

Senate Committee on Water Policy
March 5, 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

March 5, 1991Hearing Room 137
3:00 p.m. Tapes 25 - 26

MEMBERS PRESENT:Sen. Larry Hill, Chair
Sen. Wayne Fawbush
Sen. Bob Kintigh
Sen. Eugene Timms
Sen. Dick Springer (Arrived 4:25 p.m.)

VISITING MEMBER:Rep. McTeague

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

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TAPE 25, SIDE A
Oregon Drought Status - Informational Meeting
Witnesses: Bev Hayes, Water Resources Department
Barry Norris, Water Resources Department
Phil Ward, Oregon Department of Agriculture
Joseph Murray, Oregon Emergency Management
Jill Zarnowitz, Oregon Department of Fish & Wildlife
Chip Dale, Oregon Department of Fish & Wildlife
Neil Mullane, Oregon Department of Environmental Quality

004 CHAIR HILL: Calls the meeting to order at 3:15 p.m.. Agency report on drought status. Submits newspaper articles relating to the drought status. (EXHIBIT A)

Is there anybody here representing the Governor's Strategic Water Management Group?

019 BEV HAYES, WATER RESOURCES DEPARTMENT:
We are the lead agency on drought planning and Barry Norris heads the working group for the Strategic Water Management

Group.

024 BARRY NORRIS, WATER RESOURCES DEPARTMENT:
Submits and summarizes written testimony (EXHIBIT B).

061 HILL: How do you interpret that spread, e.g. 34 - 85%?

063 NORRIS: That means a range of conditions throughout the whole state, which is very general.

06HILL: That is from one basin to another, looking at all the basins?

067 NORRIS: That is correct.

068 HILL: Therefore, the best basin we have in the state right now has a seasonal precipitation average of 85 percent of average as of February 1, 1991.

070 NORRIS: Water conditions all over the state are below average. Gives an overview of conditions:

--Willamette Valley: Below average, but expect to have adequate water supplies

--Southwest Oregon: Things were very bad until a week ago. Conditions have improved a lot with rainfall and snow. Lost Creek is expected to fill while Applegate isn't.

--North Central Oregon: Below average water conditions, but no severe drought. Some drop in shallow wells as a result of four or five years in a row of below average water conditions.

--South Central and Eastern Oregon: Well below average water conditions. Have received some precipitation, but the problem is winds are drying the rains. Owyhee irrigation district has enough water to supply about three acre feet. But Warm Springs and Dealee Reservoir have enough to supply between 1/4 and 1/2 acre foot. The three main reservoirs in Lake County (Thompson Valley, Drews Reservoir and Cottonwood) are down next to nothing. Only about 15 - 10 percent of what is usually there. There is a possibility that Hart Lake will run dry. Crump Lake will also run dry.

142 TIMMS: Give us a rundown of the impact of the continuous drought situation, year after year.

152 NORRIS: Four out of the last five years have been well below average water conditions. It is a cumulative impact which cause streams and lakes to dry up.

164 TIMMS: Has it affected groundwater?

165 NORRIS: The only abnormal effects that I've seen are up in the Milton Freewater area of shallow gravel wells.

169 TIMMS: Has it affected the Christmas Valley?

171 NORRIS: I don't know.

174 NORRIS: The north and south seem to have adequate water supplies. Four reservoirs are overflowing, but they are very

small.

--N.E. Oregon: Has 100 percent of precipitation and doing good.

Submits and summarizes written testimony relating to the Oregon drought conditions. (EXHIBIT C) Submits and summarizes written testimony relating to Oregon's drought plan. (EXHIBIT D) WAC is the Water Availability Council, which include WRD, National Weather Service River Forecast Center, State Climatologist Office, State Forestry Dept., and the U.S. Geological Survey. Submits and summarizes drought mitigation procedures available through the Drought Council. (EXHIBIT E) Submits and summarizes actions that WRD can do in the event of a drought. (EXHIBIT F)

281 REPRESENTATIVE MCTEAGUE, DISTRICT 25:

Could you give us an actual example of use of purchases options or agreements?

