

SB391

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 27, 1992

FURTHER REFERRALS:

Date of Committee Action: 5/9/92

The FINANCE Committee considered:

SB 391 am

SENATE BILL NO. 391 am

PUBLIC DRINKING WATER CLEANUP

"An Act relating to the restoration of unsafe public drinking water supplies or the provision of alternative public drinking water supplies in connection with oil or hazardous substance containment and cleanup activities; and providing for an effective date."

RECOMMENDATIONS:

be replaced with HCS 055B 391 (P&H) ^{P&H} [] the same title

[] have attached amendments(s)

[] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

[] fiscal impact _____

[] fiscal note(s) _____

[] zero fiscal note _____

[] zero fiscal note(s) DEC 3/6/92

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Ed Prachen</i> <i>Prachen</i>	✓	<i>James Barnes</i>			
<i>Mike Spaw</i> <i>Navarre</i>	✓	<i>Bob A. ...</i>			
<i>Mark ...</i> <i>Boyer</i>	X	<i>RO. ...</i>			
<i>Kay ...</i> <i>Brown</i>	✓				
<i>Robert ...</i> <i>Koponen</i>	✓				
<i>Jim ...</i> <i>Ulmer</i>	X				
<i>Donald ...</i> <i>Larson</i>	X				

Mike Spaw *Ed Prachen*
CHAIRMAN'S SIGNATURE

FISCAL NOTE

Bill Version: SB 391

(S) Publish Date: 3-6-92

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Environmental Conservation
 Title: Restoring impaired public drinking water supplies BRU: Spill Prevention and Response
 Sponsor: Sen. Hoffman Component: Contaminated Sites
 Requestor: Sen. Hoffman

COMPONENT SERIAL NO.			
1	4	3	1

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	*					
---------	---	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	*					
FUND SOURCE: 1052						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: none

ANALYSIS: (Attach a separate page if necessary.)

* Any costs associated with this legislation would be recovered from the party responsible for the contamination.

Prepared by: Janice Adair
 Division: Commissioner's Office

Phone: 465-5050
 Date: 2/10/92

Approved by Commissioner: [Signature]
 Agency: Environmental Conservation

Date: 2/10/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HOUSE CS FOR SENATE BILL NO. 391 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 4/27/92
Referred: Finance

Sponsor(s): SENATORS HOFFMAN, Adams

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the restoration of unsafe public drinking water supplies or the
2 provision of alternative public drinking water supplies in connection with oil or hazardous
3 substance containment and cleanup activities; and providing for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 46.08.010(c) is amended to read:

6 (c) The fund shall be used for actual expenses incurred under AS 46.08.040. Except for
7 containment or cleanup activities related to restoration of unsafe public drinking water
8 supplies or the provision of safe alternative public drinking water supplies, or as provided
9 in AS 46.08.040(d)(2), the fund may not be used for capital improvements.

10 * Sec. 2. AS 46.08.070(a) is amended to read:

11 (a) Except as provided in (d) of this section, the [THE] commissioner shall seek
12 reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred
13 in the cleanup or containment of oil or a hazardous substance that has been released.

14 * Sec. 3. AS 46.08.070(b) is amended to read:

1 (b) Except as provided in (d) of this section, the [THE] attorney general, at the request
2 of the commissioner, shall immediately seek to recover money expended by the department under
3 AS 46.08.005 - 46.08.080 or other law to contain and clean up oil or a hazardous substance that
4 has been released or to control the threatened release of oil or a hazardous substance.

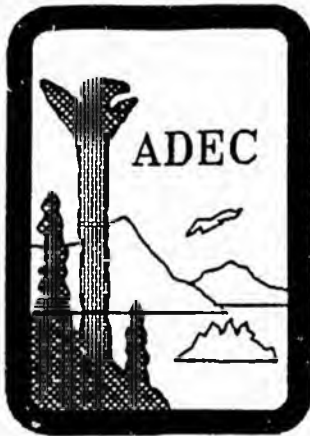
5 * Sec. 4. AS 46.08.070 is amended by adding a new subsection to read:

6 (d) Notwithstanding (a) and (b) of this section, the state may not seek reimbursement or
7 recovery of containment and cleanup costs incurred to restore unsafe public drinking water
8 supplies or to provide safe alternative public drinking water supplies from a village if the village,
9 as defined in AS 46.07.080, is a party responsible for the release that caused the water supply
10 to become unsafe.

11 * Sec. 5. AS 46.08.900(3) is amended to read:

12 (3) "containment and cleanup" includes the direct and indirect efforts associated
13 with the prevention, abatement, containment, or removal of oil or a hazardous substance, and the
14 restoration of the environment including the restoration of unsafe public drinking water
15 supplies or the provision of safe alternative public drinking water supplies; when applied to
16 expenses, the term includes the additional costs of providing a reasonable and appropriate
17 function or service incurred in response to the release of the oil or hazardous substance, including
18 administrative expenses for the incremental costs of providing the function or service;

19 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).



