

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.

Measures Heard

SB 201

SB 202

SENATE COMMITTEE ON
WATER POLICY

January 24, 1991 Hearing Room 137
3:00 p.m. Tapes 1 - 3

MEMBERS PRESENT: Sen. Larry Hill, Chair
Sen. Wayne Fawbush
Sen. Bob Kintigh
Sen. Dick Springer
Sen. Eugene Timms (Arrived 3:45 p.m.)

MEMBER EXCUSED: Sen. John Kitzhaber, Vice-Chair

STAFF PRESENT: Lisa Zavala, Committee Administrator
Bernadette Williams, Committee Assistant

WITNESSES: Bev Hayes, Water Resources Department
Douglas Farrow, Water Resources Department
Jan Boetcher, Oregon Water Resources Congress
Dave Nelson, Oregon Water Resources Congress
Reed Marbut, Oregon Water Resources Congress
Tom Simmons, Waterwatch

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TAPE 1, SIDE A

007 CHAIR HILL: Calls the meeting to order at 3:15 p.m. and reviews the day's agenda. Opens public hearing on SB 201. Closes public hearing and opens work session to adopt committee rules.

021 MOTION: SEN. FAWBUSH moved to adopt the Senate Water Policy proposed rules (EXHIBIT D).

023 VOTE: In a roll call vote, the motion carried with all members present voting AYE.

025 HILL: Rules adopted. Public hearing is opened.

030 BEV HAYES, WATER RESOURCES DEPARTMENT:
Will address what we think the bill does and the problems it addresses, as well as describing the background and status of the Water Use Reporting Program. Senate Bill 201:

--Allows the Department to keep their water right records up to date, by requiring that they receive notice when land with water rights is transferred.

--Allows reduction of annual reporting requirements in some instances and

extends deadline
to update water rights, which was imposed by the 1987 Legislature.

The problem is that the [Commission] will not meet the 1992 deadline due to insufficient funding.
The bill allows an extension of the time limit.

The 1987 legislature required verification of ownership for all water rights, including public entities and irrigation districts. The problem is that no procedure was provided to keep that information up to date once reported. The 1987 Legislation also had tight standards on information being reported and didn't give the commission flexibility in waiving the requirement when necessary.

We see some instances in implementing this law where it would be helpful to our Commission to be able to reduce reporting requirements or exempt some people in some cases.

The Department has talked to the realtors and they have identified an interest in this bill. Their legislative committee is meeting tomorrow and they may have some comments to make on the bill as it moves through the process.

There is current law that requires when property is exchanged and there is a surface water right, that the seller notify the buyer. We didn't catch that when the bill was being drafted, because that statute could have been amended to incorporate this new language. I believe the ORS site is 537 .330. This would, however, put the Department in that loop and it would expand that requirement to include ground water users and others as well. Doug will give a briefing of what and where we are in the reporting program.

092 DOUG PARROW, WATER RESOURCES DEPARTMENT:
We are just completing the third cycle of water use reporting. During the first cycle, we focused primarily on verifying who water rights belong to and insuring that the various entities and the water rights were matched up. Initially, our records showed who the permits were originally issued to and didn't show who the current water right holders were. We focused on verifying that the water rights were used by the public entities and to make sure that the records were correct with regard to the addresses.

The second year, which ended December 31, 1990, the reports were focused on obtaining data on water use. During those second two years we were lax in terms of the quality of the data that we were willing to accept. Instead, we're focusing on getting the entities into the position and habit of keeping track of how much water they were using and reporting it. The 1989 data and 1990 data (which is now being processed), are going onto a computerized database and are being used.

We are in the initial process of drafting more rules to better define what kinds of estimating methodologies will be acceptable by each of the entities to improve the quality of the data received from those entities. We will go to hearing and have additional comments.

142 HILL: Suggests going through SB 201 section by section with descriptions of what it intends to do and how it does it.

143 HAYES: Reads Section 2.

158 HILL: ORS 537.330 is the existing disclosure language and it was indicated that these must be reconciled.

160 HAYES: Not reconciled...we would have to ask Legislative Counsel if they thought that they could add this language or just reconcile it.

162 HILL: What will the new language that you are proposing accomplish that the existing language doesn't?

163 :HAYES: First of all, it puts us in the loop. There is no requirement under the existing law for the Department to be notified. And it only applies to surface water certificates; that wouldn't include permits and other kinds of water authorizations.

