

Measures Heard  
SB 208  
SB 240  
SENATE COMMITTEE ON  
WATER POLICY

January 29, 1991                      Hearing Room 137  
3:00 p.m.                              Tapes 4 - 5

MEMBERS PRESENT: Sen. Larry Hill, Chair  
                  Sen. Wayne Fawbush  
                  Sen. Bob Kintigh  
                  Sen. Eugene Timms  
                  Sen. Dick Springer

MEMBER EXCUSED: Sen. John Kitzhaber, Vice-Chair  
STAFF PRESENT: Lisa Zavala, Committee Administrator  
                  Bernadette Williams, Committee Assistant

WITNESSES:        Bill Young, Water Resources Department  
                  Barry Norris, Water Resources Department  
                  Audrey Simmons, WaterWatch  
                  Libby Henry, EWEB  
                  Denise McPhail, PGE

Jill Zarnowitz, Oregon Department of Fish and Wildlife  
Dave Nelson, Oregon Water Resources Congress  
John Gordon, Water Resources Department

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TAPE 4, SIDE A

006 CHAIR HILL: Calls the meeting to order at 3:15 p.m.. Opens public hearing of SB 240.

042 BILL YOUNG, WATER RESOURCE8 DEPARTMENT: (EXHIBIT A) Summarizes SB 240. The bill proposes to establish new fees to cover the cost of processing and evaluating new hydroelectric project applications.

--It also allows our commission to hire outside consultants if needed.

--It tries to deal with recovering the cost associated with reviewing and processing the hydroelectric applications.

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The initial problem of the bill relates to increasing the operating fees on power claims. Those would be power projects that existed prior to 1931 - 1932, and would cover all the publicly owned power claims in the state of Oregon. It proposes to increase the fees from the current level of \$.30 to \$.45 for the first 50 theoretical horsepower (h.p.) and would increase from \$.20 to \$.30 the charge on the theoretical h.p. above 50.

It does not propose to increase the annual license fees on private projects, because those fees have been adjusted over a period of time and those fees are reflected directly in the issued license. Fees that are currently collected pass through to a fund created by the Legislature in 1985 (effective 1987) for the use by the Department of Fish and Wildlife (ODFW) for their review of hydroelectric activities. We are proposing, with these changes, to increase the amount of money that we would receive, but not to erode those dollars that are already going to ODFW.

One of the outstanding issues that is not dealt with in this bill is the question of what to do with relicensing. That will start occurring in

Oregon in 1995, with a series of private facilities to be relicensed over a period of time, typically 50 years after the issuance of their initial license. We've proposed here that we would study the kind of activities that our commission will need to be involved in that relicensing, including the anticipated costs. We are expected to report back to the next legislative assembly on that task.

110 HILL: Are all the licenses on a 50 year cycle?

111 YOUNG: For the most part they are. There may be exceptions, but that is the standard and also the maximum period we can issue such licenses.

114 HILL: Is that determined by state statute or federal permits?

115 YOUNG: State statute.

115 HILL: Which hydro facilities are subject to this?

116 YOUNG: The relicensing process would apply to all privately owned hydroelectric activity. The public entities, such as cities, irrigation districts, or anything that would qualify as a municipality, would not get a hydroelectric license, but a water right permit for the use of the water. Those permits are not subject, in the state process, to an actual review and renewal process.

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132 TIMMS: Define theoretical horsepower (h.p.).

141 BARRY NORRIS, WATER RESOURCES DEPARTMENT:

Theoretical h.p. is the theoretical power that can be produced by a power plant in terms of h.p. by multiplying the actual height of the water by the total amount of water that moves through the penstock. It is called "theoretical" because in actuality a plant doesn't produce 100 percent of the power available. It is then changed into theoretical megawatts. Theoretical h.p. is always going to be the same, as long as the head and the height of the water is the same and total quantity of water is the same.

170 TIMMS: In Owyhee, the system is more efficient than other power plants. Therefore, you get more megawatts out of one than another, so you take it by theoretical h.p. to make it fairer to each installation. Is that a correct summation?

178 NORRIS: I believe that the way it was originally written in, theoretical h.p., is because it is an easy and exact thing to calculate at a specific site.

189 TIMMS: \$.30 to \$.45 for the first 50 theoretical h.p. would relate to what kind of an increase when translated to megawatts?

