

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 30, 1991Hearing Room D 1:15 p.m.Tapes 57 - 59

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:Ted Hughes Rod Park, Oregon Association of Nurserymen Greg Pilcher Phil Ward, Department of Agriculture John Mellott, Department of Agriculture Becky Kreag, Water Resources Department Bill Hutchison Jerry Schmidt, Oregon Association of Realtors Jim Myron, Oregon Trout Louise Bilheimer, Oregon Rivers Council Liz Frenkel, Sierra Club Dave Moskowitz, Northwest Steelheaders Rep. Tim Josi Joe Piva, Oregon State Parks Gary Minazuski, Oregon State Parks

MEASURES CONSIDERED:HB 2677 - Provides for preference of human and livestock uses of

water within scenic waterways when proposed uses of water are in mutually exclusive conflict or where available supplies of water are insufficient for all who desire to use them. - Work Session

HB 3404 - Allows Natural Resources Division in State Department of Agriculture to collect fees from owners of container nursery operations to defray costs of carrying out water management plans. - Public Hearing

HB 3323 - Exempts portion of Nestucca River from scenic waterways designation. - Public Hearing

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TAPE 57, SIDE A

005 CHAIR NORRIS: Calls the meeting to order at 1:19 p.m.

Opens public hearing on HB 3404.

PUBLIC HEARING HB 3404

015 BETH PATRINO, COMMITTEE ADMINISTRATOR: Reviews provisions of HB 3404.

024 TED HUGHES, OREGON ASSOCIATION OF NURSERYMEN: Explains the need and rationale for the fee in HB 3404.

035 ROD PARK, OREGON ASSOCIATION OF NURSERYMEN: Testifies in support of HB 340 4.

Department of Environmental Quality, Environmental Quality Commission, and Oregon Department of Agriculture have approved our plan, but we need HB 3404 to have the authority to implement the agreement.

070 GREG PILCHER: Testifies in support of HB 3404.

088 REP. DWYER: Why do you think the fees will cease in the future?

090 PILCHER: There is nothing in the bill that states the amount of the fees or how long they will last.

We just have to hope for the best.

105 REP. DWYER: There is no fee limit. What assurances have you had from the Department that .33 FTE will be adequate to handle the program?

115 PILCHER: When we have 100% compliance in two years there will not be an opportunity to collect the fees.

If we knew there would be a continuing fee, I would have difficulty supporting the bill.

125 REP. DWYER: Would you feel more comfortable if we specified fees and their expiration date?

129 PILCHER: Yes.

130 REP. SCHROEDER: Speaks of an earlier bill. What assurance do we have that you have checked with small nurserymen?

140 PILCHER: The Oregon Association of Nurserymen has been doing an educational program. The issue has been an industry concern for some time.

Cannot assure that all nurserymen have been contacted.

Most small nurserymen do not have a problem that needs correction. They will only be required to certify by letter that they do not have an irrigation run off problem. If they do not have run off, they will not have to pay a fee and will not be bothered again unless someone challenges that assertion.

156 PARK: Have created another opportunity for members of the nursery industry who wish to participate that is a much more reasonable fee structure with an agency that is more in tune with what we do.

170 REP. SCHROEDER: Still concerned about small growers due to past history.

Who determines if water runs off someone's property?

181 PILCHER: This is a voluntary compliance program. The Department of Agriculture will administer the program and be responsible for enforcement. We have stressed to our members that this plan does not allow anyone to violate the clean water, pesticide, herbicide, water storage, or water appropriation plans.

If a person certifies falsely, fellow nurserymen will bring it to his attention.

203 REP. SCHROEDER: There can be run off in the winter time.

208 PILCHER: The bill stresses irrigation run off.

211 CHAIR NORRIS: Will this apply only to container nurseries and will the fee apply only to those who are not in compliance with a management plan?

