

HOUSE COMMITTEE ON WATER POLICY

May 8, 1997 Hearing Room E

3:00 P.M. Tape 78 - 79

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 2628 Public Hearing

HB 2629 Public Hearing

SB 208 Public Hearing and Work Session

SB 343 Public Hearing and Work Session

HCR 29 Public Hearing and Work Session

HB 3324 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 78, A		
002	Chair Messerle	Calls meeting to order at 3:18 p.m.

HB 2628 PUBLIC HEARING		
006	Chair Messerle	Opens public hearing on HB 2628.
007	Pat Zwick	Policy Analyst, summarizes HB 2628 and submits -1 amendments. (EXHIBIT A)
024	Rep. Kruse	Testifies in support of HB 2628. Discusses the -1 amendments which will address specific problems that coast counties may have. Also discusses proposed -2 amendments.
046	Martha Pagel	Director, Water Resources Department, submits and reviews testimony in opposition to HB 2628. (EXHIBIT B)
093	Rep. Josi	Asks when the standard was adopted.
095	Pagel	The 80 percent standard was adopted in 1992. Prior to that, the standard was approximately 50 percent. As it became apparent that streams were being over appropriated, the change was made. In 1993 and 1995, the system was looked at and no changes were made.
100	Pagel	Continues review.
134	Rep. Kruse	Asks if the 80 percent standard remained unchanged in the 1993 and 1995 sessions because proposed changes were vetoed.
138	Pagel	Don't believe so. HB 3100 would have changed the standard in 1995, but it was not passed out of committee.
143	Rep. Harper	Asks the number of water masters in 1992.
145	Pagel	Approximately the same number now, about 19, which are state funded, plus an additional 10 positions through county support.
149	Rep. Harper	Asks why the workload increase now.
150	Pagel	There are 5,700 more applications or water rights in place then there was then. The workload increases if the demand on the stream increases. If permits are issued at the 50 percent rate, then the point of shortage is achieved sooner then at the 80 percent rate.
156	Rep. Corcoran	Comments that Former State Representative Chuck Norris opposes this legislation.
169	Jill Zarnowitz	Assistant Director, Oregon Department of Fish and Wildlife (ODFW), testifies in opposition to HB 2628. Concerned about returning to the 50 percent rated, for the same reasons as the Water Resources Department. ODFW holds 472 out of stream water rights, and having to rely on increased regulations in order to protect water, would be an increase in the workload of ODFW. Also hold some of the water rights for agricultural use and if the department decided to put some of the water back in the stream for fish habitat, the rights could not be transferred.

184	Jan Lee	Executive Director, Oregon Water Resources Congress, submits and reviews testimony in opposition to HB 2628. (EXHIBIT C)
236	Joni Low	Representing the League of Oregon Cities, testifies in opposition to HB 2628. HB 2628 restricts the transfer of agriculture water rights to uses other than agriculture. The water should be made available at the permit holder's discretion.
250	Reed Benson	Staff Attorney, Water Watch, testifies in opposition to HB 2628. Irrigation accounts for approximately 80 percent of the water appropriation in Oregon. HB 2628 is contrary to the Oregon Coastal Salmon Restoration Initiative by prohibiting the transfer of rights to uses which would be beneficial to fish.
300	Benson	The 80 percent standard protects existing water users and also protects people who want new water rights. Under 50 percent exceedance value, the water is only there, theoretically, 50 percent of the time. That is not what people think they are getting when they apply for a water right.
323	Andrew Purkey	Director, Oregon Water Trust, submits and reviews testimony in opposition to HB 2628. (EXHIBIT D)
373	Purkey	Continues review.
TAPE 79, A		
004	Rep. Harper	Asks if Mr. Purkey spoke to the 50 percent/80 percent issue.
006	Purkey	No, not taking a position on the part of the legislation. Concerned about the ability of the water right holder to negotiate a private property agreement with the Water Trust.
010	Jim Myron	Representing Oregon Trout, submits and reviews testimony in opposition to HB 2628. (EXHIBIT E)
016	Chair Messerle	Closes public hearing of HB 2628.
HB 2629 PUBLIC HEARING		
018	Chair Messerle	Opens public hearing on HB 2629.
021	Pat Zwick	Policy Analyst, summarizes HB 2629.
030	Rep. Kruse	Testifies in support of HB 2629.
058	Martha Pagel	Director, Water Resources Department, reviews testimony submitted at March 6, 1997, meeting of HWP. (SEE EXHIBIT J OF COMMITTEE MINUTES DATED 03/06/97)
076	Rep. Josi	Asks why HB 2629 would harm existing junior and senior water right holders.
		Water Resources Department. The definition of "substantial interference"

078	Fred Lissner	which is being considered, is by itself not critical. It is how the term is used in the law is what makes the definition critical. When substantial interference occurs, junior appropriators are regulated to the benefit of the senior appropriators. If the proposed definition is passed it could subvert the prior appropriation principle, by elevating ground water use to a higher priority than surface water use without regard to priority date.
118	Lissner	If the sole criterion is the measurability of an impact, and if there is a measurable decline in a senior appropriator's water level, all the juniors will have to be regulated in favor of the senior. HB 2629 would also establish that the water right certificate is the conclusive evidence of the source of the water for the appropriation. Historically, in the case of ground water rights, the department has relied on a variety of materials to document the source of water. The department would be restricted to only considering only the certificate which does not identify the aquifer if the source is ground water. Currently, the department relies on the well logs for identification of the aquifer. If there is a shortage in a particular area, then all the juniors will have to be regulated without regard to the source.
152	Rep. Kruse	Using a hypothetical situation, asks if a junior water right holder (ground water) would be cut-off because of an unmeasurable impact on a senior water right holder (surface water).
159	Lissner	Cannot show with measurement that there is an impact, but rules require that if there is not a timely and affective relief to the senior surface water user, we won't regulate. The department has to be able to determine before regulation occurs, that there will be timely, affective relief to the senior water user.
163	Rep. Kruse	Asks how that is done.
164	Lissner	Through calculation of what the projected amount of interference would be from that well and what the projected amount of relief would be from shutting off that well, and how fast that relief would occur. Done by calculation rather than by measurement, because the amount of interference is within the 5 percent measurement error in the stream.
170	Rep. Kruse	Asks if assumptions are made when dealing with ground water rights.
180	Lissner	Some assumptions are made, but they are based on sound scientific principals. If the well is close (within a quarter mile), and pumping water from an alluvial aquifer, the assumption will be made that there is a hydraulic connections. Most of the time, that assumption is right. There are provisions in the rules which encourage the department to work with landowners discouraged by the assumption.
194	Pagel	Current law requires that any water regulation or ground water decisions be based on scientific studies or the application of generally accepted hydro-geologic principals. That was put in the statute to recognize that the department is required to use scientific assumptions and presumptions. Do not have site-specific ground water studies for the entire state, but where they are available, they are used. Where they are not available, department

		hydro-geologists use the formula and principles laid out in WRD rules.
220	Rep. Kruse	Asks if ground water hydrology is a perfected science.
223	Lissner	It is a science.
225	Rep. Kruse	Asks if Mr. Lissner is right all the time.
226	Lissner	Of course not.
230	Rep. Kruse	Comments that the science is not perfected and assumptions are being made. Asks how much it would cost someone to challenge the departments findings..
241	Lissner	That is variable, depending on circumstances. Investigations have been done for amounts between several hundreds of dollars and several thousands of dollars.
250	Jill Zarnowitz	Assistant Director, Oregon Department of Fish and Wildlife, submits and reviews testimony in opposition to HB 2629. (EXHIBIT F)
293	Reed Benson	Staff Attorney, Water Watch, testifies in opposition to HB 2629. Discusses Idaho situation with surface water right users versus ground water right users.
345	Jan Lee	Executive Director, Oregon Water Resources Congress, testifies in opposition to HB 2629. Major concern is interference being defined as less than 5 percent, which is not a problem for one use, but for additional uses, it could significantly exceed 5 percent in the cumulative affect. As HB 2629 is currently written, it would significantly impact some senior water right users in some basins of the state.
371	Chair Messerle	Closes public hearing on HB 2629.
SB 208 PUBLIC HEARING		
380	Chair Messerle	Opens pubic hearing on SB 208.
381	Pat Zwick	Policy Analyst, summarizes SB 208.
405	Paul Cleary	Director, Division of State Lands, submits and reviews testimony in support of SB 208. (EXHIBIT G)
TAPE 78, B		
002	Cleary	Continues review.
012	Sue Hallett	Executive Director, Oregon Independent Miners, testifies in support of SB 208. It will save applicant applying to mine within scenic waterways a considerable amount of time.
016	Chair Messerle	Closes public hearing on SB 208.

<u>SB 208</u> <u>WORK</u> <u>SESSION</u>		
017	Chair Messerle	Opens work session on SB 208.
019	Rep. Josi	MOTION: Moves SB 208 to the floor with a DO PASS recommendation.
		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 2 - Bowman, Corcoran
	Chair	The motion CARRIES. REP. WELSH will lead discussion on the floor.
030	Chair Messerle	Closes work session on SB 208.
<u>SB 343-A</u> <u>PUBLIC</u> <u>HEARING</u>		
031	Chair Messerle	Opens public hearing on SB 343-A.
033	Pat Zwick	Policy Analyst, summarizes SB 343-A.
049	Paul Cleary	Director, Division of State Lands, submits and reviews testimony in support of SB 343-A. (EXHIBIT H)
067	Rep. Kruse	Asks why there was such a close vote on the Senate Floor.
070	Cleary	Does not know actual Floor discussion. Suspects that there were concerns regarding salmon habitat and the need for reassurances that these will be minimal impact activities. The division will be looking at this during the two year study the division committed to through the passage of HB 2409.
084	Sue Hallett	Executive Director, Oregon Independent Miners, submits and reviews testimony in support of SB 343-A. (EXHIBIT I)
131	Rep. Bowman	Asks for further discussion on the amount of material that will be disturbed.
138	Hallett	For this type of deminimous activity, there is not that much material disturbed. Mining is a different activity and is not addressed in this measure. Describes gold panning.
150	Rep. Bowman	Comments that traditionally, gold panners do not just go through one pan, they tend to just keep panning in the same area.
		Most panners do not have the patience to stay in one area after one or two

156	Hallett	unsuccessful pans.
165	Rep. Bowman	Comments that this is a continuous process.
169	Rep. Welsh	Discusses gold panning activities.
178	Jill Zarnowitz	Submits and reviews testimony in support of SB 343-A. (EXHIBIT J)
214	Hiram Lee	American Fisheries Society, submits and reviews testimony in opposition to SB 343-A. (EXHIBIT K)
264	Lee	Continues review.
283	Jim Myron	Representing Oregon Trout, testifies in opposition to SB 343-A. This is contrary to the Oregon Coastal Salmon Restoration Initiative.
310	Chair Messerle	Closes public hearing on SB 343-A.
SB 343-A WORK SESSION		
312	Chair Messerle	Opens work session on SB 343-A.
315	Rep. Kruse	MOTION: Moves SB 343A to the floor with a DO PASS recommendation.
326	Chair Messerle	Puts committee at ease at 4:36 p.m. Reopens work session at 4:41 p.m.
328		VOTE: 6-1 AYE: 6 - Corcoran, Harper, Josi, Kruse, Welsh, Messerle NAY: 1 - Bowman
	Chair	The motion CARRIES. REP. WELSH will lead discussion on the floor.
337	Chair Messerle	Closes work session on SB 343-A.
HCR 29 PUBLIC HEARING		
339	Chair Messerle	Opens public hearing on HCR 29.
344	Rep.	Summarizes HCR 29.

	Harper	
355	Jan Lee	Executive Director, Oregon Water Resources Congress, submits and reviews testimony in support of HCR 29. (EXHIBIT L)
395	Reed Marbut	Water Resources Department, submits and reviews testimony in support of HCR 29. (EXHIBIT M)
TAPE 79, B		
003	Marbut	Continues review.
015	Rep. Corcoran	Asks if the state is under order to protest those claims.
020	Marbut	No, but the department acts as a neutral arbitrator. Adjudications are verifications and documentation of rights that already exist. In the case of the federal government, those rights exist because the lands were set aside from the public domain for a specific purpose. When that happens, the courts have ruled that there is an implied reserved water right for those lands. It is the quantification of those water rights that occurs in an adjudication. Federal government has waived its immunity to be required to come to Oregon's court. Since the Klamath Basin has a huge federal presence it would mean little to water users of the basin to adjudicate only the private rights and leave the federal rights to be decided later. They should all be decided at the same time.
041	Rep. Corcoran	Comments.
045	Chair Messerle	Closes public hearing on HCR 29.
<u>HCR 29</u> <u>WORK</u> <u>SESSION</u>		
046	Chair Messerle	Opens work session on HCR 29.
047	Rep. HARPER:	MOTION: Moves HCR 29 be sent to the floor with a BE ADOPTED recommendation.
		VOTE: 7-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Bowman
	Chair	The motion CARRIES. REP. HARPER will lead discussion on the floor.
086	Chair Messerle	Closes work session on HCR 29.

HB 3324 PUBLIC HEARING		
087	Chair Messerle	Opens public hearing on HB 3324.
090	Pat Zwick	Policy Analyst, summarizes HB 3324 and submits letters received in support of HB 3324. (EXHIBIT N) (EXHIBIT O)
100	Mary Wahl	Department of Environmental Quality, submits and reviews testimony in opposition to HB 3324. (EXHIBIT P)
131	Rep. Corcoran	Asks the cost of deed recording to current owner.
138	Brooks Koenig	Department of Environmental Quality. The cost would be minimal for the actual recording.
142	Rep. Corcoran	Asks if language could be proposed which could require notification other than a deed, which would be less costly.
158	Wahl	There was a great deal of study of other options. This method seems to be the most familiar to people.
165	Rep. Corcoran	Comments that there should be a mechanism attached to the deed process.
179	Chair Messerle	Comments on similar issue in a different committee.
184	Wahl	Comments on discussions with Rep. VanLeeuwen.
197	Chair Messerle	Asks if the wells are sealed after completion of monitoring process.
201	Wahl	Depends on the purpose of the monitoring well. If the purpose was to monitor migration of contamination, the well would not be sealed. There are not typically sealed off.
210	Chair Messerle	Asks if that is still considered complete.
211	Wahl	Yes. The law changed last session and there are more cases in Oregon where contamination is left on site and either monitored or capped. Requires more mechanisms to ensure that it is not migrating to adjacent properties or to ground water.
221	Rep. Josi	Asks if wells which have been capped and abandon would be listed on the deed.
225	Koenig	Correct. If there was a total complete and no risks for future contamination, there would be no reason to have that well recorded.
229	Rep. Josi	Asks if there are any cases of that happening.
231	Koenig	Yes.
239	Chair Messerle	Asks if this measure passed, would department be more hesitant to complete the process.

244	Wahl	The protection is important to let people know the contamination is there and to make sure that the contamination can be dealt with if it starts to move. Would not be less likely to allow contamination to be left and manages in place. If HB 3324 became law, the department would likely try to find another mechanism.
255	Jim Myron	Representing Oregon Trout, testifies in opposition to HB 3324. Concurs with the position of Department of Environmental Quality that it is sound policy to inform potential purchasers if any of these types of sites exist.
266	Rep. Corcoran	Asks if Oregon Trout would still oppose it if there were amendments.
268	Myron	No. The mechanism needs to show up in a title search.
274	Chair Messerle	Closes public hearing on HB 3324.
279	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 2628, -1 Amendments dated 04/28/97, Staff, 1p.

B - HB 2628, Written Testimony, Martha Pagel, 3 pp.

C - HB 2628, Written Testimony, Jan Lee, 2 pp.

D - HB 2628, Written Testimony, Andrew Purkey, 1 p.

E - HB 2628, Written Testimony, Jim Myron, 1 p.

F - HB 2629, Written Testimony, Jill Zarnowitz, 2 pp.

G - SB 208, Written Testimony, Paul Cleary, 2 pp.

H - SB 343-A, Written Testimony, Paul Cleary, 2 pp.

I - SB 343-A, Written Testimony, Sue Hallett, 2 pp.

J - SB 343-A, Written Testimony, Jill Zarnowitz, 2 pp.

K - SB 343-A, Written Testimony, Hiram Lee, 2 pp.

L - HCR 29, Written Testimony, Jan Lee, 3 pp.

M - HCR 29, Written Testimony, Reed Marbut, 2 pp.

N - HB 3324, Letter received May 8, 1997, William Rauch, 2 pp.

O - HB 3324, Letter received May 8, 1997, Wayne Robbins, 1 p.

P - HB 3324, Written Testimony, Mary Wahl, 2 pp.