

HOUSE COMMITTEE ON WATER AND ENVIRONMENT

March 10, 1999 Hearing Room D

1:00 P.M. Tapes 63 - 64

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

Danielle Hamilton, Administrative Support

MEASURE/ISSUES HEARD: 2650 Public Hearing

2652 Public Hearing and Work Session

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 63, A		
004	Chair Welsh	Calls meeting to order at 1:15 and opens public hearing on HB 2650.
<u>HB 2650 PUBLIC HEARING</u>		
006	Kristina McNitt	Summarizes HB 2650.
013	Kip Lombard	Oregon Water Resources Congress OWRC. (EXHIBIT A, B, C) Explains the concept of HB 2650. Request that the committee replace HB 2650 with the ñ2 amendments and some other conceptual

		amendments EXHIBIT B, C . Discusses how irrigation districts are formed.
060	Lombard	States OWRC would like to create a sub-district within the larger districts. Explains the ñ2 amendments.
110	Lombard	Continues to explain the ñ2 amendments. Provides overview of section 5 of the ñ2 amendments. Discusses the conceptual amendments EXHIBIT C . Explains the different property assessment procedures.
134	Rep. Taylor	Asks if there are other places in the statute that address the portion basis of the benefit issue.
142	Lombard	Answers yes.
159	Rep. Morgan	Asks under current ordinances what are the mechanisms in place regarding improvements on a portion of a district.
164	Lombard	Answers the districts perform specific improvements and then spread the cost throughout the entire district. Reads ORS 545.4315, allowing owners within an area of the district to petition the board to request improvements.
215	Lombard	Explains different types of diversion points. Discusses private laterals.
236	Jane Lee	Oregon Water Resources Council (OWRC). Comments that the proposed subdivisions have been built in other counties and it seems to be an effective process.
243	Rep. Gianella	Asks about a situation where the landowners are split regarding a desire for improvements. Asks if all district residents would receive a bill for the improvements.
253	Lombard	Answers yes.
256	Rep. Gianella	Asks how much the cost of improvements might raise a landowner's water bill.
259	Lombard	Answers that it depends on the cost of the improvements. Explains the cost distribution process.
290	Lee	Provides an example of how the process works and explains the programs that can assist with the costs.
297	Rep. Gianella	Gives the history of a gravel road in her area she was forced to help pay for.

318	Lombard	Comments that part of the reasoning for HB 2650 is to limit situations like Rep. Gianellais.
334	Lee	Gives a scenario of a person requesting not to be included
342	Rep. Gianella	Provides an example of an improvement that she had to pay for. Asks for a clearer explanation of how much a water bill could rise with an improvement.
349	Lombard	Clarifies that the proposed subdivisions will separate the rural subdivision residents from the farmers, so that people who are using water will be billed for improved service.
355	Lee	Comments that a landowner can request not to receive water delivery or be included within water district boundaries.
360	Rep. Gianella	Asks if that means they could not receive water.
362	Lombard	Answers that receiving water is their choice.
363	Rep. Gianella	Clarifies that someone may choose not to receive water.
364	Lombard	Answers yes.
370	Chair Welsh	Asks Meyers if Water Watch needs more time to examine HB 2650.
372	Doug Meyers	Water Watch. States that HB 2650 is a surprise to him.
382	Chair Welsh	Asks McNitt how long the amendments have been available from Legislative Council.
390	McNitt	Explains the reason the committee had a tap- tap hearing on the 3 rd of May was because the amendments were not ready. States the amendments were submitted to the committee according the House Rules.
396	Meyers	States Water Watch was satisfied with HB 2650 as originally written and would probably accept the n2 amendments, but need more time to examine the n2 amendments.
400	Chair Welsh	Closes public hearing on HB 2650 and opens a public hearing on HB 2652.