Department of Environmental Conservation

POSITION PAPER

RECEIVED
13 1992

BILL NO: SB 391

APPROVED:

Joe A. Taylor

TITLE: Restoration of Impaired Water

DATE:

3-18-92

The Department supports this legislation. There have been several occasions in the last few years when undetected spills of hazardous substances, including petroleum products, have contaminated public drinking water supplies in remote communities. In many cases, the Department of Environmental Conservation (ADEC) undertook containment and cleanup activities using the Oil and Hazardous Substance Release Response (470) Fund.

Generally, cleanup activities of contaminated soil involve drilling "monitoring" wells to determine the extent of the contamination. The same equipment used for these monitoring wells can be used to drill a new drinking water well. ADEC has no mechanism to provide an alternative drinking water source to a community absent a specific capital project appropriation. The legal restrictions on the 470 Fund prevent ADEC from using this fund source to reestablish the drinking water source as a part of ADEC's cleanup activities. The community is thus forced to wait through at least one capital budget cycle for the necessary funds. By this time, another construction season is gone, as is the equipment used to drill any monitoring wells. The need to return this equipment to the community in order to drill a new drinking water well can significantly add to the cost of the capital project.

A.S. 46.08.040 outlines the purposes for which the 470 Fund may be used. It includes the containment and cleanup of a release of a hazardous substance. Any funds so expended are to be recovered from the party responsible for the release pursuant to AS 46.08.070. SB 391 amends the definition of "containment and cleanup" to include the restoration of a contaminated public drinking water supply. Any funds used for this purpose would be added to those the responsible party must repay to the State.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

**DEPARTMENT OF MILITARY
AND VETERANS AFFAIRS**
ALASKA DIVISION OF EMERGENCY SERVICES

PO BOX 5750
FT. RICHARDSON, AK 99505-5750
PHONE: (907) 428-7000

January 2, 1992

NOTE:

This letter is an example of the problems experienced by rural residents faced with an unreliable water supply. Even obtaining water from traditional sources can now have environmental and health problems.

Mr. John Amik
Village Administrator
Kipnuk Village Council
General Delivery
Kipnuk, Alaska 99614

Dear Mr. Amik:

The Division of Emergency Services has reviewed your request for assistance in meeting the village's need for a more readily available source of water by filling the storage tank with water drawn from a nearby lake. While recognizing the difficulty that villagers encounter in supplying themselves with water in the traditional ways, hauling ice from nearby lakes, we have concluded that your proposal does not offer a feasible alternative.

This conclusion is based in part on engineering advice we have obtained from the Alaska Department of Environmental Conservation and the U.S. Public Health Service. There are two problems with your proposal: (1) the water in the lake from which you propose to draw, and other area lakes, is extremely turbid with suspended material at this time of year. Moreover, because of the shallowness of the lakes (two feet or less), it would be impossible to avoid pumping an excessive amount of material from the bottom along with the water. The quality of the water would thus be too poor for use in daily laundry purposes, let alone drinking. (2) the logistics of drawing water from lakes and pumping it a minimum of 2000 feet to the storage tank at this time of year would be extremely difficult to accomplish without a prolonged period of temperatures that are higher than normal for this time of year.

While this does not alleviate immediately the hardships that villagers must undergo to obtain water, there is some gratification in knowing that this will probably be the last year that residents of Kipnuk experience a water shortage of this magnitude. As you know, the State Department of Environmental Conservation and the U.S. Public Health Service have been working for some time on proposals to provide a long term solution to the village's water problems,

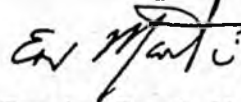
January 2, 1992

Page 2

including the construction of larger capacity storage facilities and a washeteria. At present, over \$1.2 million in federal and State funds are committed to this project, with construction of the first phase scheduled for next summer. It is expected that completion of this phase will assure a storage capacity adequate to meet all of the community's needs throughout the winter.

In the meantime, we can offer a recommendation. We suggest that the Village approach the school and request that the school make available, at least for elderly residents who have difficulty in obtaining water in the traditional way, a place for distributing limited supplies of drinking water from the school's storage tanks. With careful monitoring, this should be possible without depleting the water supply needed by the school to meet its own needs.

Sincerely,



Ervin Paul Martin
Director

EPM:JB:th

cc: Office of the Governor, ATTN: Nancy Barnes
Village Safe Water, ATTN: Greg Capito
US Public Health Service, ATTN: Tom Coolidge
Senator Lyman Hoffman
Representative Ivan Ivan

**TANANA CHIEFS CONFERENCE, INC.**

122 FIRST AVENUE
FAIRBANKS, ALASKA 99701-4897
PHONE (907) 452-8251 FAX (907) 451-8938

SB391

April 8, 1992

The Honorable Representative Georgianna Lincoln
P.O. Box V
Juneau, Alaska 99811

Dear Georgianna:

This letter is to express my strong support for the passage of House Bill No. 535. This bill, if ratified, would provide a much needed source of funds to reestablish a safe drinking water source in villages where community water supplies have been rendered unusable from hazardous material spills.

