

HOUSE COMMITTEE ON WATER AND ENVIRONMENT

January 22, 2001
8:30 AM

Hearing Room E
Tape 4-5

MEMBERS PRESENT: Rep. Laurie Monnes-Anderson, Vice-Chair
Rep. Susan Morgan, Vice-Chair
Rep. Mark Hass
Rep. Bob Jenson
Rep. Deborah Kafoury
Rep. Al King
Rep. Jeff Kruse
Rep. Jan Lee

MEMBER EXCUSED: Rep. Betsy Close, Chair

STAFF PRESENT: Megan Palau, Administrator
Shannon Relaford, Committee Assistant

ISSUES HEARD: Land Use Board of Appeals
Water Resources Department
Associated Oregon Industries

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 4, A		
001	Rep. Morgan	Vice-chair Morgan convenes meeting and begins at 8:30. Introduces Land Use Board of Appeals (LUBA) Chair, Tod Bassham.
010	Tod Bassham	Gives history and overview of LUBA, (EXHIBIT A) .
108	Rep. Morgan	Questions Mr. Bassham's position, quantity of staff, and quantity of cases.
124	Bassham	Responds that he is a Chair, and gives an idea of work load and staff.
151	Rep Morgan	Asks: How many cases in case load. How does the administration work, who writes the appeals.
154	Bassham	Responds: At any given time 100 to 130 active cases. All three members write the appeals.
164	Rep Kruse	Asks how many cases go beyond them to the Court of Appeals, how much does the body of law they put down weigh into how the Court of Appeals addresses the issue, or do they bypass that

		and just go to statute and develop their own opinion based on statute.
175	Bassham	Responds there were 44 appeals in 1998. Court of Appeals has as set forth by statute a standard of review by which they review LUBA decisions.
197	Rep. Kruse	Asks how many of the appeals were upheld and how many were overturned.
200	Bassham	Responds that they have a performance measure for Court of Appeals review of LUBA decisions of 80%.
204	Rep. Jenson	Remarks that clients do not have to be represented by attorneys, without an attorney, an individual may be at a significant disadvantage in the process. Asks for comments.
218	Bassham	Responds that they have tried to make the process for appealing with LUBA as simple as possible, land use law is quite complex. They do their best to help.
222	Rep. Jenson	Asks what is the source of cases, the land owner, or LCDC.
230	Bassham	Responds they come from all walks, often the land owner, neighborhood group, land use watch group, LCDC, business competitors.
245	Rep. King	Questions the 80% standard, where did it come from.
255	Bassham	Responds performance measures were set up in the early 80's, the board at that time may have felt that was pretty good.
260	Rep. King	Asks if you fell below that 80%, would the board go back and review why.
265	Bassham	Responds if the performance measure was not met over a course of time there would be review by the board.
273	Rep. King	Questions if the 90% current rate is a lifetime, year 2000, or five-year rolling average.
278	Bassham	Responds it's on a quarterly basis.
298	Rep. Jenson	More comments on lack of representation by attorneys in a LUBA appeal.
310	Rep. Morgan	Agrees, states her concern of putting access to the court system and to these kinds of systems to people that are not economically able to continue that process.
319	Rep. Kruse	We made the law so complicated.
320	Rep. Lee	C Comments that was the goal of the law, to make the appeal process available to people that could not afford an attorney.
334	Rep. King	Comments on when LUBA was created, it was a lower priced option.
344	Rep. Jenson	Agrees that the legislature is to blame for making the laws.
349	Rep. Morgan	States that it is the Administrative Rules that complicate the process.
360	Rep. Kruse	Agrees and comments on how the legislature tends to draft legislation that leaves too many holes for administrative rules to be written.
376	Rep. Morgan	Introduces Paul Cleary, Director of Water Resources Department.
378	Paul Cleary	Director Cleary gives over view of Water Resources, (EXHIBIT B) .
461	Tom Byler	Legislative Coordinator. Continues presentation with information on water management and strategies.
TAPE 5, A 077	Rep. Morgan	Questions how many people are staffed in each area.

