

SENATE COMMITTEE ON
WATER POLICY

February 5, 1991 Hearing Room 137
3:00 p.m. Tapes 8 - 9
MEMBERS PRESENT: Sen. Larry Hill, Chair
 Sen. Wayne Fawbush
 Sen. Bob Kintigh
 Sen. Eugene Timms
MEMBER EXCUSED: Sen. John Kitzhaber, Vice-Chair
STAFF PRESENT: Lisa Zavala, Committee Administrator
 Bernadette Williams, Committee Assistant

WITNESSES: Bill Young, Director, Water
Resources Department
 John Borden, Water
Resources Department
 Becky Kreag, Water
Resources Department
 Steve Brutscher, Water
Resources Department

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TAPE 8, SIDE A

006 CHAIR HILL: Calls the meeting to order at 3:15 p.m.. Organizational meeting with Water Resources Department review of fee structures.

017 BILL YOUNG, DIRECTOR, WATER RESOURCES DEPARTMENT:
Submits and summarizes written testimony. (EXHIBIT A)

051 HILL: Is the only fee proposed for increase the hydroelectric fee?

052 YOUNG: That is correct.

054 HILL: Do those existing fees require any legislative action to continue?

055 YOUNG: Only the confirming action in our budget process.

055 HILL: You just need the spending limit?

056 YOUNG: That is correct. Continues summary of Exhibit A.

075 HILL: Of the \$201,000 (Page 2 of Exhibit A), how much would be new revenue and how much

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would be a continuing level?

077 YOUNG: All of that would be new revenue. Continues summary of Exhibit A.

093 KINTIGH: There will be a tremendous increase in the return from those fees; does that mean you are expecting a great increase in activity? Why is the amount increased so much?

099 YOUNG: We've proposed to spread those fees through some positions that will respond to the additional activity (Page 3 of Exhibit A).

115 KINTIGH: You mentioned that some of the fees might come in earlier and that you would have more money than you anticipated, are you allowed to carry that over?

118 YOUNG: Yes. Legislation allows us to keep the monies in turn, allowing us to carry that over.

123 TIMMS: The increase in water right applications, would that be instream water rights? Does the Oregon Department of Fish and Wildlife (ODFW) pay money to establish instream water rights?

128 YOUNG: They do not.

129 TIMMS: There is no transfer between Departments?

130 YOUNG: The difference in dollars and procedural structures reflects our current estimate based on experience we have had overseeing applications and transfers.

133 TIMMS: Have we seen an escalation in the permitting and application process because of the changes in instream water rights?

135 YOUNG: Yes we have. We have also experienced a higher number of applications separate from instream water right applications.

147 TIMMS: So there has been a dramatic increase all the way around because of that legislation?

149 YOUNG: Yes.

152 HILL: Will all of the 17.5 FTE or 10.5 FTE increase be for the increased workload?

160 YOUNG: That is a fair characterization. (See page three of Exhibit A)

197 HILL: Among the existing fees are you proposing to increase any except for the hydroelectric fees?

198 YOUNG: No we are not.

199 HILL: So the individual land owner, water right holder, or other beneficiary of the program will not pay any more under this budget?

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201 YOUNG: They remain unchanged in the case of adjudications, start card fees, and water right applications.

203 HILL: Do the fees for each of these areas actually pay the cost of that portion of the Department's activities? Is there a direct relationship between the fee charged and the service linked to that fee?

207 YOUNG: No, they do not cover the cost.

211 HILL: Would John Borden give us a rundown on each of these areas and how much of the total cost of the program the fee covers.

212 JOHN BORDEN, WATER RESOURCES DEPARTMENT:
Hydroelectric power covers all (tape inaudible) associated with an activity.

216 HILL: If that is not passed into law, what percentage would be paid by the fee?

217 YOUNG: A very small percentage.

221 HILL: Currently it is the general fund that covers that cost. And that is being backed out?

222 YOUNG: We are proposing a fee to cover that.

229 BORDEN: As it relates to the water right application, our current status is about 40 - 50 percent (tape inaudible). On well water exams and licenses, that completely funds four field technicians.

