

**HOUSE COMMITTEE ON WATER**

**May 02, 2005 Hearing Room 357**

**1:00 P.M. Tapes 77 - 79**

**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:**

**HB 3023 – Public Hearing**

**HB 2367 – Public Hearing**

**HB 2915 – Public Hearing**

**HB 2265 – Work Session**

**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 77, A**

003 Chair Jenson Calls the meeting to order at 1:08 p.m. Opens the public hearing on HB 3023.

### **HB 3023 – PUBLIC HEARING**

008 Chair Jenson Closes the public hearing on HB 3023. Opens a public hearing on HB 2367.

### **HB 2367 – PUBLIC HEARING**

024 Dave Kelsea Miners Response Team. Submits written testimony (**EXHIBIT G** – received May 4, 2005) and suggests adding an exemption for mining as it does not require a water right.

030 Rep. Krummel Questions why mining should be excluded from the bill if a water right is not necessary.

045 Adam Sussman Legislative Coordinator, Water Resources Department (WRD). Speaks to comments on mining.

065 Chair Jenson Asks Legislative Counsel to speak to the issue of water rights for non-consumptive use.

076 Brenden McCarthy Legislative Counsel. Inquires if the issue is something currently within the bill.

079 Chair Jenson Responds affirmatively.

087 Kelsea Restates his question about needing a water right for non-consumptive use. Suggests excluding miners from HB 2367.

096 McCarthy Suspects that WRD issues many non-consumptive water rights. Provides examples of similar situations where a permit would be necessary.

123 Chair Jenson Inquires if mining currently requires a permit.

127	Kelsea	Responds negatively.
128	Sussman	Requests that WRD be given the opportunity to discuss the issue with Mr. Kelsea to address his concerns.
148	Chair Jenson	Announces that HB 2367 will be held over to another meeting.
151	Rep. Krummel	Questions if miners always take water from the same stream. Inquires about pertinence to the land and the short time that the water is removed from the stream.
176	Chair Jenson	Asks WRD and Mr. Kelsea to discuss the issue. Closes public hearing on HB 2367. Opens a public hearing on HB 2915.

**HB 2915 – PUBLIC HEARING**

210	Chair Jenson	Expresses concern about how the current statute reads and about repealing the existing statute.
235	Brenden McCarthy	Legislative Counsel. Describes the prospective changes made in 2001 that required legislative assent.
259	Ken Messerle	Former Senator. Testifies In support of HB 2615. Expresses concerns that the assumption plan may be implemented without legislative approval.
276	McCarthy	States that statutory changes would be necessary regardless.
308	Messerle	Recalls some statutory changes have already been made. Inquires to know what changes are still necessary.
314	McCarthy	Comments on removal-fill definitions and the differences between state law and federal law.
360	Lynne Vanderlinden	Sheep Rancher, Cave Junction. Submits written testimony <b>(EXHIBIT A)</b> and testifies in support of HB 2915. Expresses frustrations with assumption and the costs to the Common School Fund.

038	Robert Kerivan	Bridgeview Vineyards. Submits written testimony ( <b>EXHIBIT B</b> ) and testifies in support of HB 2915. Expresses concerns about assumption and the loss of funds for the Common School Fund.
110	Rep. Barnhart	Inquires about the definition of deep ripping farmland.
113	Kerivan	Defines deep ripping. Continues sharing frustrations with assumption.
169	Rep. Tomei	Seeks clarification on HB 2915 and SB 172 (2001).
187	Dale Buck	Cloverdale. Submits written testimony ( <b>EXHIBIT C</b> ) and testifies in support of HB 2915.
301	Dave Kelsea	Miners Response Team. Testifies in support of HB 2915.
350	Katie Fast	Oregon Farm Bureau (OFB). Submits written testimony ( <b>EXHIBIT D</b> ) and testifies in support of HB 2915.

**TAPE 77, B**

006	Fast	Continues testimony on the cost of assumption.
024	Glen Stonebrink	Oregon Cattlemen's Association (OCA). Testifies in support of HB 2915.
059	Rep. Tomei	Questions whether OCA was supportive of the bill as they understood it. Inquires if Department of State Lands (DSL) was more restrictive before SB 172 was passed in 2001.
066	Stonebrink	Responds affirmatively and explains why OCA supported the bill. States that DSL was more restrictive before SB 172. Expresses expectation that DSL would be less restrictive than the federal government.
082	Fast	Expresses concerns that exemptions for agriculture may be forfeited
092	Rich Angstrom	

Oregon Concrete/Aggregate Association. Testifies in opposition to HB 2915. Comments on agricultural exemptions and the assumption program.

