

Senate Committee on Water Policy
February 12, 1991 - Page

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.

SENATE COMMITTEE ON
WATER POLICY

February 12, 1991Hearing Room 137
3:00 p.m. Tapes 13 - 14

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

MEMBER EXCUSED: Sen. John Kitzhaber, Vice-Chair
Sen. Bob Kintigh

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

MEASURES HEARD:SB 201 -- Adds obligation to seller of real property to give purchaser notice of certificate of water right if available -- Work Session
SB 202 -- Clarifies that spring or seepage waters are surface waters --
Work
Session

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.

TAPE 13, SIDE A

010 CHAIR L. HILL: Calls the meeting to order at 3:17 p.m.

UPDATE ON THE SALMON SUMMIT

Witness:Angus Duncan, Pacific Northwest Electric Power and Conservation Planning Council

018 ANGUS DUNCAN, Pacific Northwest Electric Power and Conservation Planning Council: Will discuss where the salmon summit is going and where it is not going. The consequences of success and failure.

-In the summit we talk about water, power, fish, and the other uses of the Columbia River and its tributaries. We also talk about the Endangered Species Act.

-He discusses the biological context of the five species of salmon.

-They are very dependent on the narrow niche they have evolved to.

-Over the last 100 years we have modified that niche and the river beyond recognition for the salmon.

-The salmon have dwindled from 15 to 16 million fish entering the Columbia River every year down to 2.5 million. Less than 1 million could be considered wild or naturally spawning fish.

-The fish who have the most arduous journeys to their spawning beds deal not only with the dams, but also with intrusions on their habitat.

-The fish are in serious danger. A number of runs have become extinct.

-Early last year petitions were filed to protect five species as possibly threatened and endangered. Last April and May the clock started ticking on the Endangered Species Act.

087 CHAIR L. HILL: How does that clock work?

DUNCAN: This April or May the National Marine Fisheries (NMF), which has jurisdiction under the Endangered Species Act, will make a judgement whether these fish are a distinct species and whether they are in peril.

-There will be another year before some of the serious restraints begin.

-There is also the potential for an emergency listing.

CHAIR L. HILL: It's two years following listing?

DUNCAN: Two years following petitions.

-Most of the participants in the Salmon Summit assume that any or all five will be listed and we will try and craft a recovery program that may result in the NMF not listing the salmon. If they list them and the recovery program is followed, they may not substitute another recovery program.

109 CHAIR L. HILL: What if the Salmon Summit fails to produce a recovery program?

DUNCAN: NMF may not accept the recovery program or if they proceed with the listing we will be in the same process that has commenced with the spotted owl.

-A consultation process kicks in. Anyone who proposes a use on the river will have to consult with NMF, who will allow, disallow or modify that use.

-NMF will be responsible for drafting a recovery plan.

-NMF has indicated it will take into consideration any recovery plan we come up with.

-It must follow its own legally prescribed course.

131 CHAIR L. HILL: How does the "God Squad" fit in?

DUNCAN: Has been briefed that it is possible to modify a recovery program if the Secretaries of the Interior, Commerce, and others overrule the NMF. They could change the recovery program in such a way that the species could be allowed to become extinct.

148 CHAIR L. HILL: What's the deadline for the Summit to produce a plan?

DUNCAN: Originally by the end of January, but now by the end of February. Most participants agree there will be a plan for 1991.

-At a minimum we will try to make sure there is additional water in the river for the fish and take certain other actions that can be taken for the 1991 migration.

-We hope and aspire for a much more comprehensive response.

-We all agree the fish are in trouble because there are a lot of different users of the river. All those parties have to put something back for the salmon.

-The package we put together has to deal with the water in the river, the velocity of the water, the harvest regime and constraints, the status of the habitat for the fish, and the actions that have to be taken to take care of that habitat with the way the hatcheries are structured and operated.

