SENATE COMMITTEE ON WATER AND LAND USE

April 30, 2003 3:00 p.m. Hearing Room D Tapes 59 – 62

MEMBERS PRESENT:	Sen. Ted Ferrioli, Chair Sen. Charlie Ringo, Vice-Chair Sen. Jason Atkinson Sen. Rick Metsger
STAFF PRESENT:	Judith Callens, Committee Administrator Megan Jensen, Committee Assistant
MEASURE/ISSUES HEAR	D: HB 820 Public Hearing and Work Session HB 2689 Public Hearing SB 293 Public Hearing HB 836 Public Hearing HB 418 Public Hearing

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

TAPE/#	Speaker	Comments
TAPE 59, A	.	
003	Chair Ferrioli	Calls meeting to order at 3:18 p.m. and opens public hearing on SB 820.
<u>SB 820 – PUB</u>	LIC HEARING	
010	Sen. David Nelson	District 29 State Senator. Provides testimony in support of SB 820 and -5 amendments dated 4/30/03 (EXHIBIT A). States that the Columbia River should be protected but also provide for economic development uses.
025	Sen. Ringo	Asks for the main points of the -5 amendments.
030	Sen. Nelson	Explains that -5 amendments:
		 Request a 250,000 acre feet reservation of water Create a temporary ten year reservation Create a task force to study the effects on interstate compacts, the Endangered Species Act (ESA) and effects on the state
038	Sen. Ringo	Inquires if the work group included WaterWatch and other environmental groups.
040	Sen. Nelson	Affirms and lists organizations involved in the work group.
055	Martha Pagel	Schwabe Williamson and Wyatt. Provides information on the work group and refers to submitted written materials (EXHIBITS B AND C) .
088	Sen. Ringo	Asks about reserving 250,000 acre feet of Columbia River water.
092	Pagel	Explains that the Columbia River main stem is not part of the reservation and will be withdrawn from future appropriation.
096	Sen. Ringo	Inquires if there could be withdrawals from the Columbia River without legislative approval.
098	Pagel	Affirms and explains the process for requesting a withdrawal.
102	Sen. Ringo	Asks about the origin of the 250,000 acre feet figure.
103	Pagel	Explains it is a rough estimate of what might be a reasonable amount.

112	Sen. Ringo	Wonders if the majority of the water will be used for agricultural
114	Decel	purposes.
114	Pagel	Believes the water would be used for agricultural uses but also
100	C D:	for industrial and municipal development.
120	Sen. Ringo	Inquires about the temporary ten year limit on SB 820.
123	Pagel	Explains the intent is to have a systematic plan for long term water needs.
135	Sen. Ringo	Asks what issues need further deliberation.
139	Pagel	Refers to the four key issues listed on page two of her submitted written testimony.
155	Sen. Ringo	Wonders if amendments are required to address the concerns.
159	Pagel	Believes the -5 amendments address those concerns and elaborates.
176	Sen. Ringo	Clarifies that some concerns could be addressed at a future point.
183	Pagel	Confirms that the -5 amendments address the problems but there are plans to continue working on the bill on the House side.
189	Chair Ferrioli	Discusses the reservation of water as the first key component of
		the -5 amendments.
199	Pagel	Points out the language in SB 820 that reserves 250,000 acre feet of water.
204	Chair Ferrioli	Discusses the second key provision of protection for instream
204		flows.
206	Pagel	Points out language in the -5 amendment that addresses instream
200	1 4601	flows.
210	Chair Ferrioli	Asks about the third key provision of comprehensive river
		management.
212	Pagel	Explains comprehensive river management plans in the -5
	C	amendments.
238	Chair Ferrioli	Talks about the four states that share the Columbia River in
		different appropriation percentages.
241	Pagel	Replies that those issues can be addressed in an interstate
		compact.
250	Chair Ferrioli	Discusses the fourth key provision regarding the ESA.
264	Pagel	Explains the process for consulting with agencies regarding how
		the proposed water withdrawal will affect the ESA.
280	Chair Ferrioli	Points out the requirement for a report to the Legislative
		Assembly in two years.
285	Sen. Ringo	Asks about the inclusion of the ESA in the -5 amendments.
300	Pagel	Explains how the Water Resources Department (WRD) will
210		consider applications with regards to the ESA.
310	Sen. Ringo	Inquires if the term "this reservation" refers to the 250,000 acre
220		feet and not the 1.42 million acre feet originally requested.
320	Pagel	Affirms.
322	Sen. Ringo	Asks about a fiscal impact.
328	Chair Ferrioli	Comments that there is no fiscal impact statement yet and elaborates.
335	Pagel	Explains the plan is structured for a minimal fiscal impact.
338	Chair Ferrioli	Remarks that SB 820 is a work in progress.
350	Bill Burke	Confederated Tribes of the Umatilla Indian Reservation
		(CTUIR). Provides testimony against SB 820 and refers to
TADE (A A		submitted written materials (EXHIBIT D).
TAPE 60, A 005	Burke	Continues testimony in opposition to SB 820.
098	Sen. Ringo	Asks if some water could be freed up immediately while the
070	Juli. Killgu	risks it some water could be need up inimiculately while the

