

SENATE COMMITTEE ON WATER AND LAND USE

March 27, 1997 Hearing Room C

8:30 AM Tapes 47 - 49

**MEMBERS PRESENT:**

Sen. Veral Tarno, Chair

Sen. Bob Kintigh, Vice-Chair

Sen. Ginny Burdick

Sen. Ted Ferrioli

Sen. Bill Fisher

Sen. David Nelson

Sen. Thomas Wilde

**STAFF PRESENT:**

Mark Volmert, Administrator

Nancy Masee, Administrative Support

**MEASURE/ISSUES HEARD:**

SR 3 Public Hearing and Work Session

SB 431 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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 47, A</b>		
003	Chair Tarno	Calls meeting to order at 8:30 AM and opens public hearing on SR 3
<b><u>SR 3 PUBLIC HEARING</u></b>		
006	Sen. Gene Timms	Senator, District 30, gives background on SR 3 pertaining to the Klamath Basin. Discusses the Department of Justice's opinion. At issue is the federal government taking water.
	Chair	

045	Tarno	Asks if SR 3 will help to expedite the process
050	Sen. Timms	Responds that SR 3 will help Congressman Bob Smith's efforts at the federal level
052	Sen. Burdick	Asks what impact SR 3 will have on tribal water rights
053	Sen. Timms	Tribal water rights would still have priority in the adjudication process
060	Sen. Neil Bryant	District 27, addresses the issue of adjudication of federal and tribal water rights according to law, and the Federal Reclamation Act. SR 3 urges congress to affirm Oregon's rights to allocate the water.
082	Chair Tarno	Asks about an amendment that has not been drawn up
087	Sen. Bryant	Responds yes, it will be ready this afternoon
090	Sen. Burdick	Asks what the amendment will do
090	Sen. Bryant	It would set aside funds for the adjudication process
095	Sen. Fisher	Asks if this is going through the House
100	Sen. Timms	Responds, yes, but they wanted it to go out early
108	Sen. Bryant	State water rights affect everyone in Oregon not only the Klamath area.
117	Sen. Burdick	Asks if the purpose is to prohibit inter-basin transfers of water
119	Sen. Bryant	No, but indirectly it affects this and the rights of states to adjudicate their own water rights
120	Sen. Kintigh	Asks if this is a precedent setting resolution then for other basins
126	Sen. Bryant	Responds, yes, and for other states besides Oregon
139	Sen. Timms	Comments on a future constitutional change in regards to water law
145	Sen. Burdick	Comments on water in California, in Los Angeles particularly, and relates this to future intrusion in Oregon
153	Sen. Ferrioli	This is an excellent measure if you support the 10th amendment rights under the U. S. Constitution. Tribal rights for water cannot be upheld until they have been adjudicated.
170	Chair Tarno	Asks if there is an agreement with California
		Comments on California adjudication of their water rights

176	Sen. Bryant	<ul style="list-style-type: none"> <li>* Salmon runs that need more water</li> <li>* How much Oregon water should go into California system</li> <li>* Other complexities</li> </ul>
193	Reed Marbut	Water Resources Department; Supervisor of the adjudication program for the state and Indian tribal water issues. Gives background on adjudication in Klamath area saying this is