

Senate Committee on Water Policy
January 20, 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 23, 1991Hearing Room 137
3:15 p.m. Tapes 76 - 78

MEMBERS PRESENT:Sen. Larry Hill, Chair
Sen. John Kitzhaber, Vice-Chair
Sen. Bob Kintigh
Sen. Dick Springer

MEMBER EXCUSED: Sen. Wayne Fawbush
Sen. Eugene Timms

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

MEASURES
CONSIDERED:

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TAPE 76, SIDE A

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

004 BECKY KRAIG: Submits and summarizes written exhibit on stream restoration program.
(EXHIBIT A)

025 HILL: What kind of local participateion did you have with this?

029 KRAIG: Worked with forest service and ODFW district people and local people in the communities. Worked with soild and water conservation districts as well. Worked with the Bureau of Reclamation sytudy that had been done. Reviewed with Idnian tribes, etc.

048 HILL: Do you se this as a goundation of a sub basin plan or do you see

it as a subbasin plan?
What do you see as making it complete.

054 KRAIG: This would be a base and implementation would go from there.
The savings that would
be accrued under those activities would be ..

065 HILL: What was the cost of this?

066 KRAIG: About 90,000 allocated for stream coordinator. Used about
60,000 of it till this point.

071 SPRINGER: What is happening on this reach?

073 KRAIG: We had a minimum streamflow that met the needs of fish and it has
been converted to
instream water rights. (See page 7 of Exhibit A)

091 SPRINGER: On top of page 15, anything proposed to fight that
inconsistency?

097 KRAIG: We ask Leg for more money for field assistance. That would be a
priority.

102 SPRINGER: This is an area of great concern. Need for more attention.

118 HILL: Congratulated for timely development of plan. Additional need
for proposals for action.
Opens work session on SB 1163. Submits and summarizes SB 1163-4 amendments
submitted by
staff. (EXHIBIT B) This is close to what it takes to get my vote. In
interest of efficiency there
was a putting together of SB 1129 and SB 1163 together. Make them
consistent.

Old Section 2 has been moved in Section 4 and into SWMG statutes.

Question of hydroelectric aspect. Asks Bill Young to describe quantity of
water on...

193 YOUNG: We issue a right for water in hydro..calculated on TH.
Contemplates no losses. As
long as the amount of water not change d or head altered can come up with
TH.

210 HILL: If PGE or EWEB ...the amount of water remains the same ...

213 YOUNG: Would be more efficient and more TH. Arrive and actual and TH.

220 HILL: Not waste and not conserved water.

Continues summary of Exhibit B.

256 KINTIGH: It has to be formally proposed?

259 HILL: Formally proposed. Rather than requiring them to create a basin
authority in whole state,
only in areas of need.

Continues summary of Exhibit B. Old Section 7 was taken out to defer fiscal

impacts. New Section 7 are the SWMG responsibilities. Section is the same except that monies shall go to ODFW account, not WRD. Section 10a. Add "current" to show that it is not historic flow, etc.

Section 13 change to municipalities. Not eliminating mun precedence but that mun does not automatically get the water right despite certain aspects. Previous amendmetns gave them the water right no matter none. You still get superiority over instream water right if not overappropriated. May request a contested case hearing.

Buying water into the streams at the earliest priority date in Section 15. Section 16 is the new certificate to the applicant preserving the applicants rights if they preseve water. Required to provide a map and statement and won't need to use the water rihts examiner.

Section 18 is for flexibility...

Section 19 (h) previously only for irrigation district, now for everyone. Has to do with not meeting a. 50/50 split is for certain types of transfers. (7) is municipal language. (8) allows any person to protest.

TAPE 77, SIDE A

169 KINTIGH: Question regarding prtest.

172 HILL: Held till can satisfy someone's jdugement. If they can't show injury then it d\goes back to 50/50 split.

181 KINTIGH: Who can protest?

183 HILL: Anybody. The Commission would decide if there was injury. Section 19 (20) is the same definition of "district" as in SB 1129.

Section 20 is issuance of certificates for transfer of water.

Section 22 on is SB 1129. The definition of "District" previously said..., now it implements conservation plans by WRD. Modifying phrases wil achieve the bill not to hit all districts...the purpose of SB 1129 survives intact. or"ornamental vegetative" is not included. Only for irigation uses.