But three other positions remain open right now.

238 HILL: Do well driller exam licenses and start card fees go together to pay for the regulation of a well?

240 JOHN: They pay for the regulatory part of it.

241 HILL: And they pay for three out of seven dollars?

244 YOUNG: Probably a little less than half.

247 HILL: 40 - 50 percent; that is an estimate.

248 BORDEN: In the case of adjudication fees, our current situation is such that about 20 percent of the program might be covered by those fees... (tape inaudible)..increase by the number of positions.

253 HILL: Currently your budget is before a sub-committee, or will be soon?

254 YOUNG: (Tape inaudible).

258 TIMMS: Referring to adjudicated water rights for 1909, have most of those been taken care of?

They lose that water right in 1992 if they don't properly get it documented, correct?

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265 YOUNG: The adjudication cover three things:

--Taking of claims and moving forward with the adjudication of those pre-1909 rights and any reserve rights.

--The accepting of the filing of claims elsewhere in the State where we have not adjudicated those pre-1909 rights.

--It is the beginning of a negotiation process with warm springs on their rights.

296 TIMMS: Since changing and developing the position of water surveyor, water right holders can now hire an independent surveyor, where before that surveyor came to the WRD. Has that saved any money?

307 BORDEN: It will be 4 to 6 years to see any end of the backlog that the. . . (tape inaudible).

316 TIMMS: So we are getting caught up?

317 YOUNG: Yes we are.

318 YOUNG: At a given date, permits that were issued after that time would be the obligation of the water right holder to employ a certified water rights examiner. That is one of the reasons why the current fees collected cover as much of our costs as they do.

328 TIMMS: Have we increased the costs and the percentage we are receiving in the process?

331 YOUNG: We don't receive any money out of that process. We receive work that is done by someone employed by the water right holder.

340 HILL: What are the actual fees charged for water rights applications, permits and transfers, well driller exams and licenses, start card fees, and adjudication fees?

346 YOUNG: Fees in all cases are statutory fees

347 HILL: Are they capped fees or are they ranged...

349 YOUNG: No, they are specific fees.

351 BORDEN: based on and then we charge a fixed rate for each given
increment. Reads from
ORS
536 .050.

364 YOUNG: There is a \$200.00 examination fee for a small right to use water
from surface
waters.

The minimum fee charged is \$300.00 and one would add to that the cost
associated with
the

certified water right examiner.

380 HILL: If we assumed that the water right application fee covers 40 to 50
percent of the costs

of processing the fee, then the fee would have to be more than doubled to
cover the costs.

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386 KINTIGH: The fee for domestic water use would be \$300.00

?

390 YOUNG: That would not be true if we are talking about ground water. Not
a well.

407 KINTIGH: Have we ever settled what a well is and what a spring is?

412 YOUNG: We will get back to you with that.

419 HILL: Do you have a cut in general funds?

422 YOUNG: There was a reduction from the original recommendation and
feedback from the Executive Department.

424 HILL: So there is a reduction from a continuing level?

426 YOUNG: On page one of Exhibit A, the general fund is almost identical.
That is about a nine percent reduction.

437 HILL: The hydroelectric increase would recapture part of that cut?

439 YOUNG: That is correct. As does the fund shift positions described.

446 HILL: Will the additional revenue generated from those fees buy us
those positions?

448 YOUNG: That is correct.

450 HILL: If you get the hydroelectric fee increase through the
Legislature, you would buy back some of that real cut, but not all of it?

456 YOUNG: We will ultimately cut four existing positions in the agency.
Had we not been able to do those fund shifts, we would have seen twice or
more that number of positions cut.

469 HILL: What services will be reduced as a result of those reductions?

472 YOUNG: The four positions we've slated for cutting are associated with
our field crew activity. We will slow that process and take longer to catch
up.

