

SENATE COMMITTEE ON WATER AND LAND USE

March 25, 1997 Hearing Room C

8:30 AM Tapes 45 - 46

MEMBERS PRESENT:

Sen. Veral Tarno, Chair

Sen. Bob Kintigh, Vice-Chair

Sen. Ted Ferrioli

Sen. David Nelson

Sen. Thomas Wilde

MEMBER EXCUSED: Sen. Ginny Burdick

Sen. Bill Fisher

STAFF PRESENT:

Mark Volmert, Administrator

Nancy Masee, Administrative Support

MEASURE/ISSUES HEARD:

SB 464 Public Hearing and Work Session

SB 869 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 45, A		
004	Chair Tarno	Opens meeting at 8:45 AM; says SB 461 will not be heard today
014	Chair Tarno	Asks Sen. Burdick if she wishes to vote on SB 395
016016	Sen. Burdick	MOTION: Moves to SUSPEND the rules for the purpose of voting "no" on the March 20, 1997, recommendation of passage of SB 395.
021	Chair Tarno	Asks for any objections, hearing none

	Chair	The motion CARRIES.
031	Chair Tarno	Asks Mark Volmert to give background on SB 869
032	Mark Volmert	Committee Administrator gives background on SB 869
040	Chair Tarno	Opens public hearing on SB 869
<u>SB 869</u> <u>PUBLIC</u> <u>HEARING</u>		
038	Steve Sanders	Assistant Attorney General, Department of Justice, expands background on water rights as pertained to SB 869. It does not grant absolute ownership of water. Limitation on forfeiture is restricted to whether the water is used or not, not whether the water is captured itself. Forfeiture would still apply when an irrigator had not applied water to all of the acres which were entitled to irrigator. (EXHIBIT A)
063	Chair Tarno	Asks Sanders to explain rate and duty
067	Sanders	Explains a water right authorizes a user to divert water from a source at a particular rate. * The amount of water per unit of time is expressed as gallons per minute or cubic feet per second (cfs). * The duty is the total volume of water that a user is entitled to use to accomplish the beneficial use for which they are authorized by the water right. * For irrigation rights a typical rate and duty would be 1/80 of a cfs for each acre irrigated and at a three acre foot duty.
104	Chair Tarno	Asks if submitted opinion is still current
105	Sen. Kintigh	Comments that the bill looks good
111	Sen. Burdick	Comments on flexibility gained by farmer to vary water use depending on the season
114	Chair	Asks for questions
116	Richard Koesan	Water for Life, introduces Todd Heidgerken, and testifies for this bill
137	Koesan	Continues on background of bill as a conservation measure. It is a sound bill and they encourage passage of measure.
	Martha	Director, Water Resources, points out that the bill does not protect against

146	Pagel	forfeiture; (EXHIBIT B)
160	Kintigh	Asks if the five year rule still applies
165	Pagel	<p>Replies that is correct</p> <p>* the second point does not authorize enlargement of a right</p> <p>* the third point is that the ability of original holder to increase the water to full amount; does not carry forward;</p> <p>* looks at transfers with possible injury to water rights holders</p>
182	Chair Tarno	Asks about transfers
184	Sen. Burdick	Asks about less water used by users
187	Chair Tarno	Asks if the 5 year period would apply
193	Pagel	If the user used less than the full amount, the Department would look for injury to other water rights holders. If the user had not historically been using the full amount, the full amount would not be transferred.
200	Chair Tarno	Asks for questions by the committee
205	Pagel	Says they do not oppose this bill. They have implemented this legal advice upon occasion.
244	Gayle Killam	<p>Water Program Director, Oregon Environmental Council (OEC), supports intention to avoid unnecessary irrigation. OEC is concerned on some implications for future use (EXHIBIT C)</p> <p>* encourage water users to apply for more than they need</p> <p>* transfer issue opens door to junior water right being hurt</p> <p>* conserved water statute intention to deal with use or lose concept</p>
260	Chair Tarno	Asks for questions from the committee
290	Sen. Kintigh	Responds there are not many water rights being granted now
294	Sen. Nelson	Comments that the statute of conserved water doesn't work according to ranchers
302	Killam	Responds regarding the complications of conserved water statute
320	Chair Tarno	Asks for questions of committee. Chair says the committee will talk about transfers at a later date.
		<p>Director, Water Watch, opposed to SB 869; reasons are</p> <p>* Use it or lose it principle</p>

335	Jeff Curtis	<ul style="list-style-type: none"> * Affect on junior users and stream flows * Leads to concept that you can transfer an entire water right * Western water law principles not followed by this measure
392	Chair Tarno	Comments this is a weak argument based on transfer issue; believes that the SB 869 is asking for conservation by users
TAPE 46, A		
011	Sen. Ferrioli	Comments that the goal of the measure is conservation and that the conservation principle should be brought forward.
035	Curtis	Says this should be further considered. However, WaterWatch agrees there is benefit. They are concerned about the logic of transferring full paper rights.
044	Sen. Ferrioli	<p>Comments on</p> <ul style="list-style-type: none"> * Allocations going back and forth imposing more conservation methods * Benefits of lowering the threshold of uncertainty
057	Sen. Kintigh	Expresses concern that this is not acceptable to WaterWatch
163	Curtis	Says a question remains about in-stream water rights and how they could be affected.
167	Sen. Kintigh	Watering with lesser amounts is reported to be more efficient with similar results according to reports
084	Sen. Nelson	Comments on Hermiston area's updated watering techniques to save water.
090	Sen. Ferrioli	Asks if this penalizes conservation, use less--have less
093	Chair Tarno	Asks for any more questions
097	Sen. Wilde	Asks if the paper right is used at 50 percent, is the other 50 percent later authorized to water rights
100	Pagel	Before issuing any water rights, water availability is looked at, based on some reduced value of previously issued water right
115	Sen. Wilde	Asks if additional water rights were granted on reduced use; then if a large number increased use, would that injure the rights just granted
123	Pagel	Junior users could be regulated off if there was not enough water to serve all water rights. There is some uncertainty with this approach
128	Tom Paul	Water Resources Department; comments on the Doctrine of Prior Appropriation. As precipitation changes, junior water rights are subject to regulation.
138	Pagel	Use of water availability approach intends to give more certainty to a

		process that says the people farthest down the line don't get water
150	Chair Tarno	Asks for more questions
146	Jan Lee	Oregon Water Resources Congress, strongly supports opinion from the Attorney General's office. The problem is if the full water right is not allowed in changing crops.
180	Lee	Feels that SB 869 does the job. It supports the Attorney General's opinion.
183	Chair Tarno	Closes public hearing. Opens works session
<u>SB 869</u> <u>WORK</u> <u>SESSION</u>		
188	Sen. Kintigh	MOTION: Moves SB 869 to the floor with a DO PASS recommendation.
190	Chair Tarno	Asks for any more discussion; hearing none ask for a vote
		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 2 - Burdick, Fisher
192	Chair Tarno	The motion CARRIES. SEN. NELSON will lead discussion on the floor.
<u>SB 464</u> <u>PUBLIC</u> <u>HEARING</u>		
195	Chair Tarno	Closes work session on SB 869 and opens public hearing on SB 464
200	Volmert	Gives background on SB 464
220	Chair Tarno	Asks if this is an Oregon Realtors Association bill
226	Jerry Schmidt	Oregon Association of Realtors, states this was SB 54 last session. Objections are to SB 464 are stated in governor's veto letter. (EXHIBIT D) * State agency coordination aspect important * Involves people at local level in coordinating those persons affected
275	Schmidt	Comments on page 1, lines 18 & 19, are contentious with Water Resources views
307	Schmidt	Expresses that this is an important property rights issue
318	Chair Tarno	Asks if the concern of governor has been addressed

349	Schmidt	Gives background on the bill last session; believes this session will allow communication with the governor's office more than last session
366	Schmidt	Continues discussion on permitted water uses
TAPE 45, B		
006	Chair Tarno	Comments on individual water systems, and asks for questions from committee.
010	Sen. Nelson	Asks about veto letter premise which states increased use of exempt uses resulting in water shortages
012	Schmidt	Comments on areas that are in land use question outside the urban growth boundary. Says that substantive issues should be dealt with.
040	Chair Tarno	Asks about domestic use limitations on water.
047	Schmidt	Comments on limitations on exempt use.
054	Schmidt	Statutes need to allow flexibility for estimated use
064	Chair Tarno	Asks if in SB 464 domestic gallonage was reduced, would that have an impact
072	Schmidt	Regarding the exempt use statute, the department has figures.
105	Chair Tarno	Asks for any questions of committee
106	Martha Pagel	<p>Director, Water Resources Department, comments that SB 464 is identical to SB 54 last session which was vetoed. Water Resources</p> <ul style="list-style-type: none"> * Strongly oppose this measure now as they did then * The department has no objections to the parts dealing with notice and compliance with state agency coordination * The department strongly objects to the provision that would remove existing authority to regulate exempt uses in the future (EXHIBIT E)
125	Pagel	Removing exempt authority has been objected to since 1955 Oregon law was passed.
165	Pagel	The department has no opposition to two changes but they are strongly opposed to third change of repealing existing authority. Oregon's future water use has to be regulated very carefully in the basin planning programs.
170	Sen. Ferrioli	Asks what is the history of the exempt use, and what does exempt mean.
180	Pagel	<p>Replies regarding exempt ground water uses.</p> <ul style="list-style-type: none"> * Oregon water law says all surface use requires a water right. * Ground water use requires almost all uses obtain a water right. * A person does not have to apply for a water right.

188	Sen. Ferrioli	Comments that exemption is from regulations. Domestic use can exchange gallonage. The department sees SB 464 as an attempt to stop the erosion of the exemption process.
233	Pagel	Comments on current law and says SB 464 takes away authority we already have.
252	Pagel	Clarifies process for adopting a basin plan. It is an administrative rule process requiring public notice and hearings. Basin planning statutes also require public hearings.
278	Chair Tarno	Calls Gayle Killam
279	Gayle Killam	Oregon Environmental Council, expresses concerns of the department from * prohibiting exempt uses in ground water resources, not just household use * other categories including stock watering, irrigation of some uses; numbers of exempt wells * surface water more and more restricted
340	Chair Tarno	Asks for questions, hearing none asks how to address the increasing population need for water
347	Killam	Responds it is a huge problem, storage issues, trucking water; it is a challenge as more people move in
328	Chair Tarno	Asks for any more testimony; this bill will be brought back for further discussion; closes public hearing on SB 464
353	Chair	Adjourns meeting at 10:03 AM

Submitted By, Reviewed By,

Nancy Masee, Mark Volmert,

Administrative Support Administrator

EXHIBIT SUMMARY

A - SB 869, written testimony, Stephen E. A. Sanders, 4 pp

B - SB 869. written testimony, Martha Pagel, 6 pp

C - SB 869, written testimony, Gayle Killam, 1 p

D - SB 464, written testimony, Jerry Schmidt, 2 pp

E - SB 464, written testimony, Martha Pagel, 2 pp
