

Senate Committee on Water Policy  
June 4, 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

June 4, 1991Hearing Room 137  
3:15 p.m. Tapes 83 - 84

MEMBERS PRESENT:Sen. Larry Hill, Chair  
Sen. Bob Kintigh  
Sen. Eugene Timms  
Sen. Dick Springer (Arrived 4:00 p.m.)

MEMBER EXCUSED: Sen. Wayne Fawbush

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

MEASURES

CONSIDERED:HJM5 - Memorializes Congress to provide funding and direction for construction of fish ladders at certain dams on Willamette River Basin, PPW

HJM12 - Memorializes Congress to urge Citizens' Stamp Advisory Committee to adopt McKenzie Drift Boat as commemorative United States stamp, PPW

HB 2677-A - Authorizes Water Resources Commission to issue limited license for de minimis human or livestock uses above or within scenic waterway, PPW

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TAPE 83, SIDE A

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

(Tape 83, Side A)

HJM5 - PUBLIC HEARING AND WORK SESSION

Witnesses: Jill Zarnowitz, Oregon Department of Fish and Wildlife (ODFW)

005 Opens public hearing on HJM5.

013 JILL ZARNOWITZ, OREGON DEPARTMENT OF FISH AND WILDLIFE:  
ODFW supports HJM5. ODFW worked with Rep. Dominy and the House Water

Policy

Committee to expand the references from just Dexter Hills Creek and Lookout Dams to an investigation of the entire Willamette system; which is currently underway through the Corps of Engineers. HJM5 would emphasize to the Corps of Engineers that they need to investigate fish passages both upstream and downstream of all dams in the Willamette Basin.

036 HILL: Closes public hearing on HJM5. Opens work session on HJM5.

039 MOTION: SEN. KINTIGH moved HJM5 to the floor with a "do pass" recommendation.

VOTE: Hearing no objection, the motion was approved. Senators Fawbush and Springer were excused.

(Tape 83, Side A)

HJM12 - PUBLIC HEARING AND WORK SESSION

042 HILL: Opens public hearing on HJM12. Gives brief history of the McKenzie Drift Boat.

Closes public hearing on HJM12. Opens work session on HJM12.

058 MOTION: SEN. HILL moved HJM12 to the floor with a "do pass" recommendation.

VOTE: Hearing no objection, the motion was approved. Senators Fawbush and Springer were excused.

(Tape 83, Side A)

HB 2677-A - PUBLIC HEARING AND WORK SESSION

Witnesses:Becky Kreag, Water Resources Department

Representative Chuck Norris, District 57

Louise Bilheimer, Oregon Rivers Council

Dave Nelson, Water Resources Congress

Jim Myron, Oregon Trout

061 HILL: Opens public hearing on HB 2677-A

070 BECKY KREAG, WATER RESOURCES DEPARTMENT (WRD):

HB 2677-A addresses WRD concerns in terms of the far reaching effects of the Diack decision.

It establishes an avenue on a few rivers where recreation flow needs assessments have not been done yet for temporary use for livestock or human consumption. It doesn't resolve in any long

term way to allow those upstream uses in areas on an ongoing basis. One proposal that the

Commission brought to the house was to establish a one cfs cumulative limit for these uses

designating them as a de minimis use.

WRD doesn't object to HJM5 as written, but doesn't think it addresses the major problem that

was the initial concern. There are options that can be developed which would provide some form

of mitigation to future uses; we don't think this bill will accomplish that purpose.

101 HILL: This seems to be a short term or interim measure; it repeals in

199 5. Recognizing this,  
do you agree that it is helpful in the short term?

106 KREAG: Those areas that will not have their recreation flow assessment completed until near the end of the period will be helped. But there will be no affect for those areas where the assessment is completed (i.e. Klamath, John Day, Deschutes, Clackamas).

114 KINTIGH: Can you translate 1/5,000 of a cfs to gallons per day? How much water is that per household?

117 ZARNOWITZ: About four gallons per minute.

135 REPRESENTATIVE CHUCK NORRIS, DISTRICT 57:  
In January 1989, it came to my attention that WRD was unable to consider an application for any sort of appropriation from a wild and scenic stream. A great percentage of the riparian zones in the wild and scenic systems are privately owned, but there was no way they could legally request an appropriation of that water for human and livestock use. This stems from the 1988 Diack case; the ruling was that no appropriations could be made from these kinds of streams for any purpose.

HB 2677-A would allow people who live along a scenic stream to apply for small amounts of water (.005 cfs or 2.44 gallons per minute). Or it would let them apply for 1/10 of a cfs per thousand head of livestock (44.8 gallons per minute per up to 1,000 head of livestock).

The livestock issue is also an environmental issue because by diverting this water, it would keep the cattle off the riparian zone and thereby protect it.

HB 2677-A would not be offensive to anyone nor oppressive in terms of the amount of water and it could be beneficial to the preservation of the stream bank. It would also recognize some private rights to people who are paying taxes on that riparian zone.