170 HILL: Would it be closer to your intent to amend ORS 537.330, to require notification of the Department and to include other water rights, besides surface water rights?

173 HAYES: That would be the case, unless Legislative Counsel had a reason to keep it separate.
Reads Section 3.

182 KINTIGH: What do you envision being reported, other than the volume of water?

187 PARROW: What we ask the entities now are:

--What is the quantity of water?

--What is the major type of use, i.e. irrigation or municipal?

198 HILL: The current statute provides that the reporting shall include certain things, but need not be limited to them. The language of section 3 modifies "Provides rule-making authority and allows modification of the criteria", which is further amended in Section 5 (ORS 570.099). You currently feel you don't have rule-making authority? I thought you had general rule-making authority? Why do you need a specific rule-making authority this session?

211 PARROW: What we were trying to do is to give the Commission the authority in some specific, prescribed situations where they weren't mandated to require all of the information under ORS 579 .099. And to allow them some flexibility in terms of the frequency of reporting, i.e. the entity may have to report only every five years.

223 HAYES: The language here is very specific and it doesn't allow the Commission the flexibility of not requiring the Annual Use Report.

231 HAYES: Reads Section 4. We think the change of deadline for verification of water rights from July 1, 1992 to July 1, 2002 is necessary due to the current staffing levels that have been funded by the Legislature.

238 KINTIGH: What would this require on the part of the landowner? In requesting the person to verify that he owns the land, is that person going to have to send in a copy of his deed? This is Line 2 and 3 on page two.

244 HAYES: That is existing law. The only thing we're changing in the existing law is the year in which we need to verify this information.

247 KINTIGH: What do you require...what would you have to submit for proof?

254 PARROW: We can't address it in terms of private land owners. When working with the public entities, we didn't require them to send in proof of ownership, but rather

wrote them asking if it was in fact them and if it is their water right and if they are using it. As far as private land owners, we're not sure. But we are working fairly heavily with various tax records and tax lot information, and trying to overlay that with the water right information to at least get current addresses for the water rights owners.

267 KINTIGH: If you worked with the tax records and saw that I owned the land and water rights, would you still need to write to me?

269 HAYES: We match our water rights records with the tax records. But that doesn't tell us if the owner of the land knows they have a water right or if they are using the water right. We want to ask if they agree that this is the water right and if they are using the water rights. The verification process helps keep our records straight.

282 HILL: Is verification made by the property holder who also holds the water rights and who submits evidence to the Department?

284 HAYES: No. The process is that we take water right maps and overlay them on county tax lot information maps. We then get a list of the current owners and we send them a letter saying that according to the files they are the owner of this land and water right and that this is where the water is used and how much water is allowed and asking if they agree with that. The owner is required to answer us. If they say they are not using the water, we then ask if they want to cancel it.

296 HILL: If they aren't using it, aren't you supposed to cancel it and let junior water right holders have first dibs on that water?

299 HAYES: The Department considers the rights abandoned and forfeited if it has gone more than five years without use.

301 HILL: Is this done on a basin by basin process while you are doing a basin plan? Is it scattered all over the state, or is it county by county?

304 HAYES: Because of limited staffing, we started with the public entities. Also, the 1987 law requires that ground water pumpers with water right permits conduct pump tests. We are now in the process of verifying ownership of these groundwater users. We are not at the point in which we are looking at surface water irrigators. In the Willamette Basin, we are in the process of verifying the water rights.

320 HILL: Your tax lots are in a database and can be printed out and can be presented in a variety of ways. Is water right information in a database or on paper?

326 PARROW: Water rights information is all on a database and can be digitized and used in some cases. We can overlay the tax lots and map them with the water rights, but we can't do that throughout the state.

337 HILL: Why is there a limitation? Why can't we do it in most of the state?

339 PARROW: In order to actually map the water rights, that information has to be digitized.

345 HILL: It isn't the verification process that takes so long, but the entering of the data and digitalizing the information that takes time. My initial response is that

ten years is too long. I am not willing, at this point, to agree to an extension of ten years. Have you explored ways to get it accomplished in two years?

356 HAYES: We have just been asked to submit a 15 percent cut to our agency budget by the Legislature and those positions for verifying water rights are not among them. But I believe we do not have the resources, without additional funding and staff, to digitize all the information and to update all of the files in a two year period. I think that it is possible to shift priorities. Explanation of how the water rights work.

