

## SENATE COMMITTEE ON ENVIRONMENT & LAND USE

May 19, 2005  
8:00 A.M.

Hearing Room 343  
Tapes 94 - 96

**MEMBERS PRESENT:**     **Sen. Charlie Ringo, Chair**  
                                  **Sen. Jason Atkinson, Vice-Chair**  
                                  **Sen. Roger Beyer**  
                                  **Sen. Frank Shields**

**MEMBER EXCUSED:**     **Sen. Ginny Burdick**

**STAFF PRESENT:**       **Matt Shields, Committee Administrator**  
                                  **Katie Lowry, Committee Assistant**

**MEASURES/ISSUES HEARD:**  
                                  **SB 245 – Work Session**  
                                  **HB 3038 A – Public Hearing**

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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.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 94, A</b>		
005	Chair Ringo	Calls meeting to order at 8:04 a.m. Announces that SB 532, SB 347, and SB 699 will be held over until the next scheduled meeting. Opens work session on SB 245.
<b><u>SB 245 – WORK SESSION</u></b>		
	Matt Shields	Committee Administrator. Submits the -3 amendments for the record <b>(EXHIBIT A)</b> .
016	Randy Tucker	Legislative Affairs Manager, Metro. Discusses analysis of urban growth boundary. Explains the -3 amendments.
033	Chair Ringo	Asks John Chandler about the -3 amendments. Understands that witness is not opposed to the -3 amendments.
044	John Chandler	Oregon Home Builders Association (OHBA). States the OHBA is not opposed to the -3 amendments. Explains the OHBA does not like SB 245 in its current form, but is willing to continue the conversation.
057	Chair Ringo	Closes work session on SB 245 and announces that SB 245 will be held over until the next scheduled meeting. Opens public hearing on HB 3038 A.
<b><u>HB 3038 A – PUBLIC HEARING</u></b>		
065	Sen. Ben Westlund	Represents Senate District 27. Testifies in support of HB 3038 A.
128	Rep. Arnie Roblan	Represents House District 9. Comments that HB 3038 A passed in the House 53-4. Gives background information on HB 3038 A. States support for HB 3038 A. Makes comments about growth and water conservation.
228	Sen. Beyer	Comments about treating government entities different than people. States that HB 3038 A treats government different than people. Asks witnesses why this is a good idea and good public policy.

234	Sen. Westlund	States that government is the representative of the people. Discusses separating government from people. Discusses necessity of municipalities to have access to commodities.
260	Rep. Roblan	Concurs with Sen. Westlund. Discusses purpose of government.
288	Sen. Beyer	Asks Sen. Westlund why HB 3038 A should be limited to municipal water systems. Asks why irrigation districts would not be included.
294	Sen. Westlund	Discusses the differences between municipalities and irrigation districts. States that no irrigation district that he knows of in the state is faced with an expanding land base where they are required to add additional cubic feet and adjudicated water rights to their systems.
313	Sen. Beyer	Asks if he would like to hear about one.
314	Sen. Westlund	Asks if there is one.
315	Sen. Beyer	Discusses a water irrigation district in Senate District 9 that is working to build a project.
320	Sen. Westlund	Responds. Asks if they are using additional water.
331	Sen. Beyer	Replies yes and explains that they currently have no water.
332	Sen. Westlund	Verifies that once the project is complete the ground water adjudication rights will be vacated.
335	Sen. Beyer	Replies yes and explains that they have temporary ground water permits.
336	Sen. Westlund	Verifies that they are using no additional new water.
338	Sen. Beyer	Replies no and explains.
344	Sen. Shields	States that he is a co-sponsor of HB 3038 A and explains. Believes that both witnesses have a conscious concern about environmental issues. Asks about taking time for studying concerns.
369	Sen. Westlund	States that the time for studying is done. Discusses the Deschutes Basin ground water study.
<b>TAPE 95, A</b>		
028	Rep. Roblan	Appreciates Sen. Shields' question. Discusses water supply in Coos Bay. Opines there is no more surface water left in Oregon. Provides details. Discusses studies and planning in regards to water rights.
078	Glen Kirkpatrick	Resident, Clackamas County. Submits and reads written testimony in opposition to HB 3038 A <b>(EXHIBIT B)</b> .
115	Willie Tiffany	League of Oregon Cities. Submits and discusses white paper titled "Long-Term Water Supply Planning" <b>(EXHIBIT C)</b> . Submits and discusses book entitled <u>Water Conservation and Management Plans</u> <b>(EXHIBIT D)</b> . Submits written testimony in support of HB 3038 A <b>(EXHIBIT E)</b> . Submits written testimony on behalf of Rep. Brad Witt, House District 31, in support of HB 3038 A <b>(EXHIBIT F)</b> . Gives background information on HB 3038 A. Discusses water conservation and management plans. Refers to submitted white paper <b>(EXHIBIT C)</b> . States that municipalities must present a plan that provides information about how much water they need to develop over the next 20 years.
218	Chair Ringo	Asks if that plan is as rigorous in protecting the public interest as if they had to obtain a new permit.
221	Tiffany	Replies that it is not the same process as obtaining a new water right. States that he will defer to another witness to discuss the development of these plans.