186 TIMMS: Would this allow a license for watering away from the streams?

189 NORRIS: Yes.

190 TIMMS: Is the permit only allowed for watering away from the stream?

192 NORRIS: We don't attempt to tell WRD exactly how they would implement this. This is a limited license, which is for a time certain duration.

201 HILL: Questions the intent of Subsection 5; does it mean different people's licenses total? All the licenses?

207 NORRIS: If you had four ranchers with 250 cows between them, the maximum they could authorize would be no more than one-tenth of one cubic foot.

212 HILL: Out of stream, one cfs is tops for all of the limited licenses

together as a cumulative total  
that is permitted as de minimis?

215 NORRIS: That is correct.

216 HILL: One cfs would provide water for about 200 homes; that would be  
the maximum.

219 NORRIS: This would not involve irrigation or factories, just living  
creatures.

227 HILL: The ceiling is one cfs on a stream?

229 NORRIS: Yes. This would let the Commission consider some legitimate  
requests right now.

247 LOUISE BILHEIMER, OREGON RIVERS COUNCIL:  
Submits and summarizes written amendments for HB 2677-A. (EXHIBIT A)

This would clarify Rep. Norris' intent with livestock watering and getting  
them off of the riparian  
area. It is not clear in the present Section 1 (3).

269 TIMMS: This will not solve the problem, because people will not apply  
for de minimis amounts  
of water if they have to build a fence.

274 BILHEIMER: Asks how to guarantee that livestock is going to be out of  
the riparian areas,  
which is a condition of getting this water permit, if we don't have  
fencing.

278 TIMMS: I agree with the premise, but this doesn't make common sense.  
You cannot make  
someone put in a fence on every stream in Oregon when they want some water  
rights.

315 HILL: Someone who is running and watering cattle in a scenic waterway  
stream, do they  
currently need a water right to water the cattle in the stream?

322 KREAG: No.

323 HILL: Is there nothing in the Scenic Waterway that compels them to move  
the cattle away from  
the stream?

325 KREAG: No.

325 HILL: They can continue to water the cattle in the stream?

326 KREAG: That is correct.

327 HILL: HB 2677-A suggests allowing removal of water from the stream as a  
de minimums use  
for a trough with the idea of getting them to water away from the stream.

There is nothing in current law that says you must apply for a license and  
water the cattle away  
from the area. This would provide a disincentive to the farmers to do so.  
Asks for an opinion.

351 KREAG: The Department of Agriculture convinced us not to have a  
requirement for fencing as

the only method of controlling cattle access. On public lands, the cattle allotment plan would have cowboys running the cattle more; looking at methods other than fencing. Fencing would be the sure way of control, but this is for a limited license that wouldn't guarantee a water source.

382 KINTIGH: The cost of fencing on a short term would be prohibitive.

395 HILL: As a long term restoration strategy, fencing would make sense and be cost effective. We may not be able to accomplish this with HB 2677-A due to the limited license.

419 TIMMS: What does the federal government do in regards to water holes, etc. that keep cattle off the riparian areas?

427 KREAG: The federal government also applies for water rights for any watering holes. A lot of the pending applications are from the Forest Service and the Bureau of Land Management (BLM) for livestock watering.

In the instance where it is a pond to be filled and awaiting water availability, there is a chance that in the long run we will say that there is water available during enough months of the year in the winter or high flow times to fill those ponds; eventually there would be a water right issued. In the instance of diverting to fill a trough from a live flow, it would be impacted by the low stream flows in the summer in the scenic waterway downstream.

451 TIMMS: Do you see a proliferation of the federal government trying to get the water holes approved so that they can have off-stream watering for cattle?

456 KREAG: There is some movement in that direction, but there also had been a fair amount of livestock pond development over a number of years.

465 TIMMS: The fences are a deterrent to the elk who tear them down. ODFW would have to repair them and there would be a fiscal impact.

TAPE 84 SIDE A

034 HILL: How many streams have not yet been quantified for recreational uses?

036 KREAG: There are 19 streams in the system and we have quantified five; the findings on the Sandy Basin haven't been adopted yet.

041 HILL: Would these licensed uses be above or below the quantity necessary for recreational flows?

046 KREAG: At this time, the allowance for this limited license would be without the knowledge of whether it will be more or less.

048 HILL: What if the Commission was convinced that the stream applied for is already below or at the level needed for recreational flows? This would require the Commission to grant the de minimis license, even though it may push that flow level down lower. It is setting up a dynamic where people build a home, get a license and two years later it is taken away.

055 KREAG: That is WRD's concern with using limited licenses, particularly for domestic purposes.

058 HILL: Diack says that even if the Commission thinks there is plenty of water, you can't grant a water right until the recreational flows are quantified.

