

HOUSE COMMITTEE ON WATER POLICY

May 13, 1997 Hearing Room D

3:00 p.m. Tape 80 - 81

MEMBERS PRESENT: Rep. Ken Messerle, Chair

Rep. Tim Josi, Vice-Chair

Rep. Steve Harper

Rep. Jeff Kruse

Rep. Jim Welsh

MEMBER EXCUSED: Rep. Jo Ann Bowman

Rep. Tony Corcoran

VISITING MEMBER: Rep. Bob Jenson

STAFF PRESENT: Pat Zwick, Policy Analyst

Rebecca M. Scott, Administrative Support

MEASURE/ISSUES HEARD: SB 133 Public Hearing

HB 3634 Work Session

SB 1157A Public Hearing and Work Session

SB 464 Public Hearing and Work Session

SB 415 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 80, A		
003	Chair Messerle	Calls meeting to order at 3:20 p.m.
<u>SB 133</u> <u>PUBLIC</u>		

HEARING		
005	Chair Messerle	Opens public hearing on SB 133.
006	Pat Zwick	Policy Analyst, summarizes SB 133 and submits -2 amendments. (EXHIBIT A)
026	Martha Pagel	Director, Water Resources Department (WRD), submits and reviews testimony in support of SB 133. (EXHIBIT B)
084	Chair Messerle	Asks the position of WRD on the -2 amendments.
085	Pagel	Have seen the -2 amendments which relate to supplemental water rights. Are not concerned with the concept of these amendments. However, the department is concerned about attaching a substantive policy change to basically a department bill. Believe there is another vehicle to which the amendments could be attached.
094	Chair Messerle	Asks what that would be.
095	Pagel	Possibly SB 417.
099	Pagel	Discusses other proposed amendments which have not been submitted yet.
110	Rep. Kruse	Asks for status of SB 417.
115	Pagel	Currently being considered in the Senate.
117	Rep. Josi	Asks if there is any controversy surrounding SB 417.
118	Pagel	Don't believe so.
120	Rep. Kruse	Comments on concerns about amending a Senate Bill after it has passed without amendment.
125	Chair Messerle	Asks if the -2 amendments will have any fiscal impact.
126	Pagel	No.
132	Jan Lee	Executive Director, Oregon Water Resources Congress, testifies in support of SB 133. Regarding -2 amendments, supports them in concept, but have had some discussion with Water for Life that there will need to be some changes to include the Willamette system.
151	Chair Messerle	Asks if both proposed amendments are acceptable.
155	Lee	Yes. Discussing some possible changes with Water for Life and Steve Applegate.
164	Chair Messerle	Asks if Steve Applegate is in the building today.
167	Lee	He had planned to be here today, but he thought SB 133 would not be scheduled today.
178	Richard	Representing Water for Life, discusses the -2 amendments. Neither support, nor oppose SB 133. Would leave the question of whether these amendments

	Kosesan	should be attached to any specific bill to the committee.
207	Chair Messerle	Comments that this will be discussed further on Thursday.
211	Kosesan	It is a question of how soon SB 417 moves from the Senate to the House.
219	Doug Myers	Representing Oregon Environmental Council, comments that there is no opposition to SB 417A.
227	Jeff Curtis	Representing Water Watch, testifies in support of SB 133.
236	Chair Messerle	Asks if there is a preference as to where the amendments are attached.
237	Curtis	Would like to examine the amendments more closely prior to making a decision.
243	Chair Messerle	Closes public hearing on SB 133.
<u>HB 3634</u> <u>WORK</u> <u>SESSION</u>		
245	Chair Messerle	Opens work session on HB 3634.
258	Martha Pagel	Director, Water Resources Department. Submits and reviews -4 amendments to HB 3634. (EXHIBIT C)
286	Richard Kosesan	Representing Water for Life, testifies in support of -4 amendments.
296	Rep. Josi	MOTION: Moves to ADOPT HB 3634-4 amendments dated 05/12/97.
	Chair	Hearing no objection, declares the motion CARRIED.
300	Rep. Josi	MOTION: Moves HB 3634 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 2 - Bowman, Corcoran
	Chair	The motion CARRIES. REP. MESSERLE will lead discussion on the floor.
311	Chair Messerle	Closes work session on HB 3634.
<u>SB 1157 A</u> <u>PUBLIC</u> <u>HEARING</u>		