369 FAWBUSH: When was that 1992 date set?

371 HAYES: In 1987.

373 FAWBUSH: How much of what there is to do is completed?

377 HAYES: Can't give a percentage. The date was put in the legislation by the substantive committee and when Ways and Means approved the budget, they gave some fraction of the staffing to meet that deadline. The Department originally had a decision package submitted to the Executive Department and Governor for consideration to speed this process up, but it fell out due to Measure 5 cuts.

395 FAWBUSH: Don't you have an approximation of what you've done?

397 HAYES: We know about how many water rights have been done. That information isn't available at this moment.

404 FAWBUSH: I am curious to know how many you've done since 1987 and how many are left to be done.

408 HAYES: We believe that verification of all public entities has been completed and that is approximately 10,500 water rights. We have verified some water rights in the Willamette Basin, are in the process of identifying tax lots in the Klamath Basin, and have verified some ground water rights, with the total being as high as 15,000 to 20,000.

420 FAWBUSH: Out of 80,000 water rights, 20,000 have been verified. Half of the first part completed are on public water rights? Are those more difficult than the private? Is there any time difference in doing those versus other water rights.

429 PARROW: Public entities are probably easier than the private, in that one can get addresses of most public entities.

436 FAWBUSH: What is lacking in the process of verification of water in the state?

442 HAYES: Background information given. In 1985 we supported a water use reporting bill that was defeated. Out of that session came instruction to the Department to look into the issue and come back with recommendations in the 1987 session. The compromise made with the agricultural community, who opposed the idea of metering and water use reporting, was that we would instead verify the rights (identify the owner of the rights, explain the content of the files, and come to an agreement on the nature of the information). We could then confidently tell people how much water is thought to be used, where it is used, and when it is used.

This was the rationale for requesting the water use reporting bill

originally. There is no requirement for people to notify the Department when land is divided, property is sold, or they stop irrigating some portion of the land. Therefore, the records are quite confusing and aren't necessarily accurate information.

487 HILL: There is work needed to make me confident that ten years is the correct choice.

TAPE 2 SIDE A

028 HILL: In Section 5, which relates back to Section 3, I don't understand why Council gave you a separate section for rulemaking. This would permit the [Commission] to establish criteria for the waiver of reporting requirements, if reporting is not necessary for effective water resource management. The reporting currently is: The amount of water used by the entity, the period of use, and the categories of beneficial use. We don't require private water right users to report on an annual basis; that should be a reason to reconsider annual reports by the public water right holder. What would be criteria for the waiver of the reporting requirements?

045 PARROW: The criteria would be if the water is not consumptively used and simply lost to evaporation. One example would be stock ponds, where very small quantities of water are involved. We have something less than an annual reporting period for them because quantity of water going into and out of them is fairly constant. We still have a need to periodically verify that they are actually being used, but it is unclear what value the data received is to us (e.g. Bureau of Land Management reporting on their thousands of stock ponds). It just inundates us with paper and creating a significant reporting requirement on the part of the BLM.

059 HILL: I thought the BLM didn't have to obey State law...It's Federal land. I didn't know that our reporting requirements applied to the BLM.

062 HAYES: Yes, the Federal government is required to apply for water rights and is issued water rights through us.

065 HILL: Calls Jan Boetcher and Dave Nelson, Oregon Water Resources Congress to testify.

070 DAVE NELSON, WATER RESOURCES CONGRESS (OWRC):
Background: OWRC is an Association of irrigation districts, water control districts, and other districts similarly situated throughout the state. Membership provides water to most of irrigated agriculture (particularly in Eastern and Southern Oregon). In the Willamette Valley there are several irrigation districts and water improvement districts that provide irrigation and drainage services to farmland.

083 JAN BOETCHER, WATER RESOURCES CONGRESS: (EXHIBIT A)
The certification that's required in sales has been helpful to the districts in getting new people into the offices, explaining what's happening, and how they need to respond to that information. Because the records are more definitive and the smaller portions of land, the paperwork burden is heavier than for the State. We support proceeding with the language and think that ORS 537 .330 could be amended. Kit Lombard, Legal Counsel has attached the amendment.

We suggest that the Department devise a standard form that would be universal to everyone.

Districts currently have different forms. Supports that the Department should be in the loophole.

