

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

May 7, 1991Hearing Room D 1:15 p.m.Tapes 63 - 64

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:Scott Ashcom Phil Ward, Department of Agriculture Rep. Mike Nelson Bill Young, Water Resources Department Jill Zarnowitz, Department of Fish and Wildlife Jerry Schmidt, Oregon Association of Realtors Genoa Ingram, Oregon Association of Realtors Bev Hayes, Water Resources Department Dave Nelson, Oregon Water Resources Congress MEASURES CONSIDERED: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. - Work Session

HB 3465 - Requires agency applying for in-stream water right to give public notice of application. - Work Session

SB 201 A - Adds obligation to seller of real property to give purchaser notice of permit, transfer approval order or certificate of water right if available. - Public Hearing

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

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TAPE 63, SIDE A

005 CHAIR NORRIS: Calls the meeting to order at 1:24 p.m.

Opens work session on HB 3404.

WORK SESSION HB 3404

010 BETH PATRINO, COMMITTEE ADMINISTRATOR: Reviews provisions of HB

3404 and 340 4-1 amendment (EXHIBIT A).

015 SCOTT ASHCOM: Asks committee to approve 3404-1 amendments.

020 REP. DWYER: Is not satisfied with the \$500 cap. Wants the sunset to apply to the fee of those in compliance as well as a sunset date on the bill.

035 PHIL WARD, DEPARTMENT OF AGRICULTURE: Nurserymen met with DEQ and tried

to arrive at a way for the nursery industry to come into compliance with the water quality program. DEQ suggested that they come in under a regular nonpoint source pollution permit through DEQ which has an annual fee.

The nursery industry was not comfortable with that, and since the Department of Agriculture is the designated industry through DEQ, they asked us to be involved. We have worked with them and come up with this proposal.

Understands Rep. Dwyer's concern about the \$500. We would not levy a \$500 fee for this program. We propose to adopt a fee schedule by rule, and the annual fee would be something like \$50. We feel the \$50 annual component is important to give us the ability to do monitoring of compliance on a continual basis.

060 REP. DWYER: You are asking for self-certification and that serves your purpose.

070 WARD: Draws parallel with the confined animal feeding program. Feels the only way to catch violators is through complaints.

086 ASHCOM: The fee has two components; a \$50 dollar filing fee for registration with the Department of Agriculture, and a fee based on the complexity of the water management plan. If the container nursery is in compliance with DEQ water quality regulations, no plan would be required, and no fee would be assessed against that nursery.

093 REP. DWYER: If you file an application and file a plan, should you be charged annually for a program to catch non-compliers?

099 ASHCOM: Will offer draft language to address that concern.

Stresses importance of this legislation to large and small operators.

The fines our people would face if not in compliance with DEQ's and EPA's water quality regulations can reach a \$10,000 per violation figure.

The industry asked if they could voluntary come up with a water management plan for the industry. If container nurseries are in compliance with this plan and recycle their water, they will not be discharging, fined by DEQ, or required to get a waste facilities discharge permit. The annual fee is better than any of the other alternatives.

130 REP. DWYER: Is still opposed to an annual fee that assesses law-abiding people.

140 ASHCOM: The things you ask for can be accomplished in the Department of Agriculture's administrative rule process.

Mr. Ward can put into the record the intent of the Department of Agriculture and that may be adequate to bind them to do that in rule.

Can ask Department of Agriculture if it is their intent to require this fee each year, or whether the fee is just for the year in which the staff cooperates with the container nursery to devise the plan.

150 REP. DWYER: He told me privately that it is an annual fee.

152 WARD: I understand this to be an annual review fee to ascertain compliance with the management plan.

If it were on a permit from DEQ, there would be an annual fee.

160 REP. SOWA: Could you form an association and self-police and get out from under DEQ?

168 ASHCOM: DEQ will designate a state agency to work with people to bring them into compliance. They may also designate a municipal corporation as the designated agency. Does not think they will designate an association.

We are trying, with HB 3404, to get all container nurseries in the state to develop water recycling facilities so that they are not discharging into the streams of Oregon by mid-1993.

