

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 12, 1991Hearing Room D 1:30 p.m.Tapes 30 - 31

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:Rep. Denny Jones Bill Young, Water Resources Department Doug Myers, Oregon Environmental Council Jim Myron, Oregon Trout Kip Lombard, Water Resources Congress Bev Hayes, Water Resources Department Ted Pulliam, Water Well Drilling Association

MEASURES CONSIDERED:HB 2762 - Deletes provision directing penalties recovered by Water Resources Commission to be deposited into separate account of State Wildlife Fund. - Public Hearing

HB 2192 - Establishes procedure for defining boundary of critical ground water area. - Public Hearing

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TAPE 30, SIDE A

005 CHAIR NORRIS: Calls the meeting to order at 1:31 p.m.

013 BETH PATRINO, COMMITTEE ADMINISTRATOR: Reviews provisions of HB 2762 which repeals the authority of the Water Resources Commission to levy civil penalties and repeals the provision of law directing that any of those penalties collected go to a subaccount in the State Wildlife Fund. The bill also repeals a section of Chapter law from the 198 9 Session that directs the Water Resources Commission to adopt a definition of "waste".

The Commission was first given authority to impose civil penalties in the 198 9 Session.

024 REP. DENNY JONES: Was concerned with the bill that passed last session that gives the Water Resources Department the authority to cite for violations.

Questions what a permit violation is.

Expresses dissatisfaction with two bills passed in the 1989 Session.

Water Resources Department has defined "waste" in their policies.

Disagrees with Water Resources definition.

HB 2762 would make things more reasonable.

Feels rules should be less restrictive when there is an abundance of water.

Lien rights are in existing statute. Fine amounts may be in administrative rules.

Wonders why watermaster should have citation authority.

138 REP. DWYER: Where is the water supposed to come from if you take in excess of your permit?

143 JONES: I am talking about when there is an abundance of water.

150 REP. DWYER: What could the watermaster do if he did not have the authority?

156 JONES: He already has authority to make sure we do not exceed our permits.

Need to take a serious look at what we are doing with instream water rights.

194 CHAIR NORRIS: Has an instream flow been established on the stream from which you irrigate?

198 JONES: Not within our area.

Speaks of impact of dams on the area.

270 CHAIR NORRIS: What percentage of the water that you originally take returns to the stream?

277 JONES: Eighty five percent.

Flood irrigation is the only option in my area.

295 CHAIR NORRIS: Has there been serious controversy among the ranchers because of the irrigation system in general use?

305 JONES: No.

Questions why new regulations are necessary when there has not been a problem in our area.

312 CHAIR NORRIS: The law will have statewide application.

Would a process for local review of civil penalties, if assessed, be more acceptable?

320 JONES: Thinks there may be a way to make the bill workable with more reasonableness.

340 BILL YOUNG, WATER RESOURCES DEPARTMENT: Reads written testimony reviewing provisions of HB 2762, and the problems perceived by and the position of the Department (EXHIBIT A).

TAPE 31, SIDE A

YOUNG: Continues reading (EXHIBIT A).

026 REP. DWYER: Asks for names, locations, and backgrounds of citizen review committee.

030 YOUNG: Nine people have been asked to join us; Senator Fawbush, Representative Norris, Jim Myron, John Charles, Gerald Conrad, Ron Nelson, Joe Colman, Kent Madison, Harold Kramer have been asked to join the committee. They have backgrounds in the legislature, insurance, environment, and irrigation and are from various parts of the state.

040 REP. DWYER: Asks for definition of "waste".

045 YOUNG: Waste for purposes of assessing civil penalties is defined to be "when the quantity of water diverted exceeds the quantity required to meet the beneficial use specified in a water right, not including reasonable system losses, return flows, or diversion rates of water allowed in a water right or a rotation agreement".

54REP. MARKHAM: Is a person who is using water in excess of permit provisions during times of abundant water citable under that definition?

060 YOUNG: Yes. In the absence of impact, Water Resources does not have sufficient staff to seek out violations.

Our Commission is trying to determine what to do in instances of streamside native hay irrigation systems where we have investigated and concluded that a substantial amount of water is turned out and much of it returns in a short distance as return flow, but is technically in violation of the existing permit.

We have not reached a conclusion, but are discussing the issuance of a second permit that would authorize that use during high flow times.

080 REP. MARKHAM: Are any of the people on the committee from the Southwest quadrant of Oregon.

085 YOUNG: Joe Colman is a water user from the Grants Pass area.

088 REP. DWYER: In which area of the state was the one civil penalty you spoke of levied?

090 YOUNG: A fish hatchery on the South coast which had been illegally using water.

094 CHAIR NORRIS: Were any of the notices of violations on irrigation practices?

097 YOUNG: Yes, most of them.

We collected the civil penalty without taking a lien on the fish hatchery.

Encourages the committee to look at the way Water Resources has used the civil penalty authority. Does not think it wise to remove the authority so that it can be used when voluntary compliance cannot be achieved.

125 REP. MARKHAM: Why does the money go to Fish and Wildlife?

127 YOUNG: To raise money for fish screening. Is not enthused about an agency which levies fines keeping the penalty money.

170 DOUG MYERS, OREGON ENVIRONMENTAL COUNCIL: The Council is opposed to HB 276 2 and we have informed Rep. Denny Jones of that opposition.

