

## HOUSE COMMITTEE ON WATER AND ENVIRONMENT

January 29, 1999 Hearing Room D

1:00 pm Tapes 15 - 16

**MEMBERS PRESENT:** Rep. Jim Welsh, Chair

Rep. Jackie Taylor, Vice-Chair

Rep. Jason Atkinson

Rep. Richard Devlin

Rep. Juley Gianella

Rep. Deborah Kafoury

Rep. Jeff Kruse

Rep. Jeff Merkley

Rep. Susan Morgan

**MEMBER EXCUSED:**

**STAFF PRESENT:** Kristina McNitt, Administrator

Gene Newton, Administrative Support

**MEASURE/ISSUES HEARD:** HB 2163 Public Hearing

HB 2164 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 15, A**

005	Chair Welsh	Calls meeting to order at 1:08pm.
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**HB 2163 PUBLIC HEARING**

007	Chair Welsh	Opens Public Hearing on HB 2163.
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009	Kristina McNitt	Administrator, explains HB 2163.
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020	Jeff Huntington	Deputy Director, Water Resources Department (WRD). Introduces Bruce Moyer. Distributes written testimony ( <b>EXHIBIT A</b> ) and two brochures ( <b>EXHIBIT B and EXHIBIT C</b> ). Describes the history of the Water Development Loan Fund Program. Explains the loan program and defines eligibility. Explains that in 1997 the program rules and policies were changed to ensure a stronger foundation of credit criteria and improve the process. States that this increased the stability of the program.
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049	Huntington	States that there have been no loans for the last 10 years, but there are many projects that could take advantage of these low interest, fixed rate loans. States that WRD worked with an Independent Loan Advisory Committee. Explains that the committee is made up of persons outside of State Government. Explains that they review the credit worthiness of loan applications and provide input on policies and procedures of the program. Explains that HB 2163 is a product of the input received from the members of the Loan Advisory Committee. Defines four things that HB 2163 will address. First, it allows WRD to accept a secondary lien, or parity lien, as security for a loan as long as the other credit criteria is met.
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078	Huntington	Second, it expands the definition of a federal development project. States that the current statute limits loans for only two types of federal programs. Third, it changes certain uses, which the current statute classifies as secondary uses, to qualify as water development projects. States that this change will broaden the program without requiring that certain projects be done in tandem with other projects.
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104	Huntington	Explains that the frost control for agriculture projects in the Hood River area is an excellent example of a secondary water project that could be considered for a loan if HB 2163 passes. Fourth, it allows individuals to obtain financing or refinancing using the loan process if it is necessary to complete a project.
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127	Rep. Morgan	Asks for a definition of "parity".
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130	Huntington	Explains that a parity position is one that is of equal status to another lien holder.
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135	Rep. Morgan	Asks if this would require negotiations between parties to ensure their willingness to share the lien.
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137	Hunt	Explains that the language of the original loan note would usually establish a provision for a parity lien
143	Rep. Atkinson	Asks if there have been no loans taken out from this program in the last 10 years.
146	Huntington	Answers yes. Explains that there were several defaults in the early 1980's and, due to these, the program was closed down for reassessment to discern if it would continue. Explains that the program was reactivated in 1997.
160	Rep. Atkinson	Asks if the loans provided by this program are low interest loans.
162	Huntington	Answers that generally they are. Explains the loan process. Explains that the difference between interest rates offered by the private sector, as opposed to the public sector, is very small. Emphasizes that the fixed payment period, the time of amortization, and the types of projects eligible, combine to make this program more attractive to individuals seeking loans.
177	Rep. Atkinson	Asks if this fund is eligible to co-pay for programs that will save water, provide fish protection, drainage, irrigation and things that are of general interest to the State.
189	Huntington	States that there has been much discussion regarding possible partnerships and WRD is trying to find partnerships between interested parties. Explains that the program is self sustaining and self supporting, so the costs of doing a bond sale have to be absorbed by the borrowers. Emphasizes that this is one of the main barriers to creating partnerships. Explains that WRD is trying to match some of the smaller loan needs with larger projects in order to share the costs. States that the changes in HB 2163 will help this process.
231	Rep. Merkley	Asks if it is harder to sell the bonds with packaged projects due to the inability of the bond purchaser to evaluate the risk.
243	Bruce Moyer	Water Resources Department. Explains the bonds and how they would be evaluated by a potential buyer.
251	Rep. Merkley	Asks if the risk of the bonds is transferred to the taxpayer.
255	Moyer	Answers, no, not necessarily. States that the bond holder is guaranteed that the investment will be covered. It is incumbent on the program to provide security for the State.
270	Huntington	States that the risk factor has generated a great deal of discussion between WRD and the Loan Advisory Committee. Explains that the rules of the program establish the credit criteria. Emphasizes that there are people with financial expertise helping to make the decisions regarding credit worthiness.
287	Rep. Merkley	Asks if an individual could obtain a home mortgage loan for a water project on

