

HOUSE COMMITTEE ON WATER

April 13, 2005 Hearing Room 357

1:00 P.M. Tapes 66 - 67

Corrected 10/17/05

MEMBERS PRESENT: **Rep. Bob Jenson, Chair**

Rep. Jackie Dingfelder, Vice-Chair

Rep. Jerry Krummel, Vice-Chair

Rep. Phil Barnhart

Rep. Alan Brown

Rep. Billy Dalto

Rep. Carolyn Tomei

STAFF PRESENT: **Sandy Thiele-Cirka, Committee Administrator**

Elizabeth Howe, Committee Assistant

MEASURES/ISSUES HEARD:

HJR 45 – Public Hearing

HB 2130 – Work Session

HB 2882 – Work Session

HB 2367 – Public Hearing

HB 2812 – Public Hearing

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/# Speaker Comments

TAPE 66, A

002 Chair Jenson Calls the meeting to order at 1:20 p.m. Opens as a subcommittee. Opens a public hearing on HJR 45.

HJR 45 – PUBLIC HEARING

020 Adam Sussman Legislative Coordinator, Water Resources Department (WRD). Submits written testimony (**EXHIBIT A**) and testifies in support of HJR 45. Addresses two specific concerns.

045 Rep. Tomei Questions requirement that two members of the task force be attorneys in good standing with the Oregon State Bar.

052 Sussman Clarifies that according to the bill the members need to be attorneys.

057 Richard Kosesan Water For Life (WFL). Testifies in support of HJR 45.

082 Rep. Tomei Asks about two legislative members of the task force being attorneys.

088 Kosesan Explains that attorneys would help with the legal questions.

096 Rep. Tomei Comments that few legislative members would qualify.

100 Chair Jenson Clarifies that lines 15-18 state that those attorneys need not be members of the legislature, and would be an advantage to explain legal issues.

135 Kay Tiesl Oregon Cattleman's Association. Testifies in support of HJR 45.

140 Sussman Comments that the task force is unnecessary if water rights issues are resolved or if outcome is already determined, as it is in HJR 45.

150 Chair Jenson Questions whether a State Supreme Court decision determines an issue.

158 Sussman

		Addresses the ambiguity of the various decisions by the Oregon Supreme Court.
172	Chair Jenson	Questions whether a bill would stop this issue from being questioned again.
182	Sussman	Responds negatively.
184	Koesan	Addresses the adjudication process and relative rights as opposed to ownership in the Klamath Basin.
205	Chair Jenson	Questions whether the U.S. Court of Appeals has a say in water right ownership. States that water rights is a state issue.
215	Koesan	Clarifies that the case related to water allocation for farmers impacted negatively by water distribution.
227	Rep. Dingfelder	Questions why WRD is not part of the proposed task force. Inquires who would administer the task force.
239	Koesan	States that the intention was not to exclude WRD. States that WFL would have no objection to having WRD participate in the task force.
259	Chair Jenson	Opens as a full committee. Continues public hearing on HJR 45.
264	Kristina McNitt	Oregon Water Resources Congress (WRC). Testifies in support of HJR 45. Addresses concerns about predetermining outcomes of the taskforce, and suggests amendments.
293	Chair Jenson	Questions whether WRC is uncomfortable with the task force being required to be consistent with the doctrine of prior appropriation.
299	McNitt	Believes that if the task force were to discuss existing water law the doctrine of prior appropriation would be included.
312	Chair Jenson	Closes public hearing on HJR 45. Opens a work session on HB 2130.

HB 2130 – WORK SESSION

322 Sandy Thiele-Cirka

Administrator. Provides background information on HB 2130. Describes -2 amendments (**EXHIBIT B**).

358 Chair Jenson Further explains the -2 amendments.

TAPE 67, A

001 John Lilly Assistant Director, Department of State Lands (DSL). Describes -2 amendments.

009 Chair Jenson Provides background on HB 2130.

039 Rep. Dingfelder MOTION: Moves to ADOPT HB 2130-2 amendments dated 4/6/05.

VOTE: 4-0-3

EXCUSED: 3 - Barnhart, Dalto, Krummel

045 Chair Jenson Hearing no objection, declares the motion CARRIED.

050 Chair Jenson States purpose to hold bill as a vehicle for the future.

064 Chair Jenson Closes work session on HB 2130. Opens work session on HB 2882.

HB 2882 – WORK SESSION

066 Sandy Thiele-Cirka Administrator. Provides background for HB 2882. Describes -2 amendments (**EXHIBIT C**).

103 Kay Tiesl Oregon Cattleman's Association. Expresses support for -2 amendments to HB 2882.

107 Rep. Tomei Asks if someone from the Department of Environmental Quality (DEQ) could speak. Inquires if DEQ has questions about the bill.