Water Resources Department is not abusing their civil penalty authority.

Any problems which might exist with the program can be remedied administratively.

200 JIM MYRON, OREGON TROUT: Summarizes written testimony in opposition to HB 2762, but supporting the provision that monies collected should not go into the State Wildlife Fund (EXHIBIT B).

Would like the funds to go to Water Resources for enforcement.

240 CHAIR NORRIS: Closes public hearing on HB 2762.

Opens public hearing on HB 2192.

PUBLIC HEARING HB 2192

263 PATRINO: Summarizes work group activity which resulted in amendments.

275 KIP LOMBARD, OREGON WATER RESOURCES CONGRESS: Our earlier concerns about this measure have been resolved to our satisfaction.

The issues we were concerned about were: How to designate processes by which the critical groundwater area and amount of total maximum withdrawals will be determined.

Need for adequate time, particularly in rulemaking arena, to allow those in the affected area to review the study and evidence, consult with witnesses, and prepare to go to the rulemaking proceeding with meaningful testimony, once the Department concludes its groundwater study.

Adequate mail notification.

We support the proposed amendments.

375 BEV HAYES, WATER RESOURCES DEPARTMENT: We reluctantly agreed to the sixty day period and are satisfied that the proposed amendments meet the basic needs of Water Resources Department.

400 TED PULLIAM, WATER WELL DRILLING ASSOCIATION: Testifies in opposition to HB 219 2.

TAPE 30, SIDE B

Water Resources Department has several options, other than declaring a critical groundwater area, for classification.

Allowing the rulemaking process to take place, with a Commission decision on what should be done in the area, stops further appropriation of water, but does not allow the Department to take water away from a user. We feel the rulemaking process is enough.

We feel the contested case basis must stay in place when the state is going to take water away because the rulemaking process is not a very adequate process in that case.

The water of the state can be adequately protected by current laws which should not be changed.

030 CHAIR NORRIS: Are you confronted with a critical groundwater area in the Boring area?

034 PULLIAM: It is short of critical.

Speaks of how an area is affected when a critical groundwater area is declared. We feel with the threat of the declaration, the contested case process must stay in place.

When the Department decides to set a rulemaking study, anyone who has applied for a grant which has not yet been granted can have that right declared null and void.

075 REP. DWYER: Don't you think that is better than allowing someone to assume that there is unlimited water available and develop something on that basis?

079 PULLIAM: Developers and private citizens do research before spending money.

Other states have problems because they do not have the statutes that Oregon does.

Oregon has excellent groundwater rules and I do not want to see them changed.

100 TERRY WITT, OREGONIANS FOR FOOD AND SHELTER: Does not believe that the 219 2-2 proposed amendment addresses our concern about taking action on an issue of quality.

Our concern comes before, not after the contested case hearing process, i.e., upon declaration of a critical groundwater area by rule.

Believes the language needs to be inserted in Sec. 4 rather than in Sec. 2

We are trying to say that before an area can be designated a critical groundwater area by rule, based on a problem of groundwater purity, we believe that it needs to be demonstrated that implementing one or more of the corrective control provisions of Section 2 should have to be demonstrated that it applies. We see very little reason for the Water Resources Department to have the ability to declare an area a critical

groundwater area based on a water purity problem if those controls which they have under their authority will not have any impact on that water quality issue.

175 PATRINO: Reviews 2192-1 proposed amendment (EXHIBIT C).

220 LOMBARD: Even though statutes require notice by certified or registered mail, that does not guarantee that the person will accept the delivery. We feel that there is a better chance that people will accept regular first class mail.

240 PATRINO: Reviews 2192-2 proposed amendment (EXHIBIT D).

250 BEV HAYES, WATER RESOURCES DEPARTMENT: I understand Mr. Witt's concerns are about being able to designate an area critical without any evidence that water quality is impaired. He wanted to be sure that before the Department took corrective action, it would make a finding that indeed taking that action would improve the water quality.

In that case, you need to have it in the contested case portion of the bill.

HB 2192 is before the committee so that we can have a better process for declaring a critical groundwater area.

There may be lingering fears that we are adding to our ability to declare an area critical. We are not adding any more ability than we currently have.

355 CHAIR NORRIS: Closes public hearing on HB 2192.

Opens work session on HB 2192.

WORK SESSION HB 2192

377 MOTION: REP. DWYER: Moves adoption of 2192-1 amendments (EXHIBIT C).

VOTE: Without objection, amendment is adopted. All members are present.

285 REP. SOWA: Would feel uncomfortable adopting the 2192-2 amendments without consultation with Legislative Counsel.

TAPE 31, SIDE B

004 REP. MARKHAM: Wants Pulliam and Water Resources Department to meet to see if they can resolve Mr. Pulliam's concern.

015 CHAIR NORRIS: Closes work session on HB 2192.

Adjourns meeting at 2:59 p.m.

Submitted by: Reviewed by:

Pat Zwick, Beth Patrino, Assistant Administrator

EXHIBIT LOG:

A - HB 2762 Testimony - Bill Young - 3 pages B - HB 2762
Testimony - Jim Myron - 2 pages C - HB 2192-1 Amendments - Staff -
1 pages D-HB 2192-2 Amendments - Staff - 1 page