

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 28, 1991Hearing Room 137  
3:15 p.m. Tapes 79 - 80

MEMBERS PRESENT:Sen. Larry Hill, Chair  
Sen. Wayne Fawbush  
Sen. Bob Kintigh (Arrived at 4:25 p.m.)  
Sen. Eugene Timms (Arrived 3:45 p.m.)  
Sen. Dick Springer

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

MEASURES

CONSIDERED:SB 208 - Removes Water Resources Commission oversight of hydroelectric project financing and bonding requirements, WRK

HB 2192-A - Establishes procedure for defining boundary of critical ground water area, PUB

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TAPE 79, SIDE A

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

(Tape 79, Side A)  
SB 208 - WORK SESSION  
Witnesses:Paul Romain, City of Gold Hill  
Jim Downey, City of Gold Hill  
Jay DeYoe, City of Gold Hill  
Bev Hayes, Water Resources Department  
Louise Bilheimer, Oregon Rivers Congress  
Jim Myron, Oregon Trout  
Tom Simmons, WaterWatch  
Jill Zarnowitz, Department of Fish and Wildlife

006 HILL: Opens work session SB 208. SB 208 is not being heard today as written, but the Committee will hear proposed amendments to the bill.

019 PAUL ROMAIN, CITY OF GOLD HILL:

The amendments to SB 208 would not allow the operation of the hydroelectric facility on the Rogue River, but would allow us to get our hydroelectric water right back. The City of Gold Hill lost it's hydroelectric water right because they stopped using it in 1966 and stopped paying the relicensing fees in 1972.

There would be no adverse impact on starting up the facility; it would actually help the fish run. Submits photographs showing existing channels where fish cannot come up due to blockage. It is a fish kill area.

The proposal to ODFW is to give them the chance to show that by modifying the dam and putting in an operational fish ladder, more adult Salmon and Steelhead will be able to pass the dam and will increase the resource of the river. It doesn't authorize anything but the chance to show that this facility will not harm the river, but benefit the fish and the citizens of Gold Hill.

088 JIM DOWNEY, CITY OF GOLD HILL:  
ODFW will be engineering this fish ladder at a minimum cost of one million dollars to the City of Gold Hill. This will benefit the fish and the people. We lost these water rights as a result of lack of money, so now we are trying to do something constructive.

122 HILL: There is no fish ladder at all on this dam now?

123 ROMAIN: There is a non-operational, impassable fish ladder.

126 HILL: Who owns the structure?

128 DOWNEY: The City of Gold Hill owns the title.

130 JAY DEYOE, CITY OF GOLD HILL:  
WRD explained that a water right could not be reinstated, and the only solution was to change the law. That is the intent of SB 208.

The fish runs are getting smaller and are now threatened on the Rogue River. This hydroelectric project would include the most sophisticated installation of a fish passageway to date.

The Game Commission has closed the fish ladder currently and there are three waterfalls that serve as an obstruction to the fish.

174 HILL: The dam was built for power generation, not flood control, correct?

175 DEYOE: That is correct.

176 HILL: It hasn't produced power since the late 1970's?

177 DEYOE: Our records indicate 1966. They couldn't sell the electricity.

179 HILL: ODFW hasn't required maintenance of the fish passage?

181 DEYOE: They have it closed that diversion because it takes the fish so

long to get through that they are too easy to catch. They also closed Rainey Falls to fishing for the same reason.

195 HILL: The fish can get up the falls but they can't get over the dam?

196 DEYOE: They can get over both, but they have a better chance of making it through a fish ladder.

201 HILL: If they can get over the dam now, why are we worrying about a fish ladder? And if they can't, why has there been an obstruction there for so long?

203 DEYOE: Some of them die, but not all of them. A fish has a better chance of making it through a flat passage.

208 HILL: The major purpose of the proposal is not to provide a fish passage; that is incidental. The major purpose is to generate some power and also provide some fish passage.

212 ROMAIN: The major point is to show that the generation of power at this spot will both generate power and enhance the fish runs.

221 HILL: What level of water rights are you asking for? Is it the same level of water rights that you previously had?

223 DEYOE: We wouldn't know until we've completed a feasibility study analysis on how much power we would generate there.

