

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.

HOUSE COMMITTEE ON AGRICULTURE, FORESTRY & NATURAL RESOURCES

February 12, 1991 Hearing Room F 8:15 A.M. State Capitol
Tapes 17 - 18

MEMBERS PRESENT: REP. WALT SCHROEDER, Chair REP. LIZ VANLEEUWEN,
Vice-Chair REP. SAM DOMINY REP. BILL DWYER REP. CHUCK NORRIS

MEMBERS EXCUSED: REP. TIM JOSI REP. JOHN MEEK

STAFF PRESENT: BETH PATRINO, Administrator EDWARD C. KLEIN,
Assistant

MEASURES CONSIDERED: HB 2077 - Public Hearing HB 2244 - Public Hearing

These minutes contain material which paraphrases and/or summarizes statements made during this session. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE 17, SIDE A

003 CHAIR SCHROEDER: Calls the meeting to order at 8:17 A.M.

PUBLIC HEARING ON HOUSE BILL 2077 -- EXHIBITS A, B & C

Witnesses: Don Hull, Director, Department of Geology and Mineral Industries Ron Geitgey, Economic Geologist, Department of Geology and Mineral Industries Ivan Urnovitz, Northwest Mining Association Jean Cameron, Oregon Environmental Council Marc Liverman, Conservation Director, Portland Audubon Society

CHAIR SCHROEDER: Opens the Public Hearing.

018 BETH PATRINO: Describes HB 2077 (EXHIBIT A).

029 DON HULL, Director, Department of Geology and Mineral Industries: Introduces RON GEITGEY.

033 RON GEITGEY, Economic Geologist, Department of Geology and Mineral Industries: Presents testimony on HB 2077 (EXHIBIT B).

050 REP. DWYER: My concern is with the dimension of the lumber and making it shorter. Claims are there to let others know someone's been there. A short piece of wood one and one-half by one and one-half is not sufficient. We need something that demonstrates there has been someone there.

GEITGEY: Almost anything you put to mark a claim is knocked down, degrades or disappears. There is no easy answer.

-Marking claims raises aesthetic considerations.

-Is not sure how to answer both sides. There has to be some sort of compromise.

076 REP. DWYER: What's the longevity of an inch and one-half stake?

GEITGEY: Does not know.

REP. DWYER: Shouldn't we know that before we replace more substantial stakes?

082 HULL: In my experience stakes will fall down, irregardless of diameter, within a year. Unless people put in posts of glazed trees. Most people put in posts.

CHAIR SCHROEDER: Were talking about a post, "not less than one and one-half by one and one-half" No type of wood is specified.

-It also talks about piles of rock, which would last more than a year.

099 REP. NORRIS: How accurate does a description of a claim have to be? Does it require a survey?

HULL: There are different practices used and the quality of the surveying is variable. Federal law limits the size of claim. If someone overstates size they might have their mineral rites in jeopardy

116 REP. DWYER: It depends on the sophistication of the person and the level of mining being done.

131 IVAN URNOVITZ, Northwest Mining Association: Summarizes his and his organization's background.

-HB 2077 takes care of many people's concerns.

-It is consistent with Federal law.

-We're not as concerned about the stakes, because routine maintenance is required.

-There could be additions to the bill, which would make it more effective.

-When a claim stake has to be replaced it should be replaced with a new stake meeting these requirements.

-If a claim is dropped or abandoned the last person who holds the claim should be responsible for removing the claim posts.

190 REP. DWYER: What would you do if the last claimant didn't abide by the rule?

URNOVITZ: There are other proposals being considered that require penalties for noncompliance of mining regulations. This particular act of non-compliance should be included as a part of that.

REP. DWYER: Isn't that more appropriate in the other proposal rather than this bill?

URNOVITZ: Agrees.

-If the committee prefers to add it to this bill, we would be comfortable with it.

REP. DWYER: It's hard to reference something that doesn't exist. Do you agree?

URNOVITZ: If penalties are provided for, they should apply to this act.

