

Senate Committee on Water Policy  
May 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

May 30, 1991Hearing Room 137  
3:15 p.m. Tapes 81 - 82

MEMBERS PRESENT:Sen. Larry Hill, Chair  
Sen. Wayne Fawbush (Arrived 3:30 p.m.)  
Sen. Bob Kintigh  
Sen. Eugene Timms  
Sen. Dick Springer, Vice-Chair (Arrived 3:55 p.m.)

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

MEASURES

CONSIDERED:HB 2192-A - Establishes procedure for defining boundary of critical groundwater area, WRK

HB 3366-A - Prohibits siting or construction of point source sewage treatment discharge in Abernethy Creek Basin after January 1, 1991, PPW

HB 3424-A - Requires State Fish and Wildlife Commission to submit to 67th Legislative Assembly report on status of wild fish, PPW

HB 3373-A - Declares shortage of water resources is matter of statewide concern and priority to develop environmentally acceptable and economically feasible water storage facilities to address the problem of water availability, PUB

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 81, SIDE A

006 CHAIR HILL: Calls the meeting to order 3:25 p.m..

(Tape 81, Side A)  
HB 2192-A - WORK SESSION

Witnesses:Fred Lissner, Water Resources Department

006 HILL: Opens work session on HB 2192-A.

013 KINTIGH: Regarding Section 4 of the bill, does this allow them to designate an area of the state as a critical groundwater area by rule rather than contested case?

016 TIMMS: Doesn't it lengthen the time to 60 days under the Administrative Procedures Act?

019 FRED LISSNER, WATER RESOURCES DEPARTMENT:  
That is correct.

023 KINTIGH: Did the House explore this issue thoroughly?

025 LISSNER: Yes. The intent of HB 2191-A was to clarify that process. It uses a twofold process:  
1) Rulemaking, which describes the area within which the problem exists.  
2) Contested case.

032 KINTIGH: The final designation of the boundary would be by contested case?

034 LISSNER: No, the final designation of the boundary is by rule.

037 KINTIGH: It is the enforcement; when it affects the user, then the user has a chance to have a contested case.

047 MOTION: SEN. KINTIGH moved HB 2192-A to the floor with a "do pass" recommendation.

VOTE: In a roll call vote, the motion carried. Senators Fawbush and Springer were excused.

(Tape 81, Side A)

HB 3366-A - PUBLIC HEARING AND WORK SESSION

Witnesses:Representative Larry Sowa, District 26

052 HILL: Opens public hearing on HB 3366-A.

054 REPRESENTATIVE SOWA, DISTRICT 26:  
Gives a brief history of HB 3366-A. People have purchased land in the Abernethy Creek Basin and have wanted to develop the land. One of the proposals was to put in a sewage treatment plant, which was denied by DEQ. Wants to make sure that in the future some developer doesn't come in and put in a sewage treatment plant.

090 KINTIGH: Has DEQ already ruled against siting sewage treatment facilities there?

092 SOWA: They didn't rule against it, they held hearings and decided that there was enough information to have a formal hearing if need be. The owners then pulled the application back.

095 KINTIGH: It wasn't a final, unconditional ban. The possibility still exists?

099 SOWA: That is correct.

103 HILL: Closes public hearing and opens work session on HB 3366-A.

105 MOTION: SEN. KINTIGH moves HB 3366-A to the floor with a "do pass" recommendation.

VOTE: In a roll call vote, the motion carried. Senator Springer was excused.

(Tape 81, Side A)

HB 3424-A - PUBLIC HEARING AND WORK SESSION

Witnesses: Kay Brown, Oregon Department of Fish and Wildlife

Representative Dave McTeague, District 25

Jim Myron, Oregon Trout

112 HILL: Opens public hearing on HB 3424-A.

121 KAY BROWN, OREGON DEPARTMENT OF FISH AND WILDLIFE (ODFW):  
ODFW support the concepts of HB 3424-A. Regardless of the bill, we expect a written report to be available before the next session on the status of wild stocks and the causes of decline.

ODFW adopted a provisional list of wild stocks in Oregon, identified sensitive stocks and stocks of concern. Recently, a statewide review with all the district biologists was completed to look specifically at stocks in their districts.

