

Senate Committee on Agriculture and Natural Resources June 10, 1991 -
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report a speaker's exact words. For complete contents of the
proceedings, please refer to the tapes.

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

June 10, 1991Hearing Room C 8:45 a.m.Tape 240 - 241

MEMBERS PRESENT:Sen. Dick Springer, Chair Sen. Joyce Cohen,
Vice-Chair Sen. John Brenneman Sen. Shirley Gold Sen. Bob Kintigh
Sen. Tricia Smith Sen. Eugene Timms

STAFF PRESENT: Peter Green, Committee Administrator Chris Beck,
Research Associate Jill Rader, Committee Clerk

MEASURES CONSIDERED: HB 3349-A (PPW) SB 2244-A (PPW)

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proceedings, please refer to the tapes.

TAPE 240 SIDE A

003 CHAIR SPRINGER CALLS THE MEETING TO ORDER AT 8:45 AM

PUBLIC HEARING AND WORK SESSION ON HB 2244-A

WITNESSES:Martha Pagel, Governor's Assistant for Natural Resources Gary
Lynch, Department of Geology and Mineral Industries (DOGAMI) Gail
MCEWEN, Oregon Department of Fish and Wildlife (ODFW) Jean Cameron,
Oregon Environmental Council (OEC) Dave Barrows, Oregon Mining Council
(OMC) Ivan Urnovitz, OMC Don Hull, DOGAMI

010 MARTHA PAGEL, Governor's Office, Gives testimony on HB 2244-A and
overview of written testimony detailing the proceedings of the mining
workgroup through each section of the bill EXHIBIT A.

141 CHAIR SPRINGER: In reference to Section 4, line 29 of HB 2244-A,
some people say chemical process mining shouldn't be permitted at all if
it causes any environmental damage. Was that discussed?

150 PAGEL: The intent was to prevent any lasting environmental damage.

163 SEN. TIMMS: Has there been coordination with the Department of
Environmental Quality (DEQ) and the administrative rules process
regarding water permits.

178 PAGEL: DEQ was represented in the workgroup. DEQ rulemaking on water quality standards was already in process when the workgroup first began meeting. The workgroup focused on bringing the agencies together; DEQ's standards are currently being addressed in their rulemaking process.

194 SEN. TIMMS: The only coordination then is the Department of Geology's coordinated review over the total project.

198 PAGEL: The Department of Geology is the lead agency, however there are some overall standards that apply to all water permits.

205 SEN. TIMMS: Section 4 is the section in HB 2244-A relating to the DEQ water permitting. What is the time frame of the total permitting process, including appeals?

223 PAGEL: Can't answer in terms of appeals. The time lines for the state agencies is a 90 day preliminary review which triggers a 225 day period before the final permit is issued, which can then be subject to an appeal.

244 SEN. TIMMS: For how many different permits is this? Can permits be done simultaneously?

252 GARY LYNCH, DOGAMI, All of the agencies believe they can complete the process in the allotted time frames.

265 PAGEL: The major accomplishment of HB 2244-A is to bring all of the agencies onto one time line.

276 SEN. TIMMS: How do you interface with the Feds in terms of time frame?

281 LYNCH: The Project Coordinating Committee facilitates the coordination between Federal Agencies and State Agencies.

314 GAIL MCEWEN, ODFW, Supports HB 2244-A with additional amendments. Submits written testimony with suggested amendments EXHIBIT B.

350 CHAIR SPRINGER: What are `known industry standards'?

355 MCEWEN: They aren't defined anywhere that is why ODFW is uncomfortable with the phrase.

383 JEAN CAMERON, Oregon Environmental Council, Submits EXHIBIT C an assortment of letters and articles supporting her testimony on HB 2244-A. -Lists what is favorable about HB 2244-A. -Gives reasons why HB 2244-A isn't strong enough. Compares HB 2244-A to SB 118 2. -Focuses on the issues addressed in HB 2244-A.

TAPE 241 SIDE A

004 CAMERON: continues -Is willing not to bring other forms of mining into HB 2244-A on the condition that DOGAMI will evaluate the DOGAMI board in the interim. -Explains the HB 2244-A20 amendment EXHIBIT D. -Gives overview of the different attachments in her written testimony EXHIBIT C. -Explains HB 2244-A21 EXHIBIT E; Supports this with attachments from her written testimony EXHIBIT C.