109 HILL: Summary of amendments submitted. (See Exhibit A) Regarding Line 20 of proposed amendment, "...seller shall notify the Water Resources Department on a form provided by the Department of the real estate transaction and of the water right or rights involved in the transaction", it raises a question of fiscal impact upon the Department. Would it be acceptable if we had it provided in a form prescribed by the Department, rather than on a form provided by the Department?

121 NELSON: Acceptable.

125 HILL: Define permit transfer approval over a certificate. Any questions on this proposal?

126 TIMMS: In the overhead that it creates, what is the biggest problem?

130 NELSON: That they are not being notified. All property owners are not notified. Also, the Department doesn't know when a water right changes hands. This would require it to be reported to the Department by the seller.

138 TIMMS: What does this do for local water masters in each area?

146 NELSON: The water master, through the notification to the Department, would have an accurate record of the change of ownership.

150 TIMMS: Also, it creates a situation where a proper description of that water right is available.

154 NELSON: Everyone has tried to resolve the problem of transferring of ownership without proper conveyance of a water right to the purchaser. This bill intends to clarify it, and the amendments intend to make it more proper and correct.

163 HILL: Comments. Additional changes.

167 HILL: What about verification and the new deadline for verification. Is lack of verification a significant problem in parts of the state where there is intense competition over water rights?

159 NELSON: Not an enormous volume of problems, but it may present a problem that the water master would have to resolve. And that verification would upgrade the Department's records of who did own that particular water right. That becomes a policy and money balancing issue that the Legislature has to deal with.

182 BOETCHER: Gives information on what is being done in the districts. Our district is under HB 311 1, passed in 1989. We are going in and updating their own records. This becomes an extensive and expensive process when applied to all of the private water rights.

190 HILL: But it is necessary for the appropriate management of the resources; especially for the junior water right holders, who may be denied their water because the basin hasn't been cleaned up.

194 NELSON: OWRC is in the process of drafting a more comprehensive irrigation district management bill, which we'll be asking this committee to introduce. The bill will allow districts to more directly manage the water within the boundaries of the district.

200 HILL: The committee will take that under consideration.

202 KINTIGH: Are all water rights for water districts tied to certain pieces of land or do you have and use X amount of water within a boundary? Are individual parcels identified in a water right?

192 NELSON: A water right is pertinent to specific pieces of property. There currently is on the statutes authority for the individual to move the water around in a quarter-quarter section or a 40 acre parcel (They can irrigate this 10 acres this year and another the next). Part of the concept of the bill would give the district some authority to move the water around within the lands of the district because crop patterns and crop rotations have changed in the last 50 years.

219 TOM SIMMONS, WATERWATCH

We support the concept of better records. The current process is a convoluted, complicated and expensive way to get the water reported and is not necessary. Sub-section 2 of section 2, line 9 states "If the water use permit...is available". I can't imagine it not being available and if it is not, then the water shouldn't be used. Sub-section 4 of section 2, line 16, is read. Don't understand it because it amounts to about half the water in the state. Perhaps the irrigation districts are doing something now in other ways that gives the Water Resources Department specificity on where the water is being used within the district.

Doesn't see a need for Section 3 because it is in codified legislation ORS 536 .027 (1987) requiring them to make rules.

261 HILL: ORS 536.027 Rules and Standards is read. You feel this covers that need?

273 SIMMONS: I have some questions of verification on page 2, line 8. Does this mean that in 10 or 20 years from now, since we are waiving this requirement, that our records will become out of date?

284 HILL: The intent is probably to allow more recent and up to date certificates to be exempt from an additional verification process, but I don't think that the intent is to exempt the commission from updating those when reasonable. You can talk to commission about that issue.

295 SIMMONS: Regarding Sub-section 3 of Section 5, I would like to hear the Department's interpretation of that discretion they are asking for and get it on the record.

305 HILL: Calls the Department and the Commission back up to answer Sen. Timms' question.

313 TIMMS: Restatement of question: How would this process help if a person were to sell a piece of property and the property is shown to be of value to buyers. The buyers in turn go to check the water masters records. This would be another check. But often they are mischarted. Must make sure that the water rights are correct; this is the key to this whole issue. Would this help the water masters or help us coordinate the whole program?