226 HILL: That hasn't been done yet?

226 DEYOE: Not yet.

228 HILL: If there is no feasibility study, it is hard to justify changing the law.

233 ROMAIN: The problem is that different answers come from different agencies. All the agencies want something that you can't get without something from another agency. We just want the opportunity to show that it will work. We still have to go through every statutory route.

248 HILL: You would have to get a FERC permit, a DEQ permit, impact studies, etc.. Changing the statute should be one of the last things you do.

254 DEYOE: Gold Hill operates on a budget of \$750,000 a year. The feasibility study would cost around \$500,000 and we cannot afford to spend that money until we know we can get the water rights.

The intent of the Oregon water laws was targeted at new hydroelectric projects; this is an existing hydroelectric facility. We would like the old water right reinstated.

287 TIMMS: Who had the existing water right? The City of Gold Hill?

289 ROMAIN: The City of Gold Hill lost the water right in 1972. The power plant hasn't operated since 1966. We can't get backing for feasibility studies without something substantial.

321 HILL: Where does the Scenic Waterway come up to?

323 DEYOE: It comes up to the Hells Gate Canyon area.

330 TIMMS: You are not changing any process, just getting a water right back. Will you use the hydroelectricity facility to generate electricity with water currently there?

336 ROMAIN: That is correct.

351 HILL: You don't have a contract, permit or license yet. What makes you think this will work?

353 ROMAIN: We don't know if it will. We are a small city and don't have much resources, but we think that we could take advantage of the river and make modifications to help the river.

372 HILL: Removing the dam will enhance the fish run.

374 ROMAIN: That will benefit the fish, but won't benefit the people of the area. We want to show that we can do both. But we are not asking you to decide that.

425 BEV HAYES, WATER RESOURCES DEPARTMENT:  
Explains history of Gold Hill's water right forfeiture.

--Gold Hill stopped generating power in 1973, according to department records.

--Stopped paying operating fees on the facility in 1974.

--The water rights were canceled in 1991.

445 SPRINGER: It took eight or nine years, administratively, to accomplish the forfeiture?

448 HAYES: We started the proceeding in 1988 or 1989.

452 HILL: If Gold Hill wanted to save the water right, you had until January 1991.

455 HAYES: The period of non-use occurred five years after non-payment.

470 HILL: What was the water right for when it was granted?

472 HAYES: They have a water right for diverting water for municipal uses and one for diverting water for hydroelectric power generation. It was the permit for hydroelectric generation that was canceled. They continue to divert water for municipal uses.

480 HILL: Do you have the numbers off that hydroelectric permit?

481 HAYES: Not with me.

TAPE 80, SIDE A

021 SPRINGER: Is the stream navigable?

022 HAYES: It is a navigable river.

023 SPRINGER: If the structure remains in place serving no purpose except for municipal water diversion, it is clearly blocking the navigation of the river. Who has authority to enforce the navigability of the river?

026 HAYES: That would be the Division of State Lands.

027 HILL: They would also take title to abandoned structures in the river. What is the statute of limitations on abandonment of structures?

028 SPRINGER: A public agency is not subject to abandonment.

029 HAYES: They have continued to divert water for municipal purposes using the same dam. It is my understanding that it is a multipurpose structure.

We have concerns about the amendments. We doubt whether WRD could issue a new license. Although hydroelectric laws are less stringent for existing facilities, it would be difficult to meet fish standards. This would be expensive and time consuming for the applicant, WRD and other state agencies to process a license or permit when we suspect that we won't be able to issue it.

048 SPRINGER: Has WRD calculated what the theoretical horsepower of this project might be?

050 HAYES: We do have the theoretical horsepower of the project that existed when it was canceled, but not here with me.

058 TIMMS: Is the diversion where the power plant was? Could you get power out of the diversion from the water for the municipal use or was it used strictly in the river flow?

061 HAYES: Doesn't recall where the power facility was originally; either the canal or on the river.

063 SPRINGER: What is the volumetric amount of their right for municipal purposes?

064 HAYES: 300 - 400 cfs. 360 cfs when they divert for municipal purposes.

066 SPRINGER: 360 cfs for 1,200 people? That seems high; that is more than the City of Portland uses.

078 JILL ZARNOWITZ, OREGON DEPARTMENT OF FISH AND WILDLIFE:  
We have strong problems with the proposed amendments. This came before the legislature twice before and was denied both times. (1983 and 1985) ODFW opposed it both times.

