

HOUSE COMMITTEE ON WATER POLICY

April 24, 1997 Hearing Room D

3:00 P.M. Tapes 70 - 71

MEMBERS PRESENT: Rep. Ken Messerle, Chair

Rep. Tim Josi, Vice-Chair

Rep. Jo Ann Bowman

Rep. Tony Corcoran

Rep. Steve Harper

Rep. Jeff Kruse

Rep. Jim Welsh

MEMBER EXCUSED:

VISITING MEMBER: Rep. Bob Jenson

STAFF PRESENT: Pat Zwick, Policy Analyst

Rebecca M. Scott, Administrative Support

MEASURE/ISSUES HEARD: HB 3634 Public Hearing

HB 3322 Public Hearing

HB 2703 Public Hearing

HB 3324 Public Hearing

HB 3505 Public Hearing

HB 3513 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 70, A		
002	Chair Messerle	Calls meeting to order at 3:14 p.m. Announces that there will be no work session held on HB 3523.

HB 3634 PUBLIC HEARING		
005	Chair Messerle	Opens public hearing on HB 3634.
006	Pat Zwick	Policy Analyst, summarizes HB 3634. and -1 amendments. (EXHIBIT A)
017	Ben Westlund	State Representative, District 55, testifies in support of HB 3634.
040	Rep. Bowman	Asks what the fees currently collected are used for.
044	Rep. Westlund	Not sure.
048	Rep. Kruse	Asks if the intent is to exempt those impoundments which don't need to be engineered.
050	Rep. Simmons	More detailed than that. Trying to get it into statute that a certified water right examiner (CWRE) is not needed in these circumstances.
052	Rep. Kruse	Asks if the exemption was part of the decision.
058	Rep. Simmons	Basically trying to expedite the process and mitigate some of the bureaucratic morass required for very limited impoundment rights.
063	Rep. Westlund	Current costs for preparing a map can cost from \$200 to \$1000 beyond the cost of constructing the reservoir.
067	Chair Messerle	Asks for clarification on the size of reservoir being discussed.
068	Rep. Westlund	Less than 9.2 acre feet.
074	Richard Kosesan	Representing Water for Life, testifies in support of HB 3634 with the -1 amendments. This is a significant alteration of Oregon's water law, but it is not necessary to have a certified map prepared for a small impoundment reservoir of less than 9.2 acre feet or with an impoundment structure of less than 10 feet. Storage should be encouraged and enhanced. The cost of having a certified map prepared by a CWRE is a disincentive to develop small impoundments.
099	Todd Heidgerken	Representing Water for Life, testifies in support of HB 3634 with the -1 amendments. There was legislation passed last year to encourage people to build small impoundments and to do so affordably. Unfortunately, once the permit has been issued, they are required to get a certificate which requires a map prepared by a CWRE. The expense associated with the preparation of such a map is excessive. The bill still requires that a map be submitted.
129	Rep. Kruse	Asks what will be gained by certification.
135	Kosesan	Ultimate protection for the owner and operator of small impoundment.

145	Martha Pagel	Director, Water Resources Department, submits and reviews testimony in opposition to HB 3634 and the -1 amendments. (EXHIBIT B)
195	Pagel	Continues review.
218	Chair Messerle	Asks about the time frame for the application.
222	Pagel	180 days.
223	Chair Messerle	Asks for further clarification.
225	Pagel	The 180 day time frame is faster then the ordinary process. There are mechanisms to expedite this, if necessary.
229	Pagel	Continues review.
258	Rep. Harper	Asks why a reliable and accurate map can't be prepared by someone other than a CWRE.
263	Tom Paul	Water Resources Department. There are standards which must be met. Generally, applicants are not knowledgeable of land surveying. Have found that there have been significant errors in the mapping of the location. There have been instances where the water right was located on someone else's land because the map did not accurately describe place of use or location of the reservoir.
292	Rep. Harper	Asks if that would be the problem of the landowner.
297	Paul	Yes. Once an error is discovered, there is a complicated process required to correct this.
304	Rep. Harper	Asks if the landowner is held harmless now if the map is CWRE prepared.
307	Paul	The CWRE is either a licensed engineer or a professional land surveyor.
312	Rep. Harper	Asks who is held responsible if the CWRE makes a mistake.
314	Paul	The professional would be held responsible.
317	Pagel	There is no statutory provision for the landowner to be held harmless. But the landowner would have a contractual relationship and responsibility with the professional that is hired.
325	Chair Messerle	Asks how many of the exempt pond registrations were identified as having problems.
332	Paul	Can't supply exact figures, however, the exempt registration is not a water right.
345	Pagel	Certificates were issued for 16,000 ponds that requested certificates. Those are now in the process of receiving comments. After receipt of comments, WRD may have to go back and require mitigation to avoid impact to fish.
371	Chair	Asks if person can construct pond prior to the certification.