283 NORRIS: An example would be the City of Medford thinking they will run out of water. They could possibly enter into an agreement with Calin Irrigation District or someone else to buy their water. In the event of a declared drought, that option purchase could go into effect. The limits would be that the rate and duty would still be applicable to the original water right. Continues summary of EXHIBIT F. Normal priority dates would no longer be in effect.

305 HILL: Who makes the drought declaration?

306 NORRIS: The Governor. WRD can declare a drought on their own by pulling together other local governments, political subdivisions, and state agencies and conservation and curtailment plans. The Governor could then direct those state agencies to implement those plans when an emergency is declared.

327 HILL: Among the responses that the Water Resources Commission can take when a drought is declared, where do conservation measures come in?

332 NORRIS: The conservation measures are tied into these emergency provisions. The requirements, for instance, for an emergency water right permit could be that the applicant must demonstrate to the director that some conservation efforts have been tried, that it threatens health and safety, or can't get water from their original source and this is a last resort.

346 HILL: Does the Commission have priorities or preferred options to be taken first to deal with the drought situation?

354 NORRIS: In our rules, certain conditions have been set up to be met by the applicant to be eligible.

361 HILL: What if we have a municipality competing for the same surface water that a irrigation district is using during drought situation and human consumption comes first. What is the priority of choices?

370 NORRIS: In our rules, in order for the Commission to consider giving preference to human consumption and stockwater, the applicant would have to demonstrate the conservation measures that had been used.

377 HILL: In the Harney and Malheur area, what steps would you take once a drought was determined?

382 NORRIS: If the County Commissioners made a request to the Drought Council for a declaration of drought, the Council would make recommendations to the Strategic Water Management Group, who would make their recommendation to the Governor. If it were declared a drought area, as far as WRD, they would then be eligible for those measures on Exhibit F.

415 HILL: Have we ever implemented these provisions?

417 NORRIS: No.

417 HILL: I feel like what you are giving us is still unformed and there remains a lot of questions to be resolved if we go into an emergency situation. How complete are your rules if in drought.

427 NORRIS: I feel they are complete enough that we would issue the emergency permits. The question would be when the director considers these applications, they must be issued in a timely manner.

436 HILL: How about consideration of instream uses? Or fisheries on a reach that could be affected by an emergency water right granted without a hearing?

445 NORRIS: There are two ways that the rules take that into account. 1) They can't take precedence over an established instream water right.

450 HILL: But most of the instream water rights applied for have not yet been established. That is one of the problems we have going into this drought season.

453 NORRIS: 2) The water right cannot be issued unless it shows that without it it does harm to public safety and welfare. A decision would have to be made whether the fish kill does harm to the public welfare.

465 HILL: But there would be no hearing?

466 NORRIS: That is correct. There is no public notice. But they can be protested, which may prompt the delay of the issuance of the water right.

473 HILL: If we had a municipality that had an emergency need and applied for an emergency surface water right, the water would have to be in the stream because it still wouldn't take precedence over senior water rights, correct? And also would have to be unappropriated water?

483 NORRIS: Yes, that is correct.

485 HILL: So that is the threshold. Under what circumstances would a city be granted preference for waters over an

irrigation district who has an established water right?

490 NORRIS: On a request, the Commission can grant preference or priority for human consumption and stock water. So the Commission would have to decide that it is in the best interest of the public to do that. There would probably be some financial liabilities incurred by the State.

Tape 26, Side A

028 HILL: What about an established orchard crop which represents a substantial equity investments versus field crops? How would a decision be made about who gets the water? Do you have a provision to deal with those kinds of considerations?

035 NORRIS: That decision would be made under existing law according to priority date.

036 HILL: Strictly priority date? Potential damage wouldn't be taken into consideration?

037 NORRIS: There is no provision in the law to reorder priority dates or priority of use to two agricultural interests. For instance, only for stock water and human consumption.

049 TIMMS: Referring to Exhibit B, are these the best and worst case scenario?

057 NORRIS: Yes, that is correct.

057 TIMMS: Do you have the rundown on those streams that are at those levels that will support fish?

060 NORRIS: The forecasts found in Exhibit C aren't for any particular stream and are based on precipitation and snowpack. They then statistically project streamflow runoffs. It is done by basin forecasts.