		study is taking place.
102	Burke	Believes no water should be made immediately available.
108	Sen. Ringo	Expresses concern regarding the economic downturn and
		wonders if some amount of water could be allocated for
110	Daudra	economic uses in interim.
118	Burke	Reasserts his concern for the well-being of Columbia River salmon.
122	Rick George	CTUIR Water Resources Department (WRD). Talks about
		WRD's process for granting a new water right.
134	Chair Ferrioli	Summarizes crucial issues surrounding SB 820. Asks if CTUIR
		could support the committee moving SB 820 to the House with
		the understanding that the work group will continue work on the
234	Coorgo	bill. Bestrends that CTLUP would prefer that more time he spont
234	George	Responds that CTUIR would prefer that more time be spent addressing concerns about the impacts to the hydrosystem and
		instream flows in the Columbia River.
263	Chair Ferrioli	Remarks that there is very little time left in the legislative session
		to address those concerns adequately and states that those
		subjects will be included in legislative reports. Talks about three
		issues that must be addressed before water is ever even
200		appropriated.
300	Adam Sussman	WRD. Provides testimony in support of SB 820 and -5 amendments and refers to submitted written materials
		(EXHIBIT E). Believes there will be no fiscal impact to the
		general fund.
312	Sen. Ringo	Inquires how much time WRD requires to assess a fiscal impact.
313	Sussman	Explains the length of time is difficult to estimate.
318	Sen. Ringo	Asks for an estimate of the time necessary to produce a fiscal
	~	impact statement.
320	Sussman	Restates he cannot accurately estimate the length of time.
330	Chair Ferrioli	Talks about water right application costs being used to fund WRD work.
336	Sussman	Believes the SB -5 amendments require agencies comply reports
	~	of policy coordination issues.
TAPE 59, B		
020	Jill Zarnowitz	Oregon Department of Fish and Wildlife. Provides testimony on
		SB 820 and -5 amendments and refers to submitted written
055	Can Matazan	materials (EXHIBIT F).
055 059	Sen. Metsger Zarnowitz	Asks about specific concerns with the -5 amendments. Explains ODFW is satisfied with the -5 amendments.
064	Sen. Metsger	Asks if ODFW supports the bill with the -5 amendments.
067	Zarnowitz	Explains ODFW is remaining neutral on SB 820.
070	Sen. Ringo	Asks how the water withdrawal will affect the amount of water
	-	in the Columbia River.
074	Sussman	Replies that there are pending applications for Columbia River
007	C D'	water use and elaborates.
087	Sen. Ringo	Inquires if the pending applications will affect water withdrawals
089	Sussman	in the next two years. Explains that applications waiting for water will go forward
007	Sussilian	regardless of any other water use decisions.
098	Sen. Ringo	Asks if SB 820 will affect people currently in the application
	c	process.
100	Sussman	Replies that SB 820 will enhance coordination between agencies
		and the federal government but it will not allocate water.