144 HILL: Since you're doing it anyway, it has no fiscal impact over and above the Governor's recommended budget?

145 BROWN: Correct.

146 HILL: This simply requires that you not forget to do it.

148 TIMMS: Is ODFW the agency which the federal government gets their information on the Threatened and Endangered Species Act?

152 BROWN: The federal government does get a lot of their expertise from state Fish and Wildlife Departments. The Act is the responsibility of the National Marine Fisheries Service, who also has experts on their staff that are involved.

157 TIMMS: Is that completely funded by the budget's 29 percent coming from the federal government?

160 BROWN: More than half of ODFW's budget is federal budget and some of that money comes to us through the federal government and some are state funds.

163 TIMMS: What would the state moneys go to?

166 BROWN: A group of people in the Portland office are responsible for natural production, including a bio-nutrition, a statistician, a geneticist, etc. They spend a lot of time on T&E species.

178 REPRESENTATIVE DAVE MCTEAGUE, DISTRICT 25:  
HB 3424-A is within the ODFW's existing authority, budget and area of responsibility. The policy makers need to have this information brought back to us in a form that we can use as a foundation for the kind of decisions, choices and initiatives that we may need to undertake.

HB 3424-A is an important piece of a fisheries restoration agenda this session, because unless we have a database and have access to it, we can't work effectively. The American Fisheries Society released an extensive report that indicates there are real concerns about stocks and sub-species of salmon and trout in Oregon, which are near going extinct.

219 JIM MYRON, OREGON TROUT:  
Submits and summarizes written testimony on HB 3424-A. (EXHIBIT A)

235 KINTIGH: If ODFW is already going to do a report on the status of wild fish stock, why have HB 3424-A?

239 MYRON: At time of drafting, we weren't aware that ODFW was specifically going to be doing this. There is no harm in making sure that ODFW follow through with their good intentions.

247 TIMMS: We need to get the "people equation" into the threatened and endangered species issue in Oregon. We should look into what impact it will have on people economically.

269 MCTEAGUE: The point is that whatever we do to the state Threatened and Endangered Act, the federal Threatened and Endangered Act is not going to go away. We need to have a preventative strategy and look at getting ahead of this problem so we don't have more species falling into the listing. We don't want the federal government managing the watersheds along the Oregon coast.

We need to be more proactive by identifying stocks of concern, looking at on-the-ground issues and working with local communities so we don't run the state on recovery plans. We shouldn't always fight over the "last" fish or owl.

328 TIMMS: We still need to look at how the threatened and endangered species is affecting people. Now is not the time for legislation that is not needed.

356 MCTEAGUE: ODFW does need prodding at times to get things done and unless legislation is passed, we can't guarantee that we will get this report.

370 MYRON: Oregon Trout purports to speak for the fish because they can't speak for themselves. Therefore, we don't look at the economic impacts, but at the species going extinct. Before we can change that direction, we must know where we are at.

Oregon Trout prefers not to use the Endangered Species Act, except as a last resort. This is one way to get state involved in addressing these problems on a local level without involving the federal government and the Endangered Species Act.

389 TIMMS: I don't disagree with that; what we need is a balance.

399 HILL: This is compatible with human economic activities, it is a matter of deciding what actions we should take to mitigate the problems forthcoming. It makes sense to strengthen the resolve of the agency to follow through on it's studies before we are ordered to by the federal government.

433 KINTIGH: Still has a problem with asking ODFW to do something they have to do anyhow; but will support the bill.

444 MOTION: SEN. FAWBUSH moves HB 3424-A to the floor with a "do pass" recommendation.

VOTE: In a roll call vote, the motion carried, with Senator Timms voting NAY. Senator Springer was excused.

(Tape 82, Side A)  
HB 3373-A - PUBLIC HEARING  
Witnesses: Representative Chuck Norris, District 57  
Senator Scott Duff, District 29  
Jim Myron, Oregon Trout  
Louise Bilheimer, Oregon Rivers Council  
Bev Hayes, Water Resources Department  
Dave Nelson, Water Resources Congress

453 HILL: Opens public hearing on HB 3373-A.

TAPE 82, SIDE A

015 REPRESENTATIVE CHUCK NORRIS, DISTRICT 57:  
HB 3373-A is a declaration policy that storage would be a high priority in the water program in Oregon. It won't build any dams, but a clear statement of policy that relieves some of the ambivalence we've had in Oregon regarding the issue of storage. It is not a quick fix but will steer us in the direction of exploring this possibility, finding the funding and getting public support. It would be a guidepost for our future considerations.