337 BOETCHER: Adding this section to the law will help the water masters manage water better.

339 TIMMS: Water rights are important and this way they have to take care of it and it has to be put in there if there is a water right attached to the property.

351 HILL: Closes the public hearing on SB 201 and opens the public hearing on SB 202. SB 202 was also requested by the Water Resources Department.

371 HAYES: Reed Marbut, Manager of Adjudications is responsible for implementing the spring registration law that passed last session.

Gives a brief history of the bill and what the bill does. It deletes references to groundwater and it clarifies that the right to spring water is there if the use began before January 1, 1991 and the water did not flow off the property when the use began. The problem is SB 261, which we introduced and was passed. In the course of the drafting and redrafting, we have language which refers to groundwater, when the Department has always regulated springs that flowed to the surface as surface water. Approached Legislative Counsel about including it in their neutral corrections bill that they do every session, but they felt they couldn't do that.

Also, we want to clarify that you can register this spring, if when you first owned the property the spring did not flow off the property. The reason is, for example, if you have a spring that does flow off the property (the headwater of a creek or some other kind of tributary) and it has had water rights issued on it for some time, you don't want to put somebody at the head of the line in priority when in fact, it has been considered public water and has been open to appropriation.

452 HILL: Currently, the springs that arise on these properties and remain there may be utilized without a water right certificate. Is that correct?

TAPE 3 SIDE A

003 HAYES: Correct. You can apply for one and you can register your claim. But it is optional.

005 HILL: This grandfathered in that the people who have been using their spring water file for their water rights.

008 HAYES: The bill passed in 1989 did that.

010 HILL: This continues that?

011 HAYES: Yes, it doesn't change the way we regulate springs, but clarifies that this is what is being done.

017 HILL: What does section 3 address?

018 HAYES: This actually only carries over a provision that was passed in 1989 that allows us to settle a dispute between two exempt water users (domestic ground water users) by using the well log to determine the priority date.

024 HILL: On line 24, are you applying this dispute resolution to ground, surface, and spring water specifically?

026 HAYES: We already have that. We are just carrying that reference through so that we do not have one part of the statute defining existing water rights of record in one way and another part of the statute in another.

032 TIMMS: Spring Creek, for instance, is a stream that comes out of the ground and there are probably people with water rights all along it. Have we passed a new law

that changes the ownership for the use of that water where the spring originates? What are we doing with this?
If a stream originates and does not leave a person's property, that person does not have to file, but can. If it goes outside of that person's land, does the person file on the water use of the water he uses? Is he the primary water user and everybody else is a junior water user?

044 HAYES: No. In fact, when SB 261 was passed, the intention of that bill was never to change the management on a stream so that the owner of the property where the spring arose would then be free to the water to the detriment of those downstream who have water rights. We want to state clearly in the bill that you can register old claims and claim the spring water used, if when you bought the property the spring was solely on the property and did not flow off.

051 TIMMS: Are you trying to take out the part of the bill passed last session that worked and allowed it to happen?

053 HAYES: It didn't allow it to happen; it was unclear what was meant. We want to clarify that we didn't intend for someone to be able to have precedence over all the other water right users.

058 TIMMS: This bill hasn't become a statute? When did it go in to replace the bill passed last session? How many days after?

060 HAYES: It goes into place 90 days after. This explains the problem in regulating springs and why the bill was requested in 1989. The law has said that if you have spring water that arises on your property and it does not flow off your property, you do not need to file for a water right. If it does flow off your property, it is public water and open to appropriation by anyone down stream.

We were trying to address a situation in which a property owner with a spring that does not leave the property is being used and your neighbor comes and asks if they can use some. You then pipe water off your property and it goes off your property. The neighbor then files for water rights. The spring dries up and the neighbor comes and says they are not getting water. Who do we shut off? Do we shut off the property owner and not the neighbor or. We are trying to correct this situation.

081 REED MARBUT, WATER RESOURCES DEPARTMENT:
The purpose is to make this bill more easily interpreted, especially by the people who have to understand their rights for a spring versus the rights of an appropriator downstream.

089 HILL: Go over the amendments and explain what it does that the original language doesn't do.
(Exhibit B)

092 MARBUT: On page 1, line 15, the word "groundwater" is stricken (from original bill). On line 17, the words "when the construction of the well was begun" is stricken. The purpose of those two portions of the bill were to remove reference to groundwater.

The first amendment (Exhibit B) completely removes reference to groundwater.