105	Sen. Ringo	Reiterates his question regarding whether SB 820 will make it more likely that additional water will be removed from of the Columbia River over the next two years.
109	Chair Ferrioli	Clarifies that it will depend on each water right application.
115	Kimberley Priestley	WaterWatch. Provides testimony in opposition to SB 820 and refers to submitted written materials (EXHIBIT G). States that WaterWatch would accept the proposed water withdrawal if the remaining water is withdrawn from future consumptive appropriation.
185	Sen. Ringo	Asks if WaterWatch would accept SB 820 in its entirety under that assumption.
187	Priestley	Explains that WaterWatch would be comfortable with the water withdrawal if a clause was included allowing for an instream water right. Continues testimony and discusses the reporting requirements.
200	Sen. Ringo	Asks for WaterWatch's opinion on the 250,000 acre feet reservation request.
203	Priestley	Replies WaterWatch will not accept water withdrawal as long as target flows for healthy fish are not being met.
207	Aubrey Russell	Oregon Trout. Provides testimony in opposition to SB 820 and refers to submitted written materials (EXHIBIT H).
272	Sen. Ringo	Asks for his opinion on the addition of "consumptive" on page three of SB 820.
280	Pagel	Explains that it would allow an instream water right application to be filed but might erase any benefit of the water reservation.
299	Fred Ziari	Eastern Oregon Irrigation Association. Provides testimony in support of SB 820. Believes SB 820 will assist economic recovery in eastern Oregon.
324	Gary Reed	Umatilla County. Submits written testimony in support of SB 820 (EXHIBIT I).
330 SB 820 – WOR	Chair Ferrioli <u>K SESSION</u>	Closes public hearing and opens work session on SB 820.
335	Chair Ferrioli	Explains an scrivener's error in the -5 amendments to be corrected in the House. Clarifies CTUIR is concerned with fish survival and water flow. States those issues must be dealt with on any application for water rights and elaborates.
370	Sen. Ringo	Asks for clarification on the scrivener's error.
375	Chair Ferrioli	Provides clarification and explains there will be a conference committee when SB 820 moves to the House.
395	Sen. Atkinson	MOTION: Moves to ADOPT SB 820-5 amendments dated 4/30/03.
400		VOTE: 4-0
	Chair Ferrioli	Hearing no objection, declares the motion CARRIED.
406 TAPE 60, B	Sen. Metsger	Summarizes issues surrounding SB 820.
023	Sen. Ringo	Offers supports for SB 820 but comments on the arbitrary nature of the 250,000 acre feet reservation.
039	Sen. Atkinson	MOTION: Moves SB 820 to the floor with a DO PASS AS AMENDED recommendation.
043		VOTE: 4-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Ferrioli	The motion CARRIES. SEN. NELSON will lead discussion on the floor.

Directs staff to create an amendment regarding demonstrable progress and charges the work group to continue working on SB 820. Closes work session on SB 820 and opens public hearing on HB 2689.