		their property. States that it is his understanding that an individual could use the fund to improve their credit position.
300	Huntington	States that he does not believe that that would be the case.
307	Rep. Merkley	Quotes the fourth point on the page 2 of Exhibit A as clarification of his interpretation.
314	Moyer	States that page 2, point four, is specific to the water project itself and does not refer to a principal residence. Gives example.
332	Huntington	States that the specific change referring to that point in the testimony is contained in section 1, line 12, which is the definition of purchasing. "Purchasing, to be eligible for loan funds, must be for the purchase of materials, land or existing facilities necessary to complete the water development project."
346	Chair Welsh	Summarizes the discussion and points out potential problems that might occur.
357	Huntington	States that most loans are for changes in practice and are not tied to the purchase of property.
374	Willy Tiffany	League of Oregon Cities. Testifies in support of HB 2163. Explains that this is another avenue for communities to obtain funds in order to improve infrastructure. Also expresses support from Special District Association.
400	Rep. Merkley	Refers to lines 14 and 15 of page one of the HB 2163 and asks if this means that a home can be refinanced through this program to improve security.
<b>TAPE 16, A</b>		
001	Tiffany	States that he cannot speak to the intent of the language.
008	Jan Lee	Executive Director, Oregon Water Resources Congress (OWRC). Distributes written testimony ( <b>EXHIBIT D</b> ). Defines constituency and testifies in support of HB 2163. Explains that many local governments borrowed from this program and that there were no defaults by local governments during the term of the program. States that the changes afforded by HB 2163 would make the program more flexible and increase public interest in program. Cites specific language in the HB 2163 and explains how it would allow for further flexibility. Explains how they would use the program.
031	Lee	States that there are three areas where Districts have no sources of funding: fish screen and fish passage, conservation projects, and water quality projects. States that all other loan funds in the state have start up money to provide a major bond sale and this is what is needed for the Water Development Loan Fund.

055	Chair Welsh	Closes Public Hearing on HB 2163.
<b><u>HB 2164 PUBLIC HEARING</u></b>		
060	Chair Welsh	Opens Public Hearing on HB 2164.
062	McNitt	Administrator. Explains HB 2164
064	Tom Byler	Legislation Coordinator, Water Resources Department (WRD). Testifies in support of HB 2164. Distributes written testimony ( <b>EXHIBIT E</b> ). Defines HB 2164. States that HB 2164 is identical to statutory authority that has been in existence since 1993 but which expired on December 31, 1998. Points out that HB 2164 would reinstate and make permanent the statute which expired. Explains that "classifications" are a key component of each Basin Program. Explains that classifications denote and list the types of new uses that are possible within each basin. Explains that the WRD has been prevented from processing water right applications within a basin because the "type" of use was not listed as a "classified" use under the Basin Program. Cites two examples of this application process that have been troublesome in the past. States that HB 2164 would allow the commission to allow exceptions to the Basin Programs, under certain criteria that would allow flexibility that is missing at this time.
115	Byler	Explains that HB 3203, from 1993, and SB197 from 1997, were identical to HB 2164 except for the "sunset clause" attached to each. Explains the reason why the bills had sunsets attached. States that revising the Basin Programs is a low priority given the other responsibilities and obligations carried by WRD. States that as a result of this low priority the rules changes have not been made. States that HB 2164 would be helpful even without the revision of Basin Programs due to the flexibility it offers.
134	Rep. Gianella	Asks for an example where WRD would have been prevented from considering an application for new uses.
136	Byler	Explains that there are some basins where the water supply is not as desirable as WRD would like. Cites aquifers in the Willamette Valley and Northeast Oregon that cannot adequately supply water for new uses without detriment to existing users. Explains that the Basin Programs protect the users in these aquifers by limiting new use permits to the ground water source. Explains that the "ground water limited area" is incorporated into the Basin Program. Cites specific example of a golf course that would have gone out of business if they were not allowed to continue access to the ground water. States that use of WRD's authority to prevent ground water use is rare. Explains that they have had two potential water users express interest in this authority since the authority expired. States that without HB 2164 there may be a need to undergo an administrative rule making procedure to fix the Basin Program.
176	Rep. Merkley	Asks if the example of the golf course would be true for any user of water in an area where there is insufficient rainfall.
183	Byler	States that there are a number of people who could be put in the same situation.