The association prefers to work with the Department of Agriculture rather than DEQ.

190 ASHCOM: We believe that the Department of Agriculture is preferable because they understand agriculture.

If we had the opportunity as an association to be a designated agency under the DEQ's rules, the nurserymen would probably accept that. Does not feel that DEQ would sign that type of memorandum of agreement.

220 REP. SOWA: Is upset with what Measure 5 has done to our natural resource agencies.

225 REP. SCHROEDER: DEQ is asking to go from 435 FTE to 541 FTE.

230 CHAIR NORRIS: Asks Mr. Ashcom to do more work on this issue and bring results to the committee.

Closes work session on HB 3404.

Opens work session on HB 3465.

WORK SESSION HB 3465

245 PATRINO: Reviews provisions of HB 3465 and 3465-1 amendment (EXHIBIT B).

253 REP. MIKE NELSON: Appreciates the 3465-1 amendment and hopes the committee passes the bill out.

270 REP. SOWA: Bill still does not do what I wanted to do. Is

uncomfortable that duplicate notification is required.

285 REP. DWYER: We are requiring public agencies to do this, but do not require consumptive users of water to publish the fact that they have filed for a water right.

Would not object if everyone was treated the same.

295 REP. NELSON: This bill applies to the general public. Water Resources notifies counties of out-of-stream permit applications.

300 REP. SOWA: Should ask applicant or Water Resources to distribute notification. Do not want duplicate notification.

311 REP. NELSON: To receive notification from Water Resources you have to subscribe to their publication.

320 REP. SOWA: Water Resources could be instructed to notify those not subscribing. Sees no reason why an applying agency and Water Resources can't use one notification rather than duplicating each others efforts.

326 REP. MARKHAM: Could we require that Water Resources do the notification and state which Department applied for the right?

330 REP. NELSON: That would satisfy my constituents.

335 CHAIR NORRIS: Would have to determine the cost for that.

Would there be a fiscal impact if Water Resources is required to publish notification rather than the applying agency?

370 BILL YOUNG, WATER RESOURCES DEPARTMENT: If we were able to make a charge against the applying agency to cover the cost of notification, we would need authority to receive those dollars and spend them, and we would experience no cost.

TAPE 64, SIDE A

007 CHAIR NORRIS: When an agency makes application, what notice do you provide?

010 YOUNG: Notice to county planning agencies, Indian tribes, and subscribers who pay \$26 per year for the list of pending instream and out-of-stream applications.

019 JILL ZARNOWITZ, OREGON DEPARTMENT OF FISH AND WILDLIFE: Reads publication rates for Oregonian and the Capital Press.

040 REP. MARKHAM: Would your constituents be satisfied if notification is to a congressional district rather than statewide.

047 REP. NELSON: That was his intent. Did not intend statewide coverage for local concerns.

057 CHAIR NORRIS: Bill currently addresses that restriction.

060 REP. SOWA: How soon after Fish and Wildlife submitted an application would you publish that in your regular publication?

065 YOUNG: We normally gather a weeks worth of applications and mail

out a notice.

070 REP. SOWA: If we required that if there was an instream water right application in that batch, could you print that in the local newspaper?

078 YOUNG: That could be done. Concerned about cost. Would like to check costs for water right transfers which are now published in newspapers. Can provide samples.

098 REP. NELSON: Does not think we are talking about a massive amount of applications. Asks Water Resources and committee to take that into consideration.

120 CHAIR NORRIS: Asks Water Resources Department to come back on Thursday with information requested.

130 REP. SCHROEDER: Do you indicate the name of the stream as well as the legal description when you publish a notice?

135 YOUNG: Will have enough information to allow those interested to know which area is being considered.

150 REP. MARKHAM: Will you bring back an amendment such as I suggested?

155 YOUNG: Only planned to bring back notice costs. Can bring back amendment if committee wishes.

Is it the intention of the committee that Water Resources charge the applying agency for publication costs?

