

Senate Committee on Water Policy
April 18, 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

April 18, 1991Hearing Room 137
3:15 p.m. Tapes 46 - 47

MEMBERS PRESENT:Sen. Larry Hill, Chair
Sen. John Kitzhaber, Vice-Chair

Sen. Wayne Fawbush (Arrived at 3:35 p.m.)
Sen. Bob Kintigh
Sen. Eugene Timms (Arrived at 3:35 p.m.)
Sen. Dick Springer (Arrived at 3:50 p.m.)

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

MEASURES

CONSIDERED:SB 839 - Prohibits construction, operation or maintenance of dam or hydroelectric facilities on North and main stem of Umpqua River, PPW

SB 1129 - Expedited water transfer process, PPW

SB 1147 - Safe Drinking Water Act, PPW

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 46, SIDE A

007 CHAIR HILL: Calls the meeting to order at 3:25.

(Tape 46, Side A)

SB 839 - PUBLIC HEARING AND WORK SESSION

Witnesses:Sen. John Kitzhaber, District 23

Jill Zarnowitz, Oregon Department of Fish and Wildlife

Louise Bilheimer, Oregon Rivers Council

Wayne Spicer, Umpqua Fisherman's Association

Bill Strader, Umpqua Fisherman's Association

Rob Bowler, Steamboaters

Jim Anderson, Pacific Power

Steve Marks, Sen. Kitzhaber's Office

008 HILL: Opens public hearing on SB 839.

013 SENATOR KITZHABER, DISTRICT 23:
Summarizes history of SB 839. SB 839 deals with an eight year controversy over a hydroelectric generation project on the North Umpqua River at Winchester.

Pacific Power & Light owned the dam and in 1983 FERC issued an exemption order that allowed the generation of hydro power. The hydroelectric facility was closed and the dam was then given to the Winchester Water Control District. Between 1984 and 1985, the dam operated only halftime due to problems with downstream and upstream fish migration. In the case of Steamboaters versus FERC, the Ninth Circuit Court of Appeals reversed, remanded and rescinded the FERC exemption order and declined to let the project continue operating pending a remand to FERC. It has not operated since that time.

In September 1989 an agreement was reached between Pacific Corp and Winchester Water Control District stipulating that the power generating facilities would be removed from the dam by March 1990. Currently the generation facilities remain in place although not operational. Also, Pacific Corp. has agreed to pay the sum of \$10,000 a year for five years to the water control district in order to terminate the power agreement. Our concern is that the turbines are in violation of the agreement.

Subsection 2, lines 13 through 16 are redundant language that is covered in line 5. The bill's objective is to withdraw the option of hydroelectric generation on that portion of the Umpqua river.

072 JILL ZARNOWITZ, OREGON DEPARTMENT OF FISH AND WILDLIFE (ODFW):
ODFW strongly supports SB 839. We prefer keeping Subsection 2 in because the dam would be required to be removed otherwise and it may need some additional looking at before it is removed. Currently our fish passage facilities are in place and provide fish passage upstream.

085 KITZHABER: It seems that the first sentence in Subsection 2 dealt with that question. But I agree that Counsel should look at this more closely.

091 ZARNOWITZ: We would be willing to go with whatever Counsel determines.

094 LOUISE BILHEIMER, OREGON RIVERS COUNCIL:
We strongly support SB 839.

111 WAYNE SPICER, UMPQUA FISHERMAN'S ASSOCIATION:
As one of the sponsors of SB 839, we encourage passage of this bill as a means of ending the threat of hydroelectric development (both past and future). The Winchester hydroelectric project killed

thousands of downstream and upstream migrating fish. With the turbines still in place, we fear that someday someone will attempt to reactivate them.

165 KINTIGH: Do you want electricity?

166 SPICER: Yes. The project was built when there was a surplus of electricity. The electricity that came off this grid was approximately enough electricity to serve between 350 to 400 homes. This power was taken off the grid and sold to Utah Power.

177 KINTIGH: With all our streams being closed to any hydroelectric generation, what do you propose as alternative power sources?

181 BILL STRADER, UMPQUA FISHERMAN'S ASSOCIATION:
In my opinion, the amount of generation at the Winchester plant was insignificant in the PP&L grid.