486 HILL: What difference would that make? Why might someone be concerned
with that slowing down?

486 YOUNG: We want as good a record in the Department as we can. And until
that final proof survey is done, all we know is the amount of water and the
proposed use of that water. In some cases, when we go to do the final
proof, we discover that not all of the water that was allowed under the
permit was put to use. So then a certificate is issued that reflects the
actual amount of water that was developed, not the amount that they were
given a permit to develop.

TAPE 9 SIDE A

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033 HILL: What is the current period of time between application and the final proof survey?

034 YOUNG: To strike an average wouldn't be very meaningful because they run the entire range from relatively modern to decades old permits.

046 HILL: What's the average time between determination that a particular applicant is ready to be surveyed and the time the survey is actually performed?

049 BORDEN: We made an effort to cut that down from almost 10 years to a goal of one year. We are probably in the area of 18 months to two years.

54 HILL: If the budget goes through, what will the backlog go to, what will the wait be?

057 BORDEN: Certainly it will increase by 6 months.

061 HILL: It would go to two to three years?

062 BORDEN: It could very easily.

063 HILL: Is that acceptable?

066 YOUNG: The current level is not acceptable.

074 TIMMS: Looking back at the big increase on the John Day River Basin Study, how have we learned from that process and had it contributed to the overall budget of the Department? Aren't a lot of the costs from administrative rule-making?

101 YOUNG: A substantial part of our activity is rule making.

113 HILL: Opens Agency review of the Basin Planning process.

121 BECKY KREAG, WATER RESOURCES DEPARTMENT:
Submits and summarizes written testimony regarding WRD Basin and Watershed Planning.
(EXHIBIT B) Submits and references written testimony (EXHIBIT C and D).
Submits additional written testimony for the information of the Committee and staff (EXHIBIT E). The
Water Resources "Oregon Water Management Program", (Exhibit E) was approved by both the Commission and the Strategic Water Management Group and it was based on the budgets before they went through the Executive Department review. Refers back to page 2 of Exhibit B and summarizes "State Water Resource Policies".
Submits policies. (EXHIBIT F)

196 HILL: These are policies adopted under the authority granted in ORS 536.220?

197 KREAG: That is correct. And ORS 536.300.

199 KREAG: In addition to the six topics the Commission has adopted water policies on, (page 2, "State Water Resources Policies"), the Commission proposes in the biennium program to

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complete statewide policies on the topic of water allocation and reservoir

storage, etc. We have talked with the DEQ and ODFW on a number of topics and we would expect contributions from them.

210 HILL: Does your planning include addressing the current issues of salmon and steelhead fisheries, particularly the Columbia River runs that have been filed for threatened and endangered species?

214 KREAG: The biennium program doesn't specifically call that out because the major staff work was put together before it became an issue. However, because it was a major problem, a number of the activities do reflect the types of things that the State of Oregon believes it can do to improve fishery resources in general.

224 HILL: This will be a significant issue in almost every basin. Are you going to include that as a policy question in basin planning and future basin planning as well as looking at previous basin planning in terms of the endangered species issue? How do we deal with that?

239 KREAG: We are doing some things that directly affect that:
--Our water allocation policy will address the balance between instream and out of stream demands and how we do that.

--Instead of doing 2 or 3 basin plans, as we originally proposed, we will do a short version of the Deschutes Basin revision and spend the remainder of time reviewing all of our water use classifications and making sure that they are current.

--Under the Governor's Watershed Enhancement Board, we have a decision package which would provide us with an inventory (Watershed Condition Inventory) that would target those basins needing the most attention. We will try to dedicate state and federal resources to accomplish that.

285 HILL: In the 1991-93 summary (EXHIBIT C), is there something that speaks of the work done so far on the basin planning process?

290 KREAG: The very last page describes basin planning, but doesn't particularly describe what we have done. The main program has a fuller description of the recent progress and latest updates of the 18 river basins.

297 HILL: Have we completed any of the plans?

298 KREAG: We have basin programs for 17 of the 18 major river basins. Since 1985, we have completed revisions on three.

305 HILL: Is there any basin that you could call complete and that have met all of the planning goals, except for normal reevaluation and amendment?

