

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 WATER POLICY

March 26, 1991Hearing Room D 1:30 p.m.Tapes 36 - 37

MEMBERS PRESENT:Rep. Chuck Norris, Chair Rep. Bill Dwyer, Vice-Chair
Rep. Bill Markham Rep. Walt Schroeder Rep. Larry Sowa

STAFF PRESENT: Beth Patrino, Committee Administrator Pat Zwick,
Committee Assistant

WITNESSES:Kip Lombard, Oregon Water Resources Congress Dave Smith, Rogue River Irrigation District Barry Slaughter, Arnold Irrigation District Audrey Simmons, Water Watch Tom O'Connor, League of Oregon Cities Rep. Dave McTeague Jeff Curtis, Oregon Department of Fish and Wildlife Dave Nichols, Oregon Department of Fish and Wildlife Bob Hall, Portland General Electric Dale Pearson, Legislative Aide, Rep. McTeague's Office Jeffrey Kee Mark Nelson, Water For Life Dave Nelson, Oregon Water Resources Congress Jim Myron, Oregon Trout David Moskowitz, Northwest Steelheaders Libby Henry, Eugene Water and Electric Board

MEASURES CONSIDERED:HB 2926 - Allows irrigation districts to provide water for domestic, municipal and industrial purposes. - Public Hearing

HB 3180 - Requires State Department of Fish and Wildlife to provide cost share assistance for compliance with fish screening requirements for water diversions. - Public Hearing

HB 3457 - Requires installation, operation and maintenance of screening or by-pass devices in certain water diversions. - Public Hearing

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TAPE 36, SIDE A

010 CHAIR NORRIS: Calls the meeting to order at 1:32 p.m.

011 BETH PATRINO, COMMITTEE ADMINISTRATOR: Reviews provisions of HB 2926.

There is no subsequent referral, and no revenue impact. There is a minimal fiscal impact.

PUBLIC HEARING HB 2926

025 KIP LOMBARD, OREGON WATER RESOURCES CONGRESS: HB 2926 is a housekeeping measure that clarifies current questions in the authority of irrigation districts and will aid districts in their ability to manage the water resource.

Gives section by section review of HB 2926.

Some districts today have permits and certificates that allow them to provide water for certain municipal and industrial uses.

Irrigation districts do not want to get into the municipal water supply business, although some districts do contract with cities and special districts to wholesale water to them in times of shortage.

Wise management of water resources may suggest in the future in certain areas it is better to use the untreated irrigation water for certain industrial and municipal purposes rather than use treated water. The amendments to 545.102 would clarify the district's authority to deliver water for domestic, industrial, and municipal purposes.

Asks committee to hold on to HB 2926 while we consider additional amendments as a consequence of ballot Measure 5.

120 CHAIR NORRIS: Believes that the restrictions of Ballot Measure 5 would not apply to your fees.

125 LOMBARD: Not his understanding, but would like that.

145 REP. DWYER: Do you think people pay or do not pay their bill based on the rate of interest they will be charged?

150 LOMBARD: Yes.

159 REP. DWYER: Sees this bill as giving you authority to do things that people do not want government to do and charging them.

Concerned that there is no definition of "properly maintain", does not know notice requirements that it is not being properly maintained, when the land owner is given the opportunity to remedy the problem. Does not see the bill addressing any of those issues.

175 LOMBARD: Statutes do not currently set out a detailed process by which a district may require that a patron properly maintain their ditches before they can receive water. Districts do not want to go on anyone's property, but the problem is that there are good users above and below the person not maintaining his ditch and they suffer harm.

Districts try to get cooperation before the district steps in.

195 REP. DWYER: Would you have an objection about including notice requirements, etc.?

198 LOMBARD: No.

We are talking about people who are abusing their water right by not maintaining their systems.

215 REP. DWYER: Can someone leave an irrigation district?

220 LOMBARD: Yes. The law still provides that individuals are to maintain any ditches that go through their property, and the easement

laws generally apply. Most private owners along the lateral have concurrent easements across each others property which require maintenance of the easement.

230 REP. DWYER: That they maintain the easement?

232 LOMBARD: That they not obstruct the flow of water.

There is a provision in the Oregon Water Code that requires that people maintain ditches going through their property even if they do not have a water right.

240 REP. DWYER: Asks for the citation.

235 DAVE SMITH, ROGUE RIVER IRRIGATION DISTRICT: There is one certificate for municipal and industrial use in our district. The rest of our water is under permit.

Would like to be able to continue to supply the few users to whom we currently deliver water.

260 CHAIR NORRIS: Do you provide this untreated water to any city?

265 SMITH: We do not deliver any domestic water, but deliver some to lawns and gardens within cities.

273 LOMBARD: Reads ORS 540.440 in response to Rep. Dwyer's request.

280 REP. DWYER: Who controls the districts?

The citation you read seems to put the responsibility for maintenance on the district and not on the land owner.