187 SPICER: The key is the placement of the project. If the projects are placed high in the systems where they do not interfere with anadromous fish runs or native populations, we can accept that. The problem with the Winchester project is that the North Umpqua is a main freeway for migrating salmon and steelhead.

201 KINTIGH: But this bill is prohibiting it forever, so placement is not the issue here.

203 SPICER: We didn't include the South Umpqua River on this bill. There may be other streams in the state where it would be tolerable to have projects on a higher stretch.

209 KINTIGH: Would you support steam or nuclear plants when we need more power?

210 SPICER: Not prepared to speak for the organization. We would have to look at what the project is.

215 STRADER: We are alarmed that Winchester Dam is still at large and fear that they may retrofit the project.

260 ROB BOWLER, STEAMBOATERS:
We strongly support SB 839.

308 JIM ANDERSON, PACIFIC POWER:
We do not oppose SB 839 in its present form. Per a telephone conversation, we are going to be removing the equipment ourselves and we will be withholding the amount of money from the district equal to the amount it costs us to remove it, less the amount we can salvage from sale and the depreciation on that equipment as it comes out. It will be an amount withheld from the district as if they had been removing it themselves.

344 TIMMS: The big cost is to the water control district/irrigation district?

347 ANDERSON: That is right.

348 TIMMS: They are the ones responsible for removing the equipment, but can you still go in and do it without incurring a liability?

351 ANDERSON: I'm not certain about the liability. We are putting together a deal with the district to remove the equipment ourselves since they have not been able to do it.

357 TIMMS: Will the structure continue to provide irrigation to the water control district or are we doing away with it completely?

362 ANDERSON: I don't believe that we will get rid of the impoundment.

364 TIMMS: How are the fish currently getting over the impoundments?

365 ANDERSON: I'm not sure, but probably fish ladders.

366 TIMMS: The dam was constructed adequately for fish to get over it. That is not the argument, it is rather to prohibit any further hydroelectric development on Winchester Dam and to require the equipment to be removed.

375 ANDERSON: That is correct. Operation and maintenance.

376 TIMMS: Is there a process for the fish to get over the dam and it has been effective?

380 ANDERSON: I believe there is.

402 HILL: Closes public hearing on SB 839 and opens work session on SB 839.

Senator Kitzhaber suggests that on lines 14 through 16 we strike the sentence after the period on line 13 through line 16. The prohibition on operation would still apply to the Winchester Dam because it would still be subject to the effects of Subsection 1.

423 KINTIGH: Asks for clarification.

425 HILL: Strike the last sentence in Subsection 2 because it appears to be redundant in Subsection 1. Not changing the effects, just cleaning up the language.

435 STEVE MARKS, SENATOR KITZHABER'S OFFICE: That is accurate. I have discussed with ODFW whether they could repair and operate their fish ladder at Winchester Dam and we believe that is covered under the Section 2, line 12 because they are considered part of the dam.

443 HILL: Asks Jill Zarnowitz if leaving in the first sentence of Subsection 2 ODFW could require maintenance of the fish ladder. Does that meet your concerns?

448 ZARNOWITZ: I believe it does. We agree that leaving the sentence in seems redundant

452 MOTION: SEN. HILL moved to amend SB 839 by deleting the last sentence in Section 1, Subsection 2 on lines 13 through 16 of the bill.

VOTE: With no objection, the motion carried.

457 MOTION: SEN. FAWBUSH moved SB 839 as amended to the floor with a "do pass" recommendation

463 TIMMS: Does Mr. Nelson know anything about the Water Control District. They should work this out between PP&L and the Water Control District, because this bill doesn't have a thing to do with that anyway.

474 VOTE: In a roll call vote, the motion carried with all members voting AYE.

TAPE 47, SIDE A

(Tape 47, Side A)

SB 1129 - PUBLIC HEARING

Witnesses: Kip Lombard, Oregon Water Resources Congress
Dan Wilson, Tualatin Valley Irrigation District
Jan Boetcher, Oregon Water Resources Congress
Bev Hayes, Water Resources Department
Tom Simmons, WaterWatch

028 HILL: Opens public hearing on SB 1129.

047 KIP LOMBARD, OREGON WATER RESOURCES CONGRESS:
Submits and summarizes written testimony on SB 1129. (EXHIBIT A) Submits and summarizes amendments and hand-engrossed amendments to SB 1129 (EXHIBIT B and C)

289 DAN WILSON, TUALATIN VALLEY IRRIGATION DISTRICT, FOREST GROVE:
We have formally started this process. We have a water right for 17,500 acres of Bureau of Reclamation water out of Hague Lake and it is spread over a 60,000 acre district. People wanted to move that water from place to place for cropping patterns. We spent \$18,000 having the rest of our district mapped for water rights.