168 CHAIR NORRIS: See what your costs would be and provide wording to accomplish committee suggestions.

REP. SOWA: Is sympathetic with Rep. Nelson's concern and hope we can provide some comfort.

Closes work session on HB 3465.

Opens public hearing on SB 201 A.

PUBLIC HEARING SB 201 A

187 PATRINO: Reviews provisions of SB 201 A.

200 YOUNG: Reads written testimony stating what the bill does, purpose of the original bill, and Water Resources Department concerns (EXHIBIT C).

290 REP. SOWA: Will you come in next session and give the legislature the opportunity to fund the water rights verification program if they so desire?

300 YOUNG: Yes.

312 CHAIR NORRIS: Refers to language in the original bill. Does current statute say that you will do this by July 1, 1992?

What was your impression of what the Senate meant by striking that language?

327 YOUNG: Senate did not want to appear to be falling back from the obligation to move on with the business of getting water right records in good order. There may have been some belief that not including that in the statute, put the agency in clear violation of statute, and was a way to call to the attention of the legislature the consequences of failure to fund that activity.

340 REP. MARKHAM: What is required in a transfer by this bill?

345 YOUNG: A seller would be required to reveal to the purchaser in writing when he accepted an offer, any evidence of the water right on the property. Upon the closing and delivery of the instrument of conveyance, the seller would be obliged to convey to the purchaser any of those permits, transfers, etc. The seller would also be obliged to notify Water Resources Department. on a form provided for that purpose, of the transaction and the water right involved in the transaction.

362 REP. MARKHAM: Does property change hands without the water right going with it?

368 YOUNG: Only if there is a deliberate determination to transfer the water right from the land.

A landowner who proposes to hold the water right and not transfer it with the property, would have to describe to Water Resources their intentions to transfer that right to some other property, or in failing to do so within five years, the water right would lose its standing because of forfeiture.

380 REP. MARKHAM: Can we transfer property without this requirement if the water right is going somewhere else?

390 YOUNG: If you sold a piece of property and elected to transfer the water right to another piece of property you owned, and went through the proper processes when you sold the property, you would be selling the property without a water right and there would be no need to demonstrate the existence of a water right that was not there.

395 REP. SOWA: It says you have to notify the purchaser if there is a transfer.

400 YOUNG: Can't tell if we intended a transfer off or a transfer on. We were trying to characterize water that was travelling with the land.

TAPE 63, SIDE B

003 REP. SOWA: Understands you go through a title search with property transfers. Do a lot of deeds include that there is a water right with the property?

008 YOUNG: A title insurance company will not verify the nature, adequacy, existence, and effectiveness of the water right.

015 CHAIR NORRIS: Explains his procedures as a realtor.

026 YOUNG: Procedure was correct.

The law has required elements of this report for some time, but it has been largely ineffective, and at no point has it been required that the Department be built into the loop as a matter of law.

035 CHAIR NORRIS: Should we say only right or right and/or permit? The inchoate right is not a permit.

040 YOUNG: The intent was to elaborate on what the more general term "water right" meant.

050 REP. MARKHAM: When you finish verifying water rights, will the Department guarantee the water right?

052 YOUNG: No. We will know who is the apparent holder of the property to which the water right is appurtenant. We are not guaranteeing the validity of the water right.

085 CHAIR NORRIS: Title companies rely on available records but do not certify to the accuracy of the records.

100 REP. SCHROEDER: Realtors in my area say they would like a bill like this.

130 CHAIR NORRIS: Asks Mr. Young to submit written information on the Department's concern about meeting the requirement of the statute.

137 YOUNG: Agrees to do so.

155 JERRY SCHMIDT, OREGON ASSOCIATION OF REALTORS: Submits and reviews written conceptual amendment to address their concerns with SB 201 A (EXHIBIT D).

168 GENOA INGRAM, OREGON ASSOCIATION OF REALTORS: The concern of our legislative committee was getting the actual hard copy of the water right before the contract was paid in full. The concern was that if the contract is not paid in full and the prospective purchaser disappears, the seller may never have the opportunity to get the original copy back.