225	Tiffany	Continues explanation of the plans municipalities must provide. Says that the Water Resources Department (WRD) has the opportunity to deny a municipality the ability to develop water. Discusses law suit mentioned in earlier testimony. Discusses opposition to HB 3038 A and explains section 5 of HB 3038 A.
279	Rick Glick	Attorney, Davis Wright Tremaine LLP. Submits and discusses written testimony in support of HB 3038 A <b>(EXHIBIT G)</b> .
365	Glick	Discusses law suits in Coos Bay and Deschutes Basin.
<b>TAPE 94, B</b>		
002	Glick	Discusses proposed language for amendments to HB 3038 A <b>(EXHIBIT G, Page 3)</b> .
019	Sen. Beyer	Asks if witness is proposing new amendments to the A-engrossed bill.
020	Tiffany	States there are technical amendments that were not ready for today's hearing. Provides details.
028	Glick	Continues discussing proposed language for amendments to the A-engrossed bill.
049	Chair Ringo	Asks who would benefit if permits received by municipalities 50 years ago that haven't been acted on lost their priority. Wonders if it would be industrial users, agricultural users, or in-stream water rights.
055	Glick	Replies all of the above. Provides details.
060	Chair Ringo	Asks about the relation between the 20 year time period to develop a water right and the bonding period. Asks if there is a logical connection between the two.
070	Glick	Responds.
084	Chair Ringo	Verifies that witness doesn't see a connection between the details of the bonding and the 20 year time period.
089	Glick	Believes there to be no connection between the laws regarding revenue bonding and the 20 year time period.
091	Sen. Shields	Mentions court cases discussed earlier. Asks witnesses if they believe that HB 3038 A and the amendments they will propose are steps towards making a compromise with WaterWatch.
097	Glick	Explains intent of HB 3038 A.
127	Tiffany	Explains they have been working with WaterWatch as they drafted the bill and throughout the process. States they have come a long way, but have not been able to come eye to eye. Offers willingness to negotiate.
139	Chair Ringo	Makes comment.
144	Todd Heidgerken	Manager of Community and Intergovernmental Relations, Tualatin Valley Water District (TVWD). Gives background information on TVWD. Discusses: <ul style="list-style-type: none"> <li>• Planning for future water supply</li> <li>• Water Service Master Plan</li> <li>• Water Management and Conservation Plan</li> <li>• Development of water source</li> </ul>
224	Chair Ringo	Asks if witness has written testimony to provide.
225	Heidgerken	States he will provide written testimony to the committee.
230	Heidgerken	Continues discussion of the development of a water source. Points out that they try to work with other municipal water providers.
270	Sen. Shields	Points out that all three witnesses mentioned public input

		somewhere in their testimony. Discusses public interest review of establishing a water right. Opines that the public interest review is probably different in 2005 than it was in 1920 or 1950. Wonders how to reconcile an old water right with all the changes that have occurred.
287	Glick	Responds.
307	Tiffany	States that the amendments mentioned earlier were just received. Submits the –A6 amendments for the record ( <b>EXHIBIT H</b> ).
315	Adam Sussman	Legislative Coordinator, WRD. Submits written testimony on HB 3038 A ( <b>EXHIBIT I</b> ). States for the record that the WRD supports HB 3038 A with the –A6 amendments that were just distributed. Discusses section 5 of HB 3038 A. Discusses undeveloped municipal permits. Discusses extension of municipal permits.
397	Chair Ringo	Asks if the Oregon Department of Fish and Wildlife (ODFW) is satisfied with the status of the Gleneden Beach situation.
400	Sussman	Responds.
<b>TAPE 95, B</b>		
007	Sen. Shields	Mentions comment made by witness in testimony regarding effects of a court decision. Asks if witness believes that the Supreme Court knew that these effects would take place. Asks if witness believes that the Supreme Court understood what they were doing.
014	Sussman	States that the mentioned discussion took place for four years prior to the Supreme Court decision.
015	Sen. Shields	Asks if witness believes the Supreme Court was unaware of that.
016	Sussman	Responds.
033	Sussman	Discusses Water Management and Conservation Plans.
060	Sussman	Discusses the –A6 amendments.
080	Brian Posewitz	President of the Board of Directors, WaterWatch. Submits written testimony ( <b>EXHIBIT J</b> ). Submits the –A5 amendments for the record ( <b>EXHIBIT K</b> ). Gives background information on WaterWatch. Explains HB 3038 A. Discusses Oregon’s Water Law. Discusses timeline between a permit issuance and the actual use of the water.
133	Posewitz	Discusses current law. References submitted testimony.
163	Chair Ringo	Points out that witness said some of the water rights are being used without a certificate. Asks for explanation.
165	Posewitz	Responds. Continues discussion of unused water rights.
219	Chair Ringo	Asks about the city of Adair Village.
220	Posewitz	Responds.
223	Chair Ringo	Asks where the money from the sale of the unused water right would go.
225	Posewitz	Replies that he doesn’t know. Explains.
229	Karen Russell	WaterWatch. Believes that Adair Village is planning on using the money from the sale of the water as a revenue source for economic development for the city.
233	Posewitz	Discusses the court case involving Coos Bay.
252	Posewitz	Discusses HB 3038 A.
276	Chair Ringo	Discusses timeline for land use planning required of cities. Wonders about planning for water rights for the same amount of time.
281	Posewitz	Discusses planning for 20 years. States that HB 3038 A allows for more than a 20 year water planning horizon.

