

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 16, 1991Hearing Room D 1:15 p.m.Tapes 46 - 48

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:Steve Sanders, Attorney General's Office Bev Hayes, Water Resources Department Larry Trosi, Oregon Farm Bureau Joe Hobson Rep. Dave McTeague Larry Craft, Oregon State Police Kay Brown, Oregon Department of Fish and Wildlife Ginny VanLoo, Oregon Wildlife Federation David Moskowitz, Northwest Steelheaders Bill Bakke, Oregon Trout Louise Bilheimer, Oregon Rivers Council Tom Geisa, Pacific Northwest Utilities Conference Committee

MEASURES CONSIDERED:HB 2192 - Establishes procedure for defining boundary of critical ground water area. - Work Session

HB 3066 - Prohibits sale of fishing bait in non-biodegradable containers. - Public Hearing

HB 3424 - Requires State Fish and Wildlife Commission to submit to Sixty-eighth Legislative Assembly report on status of wild fish. - Public Hearing and Work Session

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TAPE 46, SIDE A

006 CHAIR NORRIS: Calls the meeting to order at 1:16 p.m.

Opens work session on HB 2192.

WORK SESSION HB 2192

008 BETH PATRINO, COMMITTEE ADMINISTRATOR: Updates committee on work they have previously done on HB 2192.

025 STEVE SANDERS, ATTORNEY GENERAL'S OFFICE: Explains the administrative processes which the Water Resources Department considered and gives explanation of the benefits and weaknesses of each of the three processes by which a critical ground water could be designated.

The three processes are: contested case, order in other than a contested case, and rulemaking.

The Department's goal is to create an informal process which invites public comment so that the final decision is informed, defensible, and protects the resource.

The Department's choice is rulemaking because it permits public input in an informal manner, there are no tight time deadlines, there are no standing or interest requirements to participate, the process is one with which the Department is familiar, and the resulting rule is readily accessible.

135 REP. MARKHAM: Who has not signed off on this choice?

137 BEV HAYES, WATER RESOURCES DEPARTMENT: The well drillers support the bill with the amendments submitted to Rep. Norris.

Do not know if the Farm Bureau has taken a position on the final draft.

Have resolved the major issues of notice and review.

145 SANDERS: Mr. Hobson of the Farm Bureau agrees that from a procedural standpoint, the contested case is the worst way. While the Farm Bureau might prefer an order in other than a contested case, rulemaking is adequate because it permits public input and is a way to assure an accurate and fair determination by the Department.

155 CHAIR NORRIS: Under the administrative rule procedure, you mentioned that if someone's well was to be shut off, that would be the subject of a contested case hearing if there was an actual adverse effect on a given well or group of wells.

165 SANDERS: No one will be shut off as a result of rulemaking or without a personal opportunity to attack the control mechanisms that the Department is proposing.

170 REP. SCHROEDER: What is the cost to the individual land owner in each process?

175 SANDERS: The contested case would be the most expensive process for the individual because it will require him to hire an attorney and go an through extensive procedural process to participate.

The order in other than a contested case and rulemaking would probably be about the same level of expense for the person participating.

Finding the document in an order other than a contested case might be more difficult to locate.

Rulemaking documents can probably be located locally.

195 REP. SCHROEDER: What will an appeal cost in an order in other than a contested case and rulemaking?

198 SANDERS: Could cost \$20,000 for an individual to appeal through an order in other than a contested case.

208 CHAIR NORRIS: The bill would provide that the first step would be to hold a public hearing under the administrative rules process. You would then go to the possibility of contested case hearings on individual damages or effects.

230 HAYES: Presents and reviews provisions of proposed amendment agreed to by Ted Pulliam (EXHIBIT A).

We have agreed to the inclusion of well drillers in the notification by regular mail amendment.

255 LARRY TROSI, OREGON FARM BUREAU: We were interested in the order in other than a contested case process because it allows the procedure to define what a critical ground water area is rather than going through the administrative rules process.

300 JOE HOBSON, OREGON FARM BUREAU: Have taken this opportunity to begin reviewing some of the processes that the Department uses in making some of its determinations. We felt that this was an opportunity to bring to everyone's attention that there is a third way of making decisions. The other than a contested case process should be available to administrative agencies. It is a workable and usable process, especially in situations such as critical groundwater area determinations which have aspects of adjudication and rulemaking at the same time.

Agrees with Steve that the current situation where they are using contested case proceedings is wrong. Contested case proceedings should be used primarily in revoking a permit or dealing with an individual license.

A change away from the contested case process is appropriate.

We have discussed the provision of adequate notice to those who might be affected by the rule in a rulemaking process. This can be done by additional rulemaking by the Agency to establish what kind of procedure it will follow, or something could be written into the legislation.

We understand the intent is to hold an actual public hearing under rulemaking.

Notice, public hearing, and a standard for the decision to meet once made were our major concerns.

