and conservation needs, planning for that.

YOUNG: There are high priority activities we are involved in that don't touch stream restoration except in a tangential way.

140 SENATOR TIMMS: We get into the appointments of Governor's Water Basin groups; we should encourage them already there to do something.

YOUNG: I assume the Governor's Office may have thoughts about appointments and the process.

145 CHAIR HILL: We took out all funding you would have to provide to the local authorities; they

would be a volunteer group dominated by the locals.

160 LARRY TROSI, DIRECTOR, GOVERNMENT AFFAIRS, OREGON FARM BUREAU:  
There are two problems, first being that there is no way to deal with competing interests.

There is no provision for balancing competing public interests.

Balancing should look at the resources and question the need to provide wildlife habitat and the need to use the resources for other beneficial purposes.

The current bill focuses all the burden on the out of stream user; the goal is to maximize the water availability for all uses in Oregon.

There are three additional aspects of the bill that concern us, the first being the establishment of citizens suits as the state and it's agencies will have no control over these matters.

We would like to see changes that would reduce the possibility of irresponsible or frivolous law suits.

187 TROSI: Our second concern is that if a person sells a water right, one half of the water right is taken by the state; the requirement as written lacks rational basis or connection between public needs and the desire to sell.

The resource user needs protection against liability for inadvertent or technical errors.

204 CHAIR HILL: In stream with over appropriation, do you think water should be taken out or should we have conservation?

TROSI: We need to look at all existing uses of streams.

215 CHAIR HILL: Currently the Commission is not granting water rights on streams that are over appropriated; that is the problem we are addressing.

The idea is to provide incentive for conservation; we are permitting to seller a profit and currently 50 percent goes back to the stream under current law.

TROSI: We are currently having our legal counsel look at the bill.

250 SENATOR TIMMS: Most of my users are out of stream and not irrigation; I am concerned about the little people who will be affected by this.

They should be involved in this bill.

283 RICHARD COSSI, OREGON CATTLEMENS ASSOCIATION, OREGON SHEEP GROWERS ASSOCIATION AND WATER FOR LIFE: Addressing (-2) amended bill.

The cattle growers are concerned with the bill because of the designation

of the highest  
priority; this would eliminate management flexibility.

The "most efficient use" is described and is out of reach for most people.

If you are going to define "waste", apply the same criteria to in stream  
uses and out of stream  
uses.

338 COSSI: The agricultural community is concerned with private right of  
action; this would create  
a situation with increased litigation activity.

The conservation measure would provide a disincentive for water users.

364 CHAIR HILL: Currently if a farmer installs lines and piping and makes  
other changes that result  
in conservation of water they must return the water to the stream.

TROSI: That doesn't mean they wouldn't change types of agriculture.

CHAIR HILL: That would be illegal under current law.

YOUNG: That depends on whether the certificate of water use goes with the  
land.

402 CHAIR HILL: If farmer has water on 150 acres and conserves that water  
they can't sell it or  
move it, but can transfer it for new beneficial use.

Currently the law doesn't permit that unless the water right specifically  
covers the ground, but  
this would allow you to do that.

433 COSSI: The automatic transfer situation indicates that the loss of 50  
percent of the water and  
that is a drastic concern in the agricultural community.

It also allows any person to protest a transfer and any individual to file  
one and that would be  
a disincentive for transfers and for efficient water management practices.

TAPE 74, SIDE B

027 MARK NELSON, PUBLIC AFFAIRS COUNCIL, WATER FOR LIFE: Section 3 assumes  
no waste is possible for in stream water rights and we object to that.

Out of stream users should be held to the same accountability.

050 CHAIR HILL: What is good definition of waste?

NELSON: We believe that you shouldn't replace the long established water  
law, requiring  
"reasonable efficiency" with the concept of the "most efficient".

The bill is a poor piece of legislation.

CHAIR HILL: Do the current rules contain an appropriate definition of  
waste?

NELSON: It is a better definition than what this legislation provides.

We have concerns that when water rights are sold the public should share in the benefit.

093 NELSON: SECTION 13 (5), Section C is attempting to protect water quality, but could prevent any new appropriation.

We are also opposed to Section 2, the Private right of action.

Section 8 (6); attorneys fees is only dealing with suits against state agencies, not person against person.

155 CHAIR HILL: The law permits transfers of water rights currently; what are the limitations on current transfers and what types of transfers are permitted?

YOUNG: Transfers would be permitted in change in point of diversion, change in place of use and change in character of use for all of those in combination.

The standard is that a transfer must not do injury to other rights.