-We are 80 to 95 percent there. The last part is the hardest to get: The additional water we put into the river, where it comes from and who is affected by it.

192 CHAIR L. HILL: Water would be dumped over the dams?

DUNCAN: It might.

CHAIR L. HILL: Could out-of-stream appropriations be changed--changing the way water is permitted to be withdrawn?

DUNCAN: No one is contemplating fighting a water rights battle. We are looking for water in the Columbia and Snake Basins.

-There are three ways to get fish downstream faster:

-1) Transportation.

-2) Putting more water in the river, which moves them faster.

-3) Lowering dam pools, so fish are moved faster with the same amount of water. There is disagreement on how fast is fast enough or how much pain in terms of lost energy generation.

-All the water is being used. We have appropriated the river as though it were inexhaustible. We've discovered we've been using someone else's share and we have to give it back.

-We hope we can give enough back without creating major harm to the other users.

-We hope to at least bring the runs back to a sustainable level.

230 CHAIR L. HILL: Are you looking at increasing spawning opportunity?

DUNCAN: You can't completely blame the dams, there are other contributing factors.

-The decline of the coho is primarily habitat encroachment and harvest.

-We are looking at potential effects to irrigators: With respect to the power they purchase. With respect to their irrigation diversions; many are badly screened or unscreened.

-If we drop the pools their irrigation intakes will be left in the air.

-We are looking at transition measures for 1991 and 1992 to give people some time to shift their uses so the fish can get back the travel time they need, but not leave the irrigators with no way to get water.

-We are looking at ways to mitigate the potential annual interruption of barge traffic that could be 45 to 60 days on the Upper Snake River.

-The power impacts will be, at the very least, hundreds of megawatts.

-Fisheries are hanging on other improvements that are made.

-One of the positions that Oregon has taken is that the gains made in other areas should not be consumed by harvest until some escapement level is reached.

284 CHAIR L. HILL: Who are you referring to?

271 DUNCAN: He represents GOV. ROBERTS on the Salmon Summit. He is in contact with the agency heads.

-He is not representing the Power Counsel.

-We are contemplating some reduction in harvest, but this is a delicate part of the negotiations, particularly with tribal fisheries.

-There will be shifting around of flood control measures.

-We are looking at additional water from the water conservation bank in the Snake River and from additional investments in water conservation.

-All of the divergent interests in this process have acted and negotiated in a responsible way.

-We are talking about shutting down some of the lower Snake dams for a period of time if that accelerates passage of the fish.

342 CHAIR L. HILL: Didn't the Army Corps of Engineers promise there wouldn't be a high mortality when they dams were built?

DUNCAN: A lot of people didn't know a lot about these fish before. They weren't necessarily insincere in what they were trying to do.

CHAIR L. HILL: That may be true, but the Federal Government bears a significant part of the responsibility for the diminishing runs and should give us consideration in treatment of EPA loan repayments.

364 DUNCAN: Wouldn't disagree. We'll go to Washington and say that it is partly our problem, but it is partly a national resource as well.

CHAIR L. HILL: First they help destroy it, and they require us to rebuild it. They have to help.

372 DUNCAN: That won't be an easy sell. Unless we're subtle, they'll tell us that we are blaming the Federal Government for building dams that gave us cheap power and irrigation water for the last 60

years.

-He agrees with the Chair. We will try to get the Federal Government to help pay the cost.

CHAIR L. HILL: We can add up the economic loss to the fishermen over the years and show them what we've paid.

388 DUNCAN: A reservation that he has and SEN. HATFIELD has expressed, is that we are better off fixing the problem ourselves. If it gets finished in Washington there are too many people interested in advancing their own agendas at the expense of the salmon.

404 SEN. TIMMS: The Hells Canyon damns were built without fish ladders. They collect the fish and truck them to a hatchery. Does that work?

DUNCAN: Not that he's aware of. That's a last resort. Most of the runs above those damns are extinct.