370 CHAIR NORRIS: Would the bill as written be an improvement over what we have now?

375 HOBSON: Yes.

380 CHAIR NORRIS: Would an administrative case hearing clearly establish that there would be a public hearing?

384 STEVE: Yes.

Current law requires a public hearing and while rulemaking does not technically require a public hearing unless ten persons or an organization representing ten persons asks for it, under water law there

is a separate provision for rules that are made a part of the basin program by statute. A public hearing must be held in the area and chaired by a member of the Commission.

400 REP. MARKHAM: How many lawyers in the state understand the water law?

TAPE 47, SIDE A

002 STEVE: Not many. It is hoped that most people will not have to get a lawyer before they can figure out what is happening.

015 CHAIR NORRIS: Closes work session on HB 2192.

Will take final action on HB 2192 at Thursday's meeting.

Opens public hearing on HB 3066.

PUBLIC HEARING HB 3066

030 PATRINO: Reviews provisions of HB 3066.

040 REP. McTEAGUE: HB 3066 is an attempt to address the issue of refuse along the river banks.

050 REP. DWYER: What about the notification to parties affected?

058 REP. McTEAGUE: Enforcement people can address that.

Expects a warning for a substantial period of time before actual citation.

064 REP. DWYER: Does law enforcement have discretion in enforcing laws?

067 McTEAGUE: Believes so.

070 REP. SCHROEDER: Is this similar to SB 699?

073 REP. McTEAGUE: No, this bill is a similar concept but different language.

080 LARRY CRAFT, OREGON STATE POLICE, FISH AND WILDLIFE ENFORCEMENT: Presents and paraphrases written testimony in support of HB 3066 (EXHIBIT B).

100 REP. DWYER: Gives scenario where an unsuspecting person could be subject to a fine.

110 CRAFT: Thinks we need language to define biodegradable. If a person used a non-biodegradable container that may be a violation.

118 REP. DWYER: Is possession of a non-biodegradable container a violation of the law, even if it is not the person's intent to leave it at the river?

125 CRAFT: If the substance was defined as non-biodegradable under the use that I suggested adding.

130 REP. SCHROEDER: Shares Rep. Dwyer's concerns about the non-biodegradable definition. Speaks of types of containers he finds on

the beach. This bill would outlaw almost everything in which you might carry bait without a definition of biodegradable.

140 REP. DWYER: Wants exemption for things which are not biodegradable but which you have no intention of discarding.

165 REP. MARKHAM: Onus should be on the person using the container not on the merchant.

180 CRAFT: Notes materials attached to (EXHIBIT B).

200 KAY BROWN, OREGON DEPARTMENT OF FISH AND WILDLIFE: Submits and paraphrases written testimony in support of the concepts included in House Bill 3066 (EXHIBIT C).

230 CHAIR NORRIS: Would the common containers in which bait are sold be outlawed under this bill?

240 BROWN: Yes. We would suggest an amendment to limit the bill to certain items.

No action is being taken on similar Senate Bills until this committee acts on HB 3066. The Senate bills address only sport fishermen and the relating clauses did not allow for any modification of the bills.

255 REP. SCHROEDER: Concerned that this bill will not stop littering of styrofoam cups.

Catching violators and sentencing them to five days of cleaning up the beach would be more effective.

Attacking one small portion will not solve the problem.

285 GINNY VANLOO, OREGON WILDLIFE FEDERATION: The intent of HB 3066 was to prohibit the sale of styrofoam bait containers.

315 REP. DWYER: Was it your intention to include articles that a person did not intend to discard?

330 VANLOO: We never considered including materials that are not disposed of.

320 REP. DWYER: Would you object to deferring enforcement of the bill until the next set of fishing rules are published to avoid unfairly impacting people?

330 VANLOO: Will take that question to her board.

350 REP. MARKHAM: Ask your board if this bill should be aimed at the people causing the problem rather than at the merchant.

357 VANLOO: Lt. Craft was addressing that when he added the language "use".

375 REP. SCHROEDER: Might be necessary to get information to out of state packagers that Oregon will no longer accept styrofoam containers.

385 VANLOO: Bait I used recently is packaged in styrofoam in Salem.

395 DAVID MOSKOWITZ, NORTHWEST STEELHEADERS: Status of the Senate Bills

is questionable. The state police do not like the language because it does not apply to commercial and sport anglers. There is some question of what is going to happen with those bills.

Steelheaders would like to begin to find a solution to the litter problem on rivers.

TAPE 46, SIDE B

010 REP. DWYER: What about requiring a deposit on bait containers?

014 MOSKOWITZ: That might encourage return of the containers.

The issue is to put the right product in their hands and if they throw it down, there needs to be enforcement.

Merchants need to bear some of the burden.

033 REP. DWYER: Recognizes reality. Should try something else before being punitive. We know that deposits work in keeping our highways clean. Thinks the idea is worth exploring for bait containers.