040 KINTIGH: How do you think you can overcome the problem of these dams being built, especially for irrigation? This would result in conflict when the water is needed in late summer. Do you address this conflict? Do you state ahead of time that this is for storage?

048 NORRIS: HB 3373-A has made reference to multi-purpose water storage facility. Doesn't want to attempt to get into much detail at this point, but work out the details later. We want to state that we believe in saving water by means of storage.

061 HILL: In past discussions of conservation, it seems clear that storage is part of a comprehensive approach to insuring that the water is there when we need it. Other things also need to be done; e.g. restoring the riparian zones in the uplands, which would act as a reservoir. Asks if this issue has been addressed.

078 NORRIS: Haven't specifically addressed this issue. But agrees that this is just one part of conservation and watershed enhancement issues.

085 HILL: This is not a simple, one-shot solution?

086 NORRIS: No it isn't; this is just one step.

087 SENATOR SCOTT DUFF, DISTRICT 29:  
Water storage is an issue in the district, both for drought and flood control. One solution to this problem is the ability to implement small impoundments; e.g. an earthen impoundment of 500 acre feet or less. Submits SB 1177, which would deal with this issue. (EXHIBIT B) Suggests that the components of SB 1177 could be integrated into HB 3373-A.

109 HILL: It is compatible if we choose to do that.

112 DUFF: It should emphasize small impoundments and have a ten year timeframe for WRD to implement it.

117 HILL: This could be part of a comprehensive basin plan.

119 NORRIS: It would be appropriate in a basin study, but it shouldn't exclude any other initiative.

125 DUFF: The Umatilla River headwaters and part of the basin are within federal land and are fed by protected, undeveloped riparian areas. The same is true of the Grande Ronde River. We need storage as an adjunct to the natural riparian areas, which would also improve the riparian areas.

145 TIMMS: WRD lists stream impoundments as a priority. How do you envision financing

impoundments?

151 NORRIS: A wide variety of ways, including public funds (local and federal); the process of funding wasn't looked at. This is just a policy that will get us looking for funding and sites over the long term.

157 TIMMS: We have to get all users involved, even the recreational users. Maybe the Northwest Power Planing Council can help with funding. Or we could put together a group to try and determine how we can best get it done.

175 NORRIS: Money would be a big issue, but we don't want to sidetrack the policy statement.

178 DUFF: There are funds available through the Agricultural Stabilization and Conservation Service (ASCS). And there is technical help through the Soil Conservation Service for some design work. On private land with agricultural interests, they can obtain up to 3,500 dollars per year. Hopes that WRD could do some standardized design work that would expedite the construction of small impoundments.

The foresters of the Wallowa-Whitman and Umatilla forests are interested in pursuing the development and improvement of riparian areas and small impoundments.

We have a forest health problem in the district and it does affect riparian areas and water holding capacity. This includes disease and insects.

205 NORRIS: This would be a statewide bill. Asks for support of HB 3373-A.

226 JIM MYRON, OREGON TROUT:  
Submits and summarizes written testimony on HB 3373-A. (EXHIBIT C)

255 FAWBUSH: Couldn't dams and reservoirs also have positive effects on fish and wildlife?

256 MYRON: That is correct. We think each project should be looked at on a site specific basis to determine its environmental effect.

WRD had the first meeting of a statewide group to address the issue of a statewide policy on water storage. They will be meeting throughout the summer months and will have a document ready this fall for public comment for the development of a statewide policy on storage. If there is a risk that this bill may preclude that group from coming up with the best policy on storage, that is an issue to think about.

283 HILL: Define "natural water storage"? (See page two of Exhibit C)  
Would that be the sponge effect of riparian zones?

