

## **HOUSE COMMITTEE ON WATER AND ENVIRONMENT**

**February 15, 1999 Hearing Room D**

**1:00 p.m. Tapes 29 - 31**

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

**Sen. Jackie Taylor, Vice-Chair**

**Sen. Jason Atkinson**

**Sen. Richard Devlin**

**Sen. Juley Gianella**

**Sen. Deborah Kafoury**

**Sen. Jeff Kruse**

**Sen. Jeff Merkeley**

**Sen. Susan Morgan**

**STAFF PRESENT: Kristina McNitt, Administrator**

**Danielle Hamilton, Administrative Support**

**MEASURE/ISSUES HEARD: HB 2600 Public Hearing**

**HB 2162 Public Hearing**

**Introduction of Committee Bills**

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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TAPE/#	Speaker	Comments
<b>TAPE 29, A</b>		
005	Chair Welsh	Calls meeting to order at 1:10 p.m.
<b><u>HB 2600 PUBLIC HEARING</u></b>		
008	Kristina McNitt	Administrator. Reads and explains HB 2600.
010	Rep. Carl Wilson	District # 49. Testifies in support of HB 2600. Explains HB 2600 redefines the term "beneficial use" as it relates to irrigation seepage water. States that Oregon Water Resources Department (OWRD) can use the existing definition of "waste" to restrict irrigation diversions. Offers testimony about the history of the Grants Pass Canal System. States that lining the walls of irrigation would have a catastrophic effect on Grants Pass and the local community.
048	Dennis Becklin	Chairman, Grants Pass Irrigation District (GPID). Testifies in support of HB 2600. States the experiences of the GPID offer a broader view of how water should be used in our state. Stresses the importance of managing water effectively. Feels HB 2600 will improve the state's ability to manage water.
100	Becklin	Continues testimony in support of HB 2600. Refers to the Newton Report. Makes two conclusions: <ul style="list-style-type: none"> <li>• A substantial amount of water naturally seeps out of the canals over a range of 150 miles</li> <li>• 45% of the ground water recharge in the aquifer is the direct result of seepage from the canals and percolation from irrigated lands</li> </ul> Believes without water from these two cited sources, the aquifer supplying water to properties outside the water delivery system would not recharge, resulting in dry wells.
114	Becklin	Argues strongly that seepage, which enables domestic use, is a beneficial use. States by definition the State of Oregon considers it to be waste. Refers again to the Newton Report. Suggests a significant amount of water that today would be classified as "waste" water sustains the wetlands. States that irrigation districts like the Grants Pass Irrigation District have the potential of providing flows that are beneficial to fish.
170	Rep. Taylor	Asks why is HB 2600 necessary. States it does not seem crucial to fish habitat.
179	Becklin	Answers that an irrigation district does provide flows that sustain certain types of fisheries.
200	Becklin	Comments it is important to make sure a district with unlined canals is not forced to line the canals or it could create an environmental catastrophe.

246	Becklin	Cites statistical background. Argues that a uniform application of the term "beneficial" is not an appropriate approach. Concludes that redefining the term and providing guidelines would be helpful.
263	Don Greenwood	Member, Grants Pass Irrigation District (GPID). Testifies in support of HB 2600. Reports he has been in touch with the water commissions in Washington and California. Reads respective state statutes and summarizes.
295	Becklin	States that water is not disappearing, it is going to other uses. Notes that if the water is not disappearing it is beneficial. Believes established losses should be encouraged rather than prohibited.
319	Rep. Kruse	Asks if Becklin has documented how much of the loss is due to seepage and how much to evaporation.
323	Becklin	Answers yes. Refers to Newton Report, which concludes that the evaporation loss is small.
338	Chair Welsh	Asks if most canals are deeper than they are wide.
343	Becklin	Answers that the GPID has a variety of canal types. Describes the different canal sizes. States that all canals are not full of water all of the time.
382	Rep. Taylor	States in California and Idaho many of the ditches are lined with concrete. Notes seepage from that area would not contribute to a wet land or salmon habitat. Asks if seepage is considered beneficial in other states. States that in Idaho it rains an average of 11 inches a year, but is very viable agriculturally.
<b>TAPE 30, A</b>		
005	Becklin	Asks if ditches are lined in Idaho.
008	Rep. Taylor	Answers that many of them are.
009	Becklin	Testifies on canals in California. Discusses the California special project and the expense involved.
010	Rep. Taylor	States she is impressed with nursery draining systems, relating to how the systems test and recycle water. Asks how that could be determined in the case of G.P.I.D.
020	Becklin	Explains that unlike an orchard or row crop agricultural facility, the majority of users are small. Comments he does not believe there is a need for a test to be done. Notes that in of Oregon the land is used differently.

