

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

April 4, 1991Hearing Room D 1:30 p.m.Tapes 40 - 41

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: Duncan Wyse, Oregon Progress Board Jim Zehren, Oregon Progress Board Bill Young, Water Resources Department Rep. Denny Jones Jim Myron, Oregon Trout Larry Trosi, Oregon Farm Bureau Dave Nelson, Oregon Water Resources Congress

MEASURES CONSIDERED: Informational - Benchmarks Presentation - Duncan Wyse

HB 3328 - Allows holder of pre-1914 water right to natural flows of water of state amount of water necessary to adequately irrigate all appurtenant lands, rather than limiting holder to rate and duty of water established in adjudication decree, if abundant water. - Public Hearing

SB 202-A - Clarifies that spring or seepage waters are surface waters. - Public Hearing

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TAPE 40, SIDE A

010 CHAIR NORRIS: Calls the meeting to order at 1:33 p.m.

011 DUNCAN WYSE, OREGON PROGRESS BOARD: We are trying to come up with a set of measurable goals for Oregon for the next 20 years which we can use to help focus what we need to be doing now to build the future we want and to create a report card for Oregon that we can use to give periodic status reports.

030 JIM ZEHREN: Reviews parts of the benchmarks program relating to water quality and quantity paraphrasing (EXHIBIT A).

090 CHAIR NORRIS: Hopes statistics for water reflect positive aspects

and not just the negative.

098 REP. SCHROEDER: Which rivers besides the Tualatin do not currently meet standards?

102 BILL YOUNG, WATER RESOURCES DEPARTMENT: Portions of the Yamhill, Columbia Slough, South Umpqua, Bear Creek, and a couple of coastal streams would characterize the streams that have to look to other than standard treatment requirements to meet DEQ standards.

115 ZEHREN: Continues review of (EXHIBIT A).

We concluded that we are not now in a position to put down numbers on the affirmative statement of the status of the underground water quality in Oregon. Hope to continue to develop that data.

125 YOUNG: Some of the areas DEQ works in are non-point source pollution.

We are in a preliminary stage for acquiring groundwater data.

Continues review of (EXHIBIT A).

170 REP. DWYER: Where will the 40% more water you say will be needed in 2010 come from, and are future needs anticipated?

175 YOUNG: The numbers attempt to say that at the time these benchmarks were put together, we were talking with the Governor about an aggressive program on stream restoration, a portion of which we will probably realize out of this budget. This was an effort to say why we did not have a good starting point for knowing how many of these areas we will be concerned about for instream flows. We are saying there will be conservation and stream restoration programs and we will be able to increase the number of places where those instream needs are being met.

These figures suggest that growth will not diminish the ability of the streams to meet the instream needs.

202 ZEHREN: The numbers may be too aggressive.

208 REP. DWYER: We are setting goals, but I want to see a more definitive plan to meet goals.

215 WYSE: We need to use the benchmarks to determine strategies.

We hope this will become a tool to attain results. The Progress Board is looking for strategies and encouraging others to do the same.

240 REP. SCHROEDER: Are any of the improvements forecast for improvements in meeting instream needs due to cancellation or expiration of existing water rights?

245 YOUNG: That could be from contracting or leasing currently used water rights and devoting that to instream purposes.

To capture a water right that is on the books and cancel it does not put any water back in the stream.

260 ZEHREN: Reviews Benchmarks 28 and 29 in (EXHIBIT A).

290 REP. DWYER: Appreciates the setting of parameters, but wants to see plans to meet the goals.

310 REP. SCHROEDER: Would lake water qualify in this plan? Would small unchlorinated springs meet government standards?

325 REP. DWYER: No. Surface waters used by municipalities or water districts must meet federal standards and in order to meet standards, chemical treatment is required.

340 ZEHREN: The figures in benchmark 28 of (EXHIBIT A) are from the Health Division which has made it very clear that they only include data from drinking water systems serving 25 or more people. At a state level, we do not have information on the drinking water for approximately 500,000 Oregonians because they get their water from systems that serve fewer than 25 households.

370 CHAIR NORRIS: How much validity is still contained in the Benchmarks report since there has been a serious changes in conditions in Oregon from various factors since the inception of the Oregon Benchmark program.

385 WYSE: We hope that these are enduring benchmarks. Events have changed the ability to achieve a number of the measures. We hoped that the measures would live for 20 or 30 years and would be able to withstand the shock of changing conditions. We will deviate from goals, but measurement is important.

TAPE 41, SIDE A

010 CHAIR NORRIS: Opens public hearing on HB 3328.

PUBLIC HEARING ON HB 3328

012 BETH PATRINO, COMMITTEE ADMINISTRATOR: Reviews provisions of HB 3328.

025 REP. DENNY JONES: Testifies in support of HB 3328. Wants credit for return flow to apply against water right allowed.

Notes drafting error in the bill refers to storage. Kip Lombard has prepared amendments to address this. Recommends the amendment.

Reads letter from irrigation districts stating no objections to the bill.

078 CHAIR NORRIS: Would your amendment leave the reference to irrigation districts releasing water from storage in the bill and just add the language you are talking about?

085 REP. JONES: The amendment would replace Section 3 with a new section.

105 CHAIR NORRIS: Can we make an objective determination of what injury is and who would be responsible for determining injury?