061 KREAG: Diack says that WRD has to have affirmative findings in terms of there being water available.

063 HILL: What if the Commission hasn't quantified but suspects there is plenty of water available; this wouldn't hurt in that case. But if the Commission feels there is not enough water in the stream to meet the recreational flows, then someone who obtains a license under this could find that they can't later get a water right.

072 KREAG: It would put them on notice and give them a window in which to develop an alternative source.

076 HILL: Does the Commission have a list of which streams should have enough water and which don't and which are not quantified?

083 KREAG: We are not prepared to make that cut because we don't have a basis for knowing recreational flows on some of the smaller streams.

090 HILL: What is a stream? Is that a reach or is that from headwaters to mouth?

094 KREAG: This wasn't answered in definition in HB 2677-A and would be open to rulemaking.

096 BILHEIMER: HB 2677-A only refers to those de minimis human and livestock uses above or within the scenic waterway.

098 HILL: That part of the stream would be from the end of the scenic waterway downstream on up for the purposes of the bill. It has a cumulative total of de minimis use for the stream.

102 KREAG: We would presume that there would be 19 or 20 streams effected by this.

106 HILL: The purpose of the bill is to relieve pressure on the scenic waterways because of these uses. One problem is that it would allow the pressures to grow to this maximum. Another problem is streams with inadequate flows for recreational purposes and people losing their license

and not gaining a water right because there is not enough water.

Would this include feedlots?

137 KREAG: No it wouldn't.

141 HILL: If the feedlot is necessary to prevent livestock from watering in and along the stream bed and the livestock are corralled.

145 TIMMS: The loss of the permit in two years could encourage people to apply for an off-stream pond later.

155 KREAG: It may be that in the event we turn up illegal uses in and above scenic waterways, it does provide an avenue to make them legal while they look for another source.

162 HILL: What if it is a 150 lot ranchette development and it is not an existing use? Was it considered in the house that it be limited to existing uses, operations or domestic uses?

167 KREAG: De minimis means that it is an individual limited license; house by house and not for a subdivision.

172 HILL: Could a water authority get the entire one cfs?

175 KREAG: That would not be my interpretation of the provision.

177 HILL: It doesn't specifically prohibit it. This would allow a number of individuals to get a license for their use while this whole question is being resolved. Are there irrigation districts, water authorities or domestic water supply districts in Sandy?

184 KREAG: There are various kinds of domestic water suppliers, usually the small community types that are regulated by the Health Division.

187 HILL: Are they illegal?

188 KREAG: We haven't completed the information from Clackamas County. There are a variety and many of them have some level of water right and their use appears to have exceeded what they may have a legal entitlement for.

197 TIMMS: Asks for an explanation of the terms legal and illegal.

200 KREAG: Legal and illegal refers to whether they have either a permit or a certificate that has been granted.

205 TIMMS: Diack isn't doing away with anybody's water right if they have a certificate. This is just for somebody that is getting a permit.

208 HILL: This would address either illegal uses or new uses by either an existing or new domestic or commercial user.

212 KREAG: With these limitations and a cumulative total of both up to one cfs.

213 HILL: There are about 3,000 illegal water rights in the Sandy Basin.

224 KREAG: The exact number is hard to tell. Up to 20 units can be connected on groundwater under exempt groundwater use. Many are using the alluvial wells.

235 DAVE NELSON, WATER RESOURCES CONGRESS:  
The Water Resources Congress supports HB 2677-A.

Questions whether in Section 1 (5) the cumulative impacts are on the entire length of the stream or in the area above the scenic waterway? The intent of Section 1 (1) is to have that apply to the flow above and within the scenic waterway. It doesn't make sense to aggregate all de minimis uses from the mouth of the river to the headwaters to calculate that one cfs. Suggests that on line 19 after the word "stream" insert "above or within the scenic waterway."

Questions the number of applications filed with WRD at the time of or after the Diack decision. They ought to have a first position in line for limited licenses in the calculation of that one cfs. Suggests adding a Subsection 6 to take that into consideration.

279 HILL: Suggests "applications currently pending on the effective date of this act shall have first consideration." It is a question of who came first.

290 JIM MYRON, OREGON TROUT:  
Supports HB 2677-A. There is confusion on line 14 regarding prevention of livestock from watering in the stream bed and how that is going to be accomplished. WRD can deal with that either in rule making or a condition to the limited license, rather than amending the bill. It was clear on the house side that the intent was to encourage people to get cows off the river.

309 HILL: The distance could be looked at, i.e. 50 feet from the stream. But nothing will substitute for a fence. The question is if we require a fence, what do we accomplish?

319 MYRON: If you put stock watering ponds somewhere off-stream, that is going to encourage cattle to stay out of the stream bed for a period of time, but it will not prevent them from coming back again.

Adjourns the meeting at 4:25 p.m..

Submitted by:      Reviewed by:

Bernadette Williams      Lisa Zavala  
Assistant                      Administrator



EXHIBIT LOG:

A - Testimony on HB 2677-A - Louise Bilheimer, Oregon Rivers Council - 1 page