	Messerle	
372	Pagel	Yes.
373	Chair Messerle	Asks if it is then too late to worry about impacts on neighbors.
376	Pagel	The preliminary work is done based on the location of the pond and its effect on other water rights. When it gets to the point of having the pond built, then a permanent record of that water right for that pond at that particular location is required. That is when it is important to be able to specify with a legal description exactly where the pond is.
395	Chair Messerle	Comments on concerns regarding cost of certification in addition to the cost of building the pond. There is no incentive to build ponds or other storage facilities.
TAPE 71, A		
003	Chair Messerle	Continuation of comments.
011	Pagel	WRD is trying to encourage people to build ponds. But most ponds are built for economic reasons, not habitat purposes. The issue is whether or not the person should be required to put in some investment as is required to acquire title insurance, or record a deed.
024	Chair Messerle	Asks how many applications there are per year.
026	Pagel	There are 40 to 50 new applications per month for all uses. Thousands of registrations and notices were received on existing ponds.
032	Chair Messerle	Asks what beneficial uses ponds are being built for.
034	Paul	Recreation, wildlife attraction, industrial, agricultural, and domestic needs.
043	Chair Messerle	Asks if a pond or reservoir of this size be useful for irrigation or industrial uses.
045	Paul	The criteria is for a dam 10 feet in height, or stores of 9.2 acre feet. It can be from less than 1 acre foot to several hundred acre feet. Several notices were received for hundreds of acre feet. These can't all be classified as small ponds that don't impact other people, because the potential is there for some very large facilities.
056	Chair Messerle	Asks for further clarification.
059	Paul	There will be exceptions. There was a dam four feet high which contained 4,000 acre feet. Most will be less than 9.2 acre feet.
066	Rep. Harper	Asks if it would be helpful to scale the size down to truly small ponds.
069	Paul	The ponds where a water right certificate is involved still need to be a permanent record.
	Chair	Asks if water used out of the pond would require a separate water

074	Messerle	right.
077	Paul	Under water right process, yes. But under the exempt uses, it would not.
079	Chair Messerle	Asks if the types of ponds currently under discussion would require a separate water right for out-of-pond uses.
080	Paul	Yes.
081	Rep. Kruse	Asks if anyone does onsite inspection prior to construction.
084	Paul	The water right application is reviewed based on the information submitted in the application and the map. Onsite applications are not done prior to issuance of permit.
087	Rep. Kruse	Asks if anyone does inspection.
088	Pagel	If there are protests on the application, there may be onsite inspections. Consult with the water master who is familiar with the area.
092	Rep. Kruse	Comments on concerns regarding disincentive to store water.
102	Rep. Corcoran	Asks the cost of having map prepared.
106	Pagel	A rough estimate is from \$200 to \$600.
108	Rep. Corcoran	Comments on the cost of the map in addition to the cost of construction.
111	Paul	WRD has no oversight over how CWREs charge for their services.
116	Rep. Corcoran	Asks if this is essentially an unfunded mandate.
124	Pagel	Yes. WRD needs to be sure of getting accurate information.
146	Rep. Bowman	Asks if WRD would inspect after dams and ponds were constructed.
154	Pagel	If it was done lawfully, they would already have permits from WRD.
157	Rep. Bowman	Asks if this would be prior to the preparation of the certified map.
159	Pagel	Yes.
160	Chair Messerle	Asks if the exempted ponds were certified.
166	Pagel	No. The exemptions are not water rights, they are just lawful. There are no priority dates or legal significance beyond being safe from enforcement.
174	Chair Messerle	Asks for suggestions on improving HB 3634.
178	Pagel	Can't really recommend narrowing the scope to specify only very small ponds, because WRD needs to have reliable, accurate map. If it could be ensured that the map would be accurate, WRD could prescribe certain mapping protocols.
195	Chair	Asks for clarification of a small pond.

