

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 7, 1991Hearing Room D 1:30 p.m.Tapes 28 - 29

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

VISITING MEMBER:Rep. Dave McTeague

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

WITNESSES:Bill Hutchison Charlie Ciecko, Park Service Division, Multnomah County Florence Krebs, Welches Water Company John Borge, Clackamas County Keith Petrie, Mt. Hood Recreation Association Bill Young, Water Resources Department Ed Sullivan, Alder Creek Water Authority Jerry Schmidt, Alder Creek Water Authority Caryn Tilton, Mt. Hood Community Planning Organization David Lythgot, Mt. Hood Area Chamber of Commerce Meg Reeves, Department of Justice Ed Hopper, The Resort at the Mountain Kathy Bartlett, Mt. Hood RV Village Kelly Neal, Arrah Wanna Water Company

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. - Public Hearing

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TAPE 28, SIDE A

010 VICE-CHAIR DWYER: Calls the meeting to order at 1:30 p.m.

Opens the meeting as a subcommittee.

026 CHAIR NORRIS: Calls the full committee to order at 1:32 p.m.

030 BETH PATRINO, COMMITTEE ADMINISTRATOR: The committee first heard HB

267 7 last week. The bill addresses the issue of human and livestock consumption on or above scenic waterways.

The committee asked that Bill Hutchison, the attorney who argued the Diack case, be here today to talk about HB 2677 and how it might or might not affect Diack.

PUBLIC HEARING HB 2677

040 BILL HUTCHISON: Reads written testimony in opposition to HB 2677 and its possible effects on the Diack decision (EXHIBIT A).

Introduces Charlie Ciecko from Multnomah County Parks who participated in the litigation on behalf of Multnomah County which intervened on behalf of Arch Diack.

Provides copies of the Diack case for committee members. The case was recently featured in a case note in environmental law.

Appreciates concerns of Representatives Norris and Dwyer and the efforts they have directed to try to meet the perceived problem.

Asks that action not be taken to pass HB 2677, override a unanimous decision of the Oregon Supreme Court in the Diack case, and overrule the importance which the people of Oregon have placed on the scenic river values.

245 CHARLES CIECKO, PARKS SERVICE DIVISION, MULTNOMAH COUNTY: Reads written testimony stating he will urge opposition to HB 2677 (EXHIBIT B).

340 REP. SCHROEDER: Is it safe to assume that voters knew exactly what they were doing when they voted ten to one for a spending limit in 1970 and ten to one for a two percent kicker and on Measure 5?

348 CIECKO: To a certain extent. There is a perception that people are paying too many taxes and not receiving the benefits and services they expect.

350 CHAIR NORRIS: Questions whether voters knew that they were shutting off the water to other human beings.

360 CIECKO: Thinks that was understood. It is obvious that the resources of a river are limited. In order to promote or protect instream values at a certain point in time, decisions have to be made regarding those out-of-stream uses.

365 CHAIR NORRIS: We are principally concerned with an area which lies principally or exclusively in Clackamas County. Where is Multnomah County's interest in this?

370 CIECKO: Part of the designated stretch lies within Multnomah County and that stretch is extremely important for both economic and recreational purposes in Multnomah County. The reduction of water to the extent that it would harm those values has an economic and recreational adverse impact on Multnomah County residents.

375 CHAIR NORRIS: There is no intent in HB 2677 to "undermine or override wild and scenic values or to represent appropriations of any significant amount".

380 HUTCHISON: Appreciates the Chair's intention and the fix you are trying to offer.

The unfortunate effect of the insertion of this sentence into ORS 390.835 is more profound. It would do what you want, but would also create the problem to which we have alluded by impairing the dynamic decision making process between competing uses.

The message of Diack is that the entire river system is affected by all uses.

TAPE 29, SIDE A

HUTCHISON: We could draft, with your direction, statutory modifications to the limited license concept that would result in an increased amount of water being available or water being available for an increased amount of time.

Thinks that could be an excellent public policy achievement.

015 CHAIR NORRIS: One of our goals is to protect the riparian zones.

018 HUTCHISON: The limited right approach would do that.

070 CHAIR NORRIS: I had not heard of the Hoodland community until HB 2677 was first heard. It was never my intent with HB 2677 to talk in terms of quantities to serve municipalities, but only very small amounts.

088 BILL YOUNG, WATER RESOURCES DEPARTMENT: We talked with our Commission and focused on the question: if you were going to try and characterize some allowable use that would be, 1. modest enough for the scenic waterway understandings, it would reduce the impacts of the limited allowable uses and, 2. would state statutorily, in some quantitative way, so that there was not question what we were talking about, at least in terms of an immediate ability to look at permits, what could you do?

The language proposed at the bottom of (EXHIBIT C) is the result.

We are suggesting that it would be possible for these limited uses, (typically a single family in-house, human consumption use, or for livestock watering), to characterize the ability to issue those permits in and above any scenic waterways so long as the cumulative total of all the permits that would be issued in or above a given scenic waterway would not exceed 1 cubic foot per second (cfs).