313 KREAG: I would consider the John Day, the Umatilla and the Goose and Summer as being complete.

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330 TIMMS: What did we learn from the John Day Basin through the monies that we put into the databank and what would come out of it? What did we learn that we have been able to relate to other basin studies?

339 KREAG: We spent time identifying shortages and demands and potential reservoir sites. We focused on new ways to classify our streams. We've

identified watersheds that need a lot of attention and have directed GWEB activities in those areas. We got the attention of the federal government (Bureau of Reclamation).

In terms of the resource itself, we have a much better handle of water availability, we understand how the stream works, and the type of irrigation that occurs there.

385 TIMMS: Did we ever get the Power Planning Council interested in any projects in the John Day River basin or in helping with the process?

399 KREAG: There has been a fair amount of Power Council money spent in the John Day Basin. Mostly on instream structures and placement of rocks and work within the stream channel.

429 HILL: Maintaining stream flow year round to support aquatic life and other uses, is that part of the plan?

TAPE 8 SIDE B

003 KREAG: That has not been part of the existing plans. We have Emergency Board approval for a stream restoration program. We are putting together a restoration plan with our recommendations to restore stream flows in the John Day.

026 HILL: You would identify water or need deficits?

027 KREAG: We may come up with a statewide list of the 10 to 50 streams that could benefit from restoration activities.

033 HILL: That would be useful. But, we are missing the issue if we don't address the threatened and endangered species issue specifically in streamflow restoration.

050 KREAG: I agree. That might suggest that when we do our water allocation policy there ought to be a specific element or additional statewide policy that sets the framework.

053 HILL: When are you going to do that analysis?

054 KREAG: Last year, the Ways and Means Committee directed us to complete a water availability database by this biennium. We have completed it for the John Day, the Rogue, the Willamette, and other basins and expect to have that in place by the end of March or April. That will tell us what the natural stream flow was before the water rights, what it looks like with the current appropriations .

071 HILL: When will the database be completed?

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072 KREAG: Targeting April 1991.

074 HILL: Can you also give us a summary of those streams that appear to be over appropriated.

075 KREAG: We can do that with the Willamette basin example. That will be out to hearing in about the same time frame.

078 HILL: Why don't we look at the Willamette as an example. I would like to see a copy of your planning documents for review. For the John Day, I would like to see a final document in its current form for comparison.

096 KREAG: Continues summary of Exhibit B.

107 HILL: These are the policies; they are not rules? (Referring to Exhibit F)

108 KREAG: Within the policies, the policy statement and the principal statement are adopted by rule. There is background information there that is non-rule.

112 HILL: Those are to expand and implement the directives of ORS 536.220 and 536.300.

115 KREAG: On the back of the statewide policies (Exhibit F) is a list of implementing strategies, not only through the basin plan but through actions of our agency or other state or federal agencies.

Continues summary of Exhibit B (page 2, paragraph 2). Two documents come out of basin planning: a rule document and a non-rule document. There is also an information report.

146 TIMMS: Would you explain that one more time?

147 KREAG: In a basin plan we will have a basin report, which has the background information, the issues that were gone through and the options that were considered. There is a basin plan which is non-rule but sets out the directives to our Department on how to manage water in the basin and the coordination elements. And then there is the rule document, which describes when we will allow a new water right, and it may establish new duties for water use.

157 TIMMS: On the rule document, separate rules are developed for each basin?

158 KREAG: That is correct.

159 HILL: But they are to be consistent with policy, which are consistent with statutes. What is included in the non-rule plan document and information report that is not included in the rule document?

166 KREAG: An example of something that would be in a plan document and not in a rule document is the Goose and Summer Lakes. We addressed some issues that State Parks brought to us (stream and riparian problems within their park) and suggested strategies that the Parks Department use in order to improve the riparian conditions in the park. It isn't a rule, but it is a direction for improving water management out of an issue that arose in the discussion.

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178 HILL: And the information report is more like an addendum? A compilation of facts?

181 HILL: The basin report is more like an information report and database. It sets up background and describes the issues and the conflicts that were debated during the basin planning and sets out the direction that ultimately goes into the plan.