195 NORRIS: A megawatt of power under the existing rate structure would be about \$273.00. A megawatt under the proposed rates would be about \$410.00. Roughly a 50 percent increase is what we propose.

210 YOUNG: What we are attempting to do is to define these sources of funds. We have listed on the bottom of the outline (EXHIBIT A) some of the things we are expected to do. We are not currently well enough equipped in our department to do even an audit review of what we understand to be the current activities of the hydroelectric development that has occurred. They would argue that they have the dominance rule when dealing with hydro electric. All the more important that we do a good job in conveying the State's interest into that process. This is a revenue measure that proposes to collect somewhat more money from the power claim holders in the State of Oregon than is currently collected. I would expect that our commission would undertake a look at rulemaking to look at the licensing process of issuing licenses to new applicants.

261 HILL: What is the Hydroelectric Task Force?

262 YOUNG: It is a subgroup created by the Strategic Water Management Group and is the mechanism by which the Strategic Water Management Group tries to coordinate the six or seven agencies which would have an interest in water or

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hydroelectric power.

267 HILL: Explain this task force.

268 YOUNG: It was created in 1983, restructured and recreated in 1985 and called the Strategic Water Management Group. The purpose of that bill was to insure coordination among about 12 agencies, all who have a role to play pertaining to water.

284 TIMMS: What types of projects are we talking about when referring to hydroactivity? Do we see any real development?

292 YOUNG: In 1985, a bill was adopted that established restrictive standards for new hydroelectric development in the State of Oregon.

We have two projects within the Owyhee Irrigation District, Owyhee Drop and Mitchell butte, that have developed since the passing of that bill. There is one on the Deschutes river, which is operated by the Central Oregon Irrigation District.

We have some activity ongoing, they tend to be small projects. The Salt Caves on the Klamath River is the largest. There is less activity than in the late 70's, but we see the coming forward of some of these projects to be reviewed. Some of them haven't received a license or a permit from us.

354 TIMMS: One of the biggest problems of the Water Resources Department in 1983 were all the small hydro projects.

368 YOUNG: In the mid to late 1970s there was an enthusiasm and substantial rush at the State and Federal level encouraging hydroelectric development. We had a large backlog of those projects to work through. The effect of Measure 85, when passed, was to place very restrictive standards on hydroelectric. But less demanding was the no net loss standard in areas with native fish and other amenities, which weeded out the applicants. We worked the number down substantially, but still work with some small places.

392 TIMMS: There is a lot less hydroelectric development today than in 1985. Now we're adding permits. At that time did we have permits?

398 YOUNG: The WRD has had permits and have processed them without the ability to recover the cost associated with doing that.

402 TIMMS: You had more cost back then than you do today, yet we are looking at a process to increase your revenues today when you don't have near the problems with overall hydro. Is that true?

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406 YOUNG: In some sense it is true. We are suggesting that when those applications come in, we ought to be in a position where the benefitted party (the applicant) asks to use a public resource and pay for the cost of evaluation, what manner of evaluation and the conclusion as to whether or not we go with it or not.

TAPE 5 SIDE A

006 KINTIGH: I am curious as to who is doing the project on the Clackamas?

015 YOUNG: That project was started by a private individual. We are now dealing with another party.

015 KINTIGH: What would be the disposition of the power? Do they sell it to someplace already distributing power?

017 YOUNG: The intention in that area would be to tie into the distribution network in that area.

021 HILL: Are you trying to make the evaluation process self supporting or are you simply trying to reduce the impact? Would this pay for the analysis?

024 YOUNG: We are attempting to become self supporting. Increasing fees would allow us to undertake this grabbag of things we are doing in separate departments for project analysis. We could begin to create some dollars that would be available for us to do things including making the billing and collection of these fees more efficient.

029 HILL: Tell us about the ODFW allocation of 2/3 or \$530,000, whichever is greater, going to the ODFW.

031 YOUNG: Dating back to the 1930's, monies from license fees and power claims simply went into the general fund. It was only a revenue generator associated with someone using the public water. In 1985 ODFW came forward and explained that they were spending a lot of money reviewing hydro activities and that it was beginning to come out of fees collected from other areas. There was a need for some money to look at new applications and continue ongoing supervision from a fishery viewpoint of existing facility. Were told in 1985 that they couldn't give up these funds to the general fund, but beginning in 1987 when collected by the Water Resources Department, they would go into a separate fund managed by ODFW for the purposes of reviewing those projects.

