

Senate Committee on Water Policy
February 19, 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 19, 1991Hearing Room 137
3:00 p.m. Tapes 17 - 18

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

MEASURES

CONSIDERED:SB 325 - Requires builder to file water availability form with
Water
Resources Department, PPW

SB 326 - Requires Water Resources Department to review
comprehensive plans regarding water availability, PPW

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TAPE 17, SIDE A

006 CHAIR HILL: Calls the meeting to order at 3:15 and invites Representatives Dwyer and Pickard to testify on SB 325 and SB 326.

016 REPRESENTATIVE BILL DWYER, DISTRICT 42:
Both SB 325 and SB 326 came out of the Joint Interim Committee on Water Policy based on problems coming from Polk county.

037 REPRESENTATIVE BOB PICKARD, DISTRICT 54:
Highlights an article from the Oregonian's Metro section:

--Relates to limits on growth in California in face of the current drought.

Should have the water
problem solved before developing.

--"If we start seeing wholesale moratoriums on the new construction based
on water, we could
push California from a recession to a depression."

--A possible 50 percent cutback on water.

In the Oregonian article, "Who has the Water?" (See Exhibit E), the ripple
effect of California's
water shortage is on us. California shows us what not to do as far as land
use and resource
planning.

076 HILL: You are speaking to both SB 325 and SB 326?

078 DWYER: That is correct. SB 326 will head off some of the problems
California is experiencing
and SB 325 will speak directly to problems in Polk county (people made
investments in homes
with no potable water).

095 PICKARD: This is an important issue in Bend where they are faced with
rationing water with
no water meters.

109 KINTIGH: Addressing Rep. Pickard, how do golf courses measure up to
agriculture in terms
of water use? What is the priority and who gets it?

113 PICKARD: Agriculture is significantly more important.

117 HILL: Submits fiscal impact statement for SB 326. (EXHIBIT A)

119 DWYER: The impact would be in staff time for WRD in making these
determinations.

(Tape 17, Side A)

SB 325 & 326 - PUBLIC HEARING AND WORK SESSION

Witnesses: Rep. Dwyer, District 42

Rep. Pickard, District 54

Marjo Nelson, Oregon Well Owners Association
Gene Clemens, Polk County Community Development Department
Burton Weast, Special District
Jim Myron, Oregon Trout
Fred VanNatta, Oregon Home Builders Association
Bev Hayes, Water Resources Department
Rick Bastasch, Water Resources Department
Roberta Jortner, Water Resources Department
Tom O'Connor, League of Oregon Cities
Russell Nebon, Association of Oregon Counties

140 HILL: Opens public hearing on SB 325 and SB 326.

154 MARJO NELSON, OREGON WELL OWNERS ASSOCIATION:
Submits and summarizes written testimony on SB 325. (EXHIBIT B) Members
of our advisory
committee would like to see quality addressed as well as quantity.

187 TIMMS: Currently, under a well permit, don't you have to provide for some of the issues addressed here?

191 NELSON: Domestic wells are under the exempt use list.

192 TIMMS: Currently is there no requirement that the quality and the quantity of the water be there?

194 NELSON: Currently, the gauge is a request upon the purchase of property that it show a figure of 10 gallons of flow per minute. The static water level is not measured.

200 TIMMS: Is it a domestic water right?

202 NELSON: There is no water right.

203 TIMMS: In SB 325, we are strictly talking about the builder of a local house on acreage or outside the city limits?

207 NELSON: The Perrydale water system supplies water to Polk County. Eola Hills is being developed, but there is no water available. Polk County is correcting that problem, but on a county-by-county basis.

221 TIMMS: This legislation has to do strictly with domestic use, which doesn't require a water right. Is that correct?

226 HILL: The bill applies to commercial and domestic and it would require showing, even prior to application for a water right or joining a district or building, that there is water available.

230 NELSON: There are some commercial places in Polk County that have run into these problems.

236 HILL: Your recommendation (Point 4 in Exhibit B) is that the information be filed with the County and we just rely upon the builder, developer or individual to go there and check, but not to make any demonstration?

241 NELSON: I'd rather have someone else help me make that decision of it being voluntary or required. People are used to going to their County for information, versus WRD; it would be more accessible.