HB 2652 PUBLIC HEARING

TAPE 64, A

005	McNitt	Explains HB 2652.
011	Lee	OWRC. (EXHIBIT D, E, F) Expresses concern with section 4 of HB 2652. Discusses the ñ1 amendments. Asks the committee to support HB 2652 with the ñ1 amendments and the deletion of section 4.
032	Joe Rohleder	Assistant to the Director, Oregon Department of Fish and Wildlife (ODFW). Concurs with Lee's request.
038	Chuck Craig	Assistant Director, Department of Agriculture. States the Department of Agriculture is satisfied with HB 2652 if section 4 is deleted.
052	Rep. Kafoury	Asks for a review of HB 2652.
056	Lee	Provides an overview of the purpose of HB 2652.
076	Chair	Asks if the ñ1 amendments reflect federal law.
079	Lee	Answers yes. Refers to EXHIBIT F .
083	Rep. Merkley	Asks if the DEQ referred to the ñ1 amendment in their testimony.
085	Chair Welsh	Answers yes, as he understood it.
094	Pamela Tennity	Headwaters. Testifies in opposition to 2652 (EXHIBIT G) . Overviews the history of Headwaters. Gives examples of large fish kills. States that if the Federal Insecticide, Fungicide, and Rodenticide Act and the regulation of Department of Agriculture were adequate, large fish kills would not occur.
145	Tennity	Discusses the leakage of irrigation canals. Comments Headwaters is only asking that irrigation districts monitor the effects of the leakage. Urges the committee to vote no on HB 2652.
163	Rep. Merkley	Asks if Tennity is familiar with the improvements to the canal systems.
172	Tennity	Answers yes, the improvements are a good first step. Gives examples of problems that

		still occur.
189	Rep. Merkley	Asks how keeping the law in its current form will guard against the problems Tennity is describing.
194	Tennity	Answers that the law requires that irrigation districts, through the DEQ, monitor the impact on adjacent water. Refers to Headwaters' litigation with the Talent Irrigation District.
214	Rep. Kafoury	Asks if the lawsuit is still pending
220	Tennity	Answers Headwaters has requested a motion to reconsider.
239	Chair Welsh	States that eliminating section 4 does allow assessment by ODFW.
244	Tennity	Answers yes, but not for the pesticides, which are in section 2 of HB 2652.
251	Chair Welsh	States section 2 addresses DEQ, not permits.
253	Tennity	Notes that it is DEQ that would supervise the permit under the Clean Water Act in Oregon.
254	Rep. Merkley	Asks at what level is the appeal.
259	Tennity	Answers Headwaters she is waiting for a decision on the request for a motion to reconsider. Clarifies that Headwaters is asking the judge for a trial.
263	Rep. Merkley	Asks if the suit hinges on the canal being a closed system.
256	Tennity	Asks for clarification.
267	Rep. Merkley	Asks if the success of the reconsideration hinges on whether or not the canal is a closed system.
268	Tennity	Answers no.
272	Rep. Merkley	Asks if the \$50,000 dollar penalty has been paid by the Talent Irrigation District.
270	Tennity	Answers the penalty was reduced to \$10,000 dollars and has been paid.

280	Rep. Merkley	Asks if there is a plan set forth by the Talent Irrigation District for paying the \$354,000 dollar fine.
280	Tennity	Answers it is in mediation.
285	Chair Welsh	Asks if the Department of Agriculture is using herbicide as per instructions, and there is an accident, what kind of problems could occur.
295	Chris Kurby	Department of Agriculture (DOA). Explains the requirements of the Environmental Protection Agency (EPA).
314	Rep. Merkley	Asks who is responsible for an accidental release and how are fees assessed and paid.
320	Chris Kurby	Answers the irrigation district is responsible. Explains the fees and assessment process. Relates the process to the Talent Irrigation District litigation.
338	Rep. Merkley	Asks Tennity to clarify the civil penalty assessment.
344	Kurby	Answers that civil penalties are not assessed by the ODA for the violation of Oregon Revised Statutes chapter 634.
349	Rep. Gianella	Asks who is supposed to pay the \$350,000 dollars.
355	Kurby	Answers the Talent Irrigation District.
361	Rep. Gianella	Asks if irrigation districts have the money to pay such large fines.
370	Lee	Answers that the irrigation districts are entirely responsible for penalties or fines.
382	Chair Welsh	Notes that HB 2652 may prevent accidents where as penalties or fines may not.
388	Craig	Comments that the irrigation district is strictly liable for any mistakes that occur.
393	Rep. Taylor	Asks if there has been a problem with obtaining a permit from DEQ, and if not why is HB 2652 before the committee.
400	Lee	Answers that there has never been a requirement to obtain a permit from DEQ.
TAPE 63, B		