220 PILCHER: Explains process. It will only apply to container nurseries.

230 CHAIR NORRIS: Would this be an incentive for them to control the run off?

234 PILCHER: Yes. We hoped that before 1992 the vast majority of nurserymen will be in compliance.

242 REP. DWYER: How would you keep information current?

250 PILCHER: It is a voluntary compliance system. Not enough money generated to have environmental policing. If a person decides to change his operation to something that has a run off he has to go the Department of Agriculture to demonstrate with a management plan how water will be contained.

297 HUGHES: The bill is open-ended as drafted.

We are not apprehensive because we trust the Department of Agriculture.

300 REP. DWYER: How will you respond to the question "which is the appropriate agency to regulate non-point source pollution"?

340 PILCHER: There is a formal arrangement between DEQ and the Department of Agriculture regarding that.

320 HUGHES: If the Senate considered DEQ the appropriate agency we would probably come back to the House asking for nonconcurrency and fight against the bill.

335 CHAIR NORRIS: Are we talking wholesale operations?

340 PILCHER: Strictly growers. We are not talking about retail operations. We are talking about greenhouses, excluding those who farm beneath the glass.

355 CHAIR NORRIS: What is the benefit of this bill?

365 PILCHER: Explains container nursery business operations.

It gives the industry legitimacy.

384 PHIL WARD, DEPARTMENT OF AGRICULTURE: HB 3404 is an industry generated proposal. Cooperatively, the industry and the agencies have identified a need and a proposed solution for meeting the need.

Will present specifics on program operation and answer committee questions.

TAPE 58, SIDE A

010 CHAIR NORRIS: Asks about fees referenced on page 2.

015 WARD: The only new language is in ORS 561.400. The other references are relative to fees or assessments by the Department that are deposited in the Agriculture Service Fund relative to the fee programs.

029 REP. DWYER: Is there an existing program that has not come in and asked for more money?

039 WARD: We have undertaken programs in the past which we have been able to cover through our General Fund assessment and those have come to a close.

Would like to be able to do these activities and do a good job without having to charge a fee, but if there is no fee assessment we will not be able to do the job.

042 REP. DWYER: When do you say enough is enough. Previous witnesses say they have confidence that the fee will remain at \$50.

050 JOHN MELLOTT, DEPARTMENT OF AGRICULTURE: The fees would be established by rule and we would hold hearings with the nursery industry and others to determine what the fees will be. The filing fee would be for verifying that those who have plans are following the plans and are still in compliance.

Submits and paraphrases written testimony in support of HB 3404 and stating the goal of the statewide plan, what nurserymen will be required to do, and filing fee uses (EXHIBIT A).

170 REP. DWYER: Would you object to having fees capped and are any small growers exempt from these proposed fees?

185 MELLOTT: Most small operators would fit into Option I and would not need a plan.

200 WARD: No objection to a fee cap.

205 REP. SOWA: Is concerned about accidental runoff.

215 WARD: The enforcement authority would rest with DEQ. There is no enforcement penalty in HB 3404.

If it comes to our attention that someone who has certified that he has no run off is found to have run off, our first response would be to contact that producer and attempt to enroll them into the program. Enforcement through DEQ can take place if no resolution is found. Our first effort would be to bring that person on board.

238 MELLOTT: Explains what department plans to do to inform nurserymen,

and options available.

We want to work with the growers and help them to come into compliance.

276 REP. SOWA: What will DEQ do if someone is in violation?

280 WARD: A DEQ representative can answer that.

In an unresolved problem we would recommend referral of that operation to DEQ for enforcement action. DEQ has a matrix of civil penalties and base their response on that matrix according to the severity of the violation.