080 TIMMS: In a drought condition, instream water rights shouldn't have priority over an out-of-stream water right.

085 HILL: That assumes that the instream purposes and fish are not worth anything. I don't think that is an assumption that many people would agree with.

088 TIMMS: The point is that it agrees with the practicality and common sense that when there is very little water in the stream there aren't going to be any fish.

091 HILL: Under what circumstances should we keep water in the stream to preserve the fish in a drought situation, even at the expense of existing water rights?

093 TIMMS: It doesn't matter what consumptive uses you have in the stream because it will dry up regardless. How do you prioritize that?

101 NORRIS: We would distribute the water based on the priority dates on the existing water rights, certificates, and permits and any emergency permits issued.

105 HILL: When you have an area of the State with valuable fish

stocks, between the drought and out-of-stream uses the stream is so low the fish can't survive, what choices would WRD make under the drought scenario to make sure that the fish aren't destroyed?

122 NORRIS: I am only aware of our authority to distribute water under the existing priority date and the only order of priority we could change would be for livestock and human consumption. That authority was granted to the Commission during the last legislative session.

128 HILL: You answered earlier that you have no way to make a choice between two agricultural activities. Is that true?

140 NORRIS: That is true.

141 HILL: Asks Phillip Ward of Department of Agriculture the same question.

147 PHILLIP WARD, DEPARTMENT OF AGRICULTURE:
I think all agricultural commodities represent an investment. Certainly orchard crops with long term equity investments are a policy issue worthy of debate.

152 HILL: But there is no answer from Agriculture right now?

154 WARD: We would need to talk about that.

156 HILL: Are pears more or less valuable than tomatoes in terms of preserving them from the effects of a drought?

156 WARD: From an agricultural perspective, certainly an orchard crop is more valuable than an annual crop. And from that perspective it would be of greater interest to the agriculture interest to preserve those commodities that have the long term investment.

161 HILL: What are they doing in California in terms of orchard crops versus annual crops in their drought?

163 WARD: I'm not aware what California is doing relative particularly to orchard crops. A tree, depending on the root system, has the ability to withstand a lack of water to a greater extent than an annual crop. Sometimes the issue is moot.

175 TIMMS: Orchards are irrigated year round while crops are irrigated seasonally. The orchards in fall will have more of a problem with drought conditions.

193 NORRIS: Under an Emergency Declaration, including a drought declaration, the Governor has very broad authorities. In fact, Joseph Murray from Emergency Services may be able to speak to that. The Governor could reorient some type of priorities.

200 HILL: Does an Emergency Drought Declaration suspend the doctrine of prior appropriation for water rights laws?

203 NORRIS: That is a special type of declaration that is tuned to the mitigation measures from Exhibit B, which are available to WRD. Under the definition of a drought declaration those

measures of emergency water use permits and reorder of priority for stockwater and human consumption are available.

211 HILL: Prior appropriation continues except as allowed by the statute under the Emergency Declaration to be changed. It is guided by statute.

213 NORRIS: Yes, that is correct.

215 HILL: What does Emergency Management do in all this?

215 JOSEPH MURRAY, OREGON EMERGENCY MANAGEMENT:
Regarding the previous questions, ORS 401.065, says that the Governor has the authority to suspend the provisions of any order or rule of any state agency if the Governor determines and declares that strict compliance with the provisions with the order or rule would in any way prevent, hinder or delay mitigation of the effects of the emergency. What bearing that has on water rights is not clear to me, but it may apply.

230 HILL: It sounds broader than what we have indicated. It sounds like the Governor can suspend everything but statutes, and water rights are established by statute. And their priority is established by statute, not by rule, so prior appropriation would still apply even under those police powers of the Governor.

240 MURRAY: The drought annex to the state emergency operations plan concerns itself mostly with providing water for human consumption and needs of livestock. As in most emergency response areas, the first responsibility rests with local government. But once it is beyond that, the Governor can declare a drought emergency or a state of emergency. At that point state resources can be redirected and that also sets the stage for the state to demonstrate to the federal government that federal assistance is required. State agencies could transport water from area to area.

281 HILL: How would the filing or granting of threatened or endangered species status for fish affect these activities?

284 MURRAY: I have no idea.

285 HILL: Does anybody know?

291 TIMMS: Would like an explanation of the process of how you help people through a drought situation. Must be concerned with how people exist?