Contamination of public water supplies from fuel or other hazardous material leaks and spills is a serious public health threat to the Native people of the Tanana Chiefs Conference Region. When a public water system becomes contaminated with a hazardous material such as fuel, it often takes years and considerable sums of money to reestablish a potable water supply in the community. In the interim, community residents are forced to obtain water from unprotected sources such as nearby rivers and streams. A good example of this occurred in the Village of Minto. A fuel line leak in 1988 caused gross contamination of the community well. Development of a new well and transmission line capable of meeting the needs of the village was not completed until 1991 at a cost to the state of \$250,000. For three years, village residents were forced to drink untreated water from the Tolovana River. The provisions of House Bill No. 535 would help to prevent this type of situation from reoccurring. By allowing the use of 470 funds to reestablish a safe drinking water supply where contamination of the existing supply has occurred, the state would be able to offset any impact on the 470 fund by the savings that will be realized by using well drilling equipment already on-site for spill remediation and clean-up. More importantly, village residents who rely on community wells for their water needs will not be required to wait for prolonged periods of time before safe water can once again be provided for them.

Good luck in your efforts to promote ratification of this bill.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

Will Mayo
for Will Mayo, President



Yukon-Kuskokwim Health Corporation

"Fostering Native Self-Determination in Primary Care, Prevention and Health Promotion"

April 4, 1992

Representative Georgianna Lincoln
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Ms. Lincoln:

This letter is written in support of House Bill 535. / SB 391

A recent study conducted by YK staff working with Village Clinics, listed a total of 47 clinics in the Delta. Of the 47 clinics, 21 or 45% of those clinics have water and sewer and 26 or 55% do not.

The impact of an impaired public drinking water supply in the Villages would be severe. This Bill would facilitate cleanup or containment of oil or a hazardous substance that has been released and would allow DEC to put the 470 fund to use in restoring a safe drinking water supply to the impacted Village. This is especially important for the Delta where Villages, because of the time it takes to get the required funding for restoring drinking water. The impact for a Village having to wait for funding for clean-up and water restoration would cause a needless wait.

Sincerely,

Orie Williams

WATER MARKETING SYMPOSIUM

The two day symposium focuses on the experiences of administering water marketing policies developed in other western states. Speakers will explore both the successes and the problems they have encountered in developing a workable marketing policy.

Oregon policymakers--the government, the Legislature, and special interest groups who actively participate in water policy issues--will have the opportunity to share these experiences and to explore which combination of alternatives might be woven into a Water Market Policy for Oregon.

Oregon's Senator Mark Hatfield is the co-sponsor of U.S. Senate bill S.1228 proposing to coordinate water policy issues on a national basis. Senator Hatfield will open the conference with a national perspective.

CONFERENCE LOGISTICS

The following discounted accommodations have been arranged to facilitate travel for conference attendees:

AIR TRAVEL - DISCOUNTED FARES ON UNITED AIRLINES, UNITED EXPRESS AND DELTA AIRLINES

TRAVEL WORLDWIDE NETWORK 1-800-631-9675

The TRAVEL WORLDWIDE NETWORK has negotiated special conference airfares with both United Airlines and their United Express affiliate, and with Delta Airlines. Discounts of up to 45% off regular coach or 5% off the lowest super-savers are available. Please let The Travel Worldwide Network know if you are a senior citizen, since most airlines offer additional discounts of 5%-10%. Please compare the rates offered by Travel Worldwide Network before making your airline reservations. Call Travel Worldwide Network 1-800-631-9675 from 8:30 - 5:00 EST.

Travel Worldwide Network also will arrange for your discounted car rental through Alamo or shuttle service from Portland International Airport.

WEDNESDAY, MAY 27

SMITH AUDITORIUM, WILLAMETTE UNIVERSITY

7:30--8:30 REGISTRATION AUDITORIUM FOYER

8:30 WELCOME

President Jerry E. Hudson
Willamette University

8:40 INTRODUCTIONS

John E. Borden, Deputy Director
Oregon Water Resources Department

8:50 KEYNOTE ADDRESS

The Honorable Mark O. Hatfield
U.S. Senator, State of Oregon

9:10 SESSION 1

THE ECONOMIC THEORY OF THE WATER MARKET

Topics: Characteristics of the water market, curing market imperfections; competitive & distribution problems in free market.

Introduction: Martha O. Pagel
Governor's Senior Policy Advisor for
Natural Resources, State of Oregon

Richard E. Howitt, Professor
Department of Agricultural Economics
University of California, Davis

10:10 COFFEE BREAK

10:25 SESSION 2

LEGAL CONSTRAINTS ON WATER MARKETS

Topics: What are the legal constraints that set the parameters for water marketing? How does the "public trust" apply? What are the limitations on interstate commerce?

Introduction: Kimber Johnson, President
Oregon Water Utilities Council

A. Dan Tarlock, Professor of Law
Illinois Institute of Technology
Chicago Kent College of Law

11:30 LUNCHEON--WILLAMETTE UNIVERSITY CAFETERIA
on own

12:30 SESSION 3

TECHNICAL & ENGINEERING ASPECTS OF WATER MARKETS

Topics: How are marketable rights "measured"? Is the "Irretrievably lost" standard effective? Should only a portion of the right be marketed?