300 LOMBARD: The ditches are not owned or controlled by the district.

The district turns the water into the lateral at the headgate and that is the extent of the district authority. Feels each landowner owns and controls that portion of the ditch that passes through his property and is responsible for its maintenance.

Reads penalty provision from ORS 540.990.

315 REP. DWYER: Who has the authority to impose the fine?

320 LOMBARD: The district attorney on complaint by the watermaster.

325 REP. SCHROEDER: Reads to page 1, line 17 of HB 2926.

If you are able to give the water right to someone else, does that make them at the same senior level that you have on a water right?

333 LOMBARD: We are clarifying the authority of the districts as to the purposes for which they may deliver water. The concomitant of that is that it also means for what purposes may they obtain a permit or certificate. You can give the districts all kinds of authority but they still have to have a permit authorizing that. HB 2926 simply deals with their generic authority. You then have to go to the question of their water right and the extent of the right.

You would probably see a district come into the department with a transfer application that says we want to transfer the use of a portion

of our water right from irrigation to industrial. You would then have to go through the transfer process that requires the Department to look at the effect and impact on existing water rights. The Department can deny that transfer if the transfer provisions of the Code are not satisfied.

While you can give districts the generic authority to do these things, they are still constrained by the terms of their water right.

365 BARRY SLAUGHTER, ARNOLD IRRIGATION DISTRICT: Speaks of situation in his

district and what current law allows.

Maintenance of ditches would help in conservation.

TAPE 37, SIDE A

SLAUGHTER: We would like to have the capability to go in and do maintenance without necessarily having to obtain the permission of each and every person. This would allow those people on the systems to have the level of service for which they pay.

035 AUDREY SIMMONS, WATER WATCH: Water Watch supports some of the concepts in the bill and has concerns about others.

Review is needed to assure that any expansions and manipulation of water is still maintained in the public interest.

Suggests that Water Resources should be in the loop so that they can be aware of what is going on in the districts as they could expand.

Suggests that this be applied to certificated districts only.

Tom Simmons has discussed our concerns with Water Resources Congress. We are open to further discussion.

065 CHAIR NORRIS: Asks Ms. Simmons and Water Congress to discuss their concerns further before the bill is heard again.

075 TOM O'CONNOR, LEAGUE OF OREGON CITIES: Speaks to the issue of Section 2 of HB 292 6 which grants irrigation districts the right to provide for and furnish water for domestic, municipal and industrial purposes.

Doesn't have a problem with legalizing existing relationships, but would be concerned if this was interpreted to mean that irrigation districts would be moving into the retail sale of drinking water to people within those boundaries.

Understand that is not the intent.

Would like the bill to clarify that this would deal with wholesale sales of water to existing municipal suppliers.

The League of Oregon Cities is not wild about districts on the outer edges within urban growth boundaries of communities getting into the water supply business and leading to a situation where it becomes difficult as the city grows, to annex and provide municipal services.

115 CHAIR NORRIS: Closes public hearing on HB 2926.

Committee will stand at ease pending the arrival of Representative Courtney.

Opens public hearing on HB 3180.

PUBLIC HEARING HB 3180

160 REP. DAVE McTEAGUE: HB 3180 addresses a concern about implementing the habitat provisions of the recent Salmon Summit discussions to which Oregon was a party.

The Salmon Summit agreement says that the Northwest Power Planning Council will initiate an accelerated incentive-based program on public and private lands in 1991 to install screens and other passage facilities at stream diversions and barriers impacting salmon and steelhead.

There is a hope and expectation that some federal dollars through BPA or the Power Planning Council will become available to assist in meeting our screening needs in the state of Oregon. Rep. Courtney's bill is an attempt to make sure that we can access those dollars.

180 JEFF CURTIS, OREGON DEPARTMENT OF FISH AND WILDLIFE: We think HB 3180 and HB 3457 both try to address the same problem. We hope we can get some federal money, but are not optimistic about acquiring federal dollars because of other demands.

198 CHAIR NORRIS: What connection do you see between HB 3180 and HB 3457?

200 CURTIS: They address the same problem. We have a number of unscreened diversions that kill fish and the diversions that appear to be the main problem should be screened.

Thinks that the screening costs should be spread over a number of users with the cost falling most heavily on those who benefit from the diversion.

To the extent that BPA, National Marine Fisheries Service, or the Bureau of Reclamation can contribute to this process, the burden on other users will be relieved.

Do not presently know how much money can be expected from the federal government.

Concerned that this body wait for Congress or BPA to make up their mind with regard to funding diversion screens before we address the problem.