301 WARD: There is a Federal component to drought assistance in Oregon. The Agriculture Department, through the auspices of the Governor's office, works with local jurisdictions relative to disaster declaration.

322 HILL: Is assistance made directly to the farmers or to the State? Who passes it down to the farmer?

324 WARD: Those monies come through the local representatives of the federal agency. The loans would be made directly to producers through those local county offices.

331 HILL: Is federal funding adequate to the need? How tight is the federal money?

334 WARD: I'm not sure if the issue is relative to how much federal money is available as to the kinds of hoops that have to be met before it becomes available. There are specific requirements to making that money available. Federal money is limited and there are additional restrictions on what makes that money available to producers which sometimes limit them to take advantage of them.

345 HILL: What kind of equity does the farmer have to provide? Is there collateral requirements?

349 WARD: If they receive a loan from the Farmers Home Administration, with the exception of a special emergency low interest loan, they are required to pay it back. Some emergency fee assistance is actually granted to buy feed.

357 HILL: To get the loan, do they have to qualify as in any other loan?

358 WARD: They have to qualify for the loan, but not on the same basis as on the U.S. National Bank. There are definitely restrictions.

365 HILL: Are there similar programs that provide emergency assistance to municipal areas in a drought situation? Are there any assistance programs to cities, counties, or municipalities?

371 WARD: I know of none.

372 MURRAY: I am aware of a program with the Small Business Administration that under Presidential major disaster or emergency declaration would make businesses eligible for SB A loans.

378 HILL: Is that part of our plan?

379 MURRAY: That is included in the plan.

379 HILL: How much would be available and what are the qualifications?

381 MURRAY: I'm not familiar with the particulars of the program.

383 KINTIGH: What good is a loan if there is no water?

388 WARD: In relation to agriculture, a low interest loan can help you to carry over for the loss of a crop; it provides flexibility to a producer.

396 TIMMS: Having worked very closely with the emergency services during three disasters, there seems to be no money available for any disasters in Oregon.

421 HILL: The emergency fund would be the extent of it. With the drought situation we will be facing another bad fire season and that has been traditionally financed out of the emergency fund.

431 KINTIGH: The forest land owner makes up the deficit if the e-board doesn't have the money.

437 HILL: Is that true with Federal forest lands?

438 KINTIGH: No. Congress has to appropriate the money.

463 JILL ZARNOWITZ, OREGON DEPARTMENT OF FISH AND WILDLIFE:
We have been keeping up with the drought report. Submits and
summarizes written testimony on drought situation. (EXHIBIT
G)

066 TIMMS: Of the 600,000 trout fingerlings that are not planted,
are those considered into your fish planning for that basin?
Will they be offset in the future when the water returns?

072 ZARNOWITZ: I would presume we would do that.

073 TIMMS: Do you have any figures that would relate to that kind
of stream management?

075 CHIP DALE, OREGON DEPARTMENT OF FISH AND WILDLIFE:
No. It would be more the case that this is the allocated
amount of catchable rainbow that we would anticipate stocking
in both streams and reservoirs and with those situations
likely would have dry-up and lack of ability to sustain them.
It would be a temporary reallocation of fish that we would be
looking at as that catchable program. In terms of wild fish,
we would have a different management strategy. If we were in
need of salvaging those populations, we would temporarily
remove them from those stream systems and bring that same
stock back in.

084 TIMMS: You would reallocate back into the streams?

084 DALE: Eventually yes. It would be a temporary situation.

095 ZARNOWITZ: Continues summary of EXHIBIT G.

100 HILL: Was the loss of the Lahotan cutthroat trout population
in Indian Creek a natural occurrence or because the stream was
down and people were extracting water from the creek?

103 DALE: I'm not sure with Indian Creek whether there is
withdrawal or diversion from the stream. But some of the
situations are exacerbated by the condition of the habitat of
those stream systems.

114 ZARNOWITZ: Continues summary of Exhibit G.

120 HILL: Have you checked to see what the out of stream usage is
for those creeks? Is there any out of stream usage?

123 ZARNOWITZ: I couldn't say.

122 DALE: Not to my knowledge.

123 HILL: This is a natural situation in which the creek is
drying up and the populations that would replenish it
naturally are gone.