061	Rep. Merkley	Asks to explain section one of HB 2600. Inquires if it could address a situation in which a water user has failed to use water their right and is seeking to have their rights restored.
070	Backlin	Comments the purpose of the bill is to clarify what constitutes "beneficial" use of water.
084	Merkley	Asks if a person is not using their water right under HB 2600 would their right be guaranteed.
087	Backlin	Answers the only way an irrigation system, like the G.P.I.D would fail to use water rights is if it was not operating at all.
096	Rep. Merkley	Asks if district owns the water rights or if the water rights owned by the end user.
100	Becklin	Answers the district owns the water right but the water rights are assigned to individual properties. Elaborates by giving testimony on how GPID was originally vested with two water rights.
133	Chair Welsh	Asks about the economic impact of eliminating seepage.
139	Becklin	Answers it is extremely difficult to place a value on the seepage. Concludes from examples that the financial implications would be catastrophic.
178	Martha Pagel	Director, Water Resources Department (WRD). Testifies in opposition of HB 2600. Expresses WRD's concerns ( <b>EXHIBIT A</b> ).
215	Pagel	States when the WRD is considering legislation, they look at two key factors, one, is there a problem and two, what is the solution. Believes in this case there is no problem that needs to be fixed.
260	Pagel	States existing systems are not very efficient. Clarifies because systems are not efficient does not mean they are illegal or wasteful. Refers to state policy on conservation.
295	Pagel	Indicates HB 2600 would amend the forfeiture statues not the definition of "beneficial" use statues. Explains the forfeiture law. Comments that HB 2600 is confusing. Questions the language in section three.
325	Pagel	Disagrees with the language in section four of HB 2600. States section four lacks direction as to how it is applied to pending litigation.
374	Rep. Gianella	Asks about litigation between WRD and GPID.

382	Pagel	Testifies on general background of the litigation. States the litigation is over the conditions of a water right permit. Summarizes the water right permit process.
<b>TAPE 29, B</b>		
005	Pagel	Continues testimony on the background of the litigation between WRD and GPID.
025	Chair Welsh	Asks if there is any reason for GPID to be worried about lining their ditches or the loss of it's water rights.
032	Pagel	Covers the conditions of the permit process that deals with improved efficiency.
047	Chair Welsh	Asks if this efficiency process will be done through administrative rule and how long the planning period will be.
049	Pagel	Answers no the efficiency process will not be done through administrative rule.
054	Chair Welsh	Asks do water rights owners have to obtain a certain level of efficiency within the permit period, if so how long is that period.
057	Pagel	Answers that the permit process continues over a period of years.
060	Rep. Kruse	Asks is it not hard to separate the aquifer and recharge.
074	Pagel	Explains current certificated water rights.
102	Rep. Kruse	Comments the aquifer recharge should be a front end consideration, on the assumption that the department knew of the inefficiency of the system.
111	Pagel	Refers to the Newton Report plan of efficiency.
121	Chair Welsh	Asks when was the Newton Report done.
123	Pagel	Answers in March of 1994.
128	Rep. Atkinson	Expresses concerned about remarks on the word "waste". Asks for clarification on the WRDis definition and would flood irrigation fall under this term.
134	Pagel	Gives definition. States WRD has never had an active program for dealing with waste.

159	Rep. Morgan	Asks if the goal is to eliminate seepage until there are problems and then deal with the problems.
167	Pagel	Answers no. Restates the WRD's intentions. States the GPID does not have the rights for the seepage or to say it shall be used for an aquifer.
192	Rep. Morgan	Asks if there is an aquifer recharge in the Grants Pass area.
200	Pagel	Answers no.
202	Rep. Morgan	Asks if the irrigation district would need to stop the seepage in order for system to conform to current regulations. Then everyone that would be effected would need to apply for water rights.
207	Pagel	Explains the current law and conservation plan.
216	Rep. Morgan	Asks for clarification that what is on the ground and working does not conform with the regulatory process.
221	Pagel	States, although the aquifer may be benefiting surrounding land owners, the state believes GPID is in gross non-compliance with the water right conditions.
244	Rep. Morgan	Asks if the committee decides to allow GPID to function as it is, how would WRD frame legislation.
253	Pagel	Suggests that GPID function as it is framed. States WRD would not support such legislation but it would be more direct than HB 2600.
260	Rep. Merkley	Asks if the permit were to be revoked, would the requirements to approve efficiency be revoked as well.
268	Pagel	Answers that if the permit is canceled then there would be no conservation requirements attached to the water rights.
273	Chair Welsh	Observes that a cycle has been created and interrupting the cycle could cause a significant problem.
307	Reed Benson	Executive Director, Water Watch. Testifies in opposition of HB 2600 <b>(EXHIBIT B)</b> . States the fundamental rule of water law. Feels HB 2600 would change this fundamental rule.
364	Jim Myron	Oregon Trout. Testifies in opposition to HB 2600. Agrees with the comments of Water Watch.