As we finish the work of characterizing how much water is needed in the scenic waterways in 18 to 24 months, our Commission, by rule, perhaps could characterize some additional water in one or another scenic waterway that might be available and still meet the de minimis standard. We are suggesting that until that work is done, our Commission shares a lot of the concerns expressed by Mr. Hutchinson and is not anxious to see a bill intended to provide some relief to modest uses be more extravagantly used than is intended. For that reason our Commission focused on the idea of an initial 1 cfs in and above a given scenic waterway for all the uses that would be issued until judgments are made about whether or not extra water is available beyond the needs of that scenic waterway.

155 REP. MARKHAM: How many cows and families could be served by 1 cfs?

157 YOUNG: If we were issuing a permit for domestic use, which is a broader use than human consumption, our permit would be issued for .005 cfs. As many as 200 households could connect and not use more in the cumulative than 1 cfs. We typically issue permits for .1 cfs for 1,000 head of cattle.

Visited with Mr. Hutchison and believes he will remain concerned about this approach and would much prefer an approach that would make it statutorily clear that Water Resources can issue some kind of a conditional authorization for use, which might later become a full water right.

He also speculated that we might look at modification to the current limited license statute that the legislature passed in 1989.

180 CHAIR NORRIS: Do you have applications pending for a modest use of water?

186 YOUNG: Yes. We told these applicants that we are unable to process their applications.

210 REP. SCHROEDER: Are pending rights for existing or pending homes?

207 YOUNG: Both categories.

212 CHAIR NORRIS: Asks for summary of pending right applications.

216 YOUNG: Will provide for committee but will be unable to determine whether the pending application was for an anticipated use or already commenced use.

Of the 1,500 pending applications before us, 243 are for domestic and livestock water in areas in or above scenic waterways.

230 REP. SCHROEDER: Asks that the pending applications be broken down to determine if the applications were received before the scenic waterway designation.

253 YOUNG: Would not typically have that information, but would have date of the application.

250 REP. DWYER: What recourse do people have against anyone selling them property without a permitted water right? Who should be responsible to make them whole?

265 YOUNG: A customer can not get title insurance on the nature of the water right in property transfers. Misrepresentation to a buyer might be pursued in a private civil suit.

Does not think the legislature should make a special case out of an illegal user.

295 CHAIR NORRIS: Would like information on pending applications relative to the stream stretch or river involved.

330 ED SULLIVAN, ALDER CREEK WATER AUTHORITY: Gives history of water problems of Alder Creek.

Not interested in reversing Diack on a wholesale basis.

Problem may not be soluble by administrative rules and probably requires legislation.

Willing to work with a group to try and reach a solution.

TAPE 28, SIDE B

003 JERRY SCHMIDT: Only four percent of available water for the entire state is consumed by small water users.

Because the definition of surface water has been expanded, everything in the Sandy Basin is considered surface water.

We need administrative relief, but have been told by the Water Resources Department that administrative relief is not possible, and that this it is a statutory problem.

This is the only avenue open to us to address our problem.

030 CHAIR NORRIS: Hopes your problem can be dealt with in another vehicle.

Does not believe the problem can be addressed with an amendment to HB 2677.

052 KATHY BARTLETT, MOUNT HOOD VILLAGE: Expresses deep concern about situation in Hoodland area.

062 KELLY NEAL: Water issues are complex. It has become evident that people must be educated.

Concerned about lack of water in the Hoodland area and the scenic waterways.

090 McTEAGUE: Asks for explanation of Hoodland area water right problems.

095 NEAL: New EPA and drinking water regulations for which we were not prepared will affect a lot of our systems, the scenic waterway provisions, and water rights which I have been told have not been perfected have all contributed to the present problem.

138 REP. DWYER: How did you learn about today's meeting?

140 NEAL: From people who attended the last meeting.

144 REP. DWYER: Testimony in the interim said that water may cost about \$200 per month by the year 2000.

150 CHAIR NORRIS: I am sympathetic to your situation.

155 EDWIN HOPPER: Does not believe that people who favored either the Diack decision or the Wild and Scenic Rivers Act knew that the effect of the two actions would deprive a family which did not know it was in violation of the use of its domestic water well which has been there for a number of years.

If we believe that court decisions are a poor substitute in most cases for well thought out legislation based on hearings and public input, the Diack decision should not necessarily be held up as the end answer, but a court case that must be fixed by legislation.

Wants to be part of any future discussion.

210 REP. DWYER: Should unbridled development, to the detriment of a river beyond its carrying capacity to provide recreation and other things, be allowed?

215 HOPPER: Not in favor of unbridled development. There are people who are using small amounts of water in good faith and it seems unfair to be stripping them of their water.

227 REP. DWYER: What about future development?

230 HOPPER: That would have to be considered on a case by case basis as to whether it can be sustained. Development should not be allowed unless water is available.

250 MEG REEVES, DEPARTMENT OF JUSTICE: Summarizes written testimony on whether HB 2677 impacts the Supreme Court's decision in Diack v. City of Portland and suggestions to clarify the bill's meaning (EXHIBIT D).