230 REP. MARKHAM: Is the biggest problem in the diversions from the federal dams or the farmers?

235 CURTIS: The major dams on the Columbia River kill a great number of fish during their downstream migration. Some of the diversions on the eight dams between the mouth of the Columbia and the spawning areas in Idaho are screened. Diversions that are not screened kill a great number of fish. We also lose a number of fish to agricultural diversions.

249 DAVE NICHOLS, OREGON DEPARTMENT OF FISH & WILDLIFE: The diversions within the Columbia River basin are in pretty good shape in comparison to the rest of the state. There is a need for additional screening in

the Columbia River tributaries.

The problem is much greater outside of the basin because there is an existing program to provide federal funds for screening within the Columbia River basin. There is not a formal program for the rest of the state.

ODF&W recently completed the inventory that identified over 3,000 screens needed around the state. 90% of those screens are outside of the Columbia River Basin.

271 REP. MARKHAM: What percentage of those 3,000 are agricultural diversions?

280 NICHOLS: Approximately two thirds of the diversions are used for agricultural purposes.

300 REP. MARKHAM: Do you have a dollar figure for screening the agricultural diversions.

305 NICHOLS: Have a figure for the total 3,000 which could be apportioned.

315 REP. SCHROEDER: Is HB 3180 talking about the federal entity or some other entity helping the farmer put screens up on the Columbia Basin only?

320 CURTIS: Yes. Thinks the bill is aimed at the situation with the Bonneville Power Authority. They could contribute to screens within the Columbia Basin. It is unlikely that BPA would go outside the Columbia Basin.

We also have the opportunity in the Columbia Basin to get National Marine Fisheries funding.

350 REP. SCHROEDER: Asks if HB 3457 requires those with 30cfs or more of water to do the screening themselves on every body of water in the state?

335 CURTIS: HB 3457 would require people who divert over 30cfs to install diversions and maintain them. Under 30cfs would be eligible for assistance.

Bills are not compatible, but both are components of a solution to the problem.

Believe that we should not wait for the federal government to fix the problem.

370 CHAIR NORRIS: Are we in agreement on the parameters of the Columbia River Basin?

380 BOB HALL, PORTLAND GENERAL ELECTRIC: Reads written testimony commenting on HB 3180 (EXHIBIT A).

TAPE 36, SIDE B

005 REP. SOWA: Thought purpose of HB 3180 was to allow people not to have to pay for screening their diversions, but shift the cost to someone else.

Maybe we should throw this bill out and let everyone pay his own screening costs as state law requires.

014 CHAIR NORRIS: Closes public hearing on HB 3180.

Opens public hearing on HB 3457.

PUBLIC HEARING HB 3457.

020 REP. McTEAGUE: Speaks of work done by Oregon Department of Fish and Wildlife related to fish screening.

Submits written testimony containing major provisions of HB 3457 (EXHIBIT B).

We are working toward consensus, agreement, and a solution on screening issues that we can all live with which does not unduly burden any one group.

092 REP. SCHROEDER: Why are they moving the screening statutes to the Commercial Fishing Code from the Wildlife Code?

094 REP. McTEAGUE: The 1975 legislature merged the Game Commission and Fish Commission. There were screening statutes in both laws and the two sets of statutes were never fully integrated. In 1987 we made them the same statute in both laws with identical screening statutes and it caused a lot of confusion.

105 DALE PEARSON: Legislative Counsel bill drafter says that the Wildlife Code only applies to game fish while the legal technicalities of the Commercial Code apply to all species of fish and we have a more encompassing code in Commercial Code and that is why we chose to codify it in one place.

110 REP. SCHROEDER: What about steelhead? They are not commercial fish.

115 PEARSON: The basic tenants of the Commercial Code apply to all fish. Although the Code applies to commercial fish, it does not allow the commercial fisherman to fish for steelhead, but the Act does encompass all fish.

139 CHAIR NORRIS: What about the farmer who is absolutely unable to afford screening costs?

145 McTEAGUE: We introduced this bill as a starting point for discussion, not as an ending point, and we will have to give and take.

Another bill written by the irrigation community has other points. Interested parties are moving closer on these issues.

150 CHAIR NORRIS: I get information that Bonneville Power Administration will do no cost sharing in any state that has a law mandating screening.

Wants to get additional information on that.

152 McTEAGUE: Supportive of putting language in the bill to insure that we can fully access any available BPA or Power Planning Council dollars.

The screening law has been in effect for some years and the Department

has been reluctant to mail out letters to any diverter saying the diversion must be screened. That raises a lot of questions about the Department. Thinks their lack of action is one of the reasons we need to work out solutions on this legislation.

We are losing resource. There is general agreement among a lot of people that we need to make progress.

175 JEFFREY KEE: Presents and summarizes written testimony in support of HB 345 7 (EXHIBIT C).

Not supportive of shared costs, but feels costs should be borne by those benefitting from the resource.