Introduction: Ben "Kip" Lombard, Jr., Counsel
Oregon Water Resources Congress

Steven J. Shupe, Engineer & Attorney
President, Shupe & Associates, Inc.
Director, COMPACT Dispute Resolution Service

1:30 BREAK

1:45 SESSION 4

PROTECTING PUBLIC VALUES

Topics: What interests or values should be protected? What is the public review process?...the Administrative role?...the Judicial role?

Moderator: Susan L. Smith, Professor of Environmental and Natural Resources Law
Willamette University College of Law

Panelists:

Richard Lazarus, Professor of Environmental and Natural Resources Law, Washington University, St. Louis, Missouri

Karen Garrison, Senior Project Scientist
Natural Resources Defense Council, San Francisco

Anne Squier, Assistant Professor of Law,
Lewis & Clark Northwestern School of Law

3:00 ADJOURN

Topic areas will be more comprehensive. The topics listed will be among those discussed at presentations.

4:00-6:00 pm

RECEPTION WILLAMETTE UNIVERSITY CENTER

Oregon Wine and Cheese and Conversation
"Meet the Speakers and Conference Participants"

THURSDAY, MAY 28

8:45 CALL TO ORDER

9:00 SESSION 5

FEDERAL GOVERNMENT'S ROLE IN WATER TRANSFERS

Topics: What are the federal agency constraints on water marketing? How can they be overcome? What is the federal gov't's role in reallocation of water through market transfers?

Moderator: Dave Frohnmayer, Dean, School of Law University of Oregon

Panelists:

J. William McDonald, Assistant Commissioner, Resources Management, Bureau of Reclamation, U.S. Department of Interior

Thomas C. Jensen, Counsel Committee on Energy & Natural Resources, U.S. Senate

10:15 BREAK

10:30 SESSION 6

WHAT WORKS? -- WATER TRANSFERS IN OTHER STATES

Topic: Review of other States' transfer procedures.

Moderator: William H. Young, Director Oregon Water Resources Department

Panelists:

Lawrence J. MacDonnell, Director, Natural Resources Law Center, University of Colorado, School of Law

John E. Echohawk, Executive Director Native American Rights Fund, Boulder, CO

12:00 LUNCHEON -- WILLAMETTE UNIVERSITY CAFETERIA on own

1:30 SESSION 7

CALIFORNIA EXPERIENCE WITH WATER TRANSFERS

Moderator: Gail L. Achlerman, Attorney & Partner Steel Rives Boley Jones & Grey, Portland, OR

Panelists:

Brian E. Gray, Professor of Law University of California, Hastings College of the Law

Jerome C. Muys, Attorney & Partner Will and Muys, P.C., Washington, D.C.

Robert G. Potter, Deputy Director, Department of Water Resources, State of California Supervisor, Divisions of Planning, Management and Fiscal Services

Jason Peitler, Manager Central Valley Project Water Association

3:00 BREAK

3:15 SESSION 8

CONSERVATION & WATER MARKETING

Topics: How can conservation be a source of marketable water rights? Should beneficial use be a limitation on sellers? What are consequences for land use changes resulting from water marketing?

Moderator: Lorna Slickel, Chair, Oregon Water Resources Commission

Panelists:

Edwin V. Lance, Vice President and Director of Agricultural Land & Management, CH2M Hill, Engineers, Denver

Edward E. Pokorney, Manager, Intergovernmental Relations, Denver Water Dept.

Thomas J. Graff, Senior Attorney, Environmental Defense Fund, San Francisco

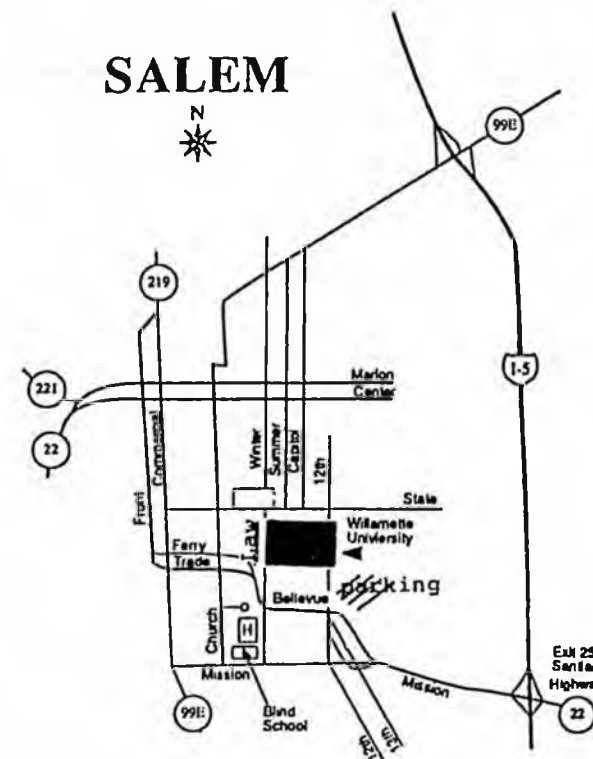
4:15 WRAP UP

SUSAN L. Smith, Professor of Environmental and Natural Resources Law, Willamette University, College of Law... "Conference Overview"