003	Rep. Devlin	Asks if he can assume that the Governor has signed off on HB 2652.
010	Lee	Answers she has not heard word directly from the Governor.
014	Rep. Kafoury	Asks if the irrigation districts are not required to have a permit, how is a fine levied.
018	Craig	Answers DEQ can levy fines for violation of Oregon law.
029	Rep. Merkley	Asks if there is a concern about leakage of pesticides in to well water.
030	Kurby	Answers that it depends on the chemistry of the pesticide being used, but does not believe there is a hazard.
045	Rep. Merkley	Asks if there are any crops that cannot be grown due to herbicides in the irrigation systems.
051	Kurby	Answers that pesticides that could cause a problem are required to be "held" while the pesticide degrades.
053	Rep. Merkley	Asks if the irrigation system is shut down, as a delivery system, while the pesticides are degrading.
056	Kurby	Answers yes.
061	Rep. Merkley	Asks what is the holding period on the pesticide indicated in the Talent Irrigation litigation.
065	Kurby	Answers about six hours.
068	Chair Welsh	Asks what volume of water are pesticides are held in.
070	Lee	Answers there is periodic movement throughout the system.
079	Chair Welsh	Closes hearing on HB 2652 and opens a work session on HB 2652.
090	Chair Welsh	Calls a recess at 2:15.
<u>HB 2652 WORKSESSION</u>		
100	Chair Welsh	Calls meeting to order at 2:20

103	Rep. Kruse	MOTION: Moves to ADOPT HB 2652-1 amendments dated 03/01/99.
105	Rep. Taylor	Asks about the removal of section 4.
106	Chair Welsh	Answers the committee will motion to remove section 4.
110	Rep. Taylor	States she is still concerned about the Clean Water Act. Notes she will vote no.
115		VOTE: 7-2 AYE: 7 - Atkinson, Devlin, Gianella, Kruse, Merkley, Morgan, Welsh NAY: 2 - Kafoury, Taylor
	Chair Welsh	The motion CARRIES.
121	Rep. Kruse	MOTION: Moves to AMEND HB 2652 by deleting line 29 on page 1.
	Rep. Kruse	VOTE: 8-1 AYE: 8 - Atkinson, Devlin, Gianella, Kruse, Merkley, Morgan, Taylor, Welsh NAY: 1 - Kafoury
124	Chair Welsh	The motion CARRIES.
128	Rep. Kruse	MOTION: Moves HB 2652 to the floor with a DO PASS AS AMENDED recommendation.
135	Rep. Devlin	Comments that he plans to vote aye on HB 2652 in committee, but plans to do research before it comes to the floor.
143	Rep. Merkley	Asks Tennity to address how long water is held during the pesticide degrading process.
154	Tennity	Comments Acralynn has a half-life of up to twenty days, the EPA label states that it needs to be held for six days. States that , due to the way irrigation districts supply water it is impossible to hold the water for

		that amount of time. Explains the process of irrigation.
171	Rep. Merkley	Asks if one fourth of the active content in Acralynn is still there after forty days.
176	Tennity	Answers most likely.
187	Lee	States the twenty day half-life of Acralynn is not supported by evidence or deemed scientific rather, it was acquired from a web site.
196	Rep. Merkley	Asks if the six day holding period is accurate.
200	Lee	Answers yes
202	Rep. Merkley	Asks if Acralynn is held for six days or released onto selected feilds.
209	Lee	Explains the different EPA approved methods.
212	Rep. Merkley	Asks if Lee believes that after six days the Acralynn is completely inert.
216	Lee	Answers yes, that is her understanding.
221	Chair Welsh	Asks if the irrigation districts do not comply with labeling requirements are they exposed to penalties.
223	Lee	Answers yes.
235	Rep. Merley	States he will support HB 2652, but expresses concerns about the herbicides getting back into fish flows.
246	Rep. Kafoury	States that she will vote no on HB 2652. Expresses concern about the message that might be sent to the public.
250	Chair Welsh	States \$350,000 dollar fine will take care of some of the problems with the Talent Irrigation District.
252		VOTE: 7-2 AYE: 7 - Atkinson, Devlin, Gianella, Kruse, Merkley, Morgan, Welsh NAY: 2 - Kafoury, Taylor

	Chair	<p>The motion CARRIES.</p> <p>REP. ATKINSON will lead discussion on the floor.</p>
283	Chair Welsh	Closes work session on HB 2652 and adjourns for the day at 2:50

Submitted By, Reviewed By,

Danielle Hamilton, Kristina McNitt,
Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2650, written testimony, Kip Lombard, 2 pp.

B - HB 2650, -2 Amendments, Kip Lombard, 5 pp.

C - HB 2650, conceptual amendments, Kip Lombard, 1 p.

D - HB 2652, written testimony, Jan Lee, 2 pp.

E - HB 2652, -1 amendments, Jan Lee, 1 p.

F - HB 2652, federal statute, Jan Lee, 1 p.

G - HB 2652, written testimony, Pamela Tennity, 1 p.