The applicant would have to meet the standards of HB 2990, which is the "no dead anadromous

fish" standard. There are two different standards in the amendments (See page 1, Section 2(b) and page 2, Section 2(d)).

The Power Planning Council has designated the Rogue River as a protected area for fish where there would be no hydroelectric activity.

The applicants would be getting exemptions to both of those existing statutes. They have a lesser standard to meet than any other facility to date.

Any screen kills fish and fish do get above the Gold Hill diversion dam. There are also existing standards allowing fish passage and screening of diversions without having to go the hydroelectric route.

127 HILL: Do you know the horsepower or cfs of the water right permit?

128 ZARNOWITZ: The powerhouse has three generators and it would generate close to three kilowatts. The dam would be shut down for a couple of months of the year because of lack of flow. This would be a junior water right to the instream flow.

144 HILL: PP&L did a study?

144 ZARNOWITZ: Yes, they did a preliminary study in the mid 1970's and found it uneconomical. They later restudied it and backed out after an initial investigation of the costs. That was in June 1990 in a meeting with the City of Gold Hill, PP&L and ODFW.

162 LOUISE BILHEIMER, OREGON RIVERS COUNCIL (ORC): We are opposed to SB 208 amendments. ORC is committed to maintaining the free flowing nature of Oregon's rivers. We support the suggestion of removing the dam altogether. An alternative would be the installation of a new fish ladder without generation of hydroelectric power from the facility.

We support the Northwest Power Planning Council's placing the Rogue River off-limits to hydroelectric project. These amendments would open the door to the project.

194 JIM MYRON, OREGON TROUT: Has concerns with the SB 208 amendments. Questions Section 1 (2) (d), which states it wouldn't adversely impact anadromous Salmon and Steelhead resources. Who would be responsible for monitoring the effects of the dam on the fish and who would pay for that monitoring?

In Section 1 (3) it is stated that if it does adversely impact the fish, they would remove certain structures. Would they remove all the existing structures or just additional structures if it does impact?

212 TOM SIMMONS, WATERWATCH: Oregon's public policy is clearly articulated by this body by withdrawing

the Rogue River from hydroelectric development. Gold Hill has attempted repeatedly to lift the ban, which have all failed.

There is no significant fish passage problem there now; there is a poaching problem though where the fish school up. The passage problems are more severe in the rapids upstream.

The Rogue Basin Project is primarily for purposes of restoring streamflows in that basin and 75 percent of that investment was for anadromous fish enhancement. There is a federal water right, that cannot be diverted for purposes of hydroelectric power. It leaves them just a few months of natural flows in the river where they could generate hydroelectric power. In the winter months, the Lost Creek Dam is storing the water, leaving little natural flow. There is not much water left in the Rogue River subject to appropriation.

269 DEYOE:

This hydroelectric project was running in 1959. We want to remodel it and start it up again. The intent of the 1959 law was not to shut us down forever if we shut down.

280 HILL: Closes public hearing on SB 208.

(Tape 80, Side A)

HB 2192-A - PUBLIC HEARING

Witnesses: Bill Young, Water Resources Department  
Fred Listner, Water Resources Department

281 HILL: Opens public hearing on HB 2192-A.

296 BILL YOUNG, WATER RESOURCES DEPARTMENT:

Submits and summarizes written testimony on HB 2192-A. (EXHIBIT A)

393 FRED LISTNER, WATER RESOURCES DEPARTMENT:

Summarizes HB 2192-A.

TAPE 79, SIDE B

101 HILL: Does WRD do a periodic review and would there be a fiscal impact on Section 5 (b)?

103 LISTNER: WRD does a periodic review. There will be a fiscal impact, but not more than we would already have due to WRD being required to periodically do a review.

114 HILL: How often is "periodic"?

117 YOUNG: The outside limit listed in the bill is 10 years. At least every 10 years, but there are some areas that are every five years.

131 LISTNER: Continues summary of HB 2192-A.

254 HILL: Closes public hearing on HB 2191-A. Adjourns the hearing at 4:45 p.m..

Submitted by:      Reviewed by:

Bernadette Williams      Lisa Zavala  
Assistant                   Administrator

EXHIBIT LOG:

A           -            Testimony on HB 2192-A - Bill Young, Water Resources Department - 2 pages