A. Reed Marbut, Manager, Adjudication Section Oregon Water Resources Department "Oregon's Water Market Task Force"

For more information contact:
Water Marketing Symposium
Phone (503) 363-0121; FAX (503) 371-4926

DIRECTIONS TO WILLAMETTE UNIVERSITY COLLEGE OF LAW



REGISTRATION

We encourage Oregon policymakers--government, Legislature and special interest groups active in development of statewide water issues--to register as soon as possible to assure participation

NAME _____

TITLE _____

FIRM/AGENCY _____

MAILING ADDRESS _____

CITY _____ STATE _____

ZIP _____

ADDITIONAL PARTICIPANTS FROM SAME FIRM/AGENCY _____

PLEASE REGISTER _____ PARTICIPANTS @ \$275 ea.
Add \$25 for all registrations received after May 1.

TOTAL: \$ _____

PAYMENT: My check is enclosed payable to "WATER MARKET SYMPOSIUM," P.O. Box 3532, Salem OR 97302.

VISA/MASTER CARD:
Please charge my VISA _____ M/CARD _____

No. _____ Expiration Date _____

Signature _____

REGISTRATION includes conference materials and the hosted reception on campus. Lunches are available at the University Center daily for under \$5.

CANCELLATIONS must be made by May 1 to receive a full refund. Cancellations after May 1 will be refunded less a \$25 administration fee.

We are sorry that we cannot provide discounted rates for state agencies, non-profit groups or others. While we would have liked to present this conference at a limited registration fee for all participants, we are providing the air transportation and lodging costs for all conference speakers and a hosted social event.

The Oregon Bar Association has pre-approved 12.5 CLE credits for this event.



WILLAMETTE UNIVERSITY

All conference functions will be held on campus. Willamette University is celebrating its Sesquicentennial this year--its 150th Anniversary! Parking will be available on campus. Maps will be provided on request.

The campus is bounded by Winter Street on the West and 12th Street on the East. It lies south of State Street and north of Bellevue Street. (The State Capitol is on State Street.)

The Smith Fine Arts Auditorium is located in the center of the campus.

Lunch service is available on campus at the University Center each day of the conference.



--OUR SPECIAL THANKS--

WILLAMETTE UNIVERSITY, COLLEGE OF LAW,
Susan L. Smith, Professor of Environmental and Natural Resources Law

OREGON WATER RESOURCES DEPARTMENT
WATER RESOURCES COMMISSION (503) 378-3671
3850 Portland Road, Salem OR 97310

With special thanks to Reed Marbut of the Water Resources Department who assisted in the planning of the conference and the administration of Oregon's WATER MARKET POLICY TASK FORCE.

OREGON WATER RESOURCES CONGRESS
P.O. Box 3609, Salem OR 97302 (503) 363-0121
Attention: Jan Boeltcher, Executive Director

an association representing irrigated agriculture and irrigation districts in Oregon since 1912

OREGON WATER UTILITIES COUNCIL
P.O. Box 10148, Eugene OR 97440 (503) 484-2411
Attention: Kimber Johnson, President

an association representing municipal utilities, serving municipal water and energy supply to Oregon communities.



CAR RENTAL

Alamo Car Rental from Portland International Airport is available at discounted rates.

Economy:	\$24 day,
Compact:	\$25
Intermediate:	\$27
Full-sized:	\$29

All prices include unlimited mileage. Please contact Travel Worldwide Network 1-800-631-9675.

HOTEL ACCOMMODATIONS

We have arranged accommodations at two facilities, for your convenience:

EXECULODGE (800) 452-7879
200 Commercial SE, Salem OR 97301
Rate: \$42 Single/ \$50 Double

This facility is within walking distance of Willamette University and restaurants in downtown Salem.

BEST WESTERN MILL CREEK INN
3095 Ryan Dr. SE, Salem OR 97301
Rate: \$51 Single/\$56 Double
(800) 346-9659

This is a new facility, approximately 2 miles from Willamette University, just off I-5 Freeway.

In either case, identify WATER MARKET SYMPOSIUM room block to get the conference rate. Make your reservations directly with the hotel before May 11.