314 HILL: Are these members of the Irrigation District who are serviced by the district moving the water around?

316 WILSON: That is correct. We also have people within our district boundaries who are not serviced by our district. This is just land that is mapped using water from the the Tualatin Valley Irrigation District.

The application process is currently underway. If this bill passes and we get our application, we will have done it both ways and it is expensive. We do not expand our water right, we just rotate the crops. The irrigation districts are a unit of government and in terms of managing a specific amount of water, we are better set up to deal with that than the water

master or the WRD.

356 HILL: SB 1129 would allow you to shift water within the district from one piece of irrigated land to another piece of land for irrigation purposes. You are not asking for nor would this accomplish a transfer to a different use? (e.g. municipal or industrial uses)

363 WILSON: Irrigation districts only deliver raw water therefore we couldn't do that. There is another bill introduced in the House that would allow irrigation districts to expand their objectives and deliver raw water for industrial use, but that is another issue.

377 LOMBARD: Some districts do have limited authority under some permits to provide some municipal and industrial water; that is not our principal function and it isn't much.

405 HILL: The range of changes are broad and we will study it.

412 WILSON: The amended bill addresses some of the problems raised to date.

419 JAN BOETCHER, OREGON WATER RESOURCES CONGRESS:
One reason for the extension request, in regard to finishing the HB 3111 work, is the drought situation. Many districts were going to do fly overs to make their maps more accurate and detailed. They were cautious of having everyone use the fullest extent of their water this year for that purpose. It makes good sense for efficiency not to do that.

439 BEV HAYES, WATER RESOURCES DEPARTMENT:
Submits and summarizes written testimony on SB 1129. (EXHIBIT D) Supports SB 1129 with the amendments and believe that they address most of our concerns. The Water Resources Commission supports the bill because it provides some flexibility and would allow WRD to maintain necessary controls as to how the water is used and how.

460 HILL: For your purposes, are the irrigation districts a single water right holder?

463 HAYES: Yes, most of them are.

463 HILL: As long as the water is put towards irrigation, that is consistent with your understanding of how it should be utilized.

470 HAYES: As long as we know where it is being used and that it falls under the amount specified in the water rights.

476 HILL: What if a member of the district, who no longer uses it, wants it back from another part of the district. What if there is dispute within the district? Is that to be settled under the District bylaws?

482 HAYES: I believe that SB 1129 outlines a process for settling those disputes to some extent.

484 LOMBARD: The law still provides for inclusions as well as exclusions from a district. A water user can petition the district for inclusion in the district. However, we still have the outside parameters of the scope and the limit of the water right. The district will have to fit that application for inclusion into the total water right.

TAPE 46, SIDE B

035 FAWBUSH: What if I were in a situation where I own land but am not able to plant trees on it due to financial circumstances and the district takes the water. What if in five years I am able to plant the trees and want the water back. Are you saying that that water I once had is no longer identifiable as mine? I have to make an application for a new allocation.

043 LOMBARD: Yes, that is correct. But, if you are truly having an economic problem, under ORS 546 .010, that is one of the exceptions to the running of the five year non-use period. You may avoid the taking in the beginning by proving to the district manager you have an economic problem under ORS 546.010.

052 FAWBUSH: What is the process for reallocating the water you've captured?

053 LOMBARD: The process is that the district could move it to other irrigable lands within the district. It is limited to the total acreage that the district is entitled to irrigate and the total volume and quantity that the district are entitled to use.

061 HILL: Regarding Tualatin, there are 17,500 acres permitted to be irrigated. SB 1129 wouldn't care which acres, but would limit it to 17,500 acres?

