

HOUSE COMMITTEE ON STREAM RESTORATION
& SPECIES RECOVERY

May 4, 2001
1:00 P.M.

Hearing Room E
Tapes 115 - 116

MEMBERS PRESENT:

Rep. Bob Jenson, Chair
Rep. Jan Lee, Vice-Chair
Rep. Randy Leonard Vice-Chair
Rep. Tim Knopp
Rep. Jeff Kruse
Rep. Patti Smith
Rep. Al King
Rep. Kelley Wirth

MEMBER EXCUSED: Rep. Carolyn Tomei

VISTING MEMBER: Rep. Jackie Dingfelder

STAFF PRESENT: Sandy Thiele-Cirka, Committee Administrator
Linda K. Gatto, Committee Assistant

MEASURES HEARD:

HB 2788 – Work Session
HB 3958 – 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 115, A | | |
| 004 | Chair Jenson | Calls the meeting to order at 1:52 p.m. and opens a work session on HB 2788. |
| <u>HB 2788 – WORK SESSION</u> | | |
| 029 | Michael W. Peterkin | Attorney representing the Cyrus's. Discusses ditches as easements. States the issue with HB 2788 is whether piping can be considered maintenance. |
| 120 | Peterkin | Quotes from court case findings. |
| 149 | Chair Jenson | Questions if HB 2788 is proposing to pipe the Cyrus's ditch. |
| 153 | Peterkin | Responds that the bill does not specifically speak to the Cyrus's property. |
| 160 | Chair Jenson | States it is his understanding that the district is not proposing to pipe the Cyrus's property. |
| 167 | Peterkin | States if HB 2788 moves forward, there is a possibility that the Squaw Creek Irrigation District will bill the Cyrus's for the Cloverdale ditch if piping is defined as maintenance. |
| 215 | Rep. Lee | Comments that it is her understanding that in regard to the Cyrus's property, it is a private ditch and that the court agreement substantiates that the district will not pipe it. |
| 244 | Peterkin | Responds that the Deshutes County case did not address the pipe issue. States the pipe issue arose just before trial when the district |

started piping the Cloverdale ditch. Notes that there is an agreement on the supplemental complaint that has been filed, but not finalized.

355 Peterkin States that the questions is, will HB 2788 allow the districts more power to pipe open ditches at their discretion and without compensation. Comments that HB 2788 does not differentiate between easement types.

TAPE 116, A

012 Peterkin Concludes testimony by relating the 1926 case Minto vs. Salem Water, Light and Power Company.

062 Kristina McNitt Oregon Water Resources Congress (ORWC). Introduces David Vantoff.

077 David Vantoff Attorney representing Water Resources Congress, (WRC). States that the testimony presented has been a one sided view of piping law. Comments that Oregon law is unclear whether piping is maintenance. Submits legal cases, **(EXHIBIT A)**.

160 Chair Jenson Questions what the implications are between the districts, the federal Endangered Species Act (ESA), and the Clean Water Act (CWA).

164 Vantoff Responds HB 2788 gives the districts the ability to conserve more water to return to the steams and ultimately avoid problems with the ESA.

199 Harrison Conley Deputy Legislative Counsel. States that federal grant programs that relate to irrigation and reclamation, in general, focus on the distribution of water. Comments that reference to ditches or canals appears to be a reference to the technology of the times.

234 Chair Jenson Questions if the court recognizes impacts from technical changes.

236 Conley Responds that maintenance has not historically been clearly defined. States the obligation is to maintain, replacing an existing improvement and replacing it with a different improvement may be outside the scope of maintenance. Adds that he can not predict the courts interpretation.

250 Thiele-Cirka Reviews the -5 amendments and -6 amendments, **(EXHIBIT B)**.

290 Conley Comments on the Cryus clause in respect to contracts.

295 Thiele-Cirka Reviews the -4 amendments, **(EXHIBIT C)**.

318 McNitt Comments on the -5 amendments and states the position of WRC.

(Prepared testimony from Leonard Knott, Deschutes County Farm Bureau, **EXHIBIT D**).