HUT COMMUTER SHUTTLE

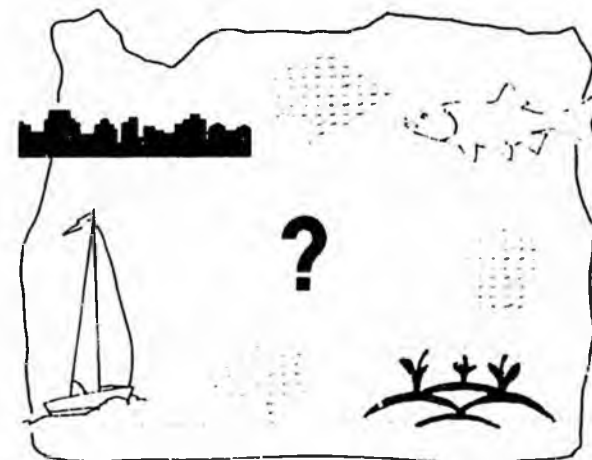
The shuttle is available by reservation between the Portland and Salem Airports, about a one hour drive. (There are no commercial flights coming into Salem Airport.) Reservations must be made along with air travel and can be booked by Travel Worldwide Network. The shuttle is \$20 each way. Airport limousine service is provided by the hotels from the Salem Airport.



*Reservations received by April 5th,
discounted to \$225.00.*

WATER MARKET SYMPOSIUM
P.O. Box 3532
Salem OR 97302

SYMPOSIUM: WATER MARKETING FOR OREGON



May 27 - 28, 1992

**WILLAMETTE UNIVERSITY
COLLEGE OF LAW
SMITH AUDITORIUM
SALEM, OREGON**

SPONSORS:
WILLAMETTE UNIVERSITY COLLEGE OF LAW
OREGON WATER RESOURCES CONGRESS
OREGON WATER RESOURCES COMMISSION
OREGON WATER UTILITIES COUNCIL

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April 13, 1992
Issue No. 934

WESTERN STATES WATER

THE WEEKLY NEWSLETTER OF THE WESTERN STATES WATER COUNCIL

Creekview Plaza, Suite A-201 / 942 East 7145 So. / Midvale, Utah 84047 / (801) 561-5300 / FAX (801) 255-9642

editor - Tony Willardson

chairman - William H. Young

typist - Carrie Curvin

executive director - Craig Bell

WESTERN STATES WATER COUNCIL

Quarterly Meetings

The Western States Water Council held its 106th quarterly meetings in Portland, Oregon on April 8-10. On Wednesday afternoon, the state of Oregon and U.S. Army Corps of Engineers hosted a tour of Bonneville Dam, including its second powerhouse and upstream and downstream fish passage facilities. The tour prefaced later discussions on the Columbia River system and the listing of some salmon as endangered species.

On Wednesday evening a subcommittee met and reviewed federal legislation on national energy policy, as well as continuing discussions with the Federal Energy Regulatory Commission regarding federal hydropower licensing and state water management and water rights administration processes. An effort to draft a memorandum of agreement between FERC and states was discussed. Also on Wednesday, the Water Policy Seminar subcommittee reviewed plans to meet in Washington, D.C. on April 21-23, 1993.

Thursday morning, the Water Resources Committee met and addressed many issues. It recommended a Council position on dam safety that was later adopted. The committee next addressed various water policy initiatives, including Senator Mark Hatfield's (R-OR) bill on western water policy review (S. 1228; WSW #931), an ICWP roundtable (WSW #928), a series of WGA/WSWC workshops, and activities of the Advisory Commission on Intergovernmental Relations. The Committee also reviewed the status of omnibus reclamation legislation (WSW #933), including Senator Tim Wirth's (D-CO) successful amendment adding S. 1812, the San Luis Valley Protection Act (WSW #921), which the Council opposes. The committee also heard a report on

FERC subcommittee activities, discussed an ongoing state water conservation program study, and noted a new contract has been signed with the Bureau of Reclamation to review its ground water recharge demonstration program. The Committee reviewed state water use fees, including proposed legislation in Alaska and a draft policy report from Oregon.

Further, Dave Johnson, Soil Conservation Service, presented the committee with the most recent westwide information regarding precipitation, snowpack, reservoir storage, and streamflow forecasts. Much of the West continues to suffer through a sixth year of drought, with some exceptions in Arizona, Colorado, New Mexico and Texas. Bill McDonald, Assistant Commissioner of the Bureau of Reclamation for Resources Management, discussed new federal authorities under the Reclamation States Emergency Drought Relief Act (H.R. 355; P.L. 102-250), which provides the Secretary of Interior with greater flexibility in operating federal projects to meet critical needs during drought. It also creates a long-term drought contingency planning program (WSW #927). Of note, the bill directs the Secretary of Interior to conduct a precipitation management technology transfer program. The Council supports the program, and recently wrote House and Senate appropriation committees requesting funding.

The Water Quality Committee began by discussing the celebration of 1992 as the Year of Clean Water, with Jay Pitkin, Utah Division of Water Quality, leading an interchange of ideas regarding appropriate state activities. Next, Gary Hanson, Washington Department of Ecology, recommended a related resolution for the Council's approval. The Committee also discussed watershed protection, with Lydia Taylor, Oregon Division of Water Quality, describing the watershed protection initiative of the Association of State and Interstate Water Pollution Control

Administrators, and Lorna Stickel, Chair of the Oregon Water Resources Board, outlining a draft watershed management bill being circulated by Rep. Les AuCoin (D-OR). The Committee also heard an update on Clean Water Act (CWA) reauthorization matters, and a description of a related meeting on western water quality issues (WSW #926). Further, EPA's efforts to define comprehensive state ground water protection plans were discussed. A presentation on state assumption of the CWA Section 404 program was rescheduled for the July meeting because an EPA spokesman was unable to attend.