167 CHAIR HILL: Can you combine the change in diversion, place of use & type of use with change of ownership?

YOUNG: Yes; water transfers are applied for and reviewed with judgements being made about the ability to do that.

CHAIR HILL: There would be a finding that there would be no damage to senior or junior water rights?

YOUNG: Correct.

190 YOUNG: If one was using water adjacent to a stream and there was an effort to transfer that water away from the stream, we would wonder if portions of the water wasn't returning to the stream, available to other users.

206 CHAIR HILL: What is the difference between a transfer and a sale?

YOUNG: In a sale the water rights move, pertinent to the land, with the water right being in the same location with the same use in the same quantity.

If I were to characterize it, current law requires that an up front finding be there; this bill, it seems to me, says do the transfer, creating a mechanism to look at problems after the fact.

237 CHAIR HILL: The bill would provide that 50% would go back to in stream uses if no one is injured?



YOUNG: That is my understanding.

253 TERENCE THATCHER, DEPUTY CITY ATTORNEY, CITY OF PORTLAND: Submits written testimony on SB 1163, see (EXHIBIT G).

267 O'CONNOR: Previously I spoke of concerns that the municipalities have with the legislation and our discussions with the sponsors of the bill and the agreements we felt we had with them about working out language on those issues.

Mr. Thatcher is here to give specifics on behalf of the League of Oregon Cities and the City of Portland.

285 THATCHER: Summarizes Exhibit G.

As cities strive to use water more efficiently, they are faced with the dilemma of trying to control and encourage consumption by literally thousands of home owners and businesses.

361 THATCHER: On the substitution of the Strategic Water Management Group, (SWMG), the cities haven't taken a position, but I do know that this substitution creates a problem for us.

SWMG doesn't have the authority to write regulations, setting out what a conservation plan should include.

We like to keep the authority where it is or we will lose time and energy.

412 THATCHER: With respect to the changes in definition of "over appropriated"; this one says there is a third residual category and I'm not sure who will make that determination, when or how.

It seems there should be some review of the decision, not based on permits or rights.

The Water Resources Commission, (WRC), suggested that water supply authorities organized under ORS 450 should be included here.

We don't want to give anyone a way to avoid the requirements of the law by calling themselves a water supply authority, using water for a non-municipal use.

TAPE 75, SIDE A

037 THATCHER: I worry about there being argument over what a municipality is; it would be better to tie it to statute.

ORS 537.510 defines municipalities differently than here and I don't want confusion.

Our language doesn't exempt municipalities from the obligation to reduce

waste, but does  
affirm pre-existing law that protects municipalities water rights for  
future development.

082 THATCHER: The adoption of new standards on page 12 was inserted because  
municipalities  
can precede certain in stream water rights.

That provision should have gone under sub (a), not in the original  
provision.

Our intent was to exempt us from this limitation on over appropriation if  
the right is otherwise  
going to take precedence over an in stream flow.

This language would negate the right of municipalities and the sponsors  
agreed that that was  
not the intent.

127 O'CONNOR: The League of Oregon Cities endorses that concept.

THATCHER: Page 20 subsection 7 provides that transfers to new  
municipalities aren't limited  
by the new provisions of the law.

I would suggest two changes in addition, first, the reference should be to  
subsection 6 and  
second, on line 5, we intended that to read "where the changes to a  
municipal use by a  
municipality".

150 THATCHER: A municipality will never ask for a conserved water credit as  
that only works if  
a municipality loses their water.

I don't think this hurts municipalities, but I don't think it will ever  
come to pass, (see line 2 -  
3 on page 20).

CHAIR HILL: Should we delete lines 3 - 6?

173 THATCHER: No; I believe lines 3 - 6 are important, but I don't think it  
is necessary to say  
"accept to allocation of conserved water", which is a new amendment.

191 CHAIR HILL: We will be working on this again tomorrow.

209 CHAIR HILL: Adjourns meeting at 5:40 p.m..

Submitted by, Reviewed by,

Bernadette Williams Lisa Zavala  
Assistant Administrator

EXHIBIT SUMMARY:

A - SB 204: Hand engrossed copy submitted by staff, pp 5

- B - SB 1163: Hand engrossed copy submitted by staff, pp 23
- C - SB 1163: Proposed amendments submitted by staff, pp 3
- D - SB 1163: Letter in opposition submitted by staff, pp 2
- E - SB 1163: Written testimony submitted by STICKELL, pp 2
- F - SB 1163: Proposed amendments & fiscal impact statement submitted by YOUNG, pp 4
- G - SB 1163: Written testimony submitted by THATCHER, pp 6