125 DALE: Yes, that is correct. We are in a situation where some
of these populations have been constricted over time and

reduced over time.

136 HILL: Are these creeks that have had reduction of streamside vegetation one reason why we are seeing problems there? Why are these creeks a problem now?

142 DALE: One of the problems is that over time the reduction in habitat quality and capacity of that habitat to sustain populations has reduced the numbers of those populations. We have had an isolation of these populations in scattered areas throughout their range.

152 KINTIGH: Could the fishing pressure have had anything to do with it?

153 DALE: It could, but I wouldn't suspect that it would on these extremely isolated populations.

154 REPRESENTATIVE MCTEAGUE, DISTRICT 25:
Is this Federal land or private land? BLM territory?

157 DALE: I'm not absolutely sure, but it's either BLM or some private lands. Most likely BLM lands.

160 MCTEAGUE: If so, BLM must have fishery biologists. Have they looked at this situation yet? These are Federally listed threatened fish. If it was BLM land, wouldn't they be required to engage in a recovery plan?

167 DALE: They would participate in that recovery plan.

168 MCTEAGUE: Is there a recovery plan for Lahotan cutthroat trout?

168 DALE: Not a finalized plan. It is still in the draft stages.

171 MCTEAGUE: How long has it been in the drafting stage?

172 DALE: I'm not exactly sure.

172 MCTEAGUE: Who would know?

173 DALE: The U.S. Fish and Wildlife Service is the lead agency on coordinating those recovery plans.

176 MCTEAGUE: You have been leaving it to the U.S. Fish and Wildlife Service to take the lead in protecting the Lahotan Cutthroat Trout?

180 DALE: They have the legal lead on that by law. We participate in those situations; it is a co-management situation.

183 HILL: Who is taking the lead on bailing the fish out? And who pays for it?

185 DALE: We will in both accounts. If there is a change in the listing of these species and they are elevated to threatened and endangered or there is a recovery plan that is implemented then there are dollars available through Section 6 of the U.S. Fish and Wildlife Services for these recovery actions.

190 HILL: Is ODFW sitting on the finalized recovery plan?

191 DALE: I can't answer where that is at.

194 ZARNOWITZ: Continues summary of Exhibit G.

202 HILL: When you say "salvage the fish", what does that mean?

204 ZARNOWITZ: We would go in with nets to recover them and then development holding ponds at our wildlife area at Summer Lake.

209 HILL: How many fish would you catch?

210 ZARNOWITZ: I don't know. It is to preserve the genetics, not necessarily to preserve a large population.

214 HILL: Doesn't that expose them to disease, injury, shock? High mortality rate?

217 ZARNOWITZ: It is an emergency procedure.

217 HILL: Why is Dinner Creek going dry?

221 DALE: I'm not sure why it is drying this year.

226 HILL: We don't know if there are extractive uses or reduced vegetation?

230 DALE: Redband trout are located on the headwaters of this stream system and there aren't any diversions at this point.

234 HILL: Why aren't they more distributed?

235 DALE: Primarily because of habitat changes related to man's landuse practices. Habitat changes are situations such as riparian degradation (excessive livestock use) and loss of riparian coverage, which causes a warming of water temperatures. There is also channel changes related to streambank degradation through cattle use.

247 MCTEAGUE: Recently there was an article by a cattle rancher, Doc Hatfield, responding to the recent articles in the Oregonian on grazing practices. He made a point that in all fairness to ranching communities that a lot of the riparian damage was done decades ago. Do you have any assessment of when the major damage occurred? Is it ongoing? Is it improving with GWEB projects? Or is it a district bio assessment that we never get to see?

263 DALE: Generally, Doc Hatfield is correct, in that it started long ago. But it is an ongoing process. We do know that when we go in and fence riparian areas and manage them from livestock, we see responses of primarily the woody vegetation but also herbacious vegetation and streambank stabilization associated with revegetation of those areas.

273 MCTEAGUE: We have invested a substantial amount of general fund and lottery dollars in GWEB projects. How far have we gotten in GWEB in addressing those kinds of basic habitat issues?