The Executive Committee met to review the current budget report and other matters. Of particular note, with the addition of Hawaii as a full member this past year, the Council determined it could maintain the existing level of dues unchanged through fiscal year 1994/95. Dues have not increased since 1987/88.

The Legal Committee addressed general water right adjudications in Arizona, Idaho, Oregon, Washington, and Wyoming, and some recent court decisions. Members also heard presentations on Oklahoma v. EPA (WSW #930), Nebraska v. Wyoming (WSW #929), and South Dakota v. Needham (WSW #892 and #873). Council staff reported working on a summary of western state water right permitting procedures, and preparations for a second WSWC/Native American Rights Fund Symposium on Indian Water Right Settlements on September 1-3, in Albuquerque, New Mexico.

Finally, the committee held a provocative and in-depth discussion on the Endangered Species Act. A panel of experts included: Steve Sanders, Oregon Attorney General's Office (moderator); Elizabeth Holmes Gaar, National Marine Fisheries Service; Frank Dunkle, Nationwide Public Project Coalition; Anne Squier, Northwestern School of Law; Gail Achterman, Attorney; Rob Lothrop, Columbia River Intertribal Fish Commission; and John Volkmann, Northwest Power Planning Council.

The 106th WSWC Quarterly Meeting began Friday morning with brief reports by the working committees. The Council adopted two policy positions. The first, on dam safety, urges the Administration and Congress to restore funding for the Federal Emergency Management Agency's dam safety work, reauthorize and update the Dam Safety Act of 1986,

and provide appropriate federal financial assistance. The second position marks the 20th Anniversary of the Clean Water Act and urges states to proclaim 1992 as the "Year of Clean Water" and October 1992 as "Clean Water Month." The Council also adopted two resolutions of appreciation recognizing the contributions of Dave Walker and Jeris Danielson (WSW #933 and #929).

Most of the meeting was dedicated to a discussion of the Columbia River System in an era of change. Various issues were addressed by a panel including: WSWC Chairman Bill Young, Director of the Oregon Department of Water Resources (moderator); Robert Flannagan, Corps of Engineers; Ken Pedde, Bureau of Reclamation; John Palensky, Bonneville Power Administration; Bob Turner, Special Assistant to Washington Governor Booth Gardner; and Andy Brunelle, Special Assistant to Idaho Governor Cecil Andrus. The panel described the hydrology and development of the Columbia River system and efforts to improve operations to meet the demands placed on the resource for water, power, recreation, navigation and fish and wildlife protection and enhancement.

Concern is focused on restoration of depleted salmon stocks, several of which have been proposed for protection under the Endangered Species Act. The many federal and non-federal dams within the system provide enormous water and power benefits, as well as a gauntlet of obstacles challenging both upstream and downstream migration of anadromous fish. The complexity of the system and varying public values result in difficult intergovernmental and interagency management problems that can be confusing and frustrating. The precipitous decline of certain salmon stocks is creating pressure for change. Several separate, but related, reviews are underway, and various actions are being considered and implemented. Last year, BPA committed \$100 million to fish conservation. Some Corps and Bureau dams are storing water for release, while the pool at others is being lowered up to 40 feet to increase the velocity of downstream flows to aid fish migration. Idaho has enacted new legislation to allow the necessary water transfers. Flexibility and innovation will be needed to resolve system problems, and tradeoffs are inevitable.

The next WSWC Quarterly meetings will be held in Salt Lake City, Utah, on July 8-10.

The WESTERN STATES WATER COUNCIL is an organization of representatives appointed by the Governors of member states - Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, with Oklahoma as an associate member state.



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WESTERN STATES WATER

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LITIGATION

General Adjudication-Arizona

The Arizona Supreme Court has issued an opinion in its review of Arizona trial court procedures for service of summons, filing, and service of pleadings in the consolidated general adjudication of the Salt, Verde, Gila, Agua Fria, Upper Santa Cruz, and San Pedro River watersheds (In the Matter of the Rights to the Use of the Gila River..., No. WC-90-0001-IR, Mar. 19). The trial court entered an order in 1986 to establish procedures to manage the complex litigation and has implemented them since. In December, 1990, the Arizona Supreme Court agreed to review six issues decided in the pretrial orders. The recent opinion addresses the first issue: whether provisions for filing and service are constitutional.

In the face of various due process challenges, the court upheld the notice by summons and publication procedures, which included a comprehensive mailing of some 850,000 summons to identifiable land owners, water right holders, well owners, and others and publication of a number of legal notices in news papers printed in or near watershed areas. The court acknowledged that some property owners, lien holders, and federal government lessees and permit holders may not have received a summons by mail, but found they were accorded due process through newspaper publication. The court also rejected arguments that the content of the notice was constitutionally deficient. With respect to filing and service of pleadings, the trial court's order required each party to file a copy of all pleadings with the clerk of the court, who compiled them into a docket system. The Arizona Supreme Court held that the docketing system was well designed to afford litigants adequate notice of all filings, and therefore constitutionally sound.

WATER RESOURCES

Water Supply Outlook/Drought

According to the Soil Conservation Service, spring and summer streamflows for nearly all western states will be below to well below average. March 1 forecasts have been reduced as a result of below to well below average precipitation during February, in combination with lower than average snowpacks. Streamflows below 70% of average are expected throughout California, Nevada, Oregon, southern Idaho, southern Wyoming, southeastern Montana, northern and central Utah, and along the northern border of Colorado. Only southcentral Colorado, New Mexico, central Arizona, and central and southeastern Alaska can expect above to well above average runoff.

Since the beginning of this water year, most western states have received well below to near average precipitation. Less than 80% of average was recorded in February throughout most of Montana, Idaho, northern Wyoming, central Oregon, western Washington, northeastern California, western Nevada, eastern Arizona, eastern Colorado, and northeastern New Mexico. Precipitation patterns favor the southwest. In February, much of California, Utah, southern and eastern Nevada, western and southern Arizona, southern New Mexico, the western border of Colorado, and central and southeastern Alaska received precipitation exceeding 120% of average.

However, below average snowpack conditions continue. Snow water equivalent values of less than 70% were recorded throughout California, Nevada, Oregon, southern Idaho, central Montana, western Wyoming, central Utah, and northern Alaska. Above to well above average snow water contents were reported in southeastern Alaska, northcentral

Washington, central Arizona, southcentral Colorado, and New Mexico. With respect to surface water storage, six states are near to well above average. New Mexico has 179%, compared to Nevada's 13% on February 29.

WATER RESOURCES/ENVIRONMENT

Endangered Species

California state and federal water projects will sharply reduce their pumping in the Sacramento-San Joaquin Delta to protect the endangered winter-run chinook salmon. The cutbacks, announced April 10 by the California Department of Water Resources and the U.S. Bureau of Reclamation, will reduce pumping to 1200 cubic feet per second, a fraction of the capacity of the state and federal pumping plants. Under the cutback the state will pump 350 cfs and the Bureau 850 cfs. Immediately before the cutback the state was pumping 2,000 cfs and the Bureau 3300 cfs. The cutback was ordered by the National Marine Fisheries Service after consultation over losses this year of young winter-run chinook migrating out from the Sacramento River watershed. The projects have pumped heavily from the Delta since the rains of early February, nearly filling the two million acre-foot San Luis Reservoir south of the Delta.

Rivers

The environmental group American Rivers has recently released its annual list of "endangered" and "threatened" rivers. The focus of the list has changed this year away from protecting pristine river resources to restoring rivers already adversely affected, in American Rivers' view, by hydroelectric development, mining, silviculture, agriculture, ground water withdrawals, and other problems. Western rivers included on the "threatened" list are: Virgin River, Arizona, Nevada and Utah; Verde River, Arizona; Rio Conchos, Rio Grande, Texas; Klamath River, Oregon; Illinois River, Oregon; Gunnison River, Colorado; Elwha River, Washington; Clavey River, California; and Animas River, Colorado.

Rivers included on the "endangered" list are: Columbia and Snake River, Washington, Oregon, Idaho, and Montana; Blackfoot River, Montana; Colorado River, Arizona; American River, California; and Alsek and Tatshenshini River, Alaska. The

Columbia and Snake river system is listed first, according to an American Rivers representative, because of the "tremendous decline in the number of native fish species moving up and down those rivers." The group asserts that over 200 fish species are imperiled in the system.

WATER RIGHTS

Indian Reserved Rights/Northern Cheyenne Tribe

The Senate Select Committee on Indian Affairs has reported S. 1607, a bill that codifies a reserved water rights settlement agreement between the Northern Cheyenne Indian Tribe and the state of Montana. It provides approximately \$22M to the Tribe, half of which the tribe will loan to Montana to rehabilitate the Tongue River Dam. The loan's repayment agreement will include provisions creating an Indian preference clause for all contracts for work on the dam. Markup for S. 1607 was first scheduled last fall, but was delayed a number of times because of opposition from the Administration and because some senators had placed holds on the bill. No companion bill has yet passed the House.

In addition to its provisions to settle the Northern Cheyenne Tribe's claims, S. 1607 would create a trust fund at the Department of Treasury for Indian water claims settlement generally. Appropriations under the bill, and those for future settlements, would be deposited into the fund to provide a consistent and dependable funding source for Indian water rights settlements. Under current policy, funding for settlements often competes with funding for other Bureau of Indian Affairs and Indian Health Service programs. This competition has been criticized in the past.

MEETINGS

Enclosed with this newsletter is a brochure advertising a two day symposium sponsored by various Oregon water organizations which will focus on experiences of administering water marketing policies in the western states. Speakers will explore both successes and problems related to water marketing efforts. Oregon Senator Mark Hatfield will be a keynote speaker. The symposium will take place May 27-28, at the Willamette University College of Law Smith Auditorium in Salem, Oregon.

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