295 REP. SCHROEDER: Gives scenario.

300 MELLOTT: Changes to topography might be needed to address Rep. Schroeder's scenario.

312 REP. SCHROEDER: Will I have any expense if water is seeping into my ground?

315 MELLOTT: No.

320 REP. SCHROEDER: Would you have a problem with putting "irrigation" on line 4, page 3 after "owners of"?

330 WARD: May want to ask for comment from the industry.

340 PILCHER: Does not think "irrigation" is needed.

344 CHAIR NORRIS: Professionals favor this bill. Needs cap on fee, and statement of who would be exempt.

If fine tuning is possible, can give the bill another hearing.

Closes public hearing on HB 3404.

Opens work session on HB 2677.

WORK SESSION HB 2677

404 PATRINO: Reviews provisions of 2677-3 amendment which was the product of the work group that worked on HB 2677 (EXHIBIT B).

TAPE 57, SIDE B

PATRINO: Lists membership of the work group.

043 BECKY KREAG, WATER RESOURCES DEPARTMENT: It was our intent that this be

equivalent with the impact of the Diack decision. The concern for domestic water includes those who are well beyond the boundaries of the scenic waterway.

048 REP. DWYER: "within or above" would be the correct language.

How will Water Resources Department make the finding required in line 7?

055 KREAG: The conservation statute is a two part process.

Explains process.

070 REP. DWYER: How do they not affect the scenic waterway by withdrawing water? They have a five year hiatus to affect that waterway with some plan that might mitigate that. What about the effect that withdrawal is having on the waterway? Does not see anything that describes de minimis withdrawals.

076 KREAG: Was referring to how you show you have made a finding under the conservation project. The work group hoped that you could work with individuals and counties and cities to find a mitigation source.

090 REP. DWYER: We were talking about very small uses of water but this amendment goes way beyond that.

097 KREAG: The intent was that a local public agency may want to assist those independent land uses by setting up a mitigation bank for small users.

If that was the path taken, you would have more assurance that the mitigation would occur.

106 REP. DWYER: What happened to Bill Young's idea about defining de minimis and allowing that de minimis use without impact?

110 PATRINO: The 2677-3 amendment is the result of the discussion that the work group held. Water Resource's proposal to define de minimis uses is still an alternative.

122 KREAG: The majority of the work group felt strongly that there was no room for any kind of de minimis depletion in instances where actual flows were not meeting the scenic waterway needs.

In almost all scenic waterways there will be a time of the year when we are unable to find that additional flow is available.

If the scenic waterway is in place, should there be some mechanism that continued development upstream from the scenic waterway can occur, and if that occurs, you do not say there is a de minimis impact, but get into mitigation. The group felt mitigation is a better answer than allowing small bites here and there from the flow.

145 REP. SOWA: Asks if his understanding of the amendment is correct?

155 KREAG: That is addressed by (b).

165 REP. DWYER: States his concerns.

172 KREAG: There is a loophole. The question is should there be an opportunity in this brief period while we are still sorting out the scenic waterway flow needs to address some of these small uses for human consumption and livestock in the face of shortage?

185 REP. DWYER: Since we don't have a water right now, how would that affect the value?

190 KREAG: Not all applications made would be for illegal uses that are currently constructed. Does not know extent of that circumstance.

200 CHAIR NORRIS: Would this provide that the Commission could issue a permit subject to the conditions of 2677-3?

202 KREAG: Yes.

215 CHAIR NORRIS: Calls for five minute recess at 2:30 p.m.

Reconvenes at 2:37 p.m.

220 BILL HUTCHISON: The work group did not come up with this solution.

Need to start with the chair and the question of what needs to be fixed.

If it is to provide people with temporary uses while we complete the task of setting instream flows for fish, wildlife, and recreation, we should say so. This should not apply to rivers where determinations have already been made and where Water Resources is in a position to make informed decisions about whether or not a river is overappropriated.

An overappropriated river is a situation where you might not want to authorize the use of this tool.

Reviews provisions of 2677-3 amendment (EXHIBIT B).

The temporary license concept has appeal if it is keyed to de minimis uses with some protection about the cumulative effect. Thinks a temporary license and de minimis use is good.