- 126 Rep. Tomei Asks for clarification.
- 128 Angstrom States that the program is better for the farmers. Continues testimony on the assumption program.
- 172 Mel Stewart Citizen. Testifies in support of HB 2915.
- 325 Patrick Allen Office of Regulatory Streamlining. Testifies in opposition to HB 2915.
- 260 Rep. Barnhart Inquires about the current rule relating to a 50 cubic yard area and how 404 assumption affects that.
- 285 Allen Defers to John Lilly from DSL.
- 300 Chair Jenson Comments on streamlining.
- 319 Rep. Barnhart Seeks clarification on what the main issue is with 404 assumption.
- 327 Rep. Dingfelder Questions what the implications are of leaving current language in statute.
- 338 Allen States that removing the language could cause problems, while leaving the language should cause no harm.
- 358 John Lilly Assistant Director, Department of State Lands. Submits written testimony (**EXHIBIT E**) and testifies in opposition to HB 2915. Explains the permitting process for 404 assumption.

**TAPE 78, B**

- 065 Lilly Continues explanation of assumption.
- 112 Lilly Addresses concerns about administrative rules.

134	Rep. Tomei	Questions the 50 cubic yard exemption. Inquires if state law can be less restrictive than federal law.
141	Lilly	Responds that state law cannot be less restrictive than federal law in order to assume the program. States that the changes in SB 172 (2001) are not in effect today.
164	Rep. Dingfelder	Comments on DSL's 90-day turn-around for permit decisions. Questions how long it typically takes the Army Corps of Engineers (ACOE) to issue a permit.
173	Lilly	Responds that it takes ACOE approximately a year.
195	Rep. Dingfelder	States that if ACOE must issue a permit as well, then it does not help the customer to receive the permit in a timely manner from DSL.
200	Rep. Barnhart	Asks if federal agencies must give approval for assumption to occur.
206	Lilly	Describes the process for assuming a functional equivalent program.
216	Chair Jenson	Inquires about previous alleged comments that DSL does not need the legislature to pursue assumption.
224	Lilly	States that under current law DSL can never assume without legislative approval.
231	Chair Jenson	Asks what is taking so long to get an agreement with the federal government.
234	Lilly	States that the state Attorney General must certify that the program is equivalent under Environmental Protection Agency regulations, and assumption is not given a high priority.
255	Chair Jenson	Closes the public hearing on HB 2915. Announces that HB 2915 will be carried over to Wednesday, May 4, 2005. Opens a work session on HB 2265.

**HB 2265 – WORK SESSION**

281	Rep. Tomei	Inquires if the SMS refers to the amendment.
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283	Sandy Thiele-Cirka	Administrator. Responds negatively.
288	Chair Jenson	Comments on the amendments.
295	Shaun Jillions	Legislative Aide to Rep. Jenson, House District 58. Provides description of the -4 amendments ( <b>EXHIBIT F</b> ) to HB 2265.
343	Rep. Tomei	Questions what sections are being deleted.
346	Jillions	Points out which sections are being deleted.
355	Rep. Barnhart	Inquires which parts of the -3 amendments are being deleted.
364	Jillions	Clarifies which sections are being deleted.
367	Adam Sussman	Legislative Coordinator, Water Resources Department (WRD). Provides background for HB 2265 and the amendments.
414	Chair Jenson	Explains the reason for the -4 amendments.
442	Rep. Krummel	Questions which agency is concerned. Inquires if -4 amendments will supersede the -3 amendments.

**TAPE 79, A**

019	Rep. Barnhart	Points out that if processing costs more than the fees bring in, the funds come out of the Common School Fund.
031	Rep. Dingfelder	Urges the committee to send the bill to Ways and Means to make the decision.
042	Chair Jenson	States that this committee should not discuss the funds in the Common School Fund.
046	Rep. Dingfelder	Inquires if fees possibilities will be discussed if HB 2265 is not sent to Ways and Means.
056	Chair Jenson	Responds negatively. Closes the work session on HB 2265. Adjourns the meeting at 3:05 p.m.

## **EXHIBIT SUMMARY**

- A. HB 2915, written testimony, Lynne Vanderlinden, 2 pp
- B. HB 2915, written testimony, Robert Kerivan, 2 pp
- C. HB 2915, written testimony, Dale Buck, 1 p
- D. HB 2915, written testimony, Katie Fast, 4 pp
- E. HB 2915, written testimony, John Lilly, 59 pp
- F. HB 2265, -4 amendments, staff, 4 pp

### **The following testimony submitted May 4, 2005:**

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- G. HB 2367, written testimony, Dave Kelsea, 2 pp