283	Chair Ringo	Verifies that witness is concerned about the extensions after 20 years.
286	Posewitz	Replies yes.
287	Chair Ringo	Verifies that witness' amendments state that the initial time is 10 years.
290	Posewitz	Replies yes and explains.
317	Posewitz	Continues discussion of HB 3038 A.
335	Posewitz	Discusses mentioned conservation plans.
352	Posewitz	Discusses municipal water use. Makes closing remarks.
367	Sen. Shields	States that he cares about both sides of this issue. Asks if there is room for further compromise.
376	Posewitz	Discusses the –A5 amendments.
392	Russell	Makes comment.
403	Paul Katen	Resident, Otis. Scientist. Volunteer and President, Salmon Drift Creek Watershed Council in Lincoln City. Testifies in opposition to HB 3038 A.

**TAPE 96, A**

001	Katen	Continues testimony in opposition to HB 3038 A.
042	Chair Ringo	Asks when Lincoln City obtained the mentioned permits.
043	Katen	Believes the 1960s.
044	Katen	Concludes testimony in opposition to HB 3038 A.
060	Lorna Stickel	Portland Water Bureau, Water Resources Planning Manager and Project Manager for the Regional Water Providers Consortium. Submits informational packet ( <b>EXHIBIT L</b> ). Testifies in support of HB 3038 A.
085	Chair Ringo	Comments about impact of this issue. Cites examples and says additional information would be helpful.
090	Stickel	Responds.
097	Chair Ringo	Verifies that a city could develop 20 percent of a water right.
098	Stickel	Replies 25 percent.
099	Chair Ringo	States that witness said that they need to develop more than 25 percent before they can get a certificate.
100	Stickel	Clarifies perfected, not receive a certificate. Discusses: <ul style="list-style-type: none"> <li>• City of Portland's water right</li> <li>• Plans required by municipalities for water rights</li> <li>• Financing</li> </ul>
139	Chair Ringo	Asks about the 20 year time period.
140	Stickel	Replies 20 years is the standard payback period for municipal bonds.
141	Chair Ringo	States that may be the payback period, but wonders about connection to development.
143	Stickel	Responds.
150	Stickel	Concludes testimony in support of HB 3038 A. References submitted materials.
189	Tom Hickmann	City of Bend Water Utility Manager. Submits informational packet ( <b>EXHIBIT M</b> ). Highlights written testimony included in submitted materials.
268	Paul Eckley	Operations Manager, City of Salem Public Works Department. Submits and highlights written testimony in support of HB 3038 A ( <b>EXHIBIT N</b> ).
368	Stickel	Makes comment.
373	Chair Ringo	Believes that it is important to pass legislation on this issue.

379	David Moskowitz	Wild Salmon Center. Testifies in opposition to HB 3038 A.
400	Chair Ringo	Closes public hearing HB 3038 A and adjourns meeting at 10:23 a.m.

### **EXHIBIT SUMMARY**

- A. SB 245, -3 amendments, staff, 2 pp**
- B. HB 3038 A, written testimony, Glen Kirkpatrick, 1 p**
- C. HB 3038 A, white paper, Willie Tiffany, 12 pp**
- D. HB 3038 A, book, Willie Tiffany, oversized**
- E. HB 3038 A, written testimony, Willie Tiffany, 2 pp**
- F. HB 3038 A, written testimony of Rep. Brad Witt, Willie Tiffany, 1 p**
- G. HB 3038 A, written testimony, Rick Glick, 4 pp**
- H. HB 3038 A, -A6 amendments, Willie Tiffany, 9 pp**
- I. HB 3038 A, written testimony, Adam Sussman, 2 pp**
- J. HB 3038 A, written testimony, Brian Posewitz, 16 pp**
- K. HB 3038 A, -A5 amendments, Brian Posewitz, 7 pp**
- L. HB 3038 A, informational packet, Lorna Stickel, 16 pp**
- M. HB 3038 A, informational packet, Tom Hickmann, 61 pp**
- N. HB 3038 A, written testimony, Paul Eckley, 15 pp**