433 SEN. TIMMS: How would we change that?

DUNCAN: Doesn't think anyone aspires to change that above those damns. We have enough to do dealing with the runs that are still here.

-Snake River chinook, for example, are down to about 200 to 300 fish.

TAPE 14, SIDE B

005 CHAIR L. HILL: Where do they go to spawn?

DUNCAN: They go to an open region below the Hells Canyon Dam complex. There is not much room to spawn. The habitat is not good, so it's no surprise they've declined the way they have.

011 CHAIR L. HILL: Have you worked with the Department of Energy's geographical information services to try and map this?

DUNCAN: He's aware of the service, but doesn't know if the Oregon Department of Fish and Wildlife (ODFW) have used it.

-The Power Council has embarked on a multi-year planning exercise to inventory the streams, populations, and conditions. He doesn't know if that is connected with the Department of Energy's service.

021 CHAIR L. HILL: About 600 reaches in Oregon have not been surveyed by ODFW. Where does the council obtain its information?

DUNCAN: My understanding is the we have information on and have included all of the reaches in the Northwest, but the level of detail may be sparse in some areas.

-We worked with ODFW and the states of Idaho, Washington and Montana to accumulate this information.

035 CHAIR L. HILL: For a couple of sessions there has been an emphasis on stream restoration. Will those approaches be a part of the plan?

DUNCAN: The habitat section of the plan will involve that.

-That and irrigation diversion screening and diversions for other purposes are high on the list.

CHAIR L. HILL: We have a bill that would require screening on diversions, but there's no funding. Is there a chance we could get some funding from the BPA?

050 DUNCAN: Wouldn't rule it out. There are discussions going on about a glitch that precludes us from making use of money available to others for diversion screening.

-He doesn't think enough money will be available.

CHAIR L. HILL: Do you see a source for those dollars

057 DUNCAN: No, but we'll look at other areas. It's a problem because there are more uses for that money than there is money.

-We will have to review all of that and target some of that money more precisely.

069 CHAIR L. HILL: We hear additional filings by a number of other groups are being contemplated. How do you see the immediate future for these listings?

DUNCAN: Expects additional filings in every Northwest state.

-If we are able to succeed in this process, it will bode well with for our dealings with the next set of problems.

-We've already done better with the salmon than we have with the owl.

-The most vulnerable runs are the runs that were petitioned first.

-The subsequent runs may be more difficult to list and the recovery programs may be easier.

-The actions we are contemplating for runs in the Columbia Basin will have some spinoff effect for a number of other runs that might be listed.

-If we succeed with recovery plans with these runs, it will benefit most of the other runs that might be listed.

-The last pieces of this will cause major economic, cultural, and social hits on the Pacific Northwest. We need to address transition effects. There is no painless solution.

-He is hopeful, that at a minimum, there will be measures for the 1991 runs. He is less hopeful they will come to closure on some of the larger issues in the next two to three weeks.

124 SEN. FAWBUSH: That's more hopeful than what the news media reports.

DUNCAN: The process is a little steadier than that. We are a long way from where we were eight months ago.

SEN. FAWBUSH: What's the probability of saving the runs? You've done a lot of work for a very little return.

139 DUNCAN: Short of restoring the river to its pre-developed condition--we can't say that anything will really make a difference. We make the best judgements on the variables. We try to make it work and monitor it.

164 SEN. FAWBUSH: The process has some value. Maybe we'll be proactive one day before a species reaches the point of not being able to recover.

DUNCAN: We hope we learn some lessons from this set of salmon runs.

180 SEN. TIMMS: How will the cooperation with other states be implemented? Through the Federal Government? Will each state take its own part? How do we make it work as a region?

DUNCAN: Once we come to an agreement we'll allocate responsibilities to states, federal agencies or private parties.

-We've talked about drafting legally binding instruments and a management process that brings a harsh political revelation to bear on those who are not delivering on their responsibilities.