248 HILL: The basic idea is good, but you aren't sure this is the right way to do it?

252 NELSON: Correct.

256 GENE CLEMENS, POLK COUNTY COMMUNITY DEVELOPMENT DEPARTMENT: Submits and summarizes written testimony on SB 325 (EXHIBIT C).

279 TIMMS: What have we done regarding comprehensive plans for water up until now?

289 CLEMENS: The comprehensive plan has some language which requires us to address the use of water and whether utilities are available to provide service to that site.

320 TIMMS: In our planning process, does the Water Resource Commission solve the problem because we've taken it to WRD. Under California's LCDC Comprehensive Plans, are you required to show that there is water available for any development?

330 CLEMENS: My understanding is that WRD has not been involved in reviewing comprehensive plans in the past. Although it is addressed in our comprehensive plan, we just didn't provide adequate coordination with the water associations. We have begun to do that with our land use notification process.

357 BURTON WEAST, SPECIAL DISTRICTS:
We have some suggestions to make the bill more workable.

20,000 building permits were issued for new construction in Oregon last year and requiring work on every permit is probably a mistake. WRD doesn't want to look at thousands of building permits to determine the issue of water.

Suggests limitation of interest on building permits to those areas where the problem occurs.

Some cuts you might make are:

1) Make clear that you are only dealing with building permits that involve new residential construction. Currently, any subdivision by the city or county requires that water be addressed. It has been State law that in regular platted subdivisions you must indicate the water source and where it is. And before final plat approval, you must have that water in and it must be installed.

2) If the permit is within a municipal water system and there is a letter or document that evidences that the permit agency knows how much water is available or the individual can document they have water. The issue is whether there is coordination between the building issuing agency and the water provider. The exception is a municipal water system, e.g. Perrydale is not a municipality or a public agency and doesn't operate under the rules that a special district would operate under.

456 FAWBUSH: Approved subdivisions and municipal water supplies are out. Do we have confidence that approved subdivisions have to guarantee water capability?

461 WEAST: The existing statute requires that there be a water availability

finding when you do
your preliminary plat. If you are in an approved subdivision and there is
no water, there is a
clear trail on what happened and who is responsible.

TAPE 18, SIDE A

019 FAWBUSH: Where is the problem?

020 HILL: Representative Dwyer and Pickard both indicated that it was
outside the urban areas.

022 WEAST: The concern of the Interim Joint Committee was that building
permits were being
issued in a water association without them believing they had the water to
supply these new
houses; it is an issue of coordination. The issue is going to be in rural
areas where somebody
bought the land 10 - 15 years ago and now want to build a house with water
status changing
drastically.

036 FAWBUSH: What if someone doesn't get a building permit? You can't
protect everybody from
everything. How can we protect against them?

040 WEAST: That is the issue. You can require a water test on bare land
before you can transfer
property, but what does that test mean if they don't build immediately.
More important is that
we shouldn't have building permits issued without checking the water.

047 FAWBUSH: Why shouldn't we have a general requirement that when you buy
a homesite that
at least at the point of purchase it has to meet these qualifications?

055 WEAST: There is a bill that partially addresses that issue and would
require that if there are
water rights involved in the property that it would all be handled at the
time of closing.

069 FAWBUSH: As I read this, I don't see a sanction. I don't see anything
that says you can't build
without water; is that implied? This bill only deals with the building
permits, not land
transactions.

077 HILL: The bill in its current form doesn't prevent the issuance of the
building permit.

080 WEAST: I believe on a current building permit form, there is a section
for water.

087 FAWBUSH: You can go ahead and build, but you might not have water? I
thought there was
some kind of limitation on it.

090 HILL: Not in its current form.

102 JIM MYRON, OREGON TROUT:

Submits and summarizes written testimony supporting SB 325. (EXHIBIT D)
Submits and
summarizes written testimony supporting SB 326. (EXHIBIT E)

121 HILL: Do you suggest we at least tie it to the Economic Development
Incentive programs?

124 MYRON: As I read SB 326, it addresses that.

126 HILL: Yes it does.

129 HILL: Also included is a copy of the editorial from the Oregonian, "Who
Has the Water?"

133 FRED VANNATTA, OREGON HOME BUILDERS ASSOCIATION:
Any person applying for a building permit has got to have approval of WRD
and that includes
estimates of the present and future cost of water. The problem is the
budget to handle thousands
of permits a year and verifying the cost of providing water. It is
required by ORS 920.441 E
that before you can get a subdivision approved, you must get a letter from
the jurisdiction
providing the water saying that there will be water. The problem occurs
with lots of record,
individual parcels that people own at the present time and the availability
of water on them is
unclear.