107 HILL: After an explanation of the second amendment, explain the difference between the way you handle ground water, water rights certification and the way that this

would handle spring or
seepage water right certification.

114 MARBUT: Amendment 2 (Exhibit B) In reference to ORS 537.211, it is a key portion of ORS 537 of the 1909 water code. However, the purpose of Section 3 is to present to an owner of a property that they may file for a permit under the 1909 code. The process is described in sections ORS 537.110 through 537.270. Anyone who files for a permit also files an application, presents a fee, receives a permit, has provisions for proving up on that right, and then receives a certificate. That certificate is subject to loss by cancellation through our abandonment criteria.

135 HILL: Summarize the differences between a spring or seepage certificate process and a ground water certificate process. Why have two separate series of sections addressing the process of obtaining a certification for those two types of water?

140 HAYES: For new applications for water rights, there isn't a lot of difference. Some of the conditions and requirements might change. We're talking about trying to claim an old right. When you talk about spring registrations, you need to talk about that process and not the regular application process you use for new rights.

151 MARBUT: The basic philosophical difference is that ground water shares a characteristic with running streams, in that it is the property of the people of the State of Oregon. And in order for a person to acquire a ground water right, they must go through the process of being an appropriator from under the ground. The courts have long held that springs that arise on a property and do not leave are exempt from the concept of being the property of the people of the State of Oregon and they are, in fact, riparian rights (they belong to the people who own the property around the spring). The purpose of this legislation is to clarify the common law rule that the courts have handed down.

168 HILL: But if I have a spring on my property and it is not producing as much as I'd like, so I deepen the spring, at what point does it become a well?

171 HAYES: It is difficult to know. It is on a case by case judgement as to whether its is a well and therefore subject to well construction standards.

185 MARBUT: I would like to assess it but without having a registration process or people voluntarily participating in the permitting process, we don't know. We don't know where they are or if people are tampering with the springs in a way that could invade ground water and thus invade someone else's right and the public's right. We think that through the registration process we will be able to get a handle on the magnitude of the spring issue and maybe address it.

193 HILL: A well does not necessarily have to be vertical, correct? e.g. Drilling back into a bank to tap seepage water.

197 HAYES: It is on a case by case basis.

211 TIMMS: It is an interesting situation because of the transient nature of these springs due to seasonal changes, draughts, etc.. If it is on your own property, you don't have to register the water right for that spring.

221 HAYES: That is true, if it does not leave your property. But it may be

to your advantage to register it and get a priority date and then be protected.

224 TIMMS: You must be careful on wet years, when it leaves your property.

225 HAYES: If the water leaves the property, for any reason, you wouldn't be allowed to claim it and fall into this special category of spring users described.

228 HILL: Are the headwaters of the Metolius River a spring water?

230 HAYES: It is a spring, but it is public water. You would not under current law be allowed to claim it.

236 KINTIGH: What is the current fee for registering a spring?

240 MARBUT: It is prescribed in ORS 537.

241 KINTIGH: Do you have a dollar figure?

265 HAYES: General fees are applied. I don't know if that includes the spring registration fees or not.

272 MARBUT: It is the same as ORS 539.081, thus the reference to Chapter 539 in Section 1 of the bill. And ORS 539.081 sets forth the fees for registration. Note that the sections are broken down into subsections, and the fee is broken down into specific dollar amounts.

283 MARBUT: There is a minimum fee of \$30.00.

--Irrigation: \$2.00 per acre, up to 100 acres. \$1.00 for every acre thereafter.

287 KINTIGH: What if the person had several hundred acres of land with numerous springs on it. Do they have to register each spring?

291 MARBUT: Our policy is that a separate claim must be filed for each priority date or non-contiguous ownership.

294 KINTIGH: What if it was contiguous?

295 MARBUT: No. One filing, one fee. But they would have to identify each individual spring, giving details of the spring and the flow. The way I interpret the rules is that they would not be required if they had ten springs to register them all. Also, they would not be able to stack the water rights, which is the rule in Oregon. They would have a duty of water limit.

306 HILL: Do all the fees go back into administration?

308 MARBUT: The purpose of the fees is for us to process not to buy the waters. So yes, the fees are our operating budget to process the applications as they come in.