-Everyone at the Salmon Summit will have a job.

WORK SESSION -- SENATE BILL 201

Witnesses: Jan Boettcher, Water Resources Congress
Bev Hayes, Department of Water Resources
Doug Farrow, Conservation Program Manager, Department of Water Resources

CHAIR L. HILL: Opens the work session.

212 LISA ZAVALA: You have SB 201-1 amendments and hand-engrossed bill submitted by the Water Resources Department (EXHIBIT A).

-It's my understanding the Water Resources Congress and Water Resources Department worked together on these.

CHAIR L. HILL: Do the amendments reflect an agreement between you?

226 JAN BOETTCHER, Water Resources Congress: Was not able to review the amendments. If it is similar to the amendments we presented earlier it reflects an agreement.

ZAVALA: The language is almost identical to what the congress submitted.

CHAIR L. HILL: Does the department sign off on these?

246 BEV HAYES, Department of Water Resources: Describes the Water Resources Congress' amendments.

-There is no major change to the bill with their amendments.

260 CHAIR L. HILL: The provisions in new section 4 allow the commission to exempt some governmental entities from submitting an annual water use report.

-What entities would be exempt?

272 HAYES: We would do that by rule.

-There are some tiny, peculiar uses of water where we would want to waive

the requirement that the amount of water use be reported, but we'd still want to know when the period of use occurred.

292 CHAIR L. HILL: This is not a loophole in the bill?

HAYES: No. We would like to expand the requirement to other large users besides public entities.

CHAIR L. HILL: How many entities would be exempt? What's the volume of work that would be affected?

-Is there any utility in this information downstream? Is it useful or harmful to have? If we adopt these changes how would that relieve your workload?

298 DOUG PARROW, Conservation Program Manager, Department of Water Resources: Can only think of 10 to 20 entities.

-This involves varying numbers of water rights. For example, the Bureau of Land Management reports on each of their stock ponds every year. We're talking about having them report every five years.

-There are relatively few entities, but they involve masses of paperwork.

329 CHAIR L. HILL: The law requires you to report?

HAYES: Yes; any public entity including irrigation districts and drainage districts.

CHAIR L. HILL: Are these public records?

HAYES: Yes. Stock card information is the only record we have that's confidential.

336 CHAIR L. HILL: The intent is to insure these entities follow the rule of use without waste and the use is still active and the water rights shouldn't revert to a more junior user.

-He supposes there's a possibility that some entities could escape reporting when they should. He's not sure that represents a significant danger.

-Given the workload on the department he is leaning towards approving the change in the statute.

-He refers to the new section 2. We probably want to insert language in subsection (2) restating that we are talking about reporting requirements by governmental entities under ORS 537 .099 to clarify that subsection (2) is not broader than that.

381 SEN. SPRINGER: We need more information about water use, not less. He needs to understand what is not necessary for effective water resources management to justify the waiver.

-We don't know half of what we ought to know for effective management.

-The department doesn't have the staff or capability to track these issues with the resources they have.

-We will be called upon to make more difficult decisions on water allocation with very insufficient data.

412 CHAIR L. HILL: We could try to force a decision.

SEN. SPRINGER: He is uncomfortable taking it piecemeal.

CHAIR L. HILL: The bill does several things, we could look at those things independently.

-We could delete the notice requirements in section 2 and section 4 in the hand-engrossed bill and hold those over for later consideration. We'll probably get another bill with the proper relating clause in which to insert these sections.

TAPE 13, SIDE B

016 HAYES: We have no interest in diminishing water use reporting, which is necessary in virtually all cases.

-We're talking about very small uses that create a lot of paper work.

028 SEN. SPRINGER: What is small?

HAYES: She gives some examples.

-We could insert additional language that would narrow those kinds of exemptions.

049 SEN. SPRINGER: Would like that language.

HAYES: She distributes additional amendments (EXHIBIT B).