The previous Section 9 that amended..took it out cause it didn't have it in the bill. Had to do with diversions prior to 1931. No impact on ;the affect of the bill. No substative changes after this.

SWMG in charge of the plans and in SEction 4 and 5. Section 6 will go into

SWMG and Commission. SWMG is responsible for seeing the plans occur through various agencies. The basin or subbasin plan is represented by WRC. Public input can occur with local people...doesn't come up with plan on their own..dominated by local control and present it to the commission. Commission will approve or disapprove it.

362 SPRIGER: Fiscal impact on this yet?

366 HILL: Changes reduced some fiscal impact and put some off. Buy back list there is a 1.5 million dollar item for stream restoration and can cover any impact on WRD. Justify placing it high on the buy back list. The Governor by placing the state planning responsibility on SWMG, she has to make that responsibility. There are also multiple agency to contribute time and expertise in. WRD is not the sole agency.

TAPE 76, SIDE B

006 YOUNG: Will try to speak to the fiscal impact of amendments. When did the impacts on previous amendments, we had fiscal impact of \$310,000. You stated that you wanted ..up and active...

024 HILL: Not that but left at discretion of SWMG to create basin authority.

028 YOUNG: Fiscal impact didn't take into account the first biennium impact to put together the plans.

034 HILL: ...there is no requirement or anticipation that there will be additional staff??? Will depend on individual motivation of people. Is that your experience with the John Day.

048 YOUNG: Yes, we have been able to do that because we have a full time person in the basin and subbasin. If there had been encouragement to create plan with no staffing you would not see this plan.

063 HILL: If we come up with funding for that??

066 YOUNG: We would expect to continue to see streamflow restoration as high priority. SWMG has no budget or staff or authority to adopt rules. The question of how we translate a broader plan must be careful how it will be translated to other agencies and staff.

084 HILL: Directs Jeannette to add language to five more rulemaking authority to SWMG.

088 HOLMAN: Section 4 and 5. My understanding of SWMG, each agency uses their own

rulemaking authority to decide what they do.

096 YOUNG: That is my understanding. No obligatory.

HILL: Grant some specific rulemaking authority to SWMG as an entity.

102 HOLMAN: Reading Sections 4 and 5 is giving SWMG a directive to making rulemaking to each agency as needed rather giving it to them. Make agencies rules work together.

110 HILL: Leave it at that and option at later date. Assume that SWMG will implement it at this time.

120 YOUNG: These are comments on SB 1163-2 as further amended. Submits and summarizes written comments on SB SB 1163-2 as amended. (EXHB IT C) Refers to the SWMG role in plan. Not rely on SWMG that they can't do and that is adopting of rules. They don't budget or staff and rely on lead agencies.

149 HILL: One solution would be that SWMG have rulemaking authority. Another is Gov have her rulemaking authority and centralize... Each section would advise the gov. SWMG is best substitute for Natural resources department. Flag it and continue to work on it.

167 YOUNG: Remaining testimony is referring to stacking water rights. See EXHIBIT C.

181 HILL: Why do you want to limit the amount of waste to maximum not exceeding certificate of water right. If more..

187 YOUNG: Go back to original language of waste. Prob occurs if remove "not to exceed certificate"... that occurs in had written in sub 3. Tying that water up in instream uses would damage downstream ; uses for sure. Trying to attach date to an illegal use of water... could be dealt with modification on sub 3 or as suggested.

220 HILL: Look at 1163-2 as amended in Section 4 and is had lettered section 3. Section 7(2) on page six.

238 YOUNG: Not to hook a date on it.

241 HILL: "a permitted or certificated water right..." Objection to add that? No objection and will consider that?

254 YOUNG: Regarding the DIACK decision. Bottom of page 9 and top of page 10... concern was that .. none of that applies if within a scenic waterway. Under the Diack case we could find that there... 2) that language is broad enough that it suggests that can't use

water...

288 HILL: Require adequate flows..not all appropriations only those that impact the waterway.
Intent is to continue the status quo in DIACK. Concerned with broad lang.

Jeannette could provide absolute language..meet under DIACK first and then diminish. "unless the identified ..."added to 13 or 14??? Asks Holman to submit new language...consider it a further amendment.

330 YOUNG: Section 13 (5)...lang so broad that it prevents the application for a permit on overappropriated water that is throughly....policy call.

