

Senate Committee on Water Policy  
March 26, 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 26, 1991Hearing Room 137  
3:15 p.m. Tape 37

MEMBERS PRESENT:Sen. Larry Hill, Chair  
Sen. Bob Kintigh  
Sen. Eugene Timms

MEMBER EXCUSED: Sen. John Kitzhaber, Vice-Chair  
Sen. Wayne Fawbush

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

MEASURES  
CONSIDERED

HB 2188-A - Modifies requirements relating to records of Water

Resources Department, PUB

HB 2190-A - Modifies water right permit cancellation procedure,  
PAW

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TAPE 37, SIDE A

006 CHAIR HILL: Calls the meeting to order at 3:35 p.m..

(Tape 37, Side A)  
HB 2188-A - WORK SESSION  
Witnesses:

John Borden, Water Resources Department

008 Opens work session on HB 2188-A. Because HB 2188-A had trouble on the House side and had to be referred back to committee, I'm reluctant to change the language for fear of pushing some House member's concern to the extreme.

021 KINTIGH: Are there any "red flags" in it?

022 HILL: None that I can see. Section six changes "a notification of intention" to file a claim to a "registration statement" having been filed.

Section 11, Sub-section 2, changes what records a watermaster may use when the watermaster must rely on a well log or other documentation, which shall be in accordance with ORS 537.545 (3).

046 LISA ZAVALA, COMMITTEE ADMINISTRATOR:  
Read ORS 537.544 (3). WRD staff can explain that further.

055 HILL: What exactly do lines 11, 12 and 13 of Section 11, Sub-section 2 do?

054 JOHN BORDEN, WATER RESOURCES DEPARTMENT (WRD):  
Last session it was made clear that a well log was a record of the Department. We thought that since this was an area where we were listing all the records it would make sense to make it harmonize here as well.

063 HILL: It allows the priority date to be the date of the well log?

064 BORDEN: That is correct.

065 HILL: You're establishing a priority date for that particular record?

066 BORDEN: That was done last session and we are just making it clear

here.

067 TIMMS: It makes no changes in current water law; the only changes relate to where the records are kept.

070 BORDEN: Both where the records are kept and what medium they may be.

072 HILL: The original bill eliminated the need for paper records and some of the Representatives were concerned. It was later put back in with the allowance that it doesn't have to be kept in the Director's office. You can also utilize electronic or magnetic records for your work?

078 BORDEN: That is correct.

079 KINTIGH: What kind of backup and security do you have on these records?

084 BORDEN: We have three types of backup. The deepest one is a monthly tape put in cold storage. We also do an incremental backup on a weekly basis, which is stored on site in our vault and an evening backup.

MOTION: SENATOR KINTIGH moved HB 2188-A to the floor with a "do pass" recommendation.

VOTE: In a roll call vote, the motion carried with all members present voting AYE. Senators Kitzhaber and Fawbush were excused.

101 HILL: Closes work session on HB 2188-A.

(Tape 37, Side A)

HB 2190-A - PUBLIC HEARING AND WORK SESSION

Witnesses: John Borden, Water Resources Department  
Steven Applegate, Water Resources Department  
Bev Hayes, Water Resources Department  
Kip Lombard, Water Resources Congress

102 HILL: Opens public hearing on HB 2190-A. Certified mail sounds expensive.

116 BORDEN: I think that it is less than \$2.00 a piece. Submits and summarizes written testimony on HB 2190-A. (EXHIBIT A)

150 HILL: What is the current process and how does this differ from that? This process has never been used?

154 STEVEN APPLGATE, WATER RESOURCES DEPARTMENT:  
To my knowledge it has never been used. The intent of the original statute was to allow parties who were in favor of the cancellation to give evidence to the Department. That rarely occurs and we don't know who those people are.

164 HILL: Currently you would have to send notice by registered mail to each person having any claim or interest in the permit sought to be canceled. Is that everybody in a reach?

169 APPLGATE: That is what we don't know for sure and why we haven't used this statute. It could be construed as having to provide notice potentially to all water users in the basin, in case there is some interest in the proceeding. It has never been completely clear to us what that language meant and how it would be interpreted by a court if we failed to do things properly.

176 BORDEN: We did have a verbal communication with the Assistant Attorney General a couple of years ago. She suggested that if we had something high in the Willamette Basin, this notice could conceivably reach to the mouth of the Columbia.