353 **Rep. Leonard** **MOTION: Moves to suspend the rules for the purpose of reconsidering the vote on HB 2788 and the -5 amendments.**

Chair Jenson **Motion carries and the rules have been suspended.**

470 **Rep. Leonard** **MOTION: Moves to reconsider the vote by which HB 2788 AS AMENDED was sent to the floor with a DO PASS recommendation.**

475 **VOTE: 8-0**
AYE: In a roll call vote, all members present vote Aye.
EXCUSED: 1 – Tomei
Chair Jenson **The motion CARRIES.**

492 **Rep. Leonard** **MOTION: Moves HB 2788-6 amendments dated 5/4/01.**

496 **Chair Jenson** **Hearing no objection, declares the motion CARRIED.**

500 **Rep. Leonard** **MOTION: Moves HB 2788 AS AMENDED to the floor with a DO PASS recommendation.**

TAPE 115, B

| | | |
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| 035 | Rep. Knopp | States this issue needs more discussion and he will be a no vote. |
| 044 | Rep. Kruse | States concerns about having several water control districts in two different bills, in two different committees. States he will be a no vote. |
| 052 | Rep. Smith | States the suggestion to continue working on this issue is a good one and notes concerns with property rights and water rights. States she will be a no vote. |
| 060 | Chair Jenson | Addresses the committee and states the points made are well taken. |
| 088 | | VOTE: 5-3 AYE: 5 – King, Lee, Leonard, Wirth, Jenson NAY: 3 – Knopp, Kruse, Smith P EXCUSED: 1 – Tomei The motion CARRIES. REP. JENSON will lead discussion on the floor. |
| | Chair Jenson | |
| 096 | Chair Jenson | Closes the work session on HB 2788 and opens the public hearing on HB 3958. |

HB 3958 – PUBLIC HEARING

| | | |
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| 131 | Kristina McNitt | OWRC. Reviews and submits hand engrossed with the –1 (EXHIBIT E) |
| 193 | Bill Portily | Stanfield, OR. Provides professional background and experience. Submits and discusses water right maps (EXHIBIT F) and notes length of time for water rights. |
| 227 | Portily | States HB 3958 will allow the crop decisions to be made later in season and explains why this is important. |
| 240 | Rep. Leonard | Questions the disadvantage to making the decisions later in the season. |
| 261 | Portily | Responds that the Water Resources Department (WRD) wanted time to review the concept before the season began. |
| 303 | McNitt | Comments that the reason for the 60-day timeline is WRD wants some control over the outcome. |
| 334 | Chair Jenson | Questions if HB 3958 increase the risk of injury to other users. |
| 345 | Portily | Responds it goes to the watermaster. |
| 350 | McNitt | States for the record that there is a strict injury test. Explains how this bill affects water right transfers. |
| 373 | Rep. Lee | Clarifies that the district has one point of diversion to mitigate any injury, but the individual has one or more points and they do not have the ability to mitigate. |
| 380 | Portily | Responds in agreement. |
| 400 | Chair Jenson | Closes the public hearing on HB 3958 and adjourns the meeting at 3:25 p.m. |

Submitted By,

Reviewed By,

Linda K. Gatto,
Committee Assistant

Sandy Thiele-Cirka,
Committee Administrator

EXHIBIT SUMMARY

- A. HB 2788, legal cases, David Vantoff, 41 pp.**
- B. HB 2788, -5 amendments dated 4/23/01, -6 amendments dated 5/4/01, Staff, 3 pp.**
- C. HB 2788, -4 amendments dated 4/11/01, Staff, 1 pp.**
- D. HB 2788, written testimony, Leonard J. Knott, 1 pp.**
- E. HB 3958, hand engrossed -1 amendment, Kristina McNitt, 6pp**
- F. HB 3958, water rights maps, Bill Portily,**