080	Blyer	Refers to table for current staffing levels. Continues with presentation of Water Law.
137	Rep. Jenson	Questions what is the “Public”, is that the state, or nation?
141	Byler	Responds that we’re talking the state, the citizens of the state, and WRD is merely out there to manage the resources on behalf of the citizens.
144	Rep. Jenson	Questions how is it that Environmental Protection Agency and others refer to it as “our water?” That is the federal agency’s water.
145	Byler	Responds ultimately the water is the state’s water.
154	Rep. Jenson	Comments that there is a fundamental problem in the definition of state or federal water, and if we don’t have a definition of who’s water it is, it’s difficult without a policy,
166	Rep. Kruse	Comments that traditionally water that never left someone’s property was considered to be theirs. Asks if that is no longer true.
176	Cleary	Explains springs that rise on property and don’t flow off naturally, the use of that water is exempt from requirement for permit.
181	Rep. Kruse	Questions as we try to develop ground water policy, the relationship between ground and surface water, can see a point in time where some might challenge the sovereignty over that source simply because it is ground water initially.
185	Cleary	Responds that it is always possible, but he is unaware of any challenges in the past.
189	Blyer	Continues with overview on Water Law.
227	Rep. Morgan	Voices concerns of National Marine Fisheries Service (NMFS) implementation of 4D Rule, the previous director was concerned that the way NMFS wanted to implement the rule was really contrary to the priority aspects of Oregon Water Right. Requests an update on that discussion.
230	Cleary	Responds that they’ve had a task force of various interest groups and members of the commission that have been working on it and they’re working with NMFS and US Fish and Wildlife Service on a MOA to deal with how they will implement various actions under the Endangered Species Act. They have some different requirements in terms of consultation and enforcement and are looking for ways to restore stream flows and minimize disruption and ideally managing within the priority system is the best way to go.
250	Blyer	Continues with water code explanation.
287	Rep. Kruse	Questions protection of water rights, if a piece of land is being used for a peach orchard that will have a life of 20 years then revert back to previous use, to have to water that orchard every 5 years when it doesn’t need it, is a wasteful practice. What procedure or application would one have to do to protect that water right and not be uselessly using the water.
302	Cleary	Responds that one of the tools a lot of people use is to lease the water in stream during that time period, that meets two goals, prevents it from being forfeited and helps us in terms of stream full restoration.
308	Blyer	Continues with terms of trade and water availability and ground water.

TAPE 4, B

149	Rep. Lee	Requests copies of maps.
150	Rep. Hass	Questions who has jurisdiction of the Columbia River Basin and those water right issues.
156	Cleary	Responds any water use in Oregon is under Oregon's jurisdiction.
174	Rep. Kruse	Questions if there are restrictions on the amount of Columbia River water that can be taken for agriculture purposes.
183	Cleary	Responds there are rules that control the issuance of water rights on the Columbia River and basically there has to be a net benefit to fish or we have to do exchange projects, such as the Umatilla project.
189	Rep. Kruse	Comments on Washington not putting similar restrictions on agricultural water taken from the Columbia.
195	Cleary	Responds that since 1994 they've had restrictions on new water rights.
200	Rep. Jenson	Requests figures on the amount of water taken from the Columbia for irrigation in Oregon contrasting with the amount of water taken for irrigation in Washington, and suggests there have been new developments in the area since 1994, the distinct difference in the law in Oregon and the law in Washington, there are tens of thousands of acres of grapes that have gone into irrigation since the 1994 period, can show new areas and projects in development.
215	Cleary	Agrees that there is development of previously issued water rights going on.
221	Rep. Morgan	Compliments presentation and introduces John Ledger, Legislative Representative for Associated Oregon Industries.
241	John Ledger	Presents over view of Associated Industries.
351	Rep. King	Questions if the dioxin standard is measurable.
356	Ledger	Responds the standard is defined as whatever the least you can measure is, and when they get a better way to measure dioxin, the standard will drop, right now its about one teaspoon to about 400 billion tons of water.
369	Rep. Kruse	Asks how big a body of water would that be.
370	Ledger	Responds he doesn't know, it's a lot of water.
380	Rep. Kruse	Questions residual risk, is it a theoretical model of what might be, how do they put a scientific base, and if we are looking at dioxins and the least measurable amounts, is there any correlation between that and risk to health.
385	Ledger	Responds it will be a mathematical computation and it is premised on the idea that on some compounds (carcinogens) there is no bottom to the risk.
393	Rep. Kruse	Questions if what EPA is doing here is assuming that any risk is unacceptable and basing their assumption of risk purely on theory.
400	Ledger	Responds he wouldn't go that far. Continues with over-view.
465	Morgan	Adjourns the meeting at 10:03

Shannon Relaford,
Committee Assistant

Megan Palau,
Committee Administrator

EXHIBIT SUMMARY

A. – Agency Overview, Land Use Board of Appeals

B. – Water Resources Department