We are attempting to hold ODFW harmless and not poach any funds that the Legislature characterized appropriate for them. But if we collect additional dollars, we ought to be able to

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keep them for the purposes described.

050 TIMMS: Fees in the operating...operating permits (tape inaudible) For example, Brownlee Dam in Hell's Canyon. When it is between two states, how do we handle this type situation?

058 NORRIS: The bill went to one half of the generating capacity t tape inaudible) but not sure if it is all cases.

064 TIMMS: Does Idaho have the same fees as Oregon? Are we out of line in what we charge for the power from that facility in regards to another state?

072 NORRIS: I don't know how they would build fee structures.

073 TIMMS: Could you give me an idea of the megawatts that come out of the same dam where those fees are.

076 NORRIS: We will get back to you on that.

078 YOUNG: That may give you only boundary examples that we have. On the Columbia River everything there is federally owned.

085 HILL: If this bill doesn't pass, what detrimental effects will occur?

087 YOUNG: If our responsibilities continue to review hydroelectric applications and impact assessments, we will do that at the expense of other programs or we will find ourselves not as able to do them as we might have been.

097 HILL: If these things weren't done because of lack of monies, would the

projects proceed? Would relicensing occur? Or would they occur without as close a look as they ought to have?

100 YOUNG: We would be slower in making a rule on them. We will find ourselves continuing to rely simply on those funds associated with the original description of the project rather than being able to go out and do the job. That is typical of our performance to date.

114 HILL: How many facilities are public and have hydroelectric capacity?

115 YOUNG: We currently have 108 private, active hydroelectric licenses. Most of those were issued in late 1930's, early 1940s and into the 1950s. Those projects will come up soon for relicensing. In addition to the private activities, about 60 power claims in Oregon which represent projects commenced prior to Oregon Hydroelectric Law of 1931 or would represent

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those people who own a water right. The total number is about 168 active hydro projects.

133 KINTIGH: Does that figure include little cogenerator plants on a little stream?

135 YOUNG: Yes it would. It would include anybody that needed a permit to generate power.

141 HILL: All 168 projects would be subject to the same fees?

142 YOUNG: No, the fee would be different. But this fee that we talked about, \$.30 to \$.45 and \$.20 to \$.30, would apply to the power plant projects. A different amount applies to individual licensed projects, which can be set and changed by our rules commission.

148 HILL: Would it be approximately the same?

149 YOUNG: We can get that comparison for you.

151 HILL: I would like to know if it is different and why.

152 YOUNG: It is different for reasons that are hard to explain.

155 TIMMS: What department does a project have to go through for licensing and permitting?

159 YOUNG: They need authorization from us. I don't know who else, other than our Commission and the Department, that they would need an actual authorization from. Certainly ODFW would regularly be a participant in looking at applications. Also, DEQ authorization for water quality questions.

174 TIMMS: Do we have a lead agency? Are you the lead agency in approving a hydroelectric project?

176 YOUNG: You can characterize us as a lead agency for hydroelectric projects under 25 megawatts. If there is a project larger than 25 megawatts, e.g. the Salt Caves, the WRD and the Energy Facility Siting Council have agreed upon a joint process there. It is fair to characterize us as the lead agency for permit issuance for hydroelectric projects, either private or public smaller than 25 megawatts.

187 HILL: But you are providing services to the city of Klamath Falls for the Salt Caves. You cited that as one of your expenses.

189 YOUNG: We haven't calculated what we might have spent in the Salt Caves project, but it would be a substantial amount.

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191 HILL: You are not the lead agency, but you still have a role?

192 YOUNG: We share that with the Energy Facility Siting Council.

198 HILL: You would charge the fees for projects over 25 megawatts?

199 YOUNG: We would have the ability to charge for that as would the Energy Facility Siting Council. The language of the bill tries to give an applicant some comfort that there will be no duplication.

207 HILL: We have WRD, Strategic Water Management Group, Energy Facility Siting Council, ODFW, and FERC (at the Federal level). Is FERC involved in every project or only projects over 25 megawatts (m.w.).

214 YOUNG: I believe that FERC is involved with any project for hydroelectric that has not sought and gotten a waiver of deferred requirements. It is possible to ask for a waiver of a hydroelectric project if it is 5 m.w. or less. Mr. Norris raises the question of whether or not FERC would be involved in a project that had absolutely no connection to any power distribution system, i.e. small projects.