		States that this particular case was amplified by a large number of persons who were using ground water without the appropriate permit.
187	Rep. Merkley	Asks if a person could simply use the water for a few years and then apply under the example set forth.
190	Byler	States that they do not intend to encourage that activity with the authority.
200	Rich Angstrom	Managing Director, Oregon Concrete Aggregate Producers (OCAPA) Association. Explains that this is the first view of HB 2164 for OCAPA and states that it may have an impact on mining. Explains that WRD has been helpful in bringing OCAPA up to speed regarding water issues. Explains that OCAPA does have uses of water for washing aggregates, batching concrete, and for dust control that must comply with the Department of Environmental Quality requirements regarding atmospheric particulates. Explains exposed ground water ponds and how they are used to wash aggregate. States that WRD considers this a non consumptive usage. Explains that OCAPA would like time for its' Legislative Review Committee to study the impact on OCAPA.
232	Chair Welsh	Suggests that HB 2164 could be of benefit to OCAPA for mining sites that have been in existence for a long period of time. States that perhaps under the reclamation requirements there would be a water use change that would not affect the Basin Plan.
239	Angstrom	States that HB 2164 might be of benefit, but OCAPA would need to study it more closely. Explains the work that is being done to educate OCAPA on water issues.
250	Chair Welsh	States that he will not bring HB 2164 to a work session until he hears from OCAPA and WRD.
253	Pete Test	Associate Director of Governmental Affairs, Oregon Farm Bureau Federation (OFBF). Explains that OFBF also has some concerns regarding HB 2164. States that they would like to study HB 2164 prior to making a statement in support of or opposed to HB 2164. Explains that there have been some added uses considered by WRD if they are not in the Basin Plan. Cites an example. Explains that some of the language of the HB 2164 is of concern. States that Basins Plans are the best way to keep the management and control at the local level. States that OFBF may not support permanently handing out the authority to circumvent Basin Planning for considered uses to WRD. Requests that OFBF have time to study the impact of HB 2164 and have discussion with interested parties.
284	Rep. Gianella	Asks if there would be a problem with unlawful use of water by claiming an exception under HB 2164.
290	Test	States that it is a case by case situation. Suggests that there may be some instances of illegal use. States his concern that there is use of ground water that is illegal.