	Messerle	
196	Pagel	Less than 9.2 acre feet.
199	Rep. Harper	Asks why a map which complies with WRD standard is not sufficient unless it is from a CWRE.
207	Pagel	If a map is received that is well drawn, but not certified, it has to be assumed that the pond is located correctly. By being certified by a CWRE, it gives WRD a level of assurance.
225	Rep. Harper	Suggests that it could be made clear to the landowner that they would be held responsible if the map is inaccurate.
234	Rep. Josi	Discusses the liability principle. Asks if the consequences fall on downstream water right users.
247	Paul	Yes. Part of the mapping is the calculation of whether the conditions are met. One of the conditions is that they apply for a certain amount of water. Inaccurate calculations of the amount of water in a pond could impact the water right holder or other users.
252	Rep. Josi	Comments on the growing scarcity of water and the need for certification.
262	Chair Messerle	Asks if WRD is able to use aerial photos for verification purposes.
265	Paul	While conducting final proof surveys filed prior to 1987, that is how the survey work was being done. CWRE can also use aerial photos.
280	Pagel	The statute refers to a survey. That includes calculating the size and volume of the reservoir, not just the location.
292	Chair Messerle	Asks if that can be done from an aerial photograph.
297	Pagel	WRD can.
301	Rep. Kruse	Asks if most of the impoundments are instream.
309	Pagel	Many of these are instream impoundments. There is nothing that prevents that.
306	Rep. Kruse	Asks who is being impacted by building ponds to catch run-off.
317	Paul	Discusses off-channel versus on-channel ponds.
367	Paul	Continues discussion.
385	Rep. Kruse	Comments that part of the problem is that any water which runs off through a gully is considered the property of the state.
TAPE 70, B		
004	Pete Test	Representing Oregon Farm Bureau, testifies in support of HB 3634.
048	Rep. Josi	Comments that this may be a work group situation.
053	Rep. Corcoran	Agrees. Comments on the conflicting testimony which indicates the need for a work group.
063	Chair Messerle	Comments on personal experience regarding the building of ponds. Concerned that the cost is a serious disincentive to storage.

074	Rep. Corcoran	Comments on the growth of Oregon's population. Water is a valuable commodity and there is a need to encourage people to store water.
100	Test	Most people prefer to follow the law, but there is also a perception that the government is applying too many restrictions and requirements.
107	Rep. Harper	Recommends the formation of a work group to reach a consensus in this situation.
113	Chair Messerle	Closes public hearing on HB 3634.
<u>HB 3322 AND HB 2703 PUBLIC HEARING</u>		
118	Chair Messerle	Opens public hearing on HB 3322 and HB 2703.
120	Zwick	Summarizes HB 3322 and submits -3 amendments (EXHIBIT C) and summarizes HB 2703 and submits -2 amendments (EXHIBIT D) .
140	Michael Cape	Legislative Aide, Rep. VanLeeuwen, submits and reviews testimony in support of HB 3322. (EXHIBIT E)
163	Cape	Submits and reviews testimony in support of HB 2703. (EXHIBIT F)
207	Rep. Bowman	Asks if environmental groups were invited to join in the work groups which developed these bills.
211	Cape	No. Felt that working with ODFW would be sufficient to address environmental concerns.
219	Rep. Bowman	Asks if ODFW brought any environmental issues to the table.
221	Cape	Yes, they mentioned concerns for fish habitat and the surrounding environment.
233	Rep. Bowman	Asks how spot dredging is accomplished.
235	Cape	Discusses the removal fill process.
244	Chair Messerle	Spot dredging concentrates on just a portion of the waterbody rather than long stretches.
247	Rep. Josi	Asks if there has been any contact with the Division of State Lands regarding a fiscal impact on HB 3322 and the -3 amendments.
249	Cape	Yes, the estimated cost is about \$250,000.
259	Rep. Corcoran	Asks if ODFW joined the work group before or after the salmon plan.
270	Cape	ODFW has been involved since February, which was concurrent with discussions on the salmon plan.
275	Rep. Corcoran	Comments and concerns.

282	Cape	This legislation is to address the flood problems and the provision of immediate relief.
295	John Lilly	Assistant Director, Division of State Lands, submits and reviews testimony in support of HB 3322 and HB 2703 and their respective amendments. (EXHIBIT G)
345	Lilly	Continues review.
TAPE 71, B		
003	Lilly	Continues review.
007	Chair Messerle	Asks if there have been surveys done on how much the bed of the river has raised in the last 10 years.
010	Lilly	No knowledge of any widespread surveys. The Corps indicated in their 1979 reconnaissance report that they would be returning to do periodic hydrographic surveys. They have not done so.
014	Chair Messerle	Asks if that would be part of the planning process.
015	Lilly	Yes.
016	Chair Messerle	Comments that the Coquille River's bed has raised 7-9 feet in the last 10 years.
019	Lilly	While aimed at the Willamette River, this work would provide working knowledge which could be applied to other rivers throughout the state.
024	Rep. Bowman	Asks why both bills are being done at the same time.
032	Lilly	If these projects were planned, then they could provide additional data for other projects.
047	Chair Messerle	Comments that they are being heard together only for the hearing process. It does not mean that they need to be passed out as a package.
052	Patricia Snow	Land Use Coordinator, ODFW, testifies in regard to HB 3322 and HB 2703. Involved in on-going discussions on both bills. HB 3322 authorizes the pilot project to determine the feasibility of limited spot removal of materials from the Willamette River. HB 2703 allows issues relating to fish and wildlife resources in dredging the Willamette to be addressed during the pilot study. ODFW expects to work with others in developing the pilot study, including the need to assess the impacts on fish and wildlife habitat and fishery resources in the Willamette.
080	Rep. Bowman	Comments that the pilot study doesn't seem to take into account all the issues the state is facing in regard to water and fish.
094	Chair Messerle	Comments that addressing these issues would be part of the permitting process.
096	Rep. Bowman	Comments.
	Mike	Polk County, submits and reviews testimony in support of HB 3322

104	Propes	and HB 2703. (EXHIBIT H)
154	Propes	Continues review.
203	Chair Messerle	Comments on the amount of work that has been put into this project.
205	Propes	The communities are willing to contribute local funding.
210	Rep. Welsh	Comments on dredging.
230	Rep. Bowman	Comments that it would be advantageous to involve stakeholders early in process.
239	Propes	Agrees that it won't work unless everyone gets involved.
243	Stephen Kafoury	Representing American Fisheries Society, submits and begins review of testimony in opposition to HB 3322 and HB 2703. (EXHIBIT I)
249	Hiram Lee	Of Oregon State University, continues review of testimony in opposition to HB 3322 and HB 2703.
299	Lee	Continues review.
349	Lee	Continues review
399	Lee	Continues review
413	Chair Messerle	Closes public hearing on HB 3322 and HB 2703.
<u>HB 3324, HB 3505, AND HB 3513 PUBLIC HEARING</u>		
428	Chair Messerle	Opens public hearing on HB 3324, HB 3505, and HB 3513.
431	Chair Messerle	Closes public hearing on HB 3324, HB 3505, and HB 3513.
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432	Chair Messerle	Adjourns meeting at 5:05 p.m.

Submitted By, Reviewed By,

Rebecca M. Scott, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - HB 3634, -1 Amendments dated 4/14/97, Staff, 2 pp.

B - HB 3634, Written Testimony, Martha Pagel, 2 pp.

C - HB 3322, -3 Amendments dated 4/16/97, Staff, 2 pp.

D - HB 2703, -2 Amendments dated 4/17/97, Staff, 2 pp.

E - HB 3322, Written Testimony, Michael Cape, 2 pp.

F - HB 2703, Written Testimony, Michael Cape, 2 pp.

G - HB 3322 & HB 2703, Written Testimony, John Lilly, 2 pp.

H - HB 3322 & HB 2703, Written Testimony, Mike Propes, 5 pp.

I - HB 3322 & HB 2703, Written Testimony, Stephen Kafoury, 2 pp.