188 HILL: Does the basin plan have an effect upon the Commission's decisions to grant more water rights or to condition water rights that may be subsequent to the adoption of the plan?

191 KREAG: Yes, that is the traditional role of the program. To set out whether there will be any automatic limitations on the issuance of new water rights.

195 HILL: Does it have any effect currently on county or municipal land use plans?

196 KREAG: One of the key factors for land use planning is that local government needs the information that state agencies have in order to make good decisions. We try to convey all of our regulations and information to local governments.

207 HILL: Do the rules adopted by the agency have any effect upon county or municipal land use plan?

209 KREAG: We believe they do. We want to balance the authorities of the Water Resources Commission with the authority of the local government and land use planning.

222 HILL: Recent Federal law requires the State to monitor and insure compliance with total maximum daily loads (TMDL) of various substances in ground waters. Have you integrated those new Federal mandates into your policy documents? And are your basin plans going to be drawn up in compliance with the new federal law, which DEQ has implemented?

223 KREAG: The way we have addressed the issue of TMDL and the court directives is to work with DEQ and encourage them to provide us with a state policy on non-point source pollution that we can include in this program. We want to fold it in on a statewide level, but don't believe we are the agency to do the base work on putting it together.

251 HILL: Is compliance with the federal law part of the policy yet?

255 KREAG: I don't know if it is spelled out directly as a State policy.

257 HILL: Is compliance with the Clean Water Act part of the policy? They will sanction us if we are out of compliance.

260 KREAG: WRD recognizes all of the policies relating to water, not just the ones that directly affect operation of our department.

267 HILL: Is it part of the planning document for basin planning?

270 KREAG: We have a water quality element in the Umatilla basin plan that has been adopted; I think that is the only one.

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274 HILL: This should be folded in so that we don't have a plan that allows activities that would bring us out of compliance with Federal law by pushing up the total maximum daily loads too high in a stream. The planning process is going along fairly well, but needs further development in three areas: 1) Stream flow restoration 2) The endangered and threatened species issue 3) The Federal Clean Water Act (TMDLs).

288 KREAG: Continues summarization of Exhibit B, "Summary".

333 HILL: We will continue the review in April or May on the John Day basin work and stream restoration work.

345 TIMMS: What is the most inadequate part of water management?

361 STEVE BRUTSCHER, WATER RESOURCES DEPARTMENT:
The major problem is the rapport with the local people. Also, another shortcoming is a staff dedicated to basin planning. There is currently only four people in basin planning.

392 TIMMS: When you go into an area the water master is the record keeper for that area. How would it relate to the water master in the records?

408 BRUTSCHER: The Department here in Salem is the central depository for water rights records.

We have made some significant leaps in getting the water rights information system up and

running to the degree that local water masters or regional offices have computer capability, and have access to records that apply to their own basins.

422 TIMMS: Since we have changed that process to computer, are you finding that when you go and

look at a river basin the records in the computer are accurate?

436 BRUTSCHER: We don't go out and ground truth the records.

437 TIMMS: Wouldn't you spot check some of them?

437 BRUTSCHER: That does occur. An example would be with the Sandy and findings of

discrepancies with water use out in the basin and what our records reflect. Oftentimes, the water

master can provide us with some guidance, information or inform us of an error.

005 TAPE 9 SIDE 2

025 HILL: Closes the hearing at 4:40 p.m..

Submitted by:
Bernadette Williams
Assistant

Reviewed by:
Lisa Zavala
Administrator

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EXHIBIT LOG:

- A - WRD Review of Fees - Bill Young - 3 pages
- B - WRD Review of Basin & Watershed Plans - Becky Kreag - 1 page
- C - WRD Review of Basin & Watershed Plans - Becky Kreag - 26 pages
- D - WRD Review of Basin & Watershed Plans - Becky Kreag - 37 pages
- E - WRD Review of Basin & Watershed Plans - Becky Kreag - 137 pages
- F - WRD Review of Basin & Watershed Plans - Becky Kreag - 22 pages

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