300	Rep. Gianella	Asks if it would be helpful to add language to HB 2164 specifying a date that would stop people from using water illegally from that point forward.
307	Test	States that he would like to talk with WRD before commenting on the question.
311	Rep. Merkley	Asks if there is any water use that would not qualify to submit an application for an exemption.
316	Test	Responds no.
320	Reed Benson	Executive Director, Water Watch. Testifies in opposition to HB 2164. Expresses concerns with HB 2164. States that the provisions of the current Basin Plans provide clear protections of the water resources of the state against further withdrawal. Explains that the protections were established in very broad based, open forums that allowed all constituents to have input. States that HB 2164 changes "firm protections" to "soft protections" and moves the decision making process into the WRD. Explains that the concerns over the changes would be lessened if there were fewer of them and if there was assurance that the current leadership of WRD would remain in place.
360	Benson	States that they would prefer a two year provision rather than a broader and more permanent one as proposed in HB 2164.
376	Rep. Kafoury	Asks if HB 2164 is the only option for an individual who has a need for water use not currently in the Basin Plan.
388	Benson	States that there are opportunities for short term water use called limited licenses, but defers to WRD to answer the question.
394	Glen Stonebrink	Executive Vice President, Oregon Cattlemen's Association. References line 10 of HB 2164 and states concern with the word "consumptive".
<b>TAPE 16, B</b>		
001	Stonebrink	Asks if the language in line 10 would have any effect on the existing language in line 21, "facilitating the watering of livestock". States concern over how the language would be interpreted.
009	Chair Welsh	Calls forth Water Resource Department to respond to the question.
011	Tom Byler	States that livestock have a preference by statute over other uses. Responds to Rep. Kafoury's previous question regarding limitations of options for individuals by stating that individuals are somewhat limited. Explains that water right permits are the most obvious method to ensure a long term use of water and cites examples of types of permits. Explains that there is no "new" criteria being added in HB 2164 that did not already exist in statutory authority. Emphasizes that lines 10-14 of HB 2164 were part of SB 197 of 1995. Explains why it looks

		like new language has been added.
039	Byler	States that WRD is open to discussing the criteria with the stakeholders. States that there is no evidence of abuse regarding this exception and the process allows for public input. Explains the process of obtaining an exception to the Basin Program.
059	Chair Welsh	States that the application process is written into the bill and that public testimony and input are allowed in the process.
069	Byler	Reiterates that HB 2164 is not a guarantee that an individual will be allowed to use water. Explains that it simply means that an individual has passed the hurdle of being prevented by the Basin Program itself. The person would then have to apply for a regular water right under the current application process.
074	Rep. Gianella	Asks if line 10 was part of the original language and whether or not it would effect the watering of livestock.
078	Byler	Answers yes. States that livestock uses have a preference over other uses and items C - F would not have an impact on livestock use.
084	Rep. Gianella	Asks if the language on page 2, lines 5 and 6 establishes precedence for livestock use.
088	Byler	Answers yes and no. Explains that livestock uses do not have a water right, but rather, a preference which is elevated above the other beneficial uses listed under the law.
095	Rep. Taylor	Asks if HB 2164 is identical to SB 197 from 1995 and HB 3203 from 1993.
097	Byler	States that it is his understanding that they are identical.
100	Rep. Taylor	Asks if there was opposition in 1993 and 1995 to those bills.
102	Byler	States that he does not have that information available.
104	Rep. Taylor	Asks if there is a large backlog of applications that are unacceptable.
110	Byler	States that Basin Programs are trying to use wise management of its' resource. Explains that this requires drawing definite lines before approving new uses. States that he does not know if there are large numbers of people being denied application but that WRD works very hard to help people who are denied to find alternative sources of water.



120	Stonebrink	States that OCA's concern is not whether livestock have preference. Reads from HB 2164, line 21 and expresses concern with the language. Explains stockwatering ponds might be deemed as "facilitating" which presently requires a permit or permission. Wonders whether or not, in the process of getting the permit for a stock watering pond away from a stream, line 10 will be restrictive.
140	Byler	Responds to Stonebrink's concerns and states that it would not be restrictive. States that there was legislation enacted in 1995 that allowed for the specific type of use cited by Stonebrink. States that line 10 would not have an impact on a person engaging in that use if the system were returned back to its' source.
156	Chair Welsh	States that he will allow time before the next work session on HB 2164. Closes the Public hearing on HB 2164 .
168	Chair Welsh	Adjourns the meeting at 2:15 pm.

Submitted By, Reviewed By,

Gene Newton, Kristina McNitt,

Administrative Support Administrator

#### **EXHIBIT SUMMARY**

**A - HB 2163, written testimony, Geoff Huntington, 2 pp**

**B - HB 2163, informational brochure, Geoff Huntington, 2 pp**

**C - HB 2163, informational brochure, Geoff Huntington, 2 pp**

**D - HB 2163, written testimony, Jan Lee, 2 pp**

**E - HB 2164, written testimony, Tom Byler, 3 pp**