

Testimony
Senate Environment and Natural Resources Committee Hearing
3:00 P.M, April 2, 2009
Senate Bill 788

By
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Chair Dingfelder, Vice-Chair Atkinson, members of the Committee:

I am David J. Newton, President and Principal of Newton Consultants, Inc. in Redmond, Oregon. I am an Oregon-licensed civil engineer, engineering geologist and water right examiner. My firm provides consulting services to public and private entities to help them strategically plan for and secure water supply for their future needs. We are also involved in basin-wide water resources planning activities.

The proposed Senate Bill 788 would make legislative findings regarding peak and ecological flows. It requires the Water Resources Department to ensure that water storage projects (and their applications) contain provisions to ensure protection of peak and ecological flows necessary to maintain stream morphology and habitat before the Department issues permits or limited licenses to divert water from streams for purposes of storage.

As an avid fly fisherman, outdoorsman, and water resources professional, I have a strong affection for and intimate connection with the habitat and ecology of the streams of Oregon. For this reason, I support protection of stream morphology and its benefit to the habitat of fish and wildlife.

However, as I am sure you realize, in most basins of Oregon, surface water sources are already completely appropriated. Further, the availability of ground water is also limited because groundwater is in almost all cases is connected to the surface water. Therefore, obtaining water permits to support growth and development is severely limited without transferring water from and terminating another use. Conservation certainly helps, but it is not the panacea for future water needs.

The only viable answer to the shortage of water is to capture excess water when it is available and store it, either in above ground reservoirs or in groundwater aquifers, for times when water is scarce. Aquifer storage is a key tool currently being explored by the Governor's climate change commission.

I can support the intent of SB 788 as long as it clearly provides a true balance between the need to protect necessary peak flows and the need for storing excess water for storage and later use. I emphasize the word "balance." Peak flows need protection, especially those flows necessary to maintain and achieve necessary stream morphology. Stream flows which occur more frequently than those necessary to maintain morphology should be allowed to be diverted and stored. The language in this bill should be more explicit in this regard, should the legislature determine that this bill is actually needed. This comment is couched in my deep concern for both how water is ecologically managed and how future growth can be accommodated.

I should respectfully point out to the Committee that ODFW already reviews applications for water rights and limited licenses via the requirements of Oregon Administrative Rule 690, Division 33. In ODFW has developed written guidance for protecting peak flows and have applied the basis of the guidance to a storage project on the Deschutes River for which I am a consultant.

Peak flow rates **must** be based upon sound and defensible science. Long term, historic stream flow data must be available to determine and support the appropriate peak flow rates. This is essential considering the importance of storage as a solution for future water supply needs. While there are other methods for determining peak flows, the use of measured historic stream flow provides the most defensible methodology.

Unfortunately, flow gaging stations on many rivers and streams in Oregon have been discontinued. Budget issues often drive such decisions. Hundreds of sub-watersheds have never been gaged and no stream flow data is available. If the State of Oregon wishes to encourage water storage while at the same time protecting peak flows, it will need to ensure that stream flow gaging stations are maintained and greatly expanded over the long term so that objective data will be available to accurately determine peak flows.

Budget and staff cuts now underway at the Water Resources Department and at the Department of Fish and Wildlife take away even more resources necessary to implement provisions of this bill.

Finally, storage project developers will be investing enormous sums of money to develop storage projects. Such investments will be encouraged when there is some certainty that applications will be promptly reviewed and acted upon. Because the Oregon Department of Fish and Wildlife is expected to provide and/or approve peak flow analyses, sufficient resources and direction must be provided in this legislation in order for the agency to fulfill expectations of this bill.

Water storage must remain a viable tool for strategic water resources planning in Oregon. SB 788, in my opinion, will severely restrict and, in some cases, eliminate this option for our future water supply planning.

I respectfully offer the following suggestions:

Empanel a Task Force to assess the existing available administrative resources and scientific tools for evaluating and processing storage permits that would impact peak flows and necessary to maintain stream morphology. This task force could then confirm the practical need for this bill.

The task Force would also evaluate the scientific validity of empirical estimations of flows in the absence of historical flow data. This is very important considering the importance of storage for future water supply and potential impact of these methods on storage project evaluations. Recommendations and necessary findings and follow-up actions, if any, could then be made for future legislation.

Avoid “jumping into” new legislation that cannot be implemented due to the complex nature of issues applicable to SB 788. Let’s be patient, rational and grounded in good science in how we address storage projects. Storage is critical to future water needs and should be regarded as such in establishing peak flow legislation. Protection of peak flows needs to be balanced with ensuring water for future economic growth in Oregon.