231 CHAIR SCHROEDER: Is there a bill that would provide penalties?

233 DAVE BARROWS: Senate Bill 98.

CHAIR SCHROEDER: Suggests MR. URNOVITZ or MR. BARROWS get together with BETH and put together the amendments.

246 JEAN CAMERON, Oregon Environmental Council: Presents testimony on HB 207 7, HB 2253 and HB 2244 (EXHIBIT C).

-We support the removal of pipes from abandoned claims.

282 REP. VANLEEUEWEN: Filling hollow markers with soil or rocks would make the marker more sturdy and wouldn't require wood.

CAMERON: It might be an option for an owner of a claim to fill, cap or replace markers.

REP. DWYER: Aside from damage to animals, your concern is with aesthetics?

CAMERON: There is some concern with that. My primary concern is with wildlife impacts.

302 CHAIR SCHROEDER: Wood would be more aesthetic than white plastic pipes.

REP. VANLEEUEWEN: Why would does it have to be white?

309 MARC LIVERMAN, Conservation Director, Portland Audubon Society: Our concerns are primarily on the effects of wildlife and wildlife habitats.

-Agrees there are a variety of options:

-Non-perforated pipe, smaller diameter pipe or capping.

-REP. DWYER's comments on the visibility of the markers is well taken.

-High visibility markers serves as an important reminder on the extent of mining activities.

-He concurs with the other comments on amendments, particularly removing markers from abandoned mines.

339 REP. NORRIS: Do you support this?

LIVERMAN: Supports the bill. His primary concerns have to do with the affects on wildlife.

REP. NORRIS: It seems you're in favor of leaving the white PVC.

LIVERMAN: Is not opposed to PVC if they were modified to prevent wildlife mortality. Wooden stakes would also prevent wildlife mortality.

CHAIR SCHROEDER: Finds it strange that he doesn't support less visual impacts.

LIVERMAN: The environmental community doesn't agree on every issue.

CHAIR SCHROEDER: Closes the Public Hearing.

PUBLIC HEARING ON HOUSE BILL 2244 -- EXHIBITS D & E

Witnesses: Don Hull, Department of Geology and Mineral Industries Gary Lynch, Supervisor, Mined Land Reclamation Program, Department of Geology and Mineral Industries Martha Pagel, Governor's Senior Policy Advisor for Natural Resources Ivan Urnovitz, Northwest Mining Association Terry Drever, Eastern Oregon Mining Association

CHAIR SCHROEDER: Opens the Public Hearing.

DON HULL: Introduces GARY LYNCH.

387 GARY LYNCH, Supervisor, Mined Land Reclamation Program, Department of Geology and Mineral Industries: Presents testimony on HB 2244 (EXHIBIT D).

TAPE 18, SIDE A

011 CHAIR SCHROEDER: Is everyone familiar with heap leach mining?

-It would help to get a brief overview. The bill primarily deals with heap leach mining.

LYNCH: Large scale metal mining often includes a heap leach circuit and may also include a conventional mill circuit where rock is ground and treated with cyanide in a more closed circuit. Both of those types of mining are to occur in Eastern Oregon.

CHAIR SCHROEDER: Can you provide information on heap leach mining to the members?

LYNCH: We have a 20 minutes slide presentation.

CHAIR SCHROEDER: We can hold that off until we hear this again.

034 REP. DOMINY: Is there a limit on the size?

LYNCH: There is no maximum limit.

REP. DOMINY: Could a mine take up REP. NORRIS' district?

LYNCH: Every project is different.

-The Atlas Grassy Mountain Project, for example, has a pit that's 83

acres, but there's associated disturbance that gets in up to 1,000 to 2,000 acres. Most of that ends up being reclaimed.

053 REP. DWYER: What activity is regulated under ORS 517.905 to 517.955?

LYNCH: Metal mining.

REP. DWYER: Does that include placer mining?

LYNCH: Yes.

HULL: It includes larger scale placer mining above the statutory threshold that have been a part of the Oregon Mined Land Reclamation Law for over a decade.

REP. DWYER: What are the permits required under ORS 517.750 to 517.955?

LYNCH: Those are requirements for all mines.

REP. DWYER: Is concerned that they want to increase the fees for everyone, even the small miners.

LYNCH: We have some proposed amendments; the bill has some mistakes. There is no intent to increase fees. These fees do not apply to placer mines, they are charged a flat fee. Large scale metal mines will pay their own way separate from the others.

REP. DWYER: What are the provisions of ORS 517.790?

LYNCH: My understanding is that Legislative Counsel added that so we can use the statutes to protect ground water.

095 PATRINO: That section deals with operating permits dealing with surface mining.

CHAIR SCHROEDER: REP. DWYER was asking about line 27, page 2.

REP. DWYER: Line 31, "In addition to the provisions of ORS 517.790"

HULL: Describes the legislative history of the language.

-The bill (starting on line 31, page 2) says in addition to the more generic mining permitting provisions; metal mines have additional requirements prior to permitting. Those additional requirements are contained in ORS 517 .915.

REP. DWYER: How will this affect the small placer miner?

HULL: Not as long as they're below the statutory threshold of acreage or yardage moved or disturbed in any given 12 month period.

REP. DWYER: How will it affect the mine owners in the Bohemia mines?

HULL: The same statutory minimum thresholds apply to those small underground mining operations as apply to the small placer mining operation. If people propose metal mines that exceeded these thresholds, they would be subject to the various regulatory provisions of existing law and, if acted, the further provisions of HB 2244.

LYNCH: There are about 20 placer permits.

REP. DWYER: What's the law in terms of filling in holes in the ground?

LYNCH: On Federal land there is no requirement to backfill open pits. No state has that requirement.

-It seems reasonable that we can not expect all pits to be backfilled if we were to allow mining.

-We're trying to develop a policy that resembles the highest and best practical reclamation.

171 REP. DWYER: Wasn't specifically speaking about open pit mines. He was referring about dangerous holes and mine shafts. How are they regulated?

LYNCH: Presently there is no way to regulate them. Other states have abandoned mined lands programs.

-The State of Oregon has no vehicle to do that at the present time.

REP. DWYER: Why not?

LYNCH: We have had the discussions, but it comes down to staffing and money.

HULL: There has been a successful effort to plug and seal abandoned coal mines, due to Federal regulations and funding.

-Newly permitted metal mines are required to provide for the safe exit from the site.

CHAIR SCHROEDER: In some cases the U.S. Forest Service is doing some of this covering.

215 REP. VANLEEuwEN: This bill deals with non-Federal lands. Does this apply if someone mines their own land?

HULL: It applies to lands irrespective of ownership. The bill applies to Federal lands in cases where the Federal Government requires no environmental impact statement in advance of permitting.

232 REP. DOMINY: How long is the permit good for?

-At what point is it considered to be an abandoned mine? Is the liability over as soon as the mine is abandoned?

LYNCH: On large scale metal mines, there are procedures for releasing liability. At the time of closure a closure plan and reclamation plan is worked out with other agencies. The closure plan is monitored until the experts say it's safe. This may take 30 years.

REP. DOMINY: If a person quits using a mine for some reason and the permit is renewed, what happens?

LYNCH: That occurs. In that case the protection comes from the bonds. We have fairly solid bonding provisions. There is a contingency bond and a bond to do mine closure and reclamation. The money is in place

prior to issuing a permit.

283 REP. DWYER: You propose deleting the performance bond on line 3, page 4.

-On line 35, page 4 you talk about maintaining a regulatory permit.

-Why have you done that?

LYNCH: In no way have we done away with bonding; that's a wording change. The key bonding provisions occur in ORS 517.950. This is a housekeeping change. The term "performance bond" is incorrect. We're looking at taking other financial requirements.

REP. DWYER: Why are you deleting, "monitor and compliance" and changed it to, "maintaining a regulatory permit program"?

LYNCH: These are housekeeping changes to put new concepts together. We're attempting to clean up the fee language. We're not getting rid of monitoring compliance. We're saying the fees associated with permitting need to be paid by the operator.

REP. DWYER: What are the fees?

LYNCH: There is no limit on the fee for large scale metal facilities. The fee would be the cost incurred by the state to permit such facilities.

REP. DWYER: Give me an idea of the cost.

LYNCH: Everyone would be different. In Montana fees range from \$300,000 to \$1 million.

357 CHAIR SCHROEDER: ORS 517.950 requires a performance bond?

HULL: There are several bonding provisions; part of it is in ORS 517.950 and part of its in ORS 517.947.

-Multiple bonds are required for mines that use chemicals in the processing of ore.

REP. NORRIS: The small scale placer miner is not affected? We're talking about large scale mining operations?

LYNCH: Or large scale placer mining operations.

-Are the fee increases replacing General Funds or are they for your actual operating cost, in lieu of General Funds?

HULL: He presents an history of permit fees for metal mines in Oregon.

-We're proposing to require metal mining applicants to pay not only the full cost to the Department of Geology and Mineral Industries staff, but also to cover the costs of other state natural resource agencies who's technical expertise we need.

-He describes the other state agencies that may be involved.

-HB 2244 is cumbersome; HB 2253 is another permit fee bill.

-A portion of HB 2253, which we intend to amend, does backfill a loss of General Funds. The permit fee language is contained in the same section of law.

TAPE 17, SIDE B

017 REP. VANLEEUEWEN: What's the intent of section 10? Is this a way to cut off all mining?

LYNCH: This mitigation language is the same as is used in Federal permitting. We're trying to explain when and how mitigation will occur.

-"Avoiding the impact altogether", applies not to mining. For example it would allow us the authority to move a road into a less sensitive area.

REP. VANLEEUEWEN: Section 10(5) seems like you want to totally eliminate mining.

LYNCH: That's a key provision.

-The intent is not to deny the operation. Mitigation often has to occur for something to work properly.

-There's a provision to allow off-site mitigation.

058 CHAIR SCHROEDER: Could a court use that to stop an operation?

LYNCH: Doesn't believe it would stop it on Federal land.

REP. DWYER: How do you reduce the adverse effects by either not taking action or parts of action?

LYNCH: The relocation of a road.

-A situation where a tank and not a pond would be required.

REP. DWYER: How can you mitigate by not taking action?

LYNCH: Not putting something in a pond is not taking action. Putting it in a tank is another action.

089 CHAIR SCHROEDER: You could avoid mitigation by not allowing a mine. Avoiding the impact altogether.

-We'll ask the mining industry and environmentalists their interpretations.

REP. NORRIS: On line 37, page 3, "Any person aggrieved" Is there any understanding of what would be standing in this case?

HULL: SB 98, a civil penalty authority bill may be a vehicle to refine that understanding. We have proposed amendment for HB 2244 that would define appeal rites and standing for appeal.

110 REP. NORRIS: Can someone who is philosophically opposed, but has no stake in the mine come in and try to block it?

HULL: Believes the amendment talks about affected persons who would

have standing on an appeal.

REP. NORRIS: Someone who lives 500 miles away could feel they are affected.

HULL: That's a judgement call. There is an informal appeal process set by rules.

-We're trying to generate a clear appeal track. The current law doesn't grant standing to the public. It only grants appeal rights to the applicant. We think the public should be allowed more input.

REP. NORRIS: That's a concern we'll want to look at.

CHAIR SCHROEDER: We'll be getting back to this.

REP. DWYER: Explain the process for an aggrieved or affected person.

HULL: In the current administrative rules, the initial appeal is an informal appeal to the State Geologist. The next step is a formal contested case procedure.

142 MARTHA PAGEL, Governor's Senior Policy Advisor for Natural Resources: Presents Testimony on HB 224 4 (EXHIBIT E).

163 IVAN URNOVITZ: Supports the basic principles as outlined in HB 2244.

-The bill needs work; technical changes and clarification.

-We'd be glad to work on the problems.

-Our concerns:

-The Department of Geology and Mineral Industries is proposing to go ahead with a state environmental impact process on Federal lands when the Federal Government does not feel it is necessary.

-The going trend is that any significant project will require an environmental impact.

-We want to avoid redundant permitting and extraneous review procedures.

-In regards to the fees for other agencies--We recognize the need to pay own way. Our concern comes down to accountability. We want to make sure we pay for the work that's necessary.

-In other states and at the Federal level fees schedules are allowed for relatively routine action and review.

-For a limited operation there would be a fixed fee.

-For a larger operation with good bounds would be another fixed fee.

-Very large operations would have a fee figured out for the costs for the project. -The department has suggested they may want to use a third party contractor for review of these large projects.

-This is common practice. In the interest of accountability, a contract needs to be signed by the department, the project proponent and the

third party reviewer. There needs to be a complete understanding of the scope of work, fee structure, etc.

-We suggest the department develop a list of approved contractors. The department and party jointly choose the third party contractor from that list.

258 REP. NORRIS: Where is the contractor referred to in this bill?

URNOVITZ: Section 4.

-Another concern is the socioeconomic trigger. A large project could impact a rural community.

-We feel the 75 person trigger is fairly arbitrary.

-In Wyoming the trigger is hinged to the amount of investment in the development.

-A trigger is need. It should apply to all projects. It should apply to any natural resource development project.

-The trigger would fit the state's needs better if it addressed a certain increase in the percentage of population in the communities within the economic impact area.

314 REP. DWYER: The addition of people could have a positive effect. Is there any consideration to the positive impact?

URNOVITZ: Is not aware of any provision for that, but that's a valid consideration.

-A socioeconomic review should be done in any case. Positive effects should come up in any well done study.

344 CHAIR SCHROEDER: The bill just says economic impact, which could be positive or negative.

-Where does it say 75?

-That's in the amendments.

PATRINO: The committee doesn't have the amendments.

URNOVITZ: The point is, there has to be a trigger.

-We support a good planning process up front.

380 URNOVITZ: We think that the issue of standing in the appeals process should be looked at.

-We're concerned with the ambiguous mitigation language. Some of the terms from Federal law are out of context.

400 REP. DOMINY: Is this bill more strict than what you have in the State of Washington?

URNOVITZ: There are no provisions such as this in Washington.

-This is consistent with the intent of what's going on in Wyoming.

425 TERRY DREVER, Eastern Oregon Mining Association: Presents background information.

- We concur with what IVAN has said.
- We would like small miners defined better.
- New regulations will put all our miners out of business.
- The language is not clearly defined.
- Adversely affected or aggrieved party needs to be defined.
- Mitigation needs to be better defined.

TAPE 18, SIDE B

028 REP. VANLEEUEWEN: She expressed my concerns with section 10.

TERRY DRAKE: We're not opposed to mitigation, we would like it defined better.

-If no one can understand it, it could be costly in trying to make a decision.

036 CHAIR SCHROEDER: It needs to be spelled out.

TERRY DRAKE: Believes so.

- In regards to contractors; we concur with IVAN.
- There needs to be a definition so the small miner doesn't get trampled.

CHAIR SCHROEDER: Asks REP. DWYER to work in subcommittee to work with MARTHA PAGEL, a representative of the environmental group, a representative of the miner's group and a representative from the Department of Geology and Mineral Industries.

- Our next meeting on this will be after the first week in March.
- Adjourns at 9:45 A.M.

Submitted by: Reviewed by:

Edward C. Klein, Beth Patrino, Committee Assistant Committee
Administrator

EXHIBIT LOG:

- A - SMS/Fiscal/Revenue impacts for HB 2077 - Staff - 3 pages
- B - Testimony on HB 2077 - Ron Geitgey - 4 pages
- C - Testimony on HB 2077 - Jean Cameron - 4 pages D-Testimony on
HB 2244 - Gary Lynch - 7 pages E-Testimony on HB 2244 - Martha Pagel - 1
page