HB 2689 – PUBLIC HEARING

062	Rep. Tootie Smith	District 18 State Representative. Provides testimony in support of HB 2689 and refers to submitted written testimony (EXHIBIT L).
125	Chair Ferrioli	Asks if the -4 amendments are under consideration.
128	Rep. T. Smith	Replies that the -5 amendments are under consideration because there was a drafting error in the -4 amendments.
180	Sandy Flicker	Oregon Rural Electric Cooperative Association. Provides testimony in support of HB 2689 and refers to submitted written testimony (EXHIBIT M) .
230	Harlan Levy	Oregon Association of Realtors. Provides testimony in support of HB 2689 and -5 amendments and refers to submitted written testimony (EXHIBIT N and EXHIBIT O).
275	Sen. Ringo	Asks for his opinion on the -4 amendments.
278	Levy	Replies that some aspects of the -4 amendments are not acceptable.
281	Sen. Ringo	Believes there should be discussion on both the -4 and -5 amendments.
290	Chair Ferrioli	States there will be a presentation of the HB -4 amendments.
294	Don Schellenberg	Oregon Farm Bureau. States support for HB 2689 and -4 amendments.
324	Art Kegler	Morrow County. Provides testimony in support of HB 2689. Discusses the economic benefits of a new raceway in Morrow County.
TAPE 61, A		county.
008	Sen. Ringo	Asks about the particular land use rules that impeded the establishment of a raceway.
015	Kegler	Explains that commercial businesses were not allowed outside the urban growth boundary (UGB).
019	Sen. Ringo	Inquires if the raceway itself was considered a commercial business.
021	Kegler	Replies that the amenities associated with the raceway were considered commercial development.
025	Sen. Ringo	Asks who made the decision that impacted the establishment of the raceway.
026	Kegler	Responds that the Department of Land Conservation and Development made the decision.
029	Chair Ferrioli	Explains that the commercial development related to the raceway was disallowed.
032	Kegler	Reiterates that the decision was made because the proposed location was outside the UGB. Explains that HB 2689 would not allow "mall sprawl."
040	Sen. Ringo	Asks if HB 2689 would resurrect the racetrack proposal.
043	Kegler	Affirms and elaborates. Discusses the -4 amendments and believes the size limitation of 40,000 square feet is unreasonable.
068	Sen. Ringo	Asks for his recommendation on a size limit.
069	Kegler	Replies that he is unsure of an appropriate size limit.
075	Sen. Ringo	Asks if the -4 amendments would adequately address the problem if the size limit is removed.
077	Kegler	Affirms.

090	Chair Ferrioli	Discusses the difference between urban commercial and rural
100	IZ 1	commercial zoning.
100	Kegler	Clarifies the difference between urban commercial and rural commercial zoning.
106	Don Saari	Central Oregon Coast Board of Realtors. Provides testimony in
100	Don Suuri	support of HB 2689 and refers to submitted written testimony
		(EXHIBIT P). Discusses the background of HB 2689.
200	Saari	Continues testimony in support of HB 2689. Expresses support
200	Saarr	for the HB 2689-5 amendments and expresses concern regarding
		the -4 amendments.
260	Bob Rindy	Department of Land Conservation and Development. Provides
200	Doo Rindy	testimony in support of HB 2689 and -4 amendments. Discusses
		economic development on rural industrial lands.
370	Sen. Metsger	Asks about building size limitations.
375	Rindy	Explains that the basic premise of land use planning is to limit
570	Tentay	sprawl and keep costs down.
TAPE 62, A		
011	Chair Ferrioli	Asks about rural commercial uses.
018	Rindy	Offers to research the issue.
028	Jay Waldron	Glenwood Auto Parts. Provides testimony in support of HB 2689
	5	and refers to submitted written testimony (EXHIBIT Q). Asserts
		that HB 2689 will assist small and medium business owners in
		Oregon.
118	Chair Ferrioli	Asks if he has read the -5 amendments.
119	Waldron	Responds he has not read the -5 amendments.
125	Chair Ferrioli	Asks if there is a retail component to his business.
128	Waldron	Affirms.
130	Chair Ferrioli	Requests he study the -4 and -5 amendments.
140	Sen. Ringo	Inquires how he researched whether the land could be used for
		his business.
142	Waldron	Explains he worked with the land use planner in Lane County.
150	Sen. Ringo	Inquires how much time he spent working with the planner.
152	Waldron	Responds he spent approximately half an hour working with the
1.67		land use planner.
165	Sen. Metsger	Inquires if his business use was deemed industrial use.
168	Waldron	Affirms.
172	Sen. Metsger	Clarifies that what prevented him from establishing his business
		was the imposition of the 7500 square foot building size
175	Waldrag	limitation.
175	Waldron	Affirms and elaborates on the new rule that went into effect
178	Sen. Metsger	during the process of acquiring his business site. Asks for clarification on the new rule.
193	Waldron	Responds the building size limit changed and new ownership
195	w aldron	regulations went into effect.
197	Chair Ferrioli	Closes public hearing on HB 2689 and opens work session on
177		SB 293.
<u>SB 293 – WOR</u>	K SESSION	<u>55 275.</u>
200	Dick Stradley	Sherman County Assessor. Explains he is neutral on the issues of
		SB 293. Discusses the -6 amendments and expresses concern
		about administrative costs that might be imposed on assessors.
245	Chair Ferrioli	Asks who is the owner of record on the river banks.
252	Stradley	Believes the deeds show that property is owned to the center line
	-	of the river.
254	Chair Ferrioli	Asks if the river bed is included in tax assessments.