237 HILL: Can you provide us with a description of the various players in the hydroelectric game, i.e. the public agencies, both Federal and State? Also, the various roles and jurisdiction you each have. What services are you required to provide and how does that fit with the other agencies' services? That will help me understand how much it ought to cost and who ought to be paying?

247 YOUNG: I will get it for you.

261 AUDREY SIMMONS, WATERWATCH:

We support the effort of the Department to collect fees to help handle the costs. This is a philosophy in water management that we have had all through the years and pleased to see it begin to stretch out to pay for some of the costs.

282 LIBBY HENRY, EUGENE WATER AND ELECTRIC BOARD

(EWEB):

I call attention to the last page of SB 240, Section 15. This refers to the fee charge, which includes a 50 percent increase. In reference to costs, EWEB pays a theoretical h.p. tax. We have three generating facilities on the McKenzie River. We pay \$45,000 a year. The 50 percent increase would cost us \$26,500 additional per year. That will give us a 50 percent increase on \$53,000.

In Sections 2, 3, and 4, we talk about an actual process by which utilities would be charged. You see language referring

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to actual costs. This language was negotiated with EWEB, where we said we don't mind paying fees but we want to know what we are paying for. Section 15 reads to us open-ended. We have two projects up for relicensing, but Water Resources does not approve our relicensing applications as they include investors and utilities. What we would like to do is work with the Department to create some language that is clearer and defines some of these activities.

Section 17 is repealed in Section 18. Does that mean that you would be subject to those additions, so that if you came for relicensing it would be construed to be a new project and therefore subject to earlier provisions? We are asking for clarifications.

341 HILL: The effect from this would be to exempt from the relicensing charges those projects up for relicensing before July 1, 1993, but imposes the relicensing charges on those projects up for relicensing after July 1,

199 3?

346 HENRY: The relicense project could then be construed to be a new project and I don't think that is their intent.

353 HILL: We will have the department tell us what those two sections are intended to do.

358 DENISE MCPHAIL, PORTLAND GENERAL ELECTRIC (PGE):

We are seeking creative solutions. PGE hopes that we would have a process that is something like state and federal income tax. You don't have to go into a separate process to file. The State does declare some different rates and makes a case for those when the Legislature passes them. We are pleased to pay for new tax that we create, but not for studies just for studies. The language as it currently exists is not as narrow or crafted as we would like to see. We would like to work with the Department on SB 240. Regarding the increase of fees, the immediate impacts would be the increase of power claims paid on private projects.

Comment on where the \$177,900 in the hydrofund goes and how it got there. It was created by the Senate Water Committee in response to ODFW and other agency concerns of people wanting to do hydro but with no money to pay for it. The intent at that time was to create a fund in which any agency with concerns about the impacts of hydro on fish could use.

TAPE 4 SIDE B

024 TIMMS: Would Idaho power be the biggest company as far as the impact of this legislation?

027 MCPHAIL: I don't believe so. If they are operating under a

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license, as most of our projects are, the price that they are paying is in the license and would be adjusted over time and expiration. Therefore, that would not be subject to a power claim. We think it can become more parallel to affirm the process and add a cost saving to the entities who are relicensing and add a work savings to the Department.

046 TIMMS: We need more information.

048 MCPHAIL: In terms of the amount of power development in Oregon, PGE is roughly 40 percent...

050 TIMMS: Most of the power generated in Idaho is not used in Oregon, but they are licensed by the State of Oregon.

058 JILL ZARNOWITZ, OREGON DEPARTMENT OF FISH AND WILDLIFE (ODFW): We support Water Resources' committal. We don't see that it would affect our agency negatively and would like to see them develop a stronger hydroelectric process. But they aren't as accurate as we feel that they should be as a State agency. We depend largely upon the Federal Energy and Regulatory Commission for project use and field reviews of projects.

074 HILL: Currently, the money you get goes through the hydrofund. And does that go to both processing your hydroelectric work and hatcheries or mitigation activities?

077 ZARNOWITZ: I don't believe it goes to hatcheries at all; that is a completely separate process. The money we receive is to deal with the licensing process.

079 HILL: Does it cover the cost of the licensing process for ODFW?

080 ZARNOWITZ: Yes it does.

082 HILL: So currently you are whole. The fees you receive which go through the hydro fund cover those activities?

085 ZARNOWITZ: Yes, we recently added one person to our hydro staff. We are looking into the possibility of contracting, and using some of that money to fund a fish passage within the year. We don't have anybody on staff that

specializes in that.