110 REP. JONES: Has no intention of harming existing water rights.

120 CHAIR NORRIS: Would it be reasonable to assume that if this additional water was used and did not result in any other user having

less than their rate and duty, there would be no injury?

125 REP. JONES: Yes.

128 CHAIR NORRIS: Who would make that determination?

132 REP. JONES: If it was injuring someone, you would hear about it quickly.

133 CHAIR NORRIS: Can return flow be accurately determined?

130 REP. JONES: It has been done in the past.

Submits letter from Warm Springs Irrigation Districts and proposed amendments (EXHIBIT B).

150 BILL YOUNG: Submits and paraphrases written testimony stating what the bill does, stating concerns, and giving the Department position in opposition to HB 3328 (EXHIBIT C).

245 REP. SOWA: Would this bill as written allow an unscreened diversion to open their ditch during migration time and flush fish onto fields?

250 YOUNG: There is nothing in the bill to prevent that from happening.

It is now more difficult to determine if there is surplus water because of instream rights.

279 REP. SOWA: Do we have pre-1914 instream water rights?

280 YOUNG: No, but my understanding of the bill says that this only applies when there is water surplus to the needs of the stream. Other stream demands might be of junior right holders, and do not know why that would not also apply to junior instream water rights.

340 CHAIR NORRIS: Assumes that water measurement and control would be conducted by the Water Resources Department.

350 YOUNG: We would have to be able to measure both the amount of water turned out of the river and the amount returned.

360 REP. DWYER: If we are going to do this we should measure a TMDL (total maximum daily load) prior to the water going to irrigation and measure the return flow to see what the pollution level is and charge for the pollution if we give credit for the water.

385 JIM MYRON, OREGON TROUT: Reads written testimony in opposition to HB 332 8 (EXHIBIT D).

TAPE 40, SIDE B

REP. MARKHAM: Do downstream users complain when upstream users exceed their water right and duty?

MYRON: There are conflicts late in the season when water becomes scarce, but in the Spring there do not seem to be.

008 CHAIR NORRIS: Closes public hearing on HB 3328.

Opens public hearing on SB 202-A.

PUBLIC HEARING SB 202-A

020 Letter from Rep. Hedy Rijken is submitted as part of the record (EXHIBIT E).

025 LARRY TROSI, OREGON FARM BUREAU: One of the problems facing our members with SB 202-A is the contiguous aspect of the bill.

A lot of our members have land that is not contiguous. We want to encourage our members to file, but costs associated with filing for numerous springs and seepage on non-contiguous property are considerable.

Would like a provision that one owner could file one application for non-contiguous property.

040 CHAIR NORRIS: Is the contiguity issue the only issue that is a problem for you?

042 TROSI: One of the main problems.

047 REP. DWYER: Are you talking about one owner applying for multiple springs or seepages at the same time for one time only?

055 TROSI: My intention would be to get all properties registered at one time.

060 DAVE NELSON, OREGON WATER RESOURCES CONGRESS: A lot of Congress members have concerns about accommodating the bill.

We want to make this as simple a process as possible.

Has talked with Bev Hayes about creative ways to make the program work. Wants to meet with Department to craft a process that meets their needs without being an economic barrier to the farmers or ranchers to comply.

078 REP. DWYER: Feels bill needs to be tighter.

080 NELSON: That is a legitimate concern that needs to be addressed.

115 REP. SCHROEDER: Speaks of a ranch in his district which has non-contiguous property and seeps and springs.

165 REP. SOWA: If those seeps are not being utilized for a specific use, can he get a water right and not use them? Is putting water into a trough classified as a continuous use?

175 YOUNG: If he wants to protect it with a right, he could make a filing, move the water to a place for livestock use, and that would be a demonstration of use.

185 REP. DWYER: Are there problems associated with registering springs and seeps on non-contiguous land and doing it all at one time, and are the problems associated with costs?

195 YOUNG: We are anxious to get these recorded so that if there is competition for the water we can protect the party that is supposed to use the water.

Does not know how one document could handle a filing by one property owner with multiple properties in different water courses and different counties.

Does not know how the Department could get a document which helps us regulate water if we have different locations on a single document.

Our current rules allow us to group multiple springs on a single application if they are under single ownership, in the same water course, and contiguous.

Unable to respond to Rep. Schroeder's illustration without more information.

We need these registrations to be able to decide who has the claim to the water. It is difficult to envision doing that if we have multiple water sources going multiple directions and contained in one document.

310 Rep. Dwyer, Rep. Sowa, Dave Nelson, Bill Young discuss situations and options.

TAPE 41, SIDE B

010 CHAIR NORRIS: Refers SB 202-A to a work group.

020 REP. DWYER: Asks Committee Administrator to draft amendments to repeal 198 9 legislation related to seeps.

024 CHAIR NORRIS: Closes public hearing on SB 202-A.

Adjourns meeting at 3:00 pm.

Submitted by: Reviewed by:

Pat Zwick, Beth Patrino, Assistant Administrator

EXHIBIT LOG:

A - Oregon Benchmarks Exhibit - Jim Zehren - 2 pages B - HB
3328 - Exhibit - Rep. Denny Jones - 2 pages C - HB 3328 -
Testimony - Bill Young - 2 pages D-HB 3328 - Testimony - Jim Myron - 1
page E-SB 202-A - Exhibit - Rep. Rijken - 3 pages