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257	Stradley	Affirms.
259	Chair Ferrioli	Confirms that property owners own the river beds.
263	Donald Cossitt	Wheeler County Assessor. States that the John Day River is
270		taxed to the center line of the river.
270	Chair Ferrioli	Asks if tax payers would have the right to recover payment of
0.70		taxes back to five years if the river was declared navigable.
273	Cossitt	Affirms that tax payers could recover payments back to five
0.7.6		years if it was deemed a clerical error.
276	Chair Ferrioli	States that changes in the method of assessment would have to
• • •	- ·	take place if the -6 amendments were adopted.
283	Cossitt	States that the John Day runs through exclusive farm zones and
		explains the process for adjustments to the taxable value.
293	Chair Ferrioli	Inquires about mapping processes.
293	Cossitt	Explains different mapping processes.
298	Chair Ferrioli	Remarks that mapping processes would be a burden on counties
		and the Department of Revenue. Asks about cost estimates.
301	Cossitt	Responds that there is no cost estimate.
303	Chair Ferrioli	Clarifies that property values are assessed to the center line of
		the river and the property is taxed.
315	Pat Shaw	Gillam County Assessor. Expresses concern about exempting
		property up to the high water mark because the administrative
		process will be burdensome to counties.
340	Chair Ferrioli	Asks for an explanation of meander surveys of river banks.
345	Scott Jackson	Department of Revenue Cartographer. Explains meander surveys
		and states the John Day has not had a meander survey.
361	Chair Ferrioli	Clarifies that he would have to do a meander survey from the
		headwaters of the John Day River before he could declare the
		high water line and declare assessable property values.
365	Jackson	Affirms and elaborates.
367	Chair Ferrioli	Asks who would pay for the survey.
368	Jackson	Replies that the Department of Revenue and counties would
		share the costs.
370	Chair Ferrioli	Asks about the tax base in Wheeler County.
372	Cossitt	Believes the tax base is around \$80 million.
373	Chair Ferrioli	Asks if Wheeler County is over 98% on tax deferral.
375	Cossitt	Responds that about 98.4% is either exempt or deferred
		currently.
377	Chair Ferrioli	Asks for the annual revenue from that value.
379	Cossitt	States the levy for the entire county is \$487,597.
381	Chair Ferrioli	Asks what a meander survey would cost.
410	Jackson	Believes a meander survey would be expensive.
415	Cossitt	Comments on the cost and length of time for a meander survey.
424	Chair Ferrioli	Elaborates on the complications of a meander survey.
TAPE 61, B		
025	Sen. Metsger	Asks if the recovery of taxes back five years for errors or
		omissions would be applicable under SB 293 or the declaration
		of navigability.
035	Chair Ferrioli	States that the potential liability would come from the error of
		assessing land that is not owned by the land owner.
040	Stradley	Affirms and elaborates on exemptions.
046	Sen. Metsger	Talks about the process of determining what property is not
		taxable.
055	Stradley	Affirms.
058	Sen. Metsger	Talks about property owners on the Sandy River.