344 SPRINGER: Is quality an issue? Wouldn't speak to quantity?

372 HILL: That is a concern.

377 YOUNG: Deal with that as a separate section. Proposing to reject an application, but focus on application for non consumptive uses. Reject the application because on a stream that is overappropriated??

395 HILL: This isn't a prohibition in that...there would be an initial sharing...3 ways to deal with it???

If accept Bill's language it would be in (a)...we are overlooking the possibility for instream pollution abatement that would contribute to ...

433 YOUNG: It has to be an instream water diversion. Objection to including Bill's language..no objection in...

TAPE 77, SIDE B

021 HILL: The current language doesn't allow...even if it is detrimental. We ought to strike to "divert water out of stream" and ...objection to striking line 30 of page 13.

042 HOLMAN: On page 16...and page 17 on lines 1 - 4.

045 YOUNG: What we suggested would appear on page 16...in lieu.

048 HILL: We will stick with Jeannette's suggestion. Change highest priority to priority. If we used term "historically used" how will WRD determine that amount.

063 YOUNG: Would allow people to come in and say that they have measured what using but flow would be...it would be left in the stream or wasted in the system.

083 HILL: Why wouldn't the combination of 50/50 split and ...by recognizing that district left water

in the stream doesn't mean that...it is not only matter of getting water in stream, but prob is putting water in stream and making sure it stays there. Your approach would say that you save 1/5 of water riht and not 3/4.

112 YOUNG: not curently in new version of bill.

130 HILL: Asks Srpinger what he thinks...if we award...allow some of that water to district for resale and use...not ocnfident that the current situation satisfies those flows either.

144 YOUNG: The policy call would be that the deaprmtn wouldn't give the call of who is injured by the aprty coming forward.

162 HILL: Beside the concern of strong motivationof people using less water must recapture some it to repay damaged aprties and put more water in. Don't think we have enforcemtn capabilities iwth this bill.

173 YOUNG: This is an efficient system.

177 HILL: That is waste.

180 YOUNG: That is not waste and not taken out of stream..it is giving them an opportunity to undertake some conservation activities by pretending that they are saving water.

205 HILL: Runs through the comments and suggestion by WRD (See Exhibit C)

332 HILL: make it a ten year limit time that shall not be extended. "The extension shall not be beyond 10 year extension date the application was received." line 29...

On Page 2 of Exhibit C. Page 12 Linew 21 2 and 23. Goal to express prefrence to instream needs will be expressed by pending application for instream water right. It would be okay if included word "recommended".

450 HILL: Recesses due to a call of the Senate.

Tape78, Side A

027 Reconvenes at 5:40 p.m..

031 YOUNG: Page 13, Line 29...

043 HILL: Have amended that to say.

048 YOUNG: May want to roll that up with the... if only interested in wet water....

060 HILL: With current language it would be wither wet or dry. natural flow level that are in an overappropriated stream.

YOUNG: I've been interpreting your definition to how...you are now adding them all up and subject to full use and...different definition...

083 HILL: Reads the definition.

091 YOUNG: Not how I read it...you measured the water to satisfy the rights. If you simply add up all the rights it is dramatically different.

098 HILL: This allows you to add up all the rights and make some determination of instream right determination...and the sum total is..and against it you measure the total of the stream. If it doesn't match you have over appropriated stream.

110 YOUNG: Denys the of return flows....

113 HILL: But has no documentation of it...return flows could fall under waste.

128 YOUNG: If that has been the definition that is misunderstood. The Commission has a problem with this...etc. Issue that we would have to do. Wouldn't be able to practice conservation with the expanded version...this says that we can't accept that measure..on over appropriated stream cannot practice conservation ...

159 HILL: Point taken...adopt your recommended amendments. No objections. There is nothing in the bill will change the status quo treatment of hydro electric permits or certificates. Will not come under the waste for...That would be the extent of the permit.. Municipalities have some things...hope they see the value of conservation...

207 KITZHABER: Not up to speed only a process vote..

220 HILL: Asked ..subsequent referral to Judiciary and Ways and means... Recosider the vote..

MOTION: SpringerDelete the prior reference with

258 MOTION: Objection to amendments of -5 and ...no objection

MOTION: Moves reconsider to Ways and Means of the House side...

HILL: Adjourn 6:00 p.m..