099 CHAIR SPRINGER:Asks a question about an article in the Idaho

Statesman in EXHIBIT C.

103 SEN. KINTIGH: Does the process described by the Fountain Group (an attachment in EXHIBIT C) use much water?

109 CAMERON: It sounds like it uses a different process but isn't sure if it uses more or less water. -The water use is crucial in arid landscapes. -Continues explanation of the attachments in her testimony, EXHIBIT C. -Comments on HB 2244-A21, EXHIBIT E; These go beyond what ODFW has requested. -Refers to HB 2244-A22 EXHIBIT F which proposes an Oregon Reclamation Standard. -Gives example of the White King Lucky Lass Uranium mine near Lakeview.

188 CHAIR SPRINGER: Are they requiring back filling for coal mining in Wyoming and Montana?

189 CAMERON: Coal mining has been required to do this since passage of the Federal Surface Mining Control and Reclamation Act in the 1970's. It is easier to restore a coal mine than it is to restore a gold mine. -Comments on HB 2244-A23 EXHIBIT G, relating to civil penalties. Dave Barrows agrees with the concept but not the amount. -Explains the rest of the attachments in EXHIBIT C.

253 SEN. TIMMS: Are you in support of the legislation as it is?

259 CAMERON: There are some good sections in the bill except for the standards section. Would be supportive with the suggested amendments.

275 DAVE BARROWS, OMC, Addresses Section 21 of HB 2244-A, the appeals issue. We hope to work this issue out later today.

285 IVAN URNOVITZ, OMC, Submits and gives overview of written testimony EXHIBIT H -The mining industry wants to be regarded as an asset to the State of Oregon. -Acknowledges that a state regulatory program for large scale mining could be improved. -OMC is comfortable with most of the requirements of HB 2244-A. -Wants to focus on Section 21 of HB 2244-A regarding how to fairly provide for appeals for the consolidated mine permit. -Two points of concern: Section 21 of HB 2244-A puts the company on hold during the appeals process; Those who don't want mining at all, no matter how responsibly it's done, could use Section 21 to shut down all projects.

TAPE 240 SIDE B

005 URNOVITZ: Continues -Section 21 of HB 2244-A is a fatal flaw in an otherwise fair, yet tough, bill. -Not approving a mining project unless there is zero risk to the environment is not fair. It hasn't been imposed on any other industry to date. -OMC supports HB 2244-A with changes to Section 21.

052 CHAIR SPRINGER: Does this bill effect Land Use laws?

056 SEN. COHEN: Where do the HB 2244-A19 EXHIBIT I amendments come from?

059 BARROWS: HB 2244-A19 is language from the mining workgroup. As of yet the workgroup has not reached a consensus on the language.

065 PAGEL: The Department of Land Conservation and Development did not participate in the workgroup meetings.

074 URNOVITZ: HB 2244-A will not usurp local authority.

078 CHAIR SPRINGER: Isn't there some consistency requirement a permittee has to go through?

080 BARROWS: That issue was not dealt with. This bill does not impact local or state land use decisions in any way other than the specific roles of the other agencies.

088 CHAIR SPRINGER: So the land use permits aren't caught up in this same process. It's my recollection that in 1987, HB 2990 said 'no dead fish' was the limit for hydro-electric development. Some would argue that you should be held to similar standards.

105 URNOVITZ: The hydro-electric industry probably hasn't been successful in meeting that standard.

110 CHAIR SPRINGER: There probably hasn't been a lot of development as a result of that.

115 URNOVITZ: A rigorous standard may be appropriate in some situations but because of the limited impacts of any mining operation, that standard isn't necessary. It is unachievable. -Agrees with the objective of zero mortality. -The industry standards language came from the House Committee. OMC supports it because it clarifies the intent. -Each mining operation may require different ways to reach industry standards.