070	Cossitt	Explains the process in Wheeler County.
100	Sen. Metsger	Remarks that the state must reimburse a county for the costs
107	Jackson	involved with taking property.
107	Jackson	Clarifies that there is no money in the account the state would use to reimburse counties.
115	Chair Ferrioli	Asks about the effect on the total value of the land if the property
	C	to the center line of the river is lost.
122	Stradley	Explains that the land has relatively little value.
133	Chair Ferrioli	Believes the Sandy River property has a higher value and talks
		about assessments on the Sandy River.
151	Jackson	Offers to research the issue.
165	Bill Koran	West Linn. Provides testimony in opposition to SB 293 and
200		refers to submitted written testimony (EXHIBIT R).
288	John Garren	National Organization for Rivers (NORS). Provides testimony in
		opposition to SB 293 and refers to submitted written testimony (EXHIBIT S) . Believes the state does not have the resources of
		staff and funding for development of a river recreation
		management plan that would duplicate a federal plan already in
		place.
365	Chair Ferrioli	Asks if he would like the federal John Day River management
		plan submitted for the record.
369	Garren	Replies that the federal management plans are available through
		the Bureau of Land Management in Prineville.
378	Sen. Ringo	Comments that there has been no reference to the federal
		management plan for the John Day River in the public hearings.
380	Garren	Talks about the federal management plan as it relates to the John
		Day River.
TAPE 62, B	0	
008	Garren	Continues discussion of facilities on the John Day River and the
020	Chair Ferrioli	federal management plan. Closes work session on SB 293. Discusses management plan
020		issues. Opens public hearing on SB 836.
SB 836 – PUB	LIC HEARING	issues. Opens public hearing on 5D 650.
050	Steve Purchase	Division of State Lands Assistant Director. Reports the progress
		of SB 836.
080	Chair Ferrioli	Closes public hearing on SB 836 and opens public hearing on SB
		418
	LIC HEARING	
085	Chair Ferrioli	States that SB 418 amendments will be discussed at a later date (EXHIBIT T) . Closes public hearing on SB 418 and adjourns
		meeting at 6:42 p.m.

EXHIBIT SUMMARY

A – SB 820, SB 820-5 amendments dated 4/30/03, staff, 5 pp.

- B SB 820, written testimony, Martha Pagel, 3 pp.
- C SB 820, written testimony, Martha Pagel, 9 pp.
- D SB 820, written testimony, Bill Burke, 4 pp.
- E SB 820, written testimony, Adam Sussman, 3 pp.
- F SB 820, written testimony, Jill Zarnowitz, 3 pp.
- G SB 820, written testimony, Kimberley Priestley, 1 p.
- H SB 820, written testimony, Aubrey Russell, 1 p.

I – SB 820, written testimony, Gary Reed, 2 pp. J – HB 2689, HB 2689-4 amendments dated 4/30/03, staff, 3 pp. K – HB 2689, HB 2689-5 amendments dated 4/30/03, staff, 5 pp. L – HB 2689, written testimony, Rep. Tootie Smith, 2 pp. M – HB 2689, written testimony, Sandy Flicker, 3 pp. N – HB 2689, written testimony, Harlan Levy, 12 pp. O – HB 2689, written testimony, Harlan Levy, 8 pp. P – HB 2689, written testimony, Don Saari, 4 pp. O – HB 2689, written testimony, Jay Waldron, 2 pp. R – SB 293, written testimony, Bill Koran, 3 pp. S – SB 293, written testimony, John Garren, 5 pp. T – SB 293, written testimony, Steve Christensen, 1 p. U – SB 293, written testimony, Phil McCorkle, 1 p. V – SB 293, written testimony, Tony Brauner, 56 pp. W – SB 293, written testimony, Vaden Green, 3 p. X – SB 293, written testimony, Jim McConnaughey, 1 p. Y – SB 293, written testimony, Lyell Asher, 1 p. Z – SB 293, written testimony, John Richen, 1 p. AA – SB 293, written testimony, Jason Wells, 1 p. BB – SB 293, written testimony, Gordon Ferlitch, 1 p. CC – SB 293, written testimony, Brian O'Leary, 1 p. DD – SB 293, written testimony, Ephraim Payne, 3 pp. EE – SB 293, written testimony, Rob Allen, 2 pp. FF – SB 293, written testimony, Lawrence Edwards, 6 pp. GG – SB 293, written testimony, Rhett Lawrence, 1 p. HH – SB 293, written testimony, Tim Grinstead, 1 p. II – SB 293, written testimony, Keith Slonecker, 2 pp. JJ – SB 836, written testimony, Bill Sanderson, 1 p. KK – SB 418, SB 418-1 amendments dated 4/28/03, staff, 1 p. LL - SB 418, SB 418-2 amendments dated 4/28/03, staff, 27 pp.