Suggests that if the committee feels, after considering today's testimony, that it still wants to try to fix this problem, this concept might be the better way to fix the problem if the problem is on a stream or river that has the probability of not being overappropriated, and where a person has a crying need.

The temporary license concept includes authority for the Commission to revoke the license at any time if the use may harm any other water user, a minimum perennial streamflow, or an instream water right.

Thinks it is dangerous to pass out vested water rights before the integrated policy is ready for the whole stream.

Likes a resolution from the legislature to the Department asking them to work in the interim on the issue of water quantity and develop an overhaul of Oregon water law that treats this issue in a comprehensive fashion. There are probably opportunities we are not currently taking full advantage of to increase the volume of water and seasonality of streamflows throughout Oregon. That is something we need to do to meet all the multiple uses and demands for the water.

Hopes committee will not take action that will co-opt a comprehensive solution, but will include limitations to make sure that does not happen, that we don't aggravate the overappropriation problem, and do not provide for this on streams where instream flows have already been set.

370 CHAIR NORRIS: This is an attempt to bring to light that the needs of human beings are at least equal to the requirement that we maintain the minimum streamflow or take care of the wildlife.

There are many miles along the wild and scenic systems that are privately owned.

395 HUTCHISON Would the temporary license concept address that issue?

400 CHAIR NORRIS: If enough time was allowed to give a person reasonable assurance that they could use a small amount of water for human or livestock needs and it was not called a permit or license.

405 HUTCHISON: Would they be issued if the stream was overappropriated?

410 CHAIR NORRIS: Presumes not. If they have been there for some time, would like some flexibility.

TAPE 58, SIDE B

HUTCHISON: If they have been there for some time and have been using water effectively, it is probably not possible for Water Resources to stop those uses.

012 CHAIR NORRIS: It is possible if someone brought suit. Would like protection for pre-existing uses.

015 HUTCHISON: Feels temporary, short-term, revocable license, might be an option.

017 REP. DWYER: Refers Mr. Hutchison to original HB 2677. Reviews Mr. Young's earlier testimony, and his own proposed amendment language.

070 CHAIR NORRIS: Is looking for compromise that has broad involvement to provide relief.

Wants to give Commission flexibility to discuss the situation and, under certain circumstances, maybe grant permission for some people to use it.

095 CHAIR NORRIS: Suggests Rep. Norris meet with Bill Young to discuss the issue.

Offers his help.

100 JERRY SCHMIDT, OREGON ASSOCIATION OF REALTORS: Not prepared to talk about 267 7-3 amendments. Preferred Rep. Dwyer's language in the original bill.

The Board endorses the bill with Rep. Dwyer's proposed amendment and strongly recommends that language be included for resolution of the issue on behalf of all Oregonians, not just one special interest group.

145 JIM MYRON, OREGON TROUT: Participated in the work group. References lines 15 and 18 of 2677-3 amendments: not sure how the Commission could make a finding that a watershed enhancement project would put that water back into the river within a five year period. Most watershed enhancement projects have not been able to quantify what they are doing to the stream.

Real issue is that a lot of people are using water without a permit and how do we get the Water Resources Department in a position where they can help these people out. Does not think that is a scenic waterway problem, but an administrative problem that needs to be dealt with at the Department and Commission level.



180 CHAIR NORRIS: Closes work session on HB 2677.

Opens work session on HB 3323.

WORK SESSION HB 3323

192 PATRINO: Updates committee on HB 3323.

205 LOUISE BILHEIMER, OREGON RIVERS COUNCIL: Speaks in opposition to HB 3323.

Landowners on the portion of the Nestucca covered by HB 3323 are most concerned about Parks' management plan.

Enforcement and education are needed, rather than removing the section from the state scenic waterways designation.