198 BARROWS: Comments on OEC's Suggested amendments. EXHIBITS D-G. -HB 2244-A20 EXHIBIT D; Instead of this suggests deleting lines 29-31, page 2 of HB 2244-A. The language that is in the bill is the language presented to the House Committee by the agencies. -HB 2244-A21 EXHIBIT E, This effects language suggested by the agencies and the House. -Regarding HB 2244-A22 EXHIBIT F, OMC had proposed the HB 2244-6 amendments

EXHIBIT J, saying backfilling is acceptable in some situations. No other state requires mandatory backfilling and it is not always desirable. Mandatory backfilling is an unreasonable burden on the mining industry. Our absolute is the language in HB 2244-A. -Submits EXHIBIT K an article describing the benefits to wildlife of a mining pit. -Comments the on civil penalty section. \$25,000 is the maximum civil penalty that is acceptable to OMC. OMC proposed the inclusion of civil penalties in the first place.

346 DON HULL, DOGAMI, DOGAMI fully intends to look at the size composition and activities and responsibilities of its governing board this coming interim.

355 SEN. TIMMS: Concerned with Section 4 of HB 2244-A and what it does to mining. Would like to know what the impact of backfilling will be on the mining industry.

TAPE 241 SIDE B

PUBLIC HEARING ON HB 3349-A

WITNESSES: Frank Brawner, Oregon Banker's Association Mary Wohl, Department of Environmental Quality (DEQ) Kurt Burkholder, Asst Attorney General representing DEQ

005 FRANK BRAWNER, OBA, A conceptual compromise has been reached. After

the June 7, 1991 meeting the HB 3349-A4 amendments were drafted EXHIBIT M. Submits Environmental Protection Agency's (EPA) draft of rules on lender liability EXHIBIT L.

018 MARY WOHL, DEQ, Presents an alternative to HB 3349-A. -Lenders need clarification of what activities are permissible within the exemption from strict liability. -Whatever happens in Oregon needs to parallel the federal level. -Our recommended solution: adopt DEQ's previous amendments which direct Environmental Quality Commission (EQC) to adopt rules and incorporate whatever happens at the federal level. And direct EQC to look at rules that provide an exemption for fiduciaries in certain instances. Explains the reasoning behind these suggestions. -DEQ will act quickly to put together an advisory committee to recommend these changes to EQC.

050 KURT BURKHOLDER, Assistant Attorney General, representing DEQ, Speaks to the constitutionality of DEQ's suggestions regarding rulemaking and the EQC. DEQ's approach is legally permissible.

062 BRAUNER: Would like the emergency clause inserted in this legislation.

074 SEN. COHEN: Would like a clear definition of a fiduciary.

078 BRAUNER: Defines fiduciary.

082 CHAIR SPRINGER: Would this legislation let someone walk away from a site who otherwise would remain responsible?

088 BURKHOLDER: Gives specifics of the site in St. Helens the Chair is referring to. With this legislation the bank would be looked at as a lender and would have no direct impact. This bill would effect the trustee's responsibilities or potential liabilities.

121 WOHL: As the EPA rules are written now, the dividing line is if you are a de facto manager, you're still responsible, but if you can demonstrate that you haven't taken over management of the facility, you aren't responsible.

128 CHAIR SPRINGER: Has DEQ agreed to follow the Federal Regulation?

133 WOHL: No, not letter for letter as the amendments read now.

135 BURKHOLDER: Concurs.

142 BRAUNER: They won't be word for word but they will be parallel.

CHAIR SPRINGER ADJOURNS THE MEETING AT 10:35 AM

EXHIBIT LOG:

A - Testimony on HB 2244-A - Pagel - 4 pages B - Testimony on HB 2244-A - McEwen - 1 page C- Testimony on HB 2244-A - Cameron - 31 pages D - Amendments to HB 2244-A - Cameron - 1 page E - Amendments to HB 2244-A - Cameron - 1 page F - Amendments to HB 2244-A - Cameron - 1 page G - Amendments to HB 2244-A - Cameron - 3 pages H - Testimony on HB 2244-A - Urnovitz - 5 pages I -Amendments to HB 2244-A - Staff - 1 page J -Amendments to HB 2244 - Barrows - 1 page K -Testimony on HB 2244-A - Barrows - 1 page L -Testimony on HB

3349-A - Brawner - 13 pages M -Amendments to HB 3349-A - DEQ - 2 pages

Submitted by: Reviewed by:

Jill Rader Peter Green Assistant Administrator