373	Rep. Kruse	Asks that if you have an irrigation district or irrigator who is redistributing water in a watershed and the water is still within the system, how is it considered waste.
386	Benson	Answers the quality, quantity, and timing of the return flow may or may not be a net benefit to the system.
398	Rep. Kruse	States frustration with the assumption that water removed from a system stays out of the system.
<b>TAPE 30, B</b>		
083	Myron	States the fish are much better off with the water left in the stream even if the water later returns.
091	Rep. Kruse	Agrees with Myron's statement, but is not sure it fits with this issue.
093	Benson	States there are areas that Myron's statement does fit. Uses the Deschutes area by Madras as an example.
106	Laura Schroeder	Represents irrigation districts of Oregon, Idaho, Washington, and Nevada. Speaks in opposition of HB 2600 ( <b>EXHIBITS C, D, E</b> ). States the problem is overpopulation in Oregon, which creates competition for resources.
160	Schroeder	Continues testimony in opposition of HB 2600. Explains different forms of deeds for water rights. States measurement is a problem in water rights. Gives examples. Believes altering the forfeiture statute of beneficial use is not the solution. Refers to <b>EXHIBIT C</b> .
224	Chair Welsh	Asks if there is an opportunity while in litigation to improve communication between GPID and WRD.
230	Schroeder	Answers the litigation between GPID and WRD is not part of canal lining issue.
239	Chair Welsh	Asks if in the future there is any reason for recipients to fear losing their water rights.
245	Schroeder	Answers that recipients of seepage water can apply for the water rights.
264	Chair Welsh	Asks, who paid for the increased cost of the water loss.
268	Schroeder	Answers individuals.

281	Chair Welsh	Comments the last thing he wants to allow is a shift proof policy that places more importance on in stream values for fish and habitat than people.
303	Schroeder	Agrees with Chair Welsh.
313	Chair Welsh	Asks that those groups involved would work together.
336	Backland	States GPID differentiates between litigation and what is proposed for the future of other irrigation districts. Answers yes, to the Chairs earlier question on whether or not there was a problem between GPID and WRD. Explains that problem.
370	Chair Welsh	Closes public hearing on HB 2600 and opens public hearing on HB 2162.
<b><u>HB 2162 PUBLIC HEARING</u></b>		
375	McNitt	Reads HB 2162.
380	Pagel	Testifies in support of HB 2162. Introduces Dick Baley and Nicole Kordan. Gives general briefing on the state's hydro-electric program and how HB 2162 fits into that process. Refers to <b>(EXHIBIT F)</b> . States HB 2162 was filed early on to meet filing deadlines and is a place holder bill.
395	Chair Welsh	Clarifies the wording on HB 2162.
<b>TAPE 31, A</b>		
003	Pagel	States HB 2162 is a very small piece of a very large puzzle. Testifies on the history of the process.
015	Dick Bailey	Administrator, WRD and Chair of the Electronic Task Force. Points out the amount of effort and diligence that went into the task force. Testifies on the history of the task force.
025	Nicole Cordan	Volunteer attorney, Northwest Environmental Defense Center NEDC. Testifies in support of HB 2162.
035	Chair Welsh	Asks if the taskforce plan to get the wording of HB 2162 finalized before the end of the 1999 session.
037	Cordan	Answers yes.
034	John Brennerman	Contract Lobbyist, Idaho Power. Testifies in support of HB 2162. Restates Pagel



		comments, saying HB 2162 is clearly a place holder bill. States all entities involved are working together to come up with the most complete version of HB 2162.
037	Rep. Kruse	Comments he is glad HB 2162 is a place holder bill.
040	Chair Welsh	Closes public hearing 2162. Introduces LCs 3452, 3175, and 3176. Notes who proposed each measure.
<b><u>INTRODUCTION OF COMMITTEE MEASURES</u></b>		
<b>060</b>	<b>Chair Welsh</b>	<b>MOTION: Moves LC's: 3452, 3175, 3176 BE INTRODUCED as committee bills.</b>
<b>062</b>		<b>VOTE: 9-0</b>
	<b>Chair Welsh</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
068	Chair Welsh	Adjourns meeting at 2:10 P.M.

Submitted By, Reviewed By,

Danielle Hamilton, Kristina McNitt,  
Administrative Support Administrator

#### **EXHIBIT SUMMARY**

**A - HB 2600, Written Testimony, Martha Pagel, 2 pp.**

**B - HB 2600, Written Testimony, Reed Benson, 1 p.**

**C - HB 2162, ORS 537.141, Laura Schroeder, 2 pp.**

**D - HB 2162, Executive summary, Laura Schroeder, 2 pp.**

**E - HB 2162, Process for Non-FERC Jurisdictional, Laura Schroeder, 2 pp.**

**F - HB 2162, Enrolled HB 2199, Martha Pagel, 23 pp.**