250 LIZ FRENKEL, SIERRA CLUB: A draconian response such as HB 3323 is not needed to solve this problem.

275 DAVE MOSKOWITZ, NORTHWEST STEELHEADERS: Submits and paraphrases written

testimony in opposition to HB 3323 (EXHIBIT C).

Offers to work toward a resolution to the problem without such a drastic solution as HB 3323.

320 CHAIR NORRIS: Why shouldn't a section of the scenic river be removed from the system if it should not have been included in the first place?

330 MOSKOWITZ: Because it would open the door for every constituent who did not agree with a river being included, to seek the same remedy.

350 REP. SCHROEDER: Are you saying that people who want rivers included should have the right to add rivers to the scenic waterways, but those who want sections excluded should not have that right?

354 MOSKOWITZ: If it is recommended that additional rivers be included in the scenic waterways system, it is incumbent on sponsors of that proposal to work with private landowners in the area, and involve them with the planning system to determine if they should be included in the first place.

If you open up this system after it has gone through the process, and it was voted on statewide, allowing disgruntled people to come back and take small sections out because of perceived problems with the designation, will result in a worse product than you have with a ballot initiative.

380 REP. SCHROEDER: Do you think the people on the Nestucca had an opportunity to express their feelings before the ballot went through, was voted in by the metropolitan people, and forced upon the rural people?

389 MOSKOWITZ: Process was as broad as possible. If people did not get involved in the process, maybe the process needs to be fixed. Does not believe the vote was rural versus urban.

TAPE 59, SIDE A

REP. SCHROEDER: Were all areas thoroughly checked to see if they met the requirements of a wild and scenic river prior to their inclusion?

006 MOSKOWITZ: Was not involved in the process. Other groups could speak more clearly to that. The protections of the scenic waterway system do not deprive local landowners of total use, especially since a management plan within the region allows a time for people to come in and address their concerns about the scenic waterways system.

If there is real injustice with private rights on the Nestucca, based on the imposition of the Scenic Waterways Act, is willing to listen.

035 REP. SOWA: Reminds committee not to confuse the Oregon Scenic Waterways Act, and what was in the paper in the last few days, which was the federal Wild and Scenic Rivers Act which is entirely different.

045 REP. TIM JOSI: Expresses his frustrations with the hearings and planner changes which caused much duplication of effort.

The Nestucca landowners want an ear and are now getting it. The Parks Department is beginning to listen to them.

We are trying to mitigate something that should never have happened. Feels that including the lower portion of the Nestucca River solely for the purpose of protecting Walker Creek is also a draconian approach.

Urges committee to pass the bill out of committee. As long as the bill continues to move we have a tool with which to negotiate that is working.

090 REP. SOWA: Do you need this bill or a letter from the committee to the Parks Department instructing them to listen.

092 REP. JOSI: Prefers the bill.

100 JOE PIVA, OREGON STATE PARKS: Has met with Rep. Josi and the attorney representing Nestucca property owners. Property owners have legitimate concerns and the Parks Department's position is that we were given this mandate by the voters and we are in the same position as the landowners. We will work with those people. Staff changes during the planning process caused lack of continuity.

118 GARY MINAZUSKI, OREGON STATE PARKS: Thinks the problem is that people feel that a conclusion should have been reached earlier. Thinks there should be a solution in less than 24 months.

135 PIVA: Asks for more time to work. Feels progress is being made.

145 REP. JOSI: Encouraged to have Mr. Piva on board.

152 CHAIR NORRIS: Will intercede on Mr. Piva's behalf if necessary.

Closes work session on HB 3323.

Adjourns meeting at 3:28 pm.

Submitted by:      Reviewed by:

Pat Zwick,              Beth Patrino, Assistant Administrator

EXHIBIT LOG:

A            -            HB 3404 Testimony and Exhibit - John Mellott - 11 pages  
B            -            HB 2677-3 Amendment - Staff - 2 pages C -            HB 3323  
Testimony - David Moskowitz - 1 page