193 FAWBUSH: If there is a problem, it should be fairly specific to rural
residential lots that don't
have guaranteed water supplied to them. Would there be some rationale to
look at those areas
where water is scarce and not those that are on the valley floor that are
on municipal systems (if
they say they can handle it)?

214 VANNATTA: You must be careful not to set up a continuous loop, you
can't get the building
permit until you get the well drilled and tested. We would want a system
where there was a
commitment to issue the permit when potable water was found, a system of
conditional permits.

232 FAWBUSH: If I get a building permit and there is no water on the site,
do I have to drill the
well first and prove that there is water before I get a building permit?

247 VANNATTA: I'm not sure that is true in the rural areas.

250 FAWBUSH: Can I technically build a house that has no water supply?

252 VANNATTA: I can't speak to that. If the answer is yes, then the bill
is looking for a problem
that doesn't exist.

262 HILL: Do you want to speak to SB 326.

266 VAN NATTA: Defers any comments on that. Concerned about how the water
needs of some

economic development activities are projected, but wants to pursue that further with their planners.

279 BEV HAYES, WATER RESOURCES DEPARTMENT:

We agree with the concept of both bills, but less enthused with SB 325. SB 325 would ensure that a source of water exists before buildings are constructed and would provide useful information on water use. It would also increase local awareness of the relationship between land and water uses.

Concerns:

--Water availability assessments should be done up front in the planning process and not in the end when you are actually going to be building; generates unnecessary paperwork.

--It appears you would require this water availability form to be filed even if the structure didn't anticipate the use of water.

--It provides or requires an unnecessary state involvement in a local permit review procedure.

--It would be expensive, an estimated \$658,000 to implement in the next two years. It would require us to verify this information (30,000 - 40,000 permits). It also requires WRD to verify that sufficient water is there to meet groundwater needs.

--We would have to evaluate land uses and technologies for each permit, and that is likely to be controversial.

The Committee should amend and incorporate SB 325 into SB 326, which would then deal with the whole question of water availability in general. You should shift the responsibility to the local jurisdiction for assuring that the water is there and perhaps you ought to limit it to rural areas and only when water will be used in the structure.

We support SB 326, but it needs amendments to work well. It does focus on the planning process in its entirety rather than narrowly on the building permit end. It does support and accelerate certain portions of our land use coordination efforts. It may also provide a forum for clarifying state and local roles in water planning. It highlights the need for the link between water supply and local land use and economic development planning.

Concerns:

--Reviewing all the plans at once wouldn't provide conclusive information on how the plan is working; it would provide a snapshot in time only.

--Section 2 is the major concern. It might be construed to limit the instances when local government could address water availability to those instances when you are talking about an ordinance that would amend the comprehensive plan. We would need another position in WRD if we were going to review all 277 comprehensive plans and have a report back to the Legislature in 1993.

403 RICK BASTASCH, WATER RESOURCES DEPARTMENT:

WRD has been developing a state agency coordination program to establish rules and regulations to show how those agencies will comply with local land use plans and comply with the statewide planning goals. Submits and summarizes written testimony outlining land and water use linkage.
(EXHIBIT F and G)

TAPE 17, SIDE B

010 BASTASCH: Conceptually, SB 325 and 326 are consistent with the direction we have set out, there are some questions of process and where the state fits in that process.

065 ROBERTA JORTNER, WATER RESOURCES DEPARTMENT:

The concept of a consolidation and its reasoning is that there will be new land uses and developments and rezones that may intensify water use and change the types of use on land. The most effective way to address water availability and protecting the landowner or home buyer would be a step-by-step process where you looked at water availability in the earliest planning phase.

093 TIMMS: You are just providing information? You have no power beyond that regarding the comprehensive plan?

096 BASTASCH: That was the prime question in the development of our State Agency Coordination Program. We had to balance the authorities given the Water Resources Commission, which says that the Commission is to set up a coordinated, integrated state water resources program and nobody could take any action that would interfere or be contrary to those elements.

134 TIMMS: Before it being certified by LCDC, have we ever had under current statute a requirement that LCDC and WRD furnish a water development program for every comprehensive plan?