182 HILL: What does the new process provide?

183 APPLGATE: We believe the new language would allow us to cancel a permit if there is grounds for such cancellation at any point in which the permit holder fails to meet the requirements of that permit. With this process we would serve notice to any person who, according to our records, had an interest in that particular permit.

202 HILL: If for instance, it is an irrigation district and you have a record that they are members of that irrigation district, would each member receive a notice under this

new language?

205 APPELLEGATE: I don't believe so. We would treat a permit as if it were personal property and therefore belonged to the persons named on the permit. We believe we would be responsible for notifying anyone who had inquired of us or proved to us that they owned the property involved or named on the permit.

216 TIMMS: Are you referring to Section one, lines 18 and 19? ORS 183.415?

219 APPELLEGATE: I am not certain what the language of that statute is. I presume that is a requirement for certified mail.

222 BORDEN: I believe it is the prescription out of the Administrative Procedures Act.

225 APPELLEGATE: ORS 183.415 says "served personally or by registered or certified mail."

227 TIMMS: You are replacing everything you are taking out in Section 1, sub-sections 2 and 3 with ORS 183.415. How many cancellations are there in a year?

232 APPELLEGATE: In the last four or five years we have averaged about 200 - 300 permits a year that are canceled for failure to meet the requirements of that permit.

236 TIMMS: You aren't currently doing them under these statutes?

238 APPELLEGATE: We are not doing them under this particular set of statutes. We are doing them under ORS 537.260, which says that the permit may be canceled after the date for completion of the use if the permit holder fails to submit proof of his completion of that use.

244 TIMMS: What changes are we making in this current law? What is the difference between ORS 537.260 and the new changes?

248 APPELLEGATE: Under ORS 537.260 we are restricted to canceling the permit only after the final completion date of the permit. This is the date by which they have to have put water to beneficial use. There are three different dates in every permit. 1) A date for beginning construction. 2) A date for completion of construction of the system. 3) The C-date or beneficial use date. ORS 537.260 only allows us to cancel after that final date. In an increasing number of cases, there are situations where even though we know a permit is no longer valid, we can't take steps to cancel it for two or three years.

266 TIMMS: Is that an example that comes up frequently?

270 APPELLEGATE: It has been fairly infrequent in the past, because the only situation would be if they failed to begin construction within that first year. We often either don't know that for certain or they don't truthfully tell us what they do. It is becoming more frequent because we are increasingly conditioning permits with various other requirements that have to be met.

282 TIMMS: This legislation will have no effect on water right certificates? This is only for the permit holder who hasn't followed through with the requirements.

291 APPELLEGATE: That is correct.

303 TIMMS: How much time did the House spend on it?

304 BEV HAYES, WATER RESOURCES DEPARTMENT: We had a working group to make sure that the bill didn't do anything that would alarm people. Water Resources Congress proposed amendments, which were adopted. It did get some screening.

322 HILL: Closes public hearing on HB 2190-A. Opens work session on HB 2190-A. It looks like the House has put a lot of work into the bill. It doesn't do more than it is intended and will make this cancellation provision useful to the Department.

334 TIMMS: WRD is making a minuscule change and they've never used what is currently in statute for a certificate that is out there.

342 HILL: Water Resources Congress has no problem with this legislation?

343 KIP LOMBARD, WATER RESOURCES CONGRESS:

We presented the amendments for the A-Engrossed version of the bill. It made it a better bill because it narrowed the number of people that notice had to be sent to. Our analysis was that when talking about the cancellation of a permit, who really cares other than the permittee. That would not raise a red flag because it only means more water in the stream.

361 HILL: Yes and no. If the instream water right has been approved, it may mean more water in the streams. But if there are junior users whose appropriations come first, those users would benefit from the cancellation. That is as it should be.

370 MOTION: SENATOR TIMMS moved HB 2190-A to the floor with a "do pass" recommendation.

VOTE: In a roll call vote, the motion carried with all members present voting AYE. Senators Kitzhaber and Fawbush were excused.

376 HILL: Adjourns the meeting at 4:00 p.m..

Submitted by:      Reviewed by:

Bernadette Williams      Lisa Zavala  
Assistant                      Administrator

EXHIBIT LOG:

A            -            Testimony on HB 2188-A - John Borden, WRD - 1 page