310 HILL: The fees don't go into the general fund.

311 HAYES: Last session we did get approval from the legislature to dedicate all application fees to Department programs, and the adjudication statutes that passed in 1987 also allowed us to use those monies for final adjudication. So I think in both cases we keep the fees now.

320 TIMMS: Are we going to get an overview of fees?

323 HILL: We haven't scheduled an overview, but if there is an interest by several of the members we can schedule one.

325 TIMMS: My automatic question is whether the whole program is completely

fee funded.

327 HAYES: No not at all, not even our water rights section. We are managing with the money that we have collected to fund two or three positions. We have a little money left over, and our budget now does anticipate that we will be able to switch more of our staff to fee supported than we have in the past.

337 HILL: This is a case where general funds have subsidized the program for a considerable length of time. It might be appropriate to talk about fee levels in context with a successful Department program.

346 HAYES: We were asked by the Governor's Transition Team to talk to them about pursuing a water management fee. I think the Governor and her assistant for Natural Resources are thinking of getting a group together, maybe this session, to begin the discussion with the idea that in 1993 we can pursue some level of funding for the Department from fees.

360 DAVE NELSON, WATER RESOURCES CONGRESS: (EXHIBIT C)
Our lawyer, Kip Lombard, looked at the existing statutes and looked at what this bill did. The result was a series of cross references that went down through the bill that tied together both the surface water and the ground water statutes. His recommendation was to scrap the whole thing and start over. With that, we have presented a statement (Exhibit C) from Kip to the committee to look at. It would probably be a waste of time without looking at the Department's proposed amendments that may have clarified some of the cross referencing between ground water and surface water statutes. Our basic position is that the bill serves a useful purpose. Our intent is to simply make it work and work properly without any enormous cost to the landowner.

409 SPRINGER: When did you first get a chance to see this? Were you aware of it earlier?

411 NELSON: We heard that the bill was coming and we saw the language in draft form some time ago. We just saw it about an hour ago and that is why it is a little difficult to comment specifically on it.

418 SPRINGER: How many applications have come in since the legislation was passed in 1989? Does anybody have a ballpark sense of how many have been processed?

424 HAYES: I think we've had four or five.

428 NELSON: We are very pleased to hear the Department's comment that a number of springs could be included on one application. We were of the opinion prior to that that it would require a separate application for each spring and that there was a fee associated with that, which simply was discouragement for any property owner to go through the process.

441 SPRINGER: If that is the case, and I agree with what has been said, I think that we ought to put that in writing so that someone reading the statute will be able to know that without having to inquire further. This would help avoid any further confusion or misunderstanding, which seems to have been considerable on the subject.

TAPE 2 SIDE B

028 TIMMS: Where did the bill come from last year?

038 HILL: There seems to be a consensus to have a better way to figure out

what is ground water
and what is spring water. This is one attempt and it seems that you are
all willing to work with
the Department to come up with some other language; I encourage that.

042 TOM SIMMONS, WATERWATCH:
In difference to the carriers of both sides of this body, if this bill is
going to go through, write
it so that they can understand it and explain it on the floor.

046 HILL: WaterWatch has no objection to the bill. Closes the Public
Hearing. We'll schedule an
overview on fees.

062 HAYES: Do you want to know what we are collecting in fees, where it is
going and how it is
spent? Also, do you want to know about any proposed legislation?

064 HILL: Only about any gross new directions or big picture items.

065 TIMMS: It is interesting and controversial that they would say in
hearings of where we are in
regards to those administrative rules.

070 SPRINGER: An excellent suggestion. I would like to know how we are
doing on that, step by
step.

071 HILL: We will spend at least one meeting with several agencies to look
at the instream water
rights specifically.

073 SPRINGER: How about our basins.

074 HILL: Why don't we start off with a 45 minute Department overview. I
plan to dedicate one
meeting to the instream water rights issue and have Parks, DEQ, Fish and
Wildlife, and the
Water Resources Department in to talk about it. Also, we could get a
report of separate breakout
of your progress on the basin plans. Hearing closed.

Submitted by: Reviewed by:

Bernadette Williams Lisa Zavala
Assistant Administrator

EXHIBIT LOG:

A - Testimony on SB 201 - Jan Boetcher - 2 pages
B - Amendments to SB 202 - Bev Hayes - 1 page
C - Testimony on SB 201 - Jan Boetcher - 2 pages
D - Proposed Committee Rules 1991 - Sen. Hill - 2 pages