065 LOMBARD: That is correct.

065 HILL: You can mix and match inside the district boundaries?

066 LOMBARD: That is correct.

066 HILL: How many acre feet are permitted under the Tualatin permit certificate?

069 WILSON: The permit is 2 1/2 acre feet per acre. It is both a natural flow right and a stored flow right. The stored flow right is 1.5 acre feet per acre and the rest is made up of natural flow; we can use a combination of the two. Nursery crops are an exception, they can have five acre feet per acre. We have a meter system in our district.

078 HILL: How efficient is your district?

079 LOMBARD: It is the most efficient district in the state because it has a totally pressurized pipe system.

082 HILL: With that progressive and expensive technology, what is the percentage of the diverted water lost to leakage or not used productively?

088 WILSON: The question is "What is wasted?" Our water is from the Tualatin River and if everybody shuts their pumps down, that means our pumps shut off and all the water we have coming out of dam and down the river is lost to us as irrigators. But, it goes to the river as pollution control. Is that wastage? I don't believe so.

096 HILL: Once the water is in your system, if it is a closed system, there is probably very little wastage?

098 WILSON: Our system is 195 miles of pipeline under 150 pounds of pressure and if someone shuts down, it stays there.

101 HILL: When did you modernize your system?

102 WILSON: This system was built that way in 1975; it is a relatively new system. It was a Bureau of Reclamation design and a new concept with its pressurized system.

114 TOM SIMMONS, WATERWATCH:
WaterWatch has been working with Water Resources Congress to try to resolve the difference in SB 1129 and the provisions in SB 1163. With some slight modifications, we have no problem with the concept of SB 1129.

When an irrigation district with a great amount of land and a large water right is finally certificated, that area of land is significantly reduced and the water is reduced accordingly. Whether an irrigation is certificated or permitted makes a considerable difference as to the latitude that they are allowed to move the water around.

161 HILL: SB 1129 doesn't expand what is permitted in current law. The problem with conversion of an irrigation district to a suburban/ranchette system is not part of this bill.

167 SPRINGER: When we changed the definition of "irrigable land", that is exactly what we do. If we expand the definition to include parks, school grounds, ornamental grounds, nurseries and golf courses as ornamental vegetation then be careful. Subdivision city qualifies under that definition.
(See Section three of SB 1129 and page eight of Exhibit A)

182 HILL: Closes public hearing on SB 1129.

(Tape 46, Side B)
SB 1147 - WORK SESSION
Witnesses:Roelin Smith, Water Resources Department
Dave Leland, Oregon Health Division

182 HILL: Opens work session on SB 1147.

207 HAYES: Summarizes the management of the Water Development Loan Program.

It was created in 1975 to make loans to owners of small family farms. During the late 1970's and early 1980's, the economic conditions changed for the worse for farmers. In 1982, the statutes changed to allow funding of projects that provide water for municipal use. In 1988, fish protection and watershed enhancement were also added to program.

In 1984, the Loan Program was moved to the Central Services Division. When the program was restructured, it began dealing with the problems of how we were making interest payments. WRD took a number of steps to try and address the problems in the program (legislation and administrative rules). WRD contracted with bond counsel and financial advisors. The problems are under control and well managed.

In the last six years, three new loans were given out and WRD is no longer lending money to individuals at all. WRD only considers irrigation districts and municipalities.

251 ROELIN SMITH, WATER RESOURCES DEPARTMENT:
Summarizes history of statistics of the fund:

--Issued 43 million dollars in General Obligation (G.O.) bonds. Made 180 different loans, which all went to irrigation and drainage projects for small family farms (exception of four municipal drinking water projects).

--In 1989, did need a cash infusion from the general fund for \$330,000. To date, that is all of the money put into the program from the general fund.

--Currently, the cash flow is reflecting an ending cash balance of approximately \$11,000. This is a great improvement from a negative 1.6 million dollars projected prior to that.

--The cash flow projection done yearly is merely a projection based on the current assumptions and best information available at that time. That cash flow can change from one year to the next. It is really based on how our revenues and expenses compare.

Although currently not in statute or rule, it is a WRD policy that any entity wanting loans will have meters or a plan to put one in from funds from the loan given to them; that will become a requirement in next rulemaking. WRD currently dedicates the staff to review any conservation plans from applicants to make sure that the rates and structures are endeavoring to conserve water.

--The entity has to be less than 30,000 in population to qualify under the constitution and must show

us how they intend to repay this debt (rates, taxes or fees).