287 ZARNOWITZ: We've been very successful, but it hasn't been very wide ranging in the state. Therefore, there hasn't been dramatic results from it. We strongly support GWEB efforts. The state, in order to recover some of these areas needs to embark on intensive long term programs that the state probably can't afford right now.

298 HILL: We have a situation now where several gene pools have been driven to the brink of extinction because of mismanagement of our resources. A holding pond is an unsatisfactory way to preserve the gene pool, although it is the best we can do.

315 MCTEAGUE: The question it raises is that GWEB has been good as the first foot in the door on this issue and it is to our benefit that we have this program.

328 HILL: So far it is simply a pilot program.

331 MCTEAGUE: Money is tight, but we need a new way of looking at the issue for any solutions.

342 TIMMS: It takes a long time to bring back what was done wrong. But I agree that we should improve the programs.

382 HILL: The problem is that a lot of these species are right at the edge and we don't have much time. We are forced into emergency measures where that should be a last choice.

393 ZARNOWITZ: Continues summary of Exhibit G.

426 HILL: Will there be a limitation on commercial seasons?

427 ZARNOWITZ: That is being discussed, but I don't know what the outcome will be.

430 MCTEAGUE: Submits and summarizes written testimony relating to the Salmon Summit. (EXHIBIT H) Ed Sheets indicated that there was no agreement on harvest restrictions.

440 ZARNOWITZ: Continues summary of EXHIBIT G.

457 HILL: Are these watering holes also used for grazing cattle?

458 ZARNOWITZ: I believe so and they will end up concentrating both wildlife and livestock into those areas.

462 HILL: Can the agency restrict hunting around the water holes?

464 ZARNOWITZ: Yes we can. At this point in time, we are looking at sending out letters to everybody with a permit in that area that they should voluntarily restrict their activities around that area. If there are problems, then we make rules.

TAPE 26, SIDE B

028 HILL: What about non-game wildlife? Amphibians, small mammals, or birds?

030 ZARNOWITZ: Probably amphibians would be the most affected by the drought.

032 HILL: Are there any threatened and endangered species that are in trouble?

033 ZARNOWITZ: We don't have any listed for the State of Oregon. Birds can escape and fly to another area. A lot of small mammals don't drink water anyway; they depend on vegetation. There might be a cyclical population because of the lack of water or food. It could impact on both water fowl and non-game species.

046 NEIL MULLANE, DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ): Submits and summarizes written testimony relating to the drought. (Exhibit I)

070 HILL: What were the pollutants in particular you were concerned with in 1977?

071 MULLANE: Organic pollutants that would have a lot of chemical oxygen demand and biological oxygen demand on a river. At that particular time we were looking at ammonia.

075 HILL: Would you have the same concern about pulp and paper activity in this drought?

076 MULLANE: We would have the same concern with that and additional pollutants. Particularly chlorinated organics and amounts the industries are allowed to discharge at different river flow levels.

079 HILL: And that is driven by the TMDLs?

079 MULLANE: Correct. That wasn't the case in 1977 because there were no TMDLs. Continues summary of Exhibit I. For the most part, our sources are in the main stems. Of the 240 MPDS permits (permits that discharge to rivers), about half of them currently are land application permits.

131 HILL: Do you have a strategy for tackling some non-point sources in a drought situation?

133 MULLANE: In a drought situation, non-point sources are not necessarily a problem. Because non-point source problems are driven by rain events.

135 HILL: Closes hearing at 4:50 p.m..

Submitted by: Reviewed by:

Bernadette Williams Lisa Zavala
Assistant Administrator

EXHIBIT LOG:

A - News articles - Sen. L. Hill	6 pages
B - Summary of April 1 water conditions - Barry Norris	1 page
C - Letter to Drought Council from Barry Norris	
- Barry Norris	17 pages

D - Flow Chart - Barry Norris	1 page	
E - Drought Mitigation - Barry Norris	1 page	
F - Water Resources Commission [activities] in the event of drought declaration - Barry Norris		1 page
G - Potential Effects of Summer Drought - Jill Zarnowitz	4 pages	
H - Memo from Rep. Dave McTeague	2 pages	
I - Testimony of Neil Mullane, DEQ	15 pages	