140 BASTASCH: No.

141 TIMMS: You have never had to do that?

143 BASTASCH: As far as the land use planning process, the information on water resources that had to be incorporated into any local plan, city or county, comes under Goal 5.

150 TIMMS: Under Goal 5 your authority is part of the comprehensive plan?

152 BASTASCH: We have no authority to compel a local jurisdiction under WRD statutes to adopt specific ordinances with regard to their own plan.

157 TIMMS: It seems that we should already have in process what we are trying to do in SB 325 and 326. Water development in cities and the Comprehensive Plan has not been developed with the advice of WRD, just done locally.

172 BASTASCH: That would probably be an accurate representation of what has happened in the past. These two bills specifically and explicitly do this with regard to water and that is not there now.

179 TIMMS: I believe that they should be in the planning process.

190 JORTNER: Through our SAC program, we will be trying to develop an approach and strategy local governments can use to look at water availability both in a long term forecasting perspective and also on a project-by-project basis. Goals 5 and 6, which deal with natural resources and water quality, do require that local governments inventory and manage important natural resources.

208 HILL: Submits written testimony from 1000 Friends of Oregon and Steve Schneider relating to SB 325 and 326. (EXHIBIT H and I)

217 TOM O'CONNOR, LEAGUE OF OREGON CITIES:
Cities are required, as part of the comprehensive planning process, to address water availability and under Goal 5 you are supposed to inventory water resources.

Under the public facilities planning requirement, all cities over 2,500 in population must have a public facilities plan which requires the layout of how you will get the water, what the current sources are and how you will service it. There is a process that is established to deal with this issue.

274 HILL: The Oregonian editorial indicates a growing recognition of a potential problem out there.
(See Exhibit E)

296 RUSSELL NEBON, ASSOCIATION OF OREGON COUNTIES:
Makes self available for any questions on how water issues were addressed outside of urban

growth boundaries.

304 HILL: Does the Association of Oregon Counties see a problem in this area? It was earlier indicated that Polk County had some problems in this area. Is this experience unique to Polk County? Have other counties had problems of assurance of water for construction?

312 NEBON: Typically the problems are with understanding where and how much groundwater is available and keeping the quality of it high. On a case-by-case basis it isn't a problem, but some counties have formed water districts to serve rural development acreage home sites. In Polk county they are doing some serious planning identifying potential reservoir sites to enhance the supply of water for some of these districts.

In our plan we have said, through policy, that where evidence is presented at a rural residential subdivision hearing there may be impacts of individual wells drawing down the groundwater for existing well owners in the area; we will place an additional burden on the applicant to demonstrate that the groundwater aquifer appears to be adequate to serve that additional development.

The concerns about the bill is the proposition that WRD evaluate all the comprehensive plans. This will be expensive. In section 2, relating to ordinances that the counties might adopt, those are really legislative ordinances adopted at the time the plans were initially adopted and zoning was initially put in place.

420 TIMMS: Do they check on the water availability in subdivisions in the rural area or county?

424 NEBON: In some counties there is enough of a prevalence of a lack of groundwater where they have beefed up the policies in their ordinances to require that the applicant go out and drill wells and demonstrate capacity before subdivisions be approved.

438 TIMMS: Could you get me information from Malheur County on how they address those issues and also in Umatilla County, where they have a critical groundwater area, and how they have addressed that through the county? If they are addressing them already, we may be duplicating what is already being done.

457 HILL: Closes public hearing on SB 325 and 326. Adjourns meeting 4:40 p.m..

Submitted by: Reviewed by:

Bernadette Williams Lisa Zavala
Assistant Administrator

EXHIBIT LOG:

A - Fiscal Impact Statement for SB 326 - Sen. Hill - 2 pages
B - Testimony on SB 325 - Marjo Nelson - 1 page
C - Testimony on SB 325 - Glen Clemens - 1 page
D-Testimony on SB 325 - Jim Myron - 1 page
E-Testimony on SB 326 - Jim Myron - 2 pages
F-Testimony Relating to Land Use - Rick Bastasch - 1 page
G-Testimony Relating to Land Use - Rick Bastasch - 1 page
H-Testimony on SB 326 - 100 Friends of Oregon - 1 page
I-Testimony on SB 325 - Steve Schneider - 2 pages