300 REP. DWYER: Most streams are overappropriated as a result of Water Resources Department's failure to make a determination of the availability of water prior to appropriation.

Reads 2677-1 amendments (EXHIBIT E).

Asks Ms. Reeve's opinion of the amendments.

320 REEVES: The language you propose does put the burden back on the Water Resources Commission to make the determination of availability.

It does not change current law under Diack. Diack requires the Water Resources Commission to do what this language would require it to do.

365 ALAN COOK, OREGON PARKS AND RECREATION DEPARTMENT: Responds to Rep. Markham's request for a listing of State Park facilities on Scenic Waterways.

Reviews list (EXHIBIT F). The largest use does not exceed .25 cfs.

375 REP. MARKHAM: Asks for specific amount of water extracted from the rivers.

393 CARYN TILTON, MOUNT HOOD COMMUNITY PLANNING ORGANIZATION: In setting our goals in the 1960s we failed to take the strategic planning and implementation into account.

TAPE 29, SIDE B

TILTON: Implores committee to allow the Hoodland area to be involved in exploring possible solutions.

What is the next step, and how can we be involved and a part of the solution?

020 FLORENCE KREBS, WELCHES WATER COMPANY: We have not been abusing water.

We want you to look at our situation, as a small company, and take an interest in the small operator. We just want our water protected.

034 REP. SCHROEDER: Do you currently have enough water for present users in your system and are you above a wild and scenic river?

036 KREBS: Yes. We have water rights on springs on Huckleberry Mountain at the 2,000 foot level. It is a tributary to the Salmon which goes into the Sandy River.

040 CHAIR NORRIS: Do you have a water right certificate for that?

042 KREBS: Yes.

040 DAVID LYTHGOT, MOUNT HOOD CHAMBER OF COMMERCE: Speaks of water availability issues in the Hoodland area.

060 REP. DWYER: When should someone be told that their plans are wrong, other people and an ecosystem are involved, and that water is not available?

070 LYTHGOT: A line should be drawn, but you have to decide where it is. People who have made decisions based on representations by government agencies should not be penalized.

080 REP. SOWA: Would like to work with Rep. Shiprack on a work group to address the Hoodland area problem. Agrees that a different vehicle will be needed.

100 TILTON: Asks to be considered to participate in any work group formed.

104 KEITH PETRIE, MOUNT HOOD RECREATION ASSOCIATION: Speaks of dependence on tourism of his community.

All the lines should be drawn at the same time so that everyone is aware of the limitations.

117 JOHN BORGE, CLACKAMAS COUNTY PLANNING DIVISION: Displays map of Clackamas County Service District No. 1 - Hoodland Service Area showing existing water districts which serve existing residents.

Believes that HB 2677 is an opportunity to balance the water allocation to scenic waterways. Not suggesting that harm be done to the scenic waterways.

Believes we are looking at a possibility that language could be drafted to allow current residents to continue using water and earn a living in the area.

148 REP. SCHROEDER: Could small water impoundments be put above the area to serve the need and not impact anadromous fish runs?

152 BORGE: Believes that would be difficult.

Has not had the opportunity to explore all the tributaries of the Sandy or Salmon Rivers to determine if there could be a remedy in using an

impoundment or dam.

Understands that most tributaries contain anadromous fish runs.

167 REP. DWYER: Storage is subordinate to streams.

150 PETRIE: Suggests an economist be involved in order to consider economic impact.

175 CHAIR NORRIS: Not prepared to do that.

177 REP. DWYER: It is criminal for people to develop property knowing that potable water is not available and sell that property to an unsuspecting buyer.

190 BERGE: The Hoodland area does not have the availability to closet water as standard municipalities do.

To plan for an area, you anticipate the water will be available, go to the Water Resources Department, get the water right, put in the connection, and then have it perfected.

205 CHAIR NORRIS: We have two separate issues.

I only want to address small human and livestock uses.

Will not mix the issues.

Going to continue with HB 2677 to see if the original intention of the bill can be accomplished.

The Hoodland area problem is much bigger. It may not be looking for a legislative solution. Other options should be explored.

Asks Beth to work with Water Resources Department, Meg Reeves, and Mr. Hutchison to make it possible, if not to put people first, at least to put them on an equal footing because I am a strong believer in people first.

Suggests that the Hoodland area residents seek an administrative solution.

Don't look for your concerns to be melded into HB 2677.

Adjourns meeting at 3:14 p.m.

Submitted by: Reviewed by:

Pat Zwick, Beth Patrino, Assistant Administrator

EXHIBIT LOG:

A - HB 2677 Testimony - Bill Hutchison - 5 pages B - HB 2677
Testimony - Charles Cieccko - 2 pages C - HB 2677 Proposed
Amendment - Bill Young - 1 pages D-HB 2677 Testimony - Meg Reeves - 2
pages E-HB 2677-1 Amendment - Staff - 1 page F-HB 2677 Exhibit - Alan
Cook - 1 page