090 CHAIR NORRIS: More work will be needed before the committee considers the bill further.

100 REP. DWYER: Mr. Moskowitz' suggestion of trying to come up with a uniform deposit concept so that Oregon will be the first state in the nation to require deposits on non- biodegradable bait containers would be an excellent place to start.

110 CHAIR NORRIS: Closes public hearing on HB 3066.

Calls for ten minute recess at 2:20 p.m.

Reconvenes at 2:30 p.m.

Opens public hearing on HB 3424.

PUBLIC HEARING HB 3424

125 PATRINO: Reviews provisions of HB 3424.

142 REP. McTEAGUE: Submits and reviews written testimony and exhibit (EXHIBIT D).

170 REP. DWYER: Do you see a need for a subsequent referral on a bill which does not have a fiscal or revenue impact?

175 McTEAGUE: No. Thinks the Department can do this within existing resources. They should be doing this anyway.

180 REP. SCHROEDER: Have you ever seen Fish and Wildlife undertake a study without asking for additional revenue?

185 REP. McTEAGUE: They have resources for program and policy development. That is a question they can answer.

They have a great deal of information but whether it is in a form that would make sense to us, or is a comprehensive look is another question. This bill tells them to pull their data together in a form useful to us

as decision makers.

I have asked for information from the Department and generally received answers at some point.

225 BILL BAKKE, OREGON TROUT: Shows slides giving data on Oregon's native fish.

300 Reads written testimony in support of HB 3424 (EXHIBIT E).

365 REP. SCHROEDER: Have you considered that ocean conditions cause fluctuations in population levels?

388 BAKKE: Long term trends were taken into consideration.

400 REP. SCHROEDER: Were the reports mentioned on page two of your testimony peer reviewed?

TAPE 47, SIDE B

BAKKE: Yes, nationally.

005 REP. SCHROEDER: What balance do you think is ideal between wild and hatchery fish in a river system?

010 BAKKE: The Oregon Department of Fish and Wildlife says fifty percent if they are using indigenous stock. If they are a donor stock they can only be ten percent of the spawning population.

Mr. Bakke and committee members discuss subspecies.

080 KAY BROWN, OREGON DEPARTMENT OF FISH AND WILDLIFE: Reminds committee that HB 3424 only requires the Department to provide a report. It does not require the Department to do new studies over what we had planned to do and that is why there is no fiscal impact. With or without this bill we would be doing what this bill calls for.

Gives details of what Department is doing in the area of wild fish.

113 REP. MARKHAM: Notes that he has received no response to a letter he sent them two weeks ago asking about the mortality in the Columbia River and its cause.

130 BROWN: Has not seen the letter. Will look for it.

140 DAVE MOSKOWITZ, NORTHWEST STEELHEADERS: Submits written testimony in support of HB 3424 (EXHIBIT F).

Guesses that farming is as high a percentage as dams for fish mortality in the Columbia River.

This type of bill will insure that information gets to the public and into the hands of people who can set good policies.

325 LOUISE BILHEIMER, OREGON RIVERS COUNCIL: The Council supports passage of HB 342 4 and believes it is timely that we begin to take stock of the fish stocks in Oregon, take a look at the status and health of state watersheds, find better ways to protect and restore fish stocks and watersheds, and avoid getting into listings under the Threatened and Endangered Species Act and having the federal government dictate what we

must do.

345 TOM GEISA, PACIFIC NORTHWEST UTILITIES CONFERENCE COMMITTEE: Speaks in support of HB 3424 because uncertainty is not good for business and the study required in HB 3424 would represent the first step in solving the problem.

TAPE 48, SIDE A

008 CHAIR NORRIS: Closes public hearing on HB 3424.

Opens Work session on HB 3424.

WORK SESSION HB 3424

012 MOTION: REP. SOWA: Moves to amend HB 3424 by changing "Sixty Eighth Legislative Assembly" to "Sixty Seventh Legislative Assembly" on line 15.

VOTE: There being no objection, Chair Norris declares the amendment adopted.

020 MOTION: REP. DWYER: Moves to rescind the subsequent referral of HB 342 4 to Ways and Means.

025 VOTE: There being no objection, Chair Norris declares the motion passed.

030 MOTION: REP. DWYER: Moves HB 3424 as amended to the floor with a do pass recommendation.

035 VOTE: On a roll call vote, motion passes unanimously. All members are present.

037 CHAIR NORRIS: Rep. Sowa will carry the bill.

Closes work session on HB 3424.

Adjourns meeting at 3:20 p.m.

Submitted by: Reviewed by:

Pat Zwick, Beth Patrino, Assistant Administrator

EXHIBIT LOG:

A - HB 2192 Amendment - Bev Hayes - 1 page B- HB 3066
Testimony - Larry Craft - 12 pages C - HB 3066 Testimony - Kay
Brown - 2 pages D-HB 3424 Testimony and Exhibit - Rep. McTeague - 2
pages E-HB 3424 Testimony - Bill Bakke - 5 pages F-HB 3424 Testimony -
David Moskowitz - 1 page