180 REP. DWYER: Thinks you are trying to prevent something that I do not see as a problem.

184 REP. SOWA: Is there any sentiment for doing something like they do with vehicle titles?

190 INGRAM: Thinks that is what we are trying to accomplish by giving a copy. We would still have the problem of what happens to the original and need to devise some procedure for where the original would go.

200 REP. DWYER: Feels Water Resources Department would be the appropriate place to hold the original paper.

210 SCHMIDT: Agrees that Department needs to be kept apprised of all transactions to make it easy for the Department to track the transactions. We did not want to relinquish prematurely some of the rights that the owner of the property had.

215 CHAIR NORRIS: Have you discussed this with the Department?

216 SCHMIDT: No.

220 CHAIR NORRIS: Agrees that some notification is essential. Would title companies have a role in this?

230 SCHMIDT: Does not believe so.

235 CHAIR NORRIS: True record of the water right will remain with the Water Resources Department.

260 REP. SCHROEDER: Would there be any problem just indicating the number of the permit or certificate being held at the Water Resources Department?

270 SCHMIDT: Would have no objection to listing a permit or certificate number and notifying the Department of that number upon the transaction for tracking purposes.

285 REP. SCHROEDER: Would the realtor be responsible for giving false information?

295 CHAIR NORRIS: Asks Mr. Schmidt and the Department to work on a compromise.

300 INGRAM: We support the bill and wanted to bring that option before the committee to protect the seller should the transaction fail.

306 SCHMIDT: Would be pleased to work with the Department to facilitate the bill.

311 CHAIR NORRIS: Closes the public hearing on SB 201 A.

Opens public hearing on SB 202 A.

PUBLIC HEARING SB 202 A

325 BEV HAYES, WATER RESOURCES DEPARTMENT: Appears to review amendments submitted by the Department.

The Department is content with the bill as it came from the Senate. If that is not agreeable to the committee, we suggest repealing the 1989 law and starting over. Our amendments 202-A3 (EXHIBIT E) do that.

370 CHAIR NORRIS: The law before the 1989 law was such that if the water arose on a person's property, disappeared on that same property, with no intervening property, no right was required.

TAPE 64, SIDE B

CHAIR NORRIS: When we go back to the way the law was, there will be people who are placing themselves in jeopardy if they are not aware of the provisions of the law and sell off part of their property where the water disappears.

015 HAYES: We anticipate coming back in 1993 with a bill that will deal more broadly with the problems of how springs are managed.

065 SCHMIDT: The change in definition in lines 27 and 28 is of some concern. Moving the definition of spring water from ground to surface waters may cause problems for municipalities and individuals.

Need time to sort out conflicting statutes and agency definitions.

098 REP. MARKHAM: Does repealing what we did two years ago affect what

you are talking about?

105 SCHMIDT: I was looking at the original bill.

135 DAVE NELSON, OREGON WATER RESOURCES CONGRESS: We support SB 202-A-3.

Believes there would be Senate support for the 202-A3 amendments.

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

Opens work session on SB 202-A.

WORK SESSION SB 202-A

180 MOTION: REP. DWYER: Moves adoption of 202-A-3 amendments.

VOTE: Without objection, Chair Norris declares the amendment adopted.

182 MOTION: REP. DWYER: Moves SB 202-A, as amended, to the floor with a do pass recommendation.

VOTE: On a roll call vote, motion passes unanimously. Rep. Sowa is excused.

188 Rep. Norris will carry the bill.

190 CHAIR NORRIS: Closes the work session on SB 202-A.

Adjourns the meeting at 3:00 p.m.

Submitted by: Reviewed by:

Pat Zwick, Beth Patrino, Assistant Administrator

EXHIBIT LOG:

A - HB 3404-1 Amendment - Staff - 1 page B - HB 3465-1
Amendment - Staff - 1 page C - SB 201-A Testimony - Bill Young - 2
pages D-SB 201-A Amendment - Jerry Schmidt - 1 page E-SB 202-A Amendment
- Staff - 3 pages