091 HILL: Will this bill provide additional funds to you for your activities?

092 ZARNOWITZ: It could, above the budgeted \$53,000 a year.

094 HILL: This bill is intended to reduce or eliminate your current revenue strain and then replace it with a similar

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revenue stream. Is there a net increase in the money you would receive in the short from this bill?

099 ZARNOWITZ: It will remain the same or ..

099 HILL: But increase if activities increase?

100 ZARNOWITZ: If activities and fees increase then the amount of money will increase.

107 DAVE NELSON, OREGON WATER RESOURCES CONGRESS:

We are going to oppose SB 240 from the standpoint of the irrigation districts as a cogeneration facility on the basis of economics. The districts who are developing cogeneration facilities on their systems find themselves in a neutral position simply because they have the negotiated contract with the purchasing utility of their power as opposed to a rate payer paying the bill. Costs that are added to the process of generating the electricity are simply passed along by the utilities to the customers. But in the case of the irrigation developing a cogenerator facility, they are stuck with a fixed negotiated contract that typically is a 20 or 30 year contract. Therefore, the costs would be eaten by the irrigation district thereby reducing the amount of money the irrigation district could apply to the further development or improvement of their delivery system. We agree with POE's position that the fund that all cogenerators and generator's utilities pay into (the hydro tax) should be the facility or fund looked to to provide the money to pay those consultant fees and evaluation costs.

135 HILL: We have heard testimony from Jill Zarnowitz (ODFW) that the money they receive is just covering their activities. Is your suggestion that those activities be diminished or eliminated in order to shift the funds over to Water Resources?

139 NELSON: We haven't seen all of the things ODFW is doing and haven't had a chance to evaluate if the money is being well used or used specifically for this purpose. Our view would be that the fund should be looked at as a way to pay the cost of inflation.

In the words of SB 240, on page 2, Subsection 5, lines 22, 23, and 24, it seems to be a limitless kind of ongoing rule division process the developer may be required to pick.

Secondly, in Subsection 6, lines 26 and 27, I think it is probably a drafting error. That is 24 percent a year and would imply to be calculated on the basis of the total fee, not just the remaining outstanding value.

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167 HILL: Closes public hearing on SB 240. Opens public hearing on SB 208.

181 JOHN GORDON, WATER RESOURCE' DEPARTMENT: Summarizes SB 208. (EXHIBIT B).



224 HILL: Describe the Cumulative Impact Law.

225 GORDON: "Cumulative Impact" is looking at all the synergistic relationships in identifying and evaluating environmental impacts on projects.

232 HILL: It is reviewing the impact upon the instream flows or the fishlife or everything?

237 GORDON: Yes it is. Some of the enforcement tools in the statute is obsolete, e.g. foreclosure on facilities. ORS 543.520 is repealed by Section 2. The bill allows revocations or other actions advised by the Attorney General. By referencing Administrative Procedures Act, caption 183 , it is a body of law that falls after the thirteenth.

26 AUDREY SIMMONS,  
WATERWATCH:

We support any provision in the statute that grants the ability to look at impacts on the resources in a cumulative manner. The Class B misdemeanor process seems to be a simpler process.

290 DENISE MCPHAIL,  
PGE:

In Section 2, we understand it now says that the Water Resources Department has the opportunity when hydro projects are not completed within the prescribed time limits, they consider a motion and action to terminate the project. In Section 3, the revision seems to restore the repeal section. We would like to see some tightening up of the language so that non-compliance with any specification or requirement could become explicit. It seems to allow unreasonable recourse on the State's part of construction schedules in slipping. They might mention how you get an extension.

325 HILL: Recommend that you talk to the Department on the extension.

3 47 BEV HAYES, WATER RESOURCES  
DEPARTMENT:

We don't regard the bill as one that gives us more authority. In fact, it is repealing authority that's there and clarifying the statutory authority, we view this as non-inclusive. Taking a series of statutes that haven't been implemented and getting them off the books.

368 HILL: (Referring to Ms. Henry) Are there no feelings of alarm by repealing the exemption of the Cumulative Impact Statutes

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to municipalities?

375 HENRY: No objection.

385 HILL: Closes public hearing on SB 208 and adjourns the meeting at 4:20 p.m..

Submitted by:                      Reviewed by:  
Bernadette Williams      Lisa Zavala  
   Assistant                      Administrator

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