331 HILL: These would be G.O. bonds and would be taxable?

333 SMITH: They are G.O. bond, but non-taxable.

333 HILL: They would be under the Treasurers current moratorium on bonds.

335 SMITH: Yes. We haven't had any defaults from municipalities within the loan program. These are more secure than the past loans. Also, by making these loans it will provide the loan program with a more stable and secure base in which to cover future and ongoing operations.

361 DAVE LELAND, OREGON HEALTH DIVISION:
Testified that they are awaiting the final review of amendments by the Department Director and asks to work with the Committee staff to get the final package ready.

387 HILL: SB 1147-1 amendments are not final?

387 LELAND: That is correct.

388 HILL: Are you going to add new amendments or are you going to change this language?

389 LELAND: We will do both and put them into one package.

Reviews history of SB 1147:

--Based on legislative concept and came out of Task Force work.
Legislative Counsel prepared language that amended statutes in the Economic Development Department's Special Public Works Fund and WRD's Water Development Loan Fund.

The amendments allow the demonstration level program to proceed for the next biennium. This will construct water system projects that are consistent with the Special Public Works Fund requirements for EDD and which are designed to meet safe drinking water regulations.

They will also set up statutory framework to allow the 1993 Legislature to make appropriations to fund the full program after reporting back on the success of the 1991-93 demonstration project.

The amendments clarify the intent of the bill. Examples are: 1) Refined definition of municipality in accordance with revisions in HB 2248. 2) Clarify that we are going to fund "safe drinking water projects" in this demonstration level projects. 3) Resolve conflicting language regarding the ability to pay for administration of the funding program and the bond sale cost. 4) Allow for future appropriation of funds beyond what is currently set up.

Other keys amendments offered by the Attorney General for both WRD and EDD create a single safe drinking water fund in the State Treasury which will be administered by EDD. It will also

delete some language that requires multi-agency rulemaking.

483 SPRINGER: Refers to lines 27, 28 and 29 on page 1 of the hand-engrossed amendments to SB 114 7. (EXHIBIT E) Does that mean EDD can talk to WRD but not the Health Division or LCDC? Why do we have the disjunctive substituted for the conjunctive?

TAPE 47, SIDE B

028 LELAND: We are trying for some flexibility. It wouldn't necessarily be appropriate in every case to consult with every agency.

036 SPRINGER: "I would tend to err on the side of too much as opposed to too little."

038 HILL: Would you put in stronger language for conservation?

038 SPRINGER: Leave it as planned and keep the "and" in.

042 HILL: Is the point to keep it part of an approved plan? If there is an approved plan in the area and this is consistent with that plan, it would be easier to state that it "shall be consistent with the approved land use plan or the applying agency" and require consistency in planning that way rather than running it by the Commission?

049 SPRINGER: It would worry me if this project could only involve WRD or only the Health Division and not others. WRD and the Health Division ought to be involved in every one. And it ought to cross someone's desk at the other agencies.

055 LELAND: We currently have coordination agreements between our agencies and DLCD that require us to have their sign-off on projects that come to our office.

061 HILL: A safe drinking water project isn't just rehabilitating the plant, but could include the lines, piping and metering. It could include a range of activities beyond just bringing the plant up to correct treatment standards. If we are recognizing the role of conservation in the state, we ought to define a safe drinking water project broader than just meeting the health standards. We ought to add to the definition of "project" a purpose of achieving conservation of water.

Submits and summarizes amendments to SB 1147. (EXHIBIT F) Adjourns meeting at 5:00 p.m..

Submitted by: Reviewed by:

Bernadette Williams Lisa Zavala

Assistant

Administrator

EXHIBIT LOG:

A - Testimony on SB 1129 - Kip Lombard, Water Resources Congress - 9 pages
B - Amendments to SB 1129 - Kip Lombard, Water Resources Congress - 3 pages
C - Hand-Engrossed Amendments to SB 1129 - Kip Lombard, Water Resources
Congress - 8 pages
D-Testimony on SB 1129 - Bev Hayes, Water Resources Department - 1 page
E-Hand-Engrossed Amendments to SB 1147 - Brendan Doyle, Oregon Health
Division - 7 pages
F-Amendments to SB 1147 - Sen. Larry Hill, District 21 - 4 pages