312	Chair Messerle	Opens public hearing on 1157 A.
326	Pat Zwick	Summarizes SB 1157 A and submits -A2 amendments. (EXHIBIT D)
365	Pete Test	Representing Oregon Farm Bureau, submits and reviews testimony in support of SB 1157 A. (EXHIBIT E)
TAPE 81, A		
006	Martha Pagel	Director, Water Resources Department, submits and reviews testimony in support of SB 1157 A. (EXHIBIT F) Submits and reviews -A3 amendments (EXHIBIT G) and the -A4 amendments (EXHIBIT H) .
020	Rep. Harper	Asks for clarification on the emergency clause contained in the -A1 amendment.
022	Test	The Oregon Water Resources Congress requested that amendment, but the Oregon Farm Bureau had no objection.
027	Jan Lee	Executive Director, Oregon Water Resources Congress, discusses the -A2 amendment.
030	Pagel	Comments on the value of the emergency clause.
034	Jeff Curtis	Representing Water Watch, testifies in opposition to SB 1157 A. Concerned about the issuance of time-limited licenses.
067	Chair Messerle	Closes public hearing on SB 1157 A.
SB 1157 A WORK SESSION		
069	Chair Messerle	Opens work session on SB 1157A.
071	Rep. Josi	MOTION: Moves to ADOPT SB 1157A-2, -3, and -4 amendments dated 05/12/97.
	Chair	Hearing no objection, declares the motion CARRIED.
075	Rep. JOSI:	MOTION: Moves SB 1157A be sent to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 2 - Bowman, Corcoran
	Chair	The motion CARRIES. REP. JOSI will lead discussion on the floor.
080	Chair	Closes work session on SB 1157A.

	Messerle	
SB 464 PUBLIC HEARING		
081	Chair Messerle	Opens public hearing on SB 464.
083	Pat Zwick	Summarizes SB 464.
097	Jerry Schmidt	Representing Oregon Association of Realtors, submits and reviews testimony in support of SB 464. (EXHIBIT I)
147	Schmidt	Continues review.
186	Rep. Harper	Asks why it was vetoed last session, and why he thinks it won't be vetoed this session.
188	Schmidt	Has no idea why the Governor vetoed this last session.
207	Martha Pagel	Director, Water Resources Department, submits and reviews testimony in opposition to SB 464. (EXHIBIT J)
227	Rep. Josi	Asks if this could still be done by order.
229	Pagel	The provision Mr. Schmidt referred to, relating to order, deals with orders of withdrawal which were enacted many years ago. The problem is that the provisions were written prior to the enactment of the Administrative Procedures Act.
279	Pagel	Continues review
295	Chair Messerle	Asks for clarification on testimony referring to assisting people locate water.
299	Pagel	WRD does not provide this service, but they will come to WRD asking the department to help find water. Can try to provide information to warn people of potentially serious water shortages.
306	Chair Messerle	Asks if it is normal to form an association.
311	Pagel	Often that is the final solution. Basin planning provisions apply to all types of water uses, surface and ground water. Exempting one category from the basin plans would be creating a special exception that others would not have. If a basin plan which limited new exempt uses was adopted, then a person would have the opportunity to request an exception to the basin plan in order to develop their property. If they were denied that, they would be able to get a contested case hearing or judicial review of that determination. If any one person feels that they are going to be unduly harmed by this, they do have recourse to go before a contested case hearing or a judge.
339	Rep. Josi	Asks for further discussion on the recourse a person has if they are denied an exception.
		The basin plan, which is adopted by rule, sets out classifications of uses. If it is included that there will be no more exempt uses, or a limitation of exempt

347	Pagel	uses, that would be the basic plan for the entire basin. Any person can apply for an exception to the basin plan based on one of several criteria, such as undue or extreme hardship.
368	Rep. Josi	Asks about process for rule-making for the basin plan.
375	Pagel	That is a rule-making process which includes a notice and at least one public hearing in the basin. Have agreed to give more extensive notice.
381	Rep. Josi	Asks what process the public would have, other than testifying before the Water Resources Commission.
385	Pagel	In a rule-making process, the opportunity is to comment on the rules and try to influence the decision, similar to the legislative process. Once the rule is adopted, it can only be challenged on the basis of a procedural failure. The purpose of rules is to describe a general standard that applies to everybody. After adoption of the basin plan, applications for water rights have to be looked at to ensure that the use is authorized under the basin plan. That is where the individual opportunity for comment comes in. If the owner of a piece of property cannot get a water right because of a basin plan provision, then they can apply for the exception.
TAPE 89, B		
009	Rep. Josi	What is this based on.
010	Pagel	Based on the impact to them as an individual, and the final agency determination applying to that individual.
014	Rep. Josi	Asks if an individual, through judicial review, could contest the legitimacy of the findings of the Commission when the basin plan was developed.
017	Pagel	No.
018	Rep. Josi	Asks what they can do.
018	Pagel	Can request an exception to the basin plan, for such reasons as undue hardship, the use is non-consumptive, and several others outlined in statute.
022	Rep. Josi	Asks if they can challenge, through judicial review, the basin plan.
027	Pagel	They can't challenge the rule except as to whether there was sufficient record on which to base the rule, and whether the procedures were followed.
032	Rep. Josi	Asks if individual can dispute findings.
035	Pagel	A rule can be challenged in a separate process, looking at either the procedures or whether the agency did not have evidence in the record.
037	Rep. Josi	Asks if that is adequate evidence of a shortage of water.
038	Pagel	Not the factual basis, but the policy basis, for the rule-making. There is a very limited ability to overturn a rule once the adopting body has made a policy choice. A person can challenge the way the rule is applied to them in a separate process.
043	Rep. Josi	Asks for further discussion on the order of withdrawal.
		The process laid out in statute for an order of withdrawal roughly describes giving public notice, holding a hearing, receiving testimony, and issuing the order withdrawing the area. The order that is issued applies to everybody in

047	Pagel	the area. Historically, it was done the same as how rule-making is done now. The use of the word "order" is misleading. Before the Administrative Procedures Act was enacted, the term "order" was not specifically designed. Because of this, "order" means something that is directed to a named individual. That would mean that because the statutes refer to this as an "order of withdrawal," rather than a "withdrawal determination," the department would have to give notice, by name, to all of the people affected in the basin. Each one would then be able to request a contested case hearing, or seek judicial review in the local circuit court. This would change the essence of the basin planning process.
075	Gayle Killam	Representing Oregon Environmental Council, testifies in regard to SB 464. Concerned about the portion of the measure which prohibits the department from regulating the exempt ground uses in areas which have been designated, through the basin planning process, as ground water limited. Discusses particular situations in the Willamette basin.
112	Jeff Curtis	Representing Water Watch, testifies in regard to SB 464.
120	Chair Messerle	Closes public hearing on SB 464.
<u>SB 464</u> <u>WORK</u> <u>SESSION</u>		
127	Chair Messerle	Opens work session on SB 464.
128	Rep. KRUSE:	MOTION: Moves SB 464 be sent to the floor with a DO PASS recommendation.
		VOTE: 4-1 AYE: 4 - Harper, Kruse, Welsh, Messerle NAY: 1 - Josi EXCUSED: 2 - Bowman, Corcoran
	Chair	The motion CARRIES. REP. KRUSE will lead discussion on the floor.
135	Chair Messerle	Closes work session on SB 464.
<u>SB 133</u> <u>PUBLIC</u> <u>HEARING</u>		
142	Chair	Re-opens public hearing on SB 133.

	Messerle	
147	Steve Applegate	Testifies in regard to SB 133 and the concerns of municipalities in the lower Willamette Basin. Discusses proposed amendments. Will be meeting with WRD to discuss this amendment and to work out any problems which may arise.
168	Chair Messerle	Closes public hearing on SB 133.
<u>SB 415 PUBLIC HEARING</u>		
171	Chair Messerle	Opens public hearing on SB 415.
173	Pat Zwick	Policy Analyst, summarizes SB 415.
190	Jan Lee	Executive Director, Oregon Water Resources Congress, submits and reviews testimony in support of SB 415. (EXHIBIT K)
224	Rep. Harper	Asks why this can't be done currently.
226	Lee	Because the 190 organization does not cover some of the functions which irrigation districts do. Short of making these changes, if the districts group together and do a project, they are no longer protected by tort liability as a group, although they would be individually.
236	Martha Pagel	Submits and reviews testimony in support of SB 415.
244	Chair Messerle	Closes public hearing on SB 415.
<u>SB 415 WORK SESSION</u>		
246	Chair Messerle	Opens work session on SB 415.
247	Rep. Kruse	MOTION: Moves SB 415 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. HARPER will lead discussion on the floor.

255	Chair Messerle	Closes work session on SB 415.
257	Chair Messerle	Adjourns meeting at 4:33 p.m.

Submitted By, Reviewed By,

Rebecca M. Scott, Pat Zwick,

Administrative Support Policy Analyst

EXHIBIT SUMMARY

A - SB 133, -2 Amendments dated 05/13/97, Staff, 4 pp.

B - SB 133, Written Testimony, Martha Pagel, 7 pp.

C - HB 3634, -4 Amendments dated 05/12/97, Martha Pagel, 2 pp.

D - SB 1157 A, -2 Amendments dated 05/12/97, Staff, 1 p.

E - SB 1157 A, Written Testimony, Pete Test, 1 p.

F - SB 1157 A, Written Testimony, Martha Pagel, 3 pp.

G - SB 1157 A, -3 Amendments dated 05/13/97, Martha Pagel, 1 p.

H - SB 1157 A, -4 Amendments dated 05/13/97, Martha Pagel, 1 p.

I - SB 464, Written Testimony, Jerry Schmidt, 6 pp.

J - SB 464, Written Testimony, Martha Pagel, 2 pp.

K - SB 415, Written Testimony, Jan Lee, 2 pp.

L - SB 415, Written Testimony, Martha Pagel, 2 pp.