280 MARK NELSON, WATER FOR LIFE: Reviews history of screening legislation.

We have entered into discussions with Representative McTeague in an effort to negotiate a solution to the problem.

312 DALE PEARSON: Presents and summarizes written testimony on HB 3457 and points of agreement reached in meetings with the agricultural community (EXHIBIT D).

TAPE 37, SIDE B

PEARSON: Continues summarizing (EXHIBIT D).

020 DAVE NELSON, OREGON WATER RESOURCES CONGRESS: Have been pleased to be able to work with Dale Pearson and Representative McTeague and come forward with what we think is a very responsible step forward to screening the diversions without killing off the farmers.

030 CHAIR NORRIS: Has the Farm Bureau and Oregon Trout been involved with you?

032 M. NELSON: Those organizations have not participated in the meetings. We are providing them drafts and would also encourage comments from members of this committee.

035 CHAIR NORRIS: Hopes extremes can be minimized. Applauds the group for their conscientious effort.

045 REP. SCHROEDER: Has ODF&W been consulted on the angling fee increase?

047 PEARSON: They have not been formally consulted. Think we should expand group membership to get more varied input. Committee participation would be welcome.

052 REP. SCHROEDER: ODF&W voiced opposition to an angling stamp proposed in another bill.

Are you proposing to screen 300 diversions per year in order to screen the 3,000 diversions you say need screening in a ten year period?

068 PEARSON: That is the program proposed by the Department in the screening report and seems doable to us.

080 REP. SOWA: We heard the last group of people say that we give the water away free to the irrigators and other users, and now we're going

to pay them to take it rather than having them pay their own way.

085 JIM MYRON, OREGON TROUT: Summarizes written testimony concerning HB 345 7 (EXHIBIT E).

130 DAVID MOSKOWITZ, NORTHWEST STEELHEADERS: ODF&W's report was funded by \$100,000 from sports anglers' fees. While anglers may be willing to pay if they see movement on this, it should be noted that other diverters have not contributed to that extent.

Encouraged by work of Representative McTeague and with the cooperation of the agricultural and water interests. Have not been part of the work group but have been kept apprised of its progress.

It is time for the agricultural community to be a part of the program and pay their share of costs.

155 TOM O'CONNOR, LEAGUE OF OREGON CITIES AND MUNICIPAL ELECTRIC UTILITIES: The rate payers of the Bonneville Power Administration already pay each year upwards of \$150 million for fish costs associated with our responsibilities. The Salmon Summit will bring increased costs and ratepayers will be paying those costs for our responsibility in the main stem Columbia.

Power users also pay about \$550 million for irrigation costs associated with federal multipurpose facilities.

From municipal perspective, we support the need for screening. Where we have a responsibility to put in screens, we should assume the costs.

We will be looking at \$1.4 billion costs over the next ten years for the Safe Drinking Water Act, a range of DEQ costs, and other costs associated with running a drinking water system. Does not think that municipal drinking water users should be in the business of subsidizing the screens that the irrigation community needs to be putting in. Understands that HB 345 7 would require municipal diversions to pay into this fund to be used for agricultural diversions.

200 LIBBY HENRY, EUGENE WATER AND ELECTRIC BOARD (EWEB): We agree that a fish screening program needs to be put in place.

EWEB has two generation facilities on the McKenzie River that are in need of screening. One is screened and one is not. The one that is not presently screened will be screened soon. The cost of that screen can run from \$3 to \$15 million. It is our intent to pay our own way on this facility. Therefore, to look at language that would suggest that we also contribute to a fund to subsidize other screens, is not something that we can embrace.

Also concerned with penalty section of HB 3457 and its application to municipalities.

225 REP. SOWA: How long has the diversion on the McKenzie been unscreened?

240 HENRY: Thirty or forty years. Too long, and the board would say that.

243 REP. SOWA: Were you aware of the state law that required screening of diversions?

245 HENRY: Yes. We have talked to ODF&W.

247 REP. SOWA: Maybe you should contribute to the fund as repayment for not putting the screen on in the proper period of time.

250 HENRY: Our first priority was to screen the Leeburg Canal which cost over \$3 million. We feel we have paid a substantial cost to the protection and enhancement of fish in both the McKenzie and the Columbia Basin.

Submitted by:

Reviewed by:

Pat Zwick,

Beth Patrino, Assistant

Administrator

EXHIBIT LOG:

A - HB 3180 Testimony - Robert Hall - 1 page B - HB 3457
Testimony - Rep. Dave McTeague - 1 pages C - HB 3457 Testimony -
Jeffrey Kee - 1 pages D-HB 3457 Testimony - Dale Pearson - 2 pages E-HB
3457 Testimony - Jim Myron - 5 pages