286 MYRON: That is correct.

286 HILL: Asks about the "program implementing conservation practices in water delivery systems."  
(See page two of Exhibit C)

288 MYRON: Those are a high priority to Oregon Trout.

290 HILL: That would address the shortage issue, but not the flood issue. What effect would natural water storage have to mitigate floods or heavy rains?

297 MYRON: A restored watershed will lessen the impact of large flood events.

301 HILL: A combined approach might be the sensible way to go, providing that it is environmentally sensitive and appropriate for that particular basin. The fish would be the primary measurement whether it is environmentally acceptable.

306 MYRON: That has already been dealt with by the addition of the wording we requested on the house side.

310 LOUISE BILHEIMER, OREGON RIVERS COUNCIL:  
We also have trouble with the use of the term "high priority" when discussing development of water storage facilities. We would rather see a watershed enhancement be a high priority; that means improving and managing watersheds so that they are better storers of water.

We would like to see Oregon Trout's suggestion for Section 2 placed in HB 337 3-A. Don't want to see a bill that places a high priority on the development of storage facilities, when there are other things that are much less costly and have a greater benefit to a larger audience in the long run.

359 FAWBUSH: Asks for an example of something more valuable than an upstream impoundment.

361 BILHEIMER: Restoring watersheds would benefit everyone.

364 FAWBUSH: You could argue that everyone could benefit from the timed release of water.

367 BILHEIMER: The river ecosystems would not necessarily benefit from our manipulation of flows.

376 FAWBUSH: The massive runoffs in winter are unnatural because of the damage of the riparian zone. So we now need to artificially mitigate that and the only way to do that is impoundments. How much can we do, given the present state of degradation on the water carrying capacity of



our soils, to artificially hold some of that back.

414 BILHEIMER: While there has been severe degradation of the watersheds, it is a reversible trend and one which Oregon should take a serious look at.

451 HILL: The enhancement of watershed areas won't mitigate all the problems; impoundments have a role in a comprehensive plan to manage this situation in the uplands. It is the combination of actions and the balance in any particular basin. We must also convince people that there is a solution and that steps should be taken to reach that solution.

TAPE 81, SIDE B

030 BEV HAYES, WATER RESOURCES DEPARTMENT:  
WRD is currently adopting a statewide policy on storage; we have formed a task force. HB 3373-A is consistent with the direction we are headed in; we have no objections to it. There is no fiscal impact attached to it.

If Senator Duff's amendments are adopted (10 year time period), that would also allow us to include those site identifications in the basin reviews without a fiscal impact.

040 TIMMS: Asks for an explanation of what basic problems there are currently in financing and constructing an impoundment?

051 HAYES: You need to apply for a permit to store water.

054 TIMMS: Is the Diack decision and the evolution of law coming through the courts a detriment to construction of impoundments currently?

057 HAYES: Diack would not be a detriment in that we need to make a finding that there is water there sufficient to meet the Scenic Waterway requirements. In case of storage, I don't know if that would impact the flows of the Scenic Waterway.

064 TIMMS: How many impoundments are being constructed currently?

066 HAYES: Doesn't know, but can provide a list of applications received in the last two years.

070 HILL: It is not the intent of HB 3373-A to impact the Diack decision.

074 DAVE NELSON, WATER RESOURCES CONGRESS:  
Supports HB 3373-A. The intent is clear to move forward with a direct policy statement that states it is a high priority to proceed with environmentally and financially feasible storage facilities. It will be a state and federal cooperative venture if we proceed with any large storage projects.

After the development of this policy, the legislature should look at developing a matching funds system to attract federal funds. Currently, we are losing out on federal upstream enhancement or storage funds; they are going to other states that have a matching funds program (Washington and Colorado).

104 HILL: Closes public hearing on HB 3373-A. Adjourns meeting at 4:30 p.m..

Submitted by:      Reviewed by:

Bernadette Williams      Lisa Zavala  
Assistant                      Administrator

EXHIBIT LOG:

A            -            Testimony on HB 3424-A - Jim Myron, Oregon Trout - 1 page  
B            -            Testimony on HB 3373-A - Senator Duff, District 29 - 1 page  
C            -            Testimony on HB 3373-A - Jim Myron, Oregon Trout - 4 pages