-The problem is that we might have to come back next year to add another exemption. We prefer the broader authority.

070 PARROW: We tried to consolidate the ideas in sections 3 and 5.

-Describes the amendments (EXHIBIT B).

CHAIR L. HILL: Refers to, "...if the use of water does not affect stream flows" (EXHIBIT B). What if it affects groundwater?

096 PARROW: The point is the two examples cited.

SEN. FAWBUSH: Is there some way to put a threshold on the water used?

-What does "...contribute to the effective management of water resources" mean?

-Is there a minimum threshold that can be quantified? Is that asking too much?

115 PARROW: The difficulty is that some of these are for a larger amount of water than we want to exempt.

117 CHAIR L. HILL: We would be trusting the commission to exercise its discretion. This does narrow the waiver and reduces my concern.

132 SEN. TIMMS: How much do we allow for stock water ponds?

HAYES: Can get that information. It is not very much water.

129 SEN. TIMMS: It's certainly not priority use, but what threshold is it?

HAYES: We'd want them to report at least once every five years. We'd want

to know if the quantity
of the water is same.

145 SEN. TIMMS: If someone were selling a ranch it would be important to the buyer to know what water holes are there.

HAYES: This only applies to public entities.

155 SEN. SPRINGER: The language is moving in the right direction.

-He is troubled this can't be quantified. If this doesn't effect stream flows would that include temperature. That could be critical in the summer months whether or not the habitat is protected.

165 HAYES: The reporting requirement doesn't influence the wisdom of the authorized use. It's to help us get an understanding of how much water is used.

170 MOTION: CHAIR L. HILL: Moves to adopt the hand-engrossed bill with the following changes: Delete sections 2, 3 and 5 from the original bill, which would eliminate the reporting changes. Leave in the section 5 language, "a notice provided by the seller to the buyer in a property transaction of a water right." Also preserve the original section 4, changing the deadline for the commission requesting verification from all persons shown in the updated water right and permit records.

-Water rights ought to be verified, but they can only do it if they have the people to do it and it's reasonable that we extend that deadline.

203 SEN. SPRINGER: In the Deschutes Basin we saw a lot of irrigation districts becoming developed. How does that relate to the notice provisions and the transfer of rights in section 5?

201 HAYES: We would require accurate reporting on their use. Changing the nature of their use would not reduce our need for the information on how and where the water is being used.

SEN. SPRINGER: What about the transfer of property provisions?

-Is that kind of reporting taking place?

HAYES: There is a requirement of notification when the land changes hands.

227 CHAIR L. HILL: This bill moves verification back 10 years. What assurances do we have that the commission and department will continue to verify?

HAYES: Two positions we were given in 1987 do the verifications. She elaborates.

CHAIR L. HILL: Are you focusing on the basin plans or any particular areas?

HAYES: No.

244 SEN. TIMMS: What good is it if we don't know if they are using the water right? If they aren't using it, they lose the water. There is nothing in this bill on using the water.

HAYES: We could add an amendment that the seller had to show that there

was no period of more than
five years of non-use in the last 15 years.

245 CHAIR L. HILL: Isn't that in existing law? If the water hasn't been
used in a period of time it reverts.

HAYES: Correct, but people buy property thinking they have a legitimate
water right only to discover
the right's been forfeited. This would give assurance to the buyer.

252 CHAIR L. HILL: Require an affidavit in section 5.

258 HAYES: "Not more than five years has passed in the last 15 years in
which the water has gone unused."

-Or: "An affidavit that the water has been used continually for the last
15 years"?

261 SEN. TIMMS: The right is still active and in use.

CHAIR L. HILL: An affidavit by the seller.

-It should be verification by the department that the water right is still
good. An affidavit could be
fraudulent.

282 HAYES: Verification would add a huge fiscal impact.

CHAIR L. HILL: Does the department charge a fee for transferring a water
right?

HAYES: It's between \$50 to \$200. The money goes to the department.

CHAIR L. HILL: Hearing no objection, the amendment to section 5 requiring
the seller
to provide the buyer an affidavit is adopted.

-My motion remains.

Let's put it another way: In the hand-engrossed bill delete section 2 and
section 4.

Hearing no objection the motion is adopted.

MOTION: SEN. FAWBUSH: Moves Senate Bill 201 as amended to the Floor with
a do
pass recommendation.

315 SEN. TIMMS: Does not want to pass the bill without the amendments being
drafted.

CHAIR L. HILL: We'll hold the bill until we have the amendments.

-He closes the work session.

WORK SESSION -- SENATE BILL 202

Witnesses: Jan Boettcher, Water Resources Congress
Bev Hayes, Department of Water Resources

CHAIR L. HILL: Opens the work session.

-He refers to hand-engrossed SB 202 (EXHIBIT C). There was no opposition
to the bill.

-JAN, have you seen the amendments.

345 JAN BOETTCHER: They meet our needs.

CHAIR L. HILL: Everyone is happy.

-This bill deals with springs that are not deep enough to be wells.

358 HAYES: Reviews the purpose of the bill.

CHAIR L. HILL: The bill solves the problem of spring usage that is not currently certified. The bill also deals with spring water that may cross property lines--which is existing law.

HAYES: Correct.

CHAIR L. HILL: What is ORS Chapter 539?

399 HAYES: Believes they are our adjudications statutes.

CHAIR L. HILL: What do we lose by deleting ORS 537.670 to 537.695 (Page 3, line 1, SB 202-1 (EXHIBIT D))?

HAYES: Those are the groundwater statutes. They create confusion in the law.

425 CHAIR L. HILL: What are ORS 537.110 to 537.250?

HAYES: They are surface water registration.

431 SEN. TIMMS: At what point is it or is it not livestock surface water or a spring?

TAPE 14, SIDE B

020 HAYES: That's difficult to determine under the law. This bill doesn't affect the decision when it is spring water or groundwater.

-We can have our groundwater people testify how they decide when it's a well and when it's a spring.

-This is a case when we know it's a spring.

SEN. TIMMS: What is the workload and process like that puts this together?

030 HAYES: This bill doesn't change the law, but changes the reference to groundwater. The "spring" bill passed last session created confusion about whether it was surface or groundwater.

SEN. TIMMS: He voted no last session. He is nervous about the overhead that is established. We have a problem getting water use and we are not taking care of the problem.

HAYES: Reviews what happened with the bill last session.

064 SEN. TIMMS: A person who currently has a spring does not have to file a water right on it, but should if it is being transferred off his property. The former person has the prior right of the spring water.

HAYES: If the spring goes off the property they need a permit under any circumstances.

SEN. TIMMS: It creates overhead to go through the process.

HAYES: It must be adjudicated. We've had four or five registrations so far.

SEN. TIMMS: Probably because springs are here today and gone tomorrow.

HAYES: It's not a requirement, it allows them to do it.

077 MOTION: SEN. FAWBUSH: Moves to adopt SB 202-1, Proposed Amendments.

CHAIR L. HILL: Hearing no objections the motion passes.

087 SEN. TIMMS: Will support the bill.

MOTION: SEN. TIMMS: Moves SB 202 as amended to the floor with a do pass recommendation.

SEN. L. HILL: Hearing no objection the motion is adopted.

CHAIR L. HILL: We will carry over SB 201 for a week.

-He adjourns at 4:50 p.m.

Submitted by, Reviewed by,

Edward C. Klein, Lisa Zavala
Committee Assistant Committee Administrator

EXHIBIT LOG:

A - Amendments to SB 201 - Water Resources Department - 5 pages
B - Amendments to SB 201 - Bev Hayes - 1 page
C - Hand-Engrossed SB 202 - Staff - 4 pages
D-Amendments to SB 202 - Staff - 4 pages