117 Jim McCauley DEQ. Comments that DEQ believes they already go through the steps that HB 2882 is addressing.

126	Rep. Tomei	Questions whether HB 2882 would give the agency more work, and for whom would the bill be redundant.
132	McCauley	Responds that HB 2882 would not give DEQ more work. States that it is redundant to put language in statute that is already in effect in agency monitoring and sampling protocol.
137	Rep. Dingfelder	Reiterates that HB 2882 is not necessary, and that water quality assurance is already covered by DEQ. Suggests that the agency receive funding to assist watershed councils for technical assistance for water quality monitoring. Submits letter from DEQ regarding monitoring information submitted by OCA (EXHIBIT D).
165	Tiesl	States that DEQ cannot verify that they are collecting fill data properly with a sufficient number of samples to verify data.
180	Rep. Dingfelder	Responds that the agency will be able to do the kind of sampling that HB 2882 would require if they had adequate funding.
199	Chair Jenson	Questions whether the agency believes that they are currently conforming to the scientific standard protocols.
200	McCauley	States that DEQ has no opposition to the bill as they are currently conforming. Reiterates concern that it is unnecessary.
201	Chair Jenson	Remarks that it would have application in cases where an agency might fail to follow appropriate scientific protocols.
205	Rep. Barnhart	Asks for description of situation where control specimens are used.
214	McCauley	Explains situations where control specimens are used. Believes that calibration would be part of the process explained in the language.
231	Rep. Barnhart	Questions what Section C requires DEQ to do. Inquires whether requirements would have an effect of what the standards are.
239	McCauley	Explains what Section C requires of DEQ. Provides example. States that requirements would only affect the application of the standards.
268	Rep. Dingfelder	Illustrates with her own experience with TMDL's and baselines.

- 287 Rep. Krummel **MOTION: Moves to ADOPT HB 2882-2 amendments dated 4/6/05.**
- VOTE: 7-0-0**
- 293 Chair Jenson **Hearing no objection, declares the motion CARRIED.**
- 296 Rep. Krummel **MOTION: Moves HB 2882 to the floor with a DO PASS AS AMENDED recommendation.**
- 300 Rep. Dingfelder Reiterates that she will vote no, as this bill is unnecessary. Proposes an emphasis on providing funding for technical assistance to DEQ.
- 318 Chair Jenson Comments on the scientific aspects of redundancy.
- VOTE: 4-3-0**
- AYE: 4 - Brown, Dalto, Krummel, Jenson**
- NAY: 3 - Barnhart, Dingfelder, Tomei**
- 338 Chair Jenson **The motion CARRIES.**
- REP. KRUMMEL will lead discussion on the floor.**
- 349 Chair Jenson Closes work session on HB 2882. Opens a public hearing on HB 2367.

HB 2367 – PUBLIC HEARING

- 390 Brendon McCarthy Deputy Counsel. Provides background for HB 2367. Describes terminology within the statute.

TAPE 66, B

- 031 Chair Jenson Seeks clarification on the change of the concept of holder. Mentions substituted language.
- 040 McCarthy Explains the changes he made to the language and concept of holder. Explains other substituted language.

062	Rep. Barnhart	Asks if Counsel looked for guidance on terminology from other states.
070	McCarthy	Believes that guidance should be sought, but it currently has not been.
078	Chair Jenson	Questions whether other states' water language is as convoluted as that of Oregon. Comments on water law origins.
082	McCarthy	Explains that other states have similar laws, but cannot answer to the language being convoluted. Believes laws can develop inconsistencies.
130	Adam Sussman	Legislative Coordinator, Water Resources Department (WRD). Submits written testimony (EXHIBIT E) and testifies in support of effort to clarify language. Addresses concerns about specific language and desire to assess ramifications of various changes.
165	Katie Fast	Oregon Farm Bureau (OFB). Expresses concerns about impacts of certain changes in language.
195	Doug Myers	WaterWatch. Expresses concerns for certain changes in language.
220	McCarthy	States that conforming terms may cause confusion in courts.
234	Rep. Barnhart	Seeks a response to the panel's concerns about holders and owners. Questions whether the ambiguity would continue.
246	McCarthy	States that his intent was not to change the landscape and that HB 2367 would not resolve the issue, only shift the terms of the debate.
269	Richard Kosesan	Water for Life (WFL). Testifies in support of the effort to develop consistency in terminology. Expresses concerns with the use of holder in place of user and owner, and other language concerns.
315	Chair Jenson	Comments on effort to find consistency within the statutes.
350	Chair Jenson	Closes public hearing on HB 2367. Opens a public hearing on HB 2812.

HB 2812 – PUBLIC HEARING

- 352 Chair Jenson Announces that HB 2812 will be held over for Monday, April 19, 2005. Closes public hearing on HB 2812.
- 354 Chair Jenson Adjourns the meeting at 2:40 p.m.

EXHIBIT SUMMARY

- A. HJR 45, written testimony, Adam Sussman, 1 p
- B. HB 2130, -2 amendments, staff, 1 p
- C. HB 2882, -2 amendments, staff, 1 p
- D. HB 2882, letter from DEQ, Rep. Dingfelder, 2 pp
- E. HB 2367, written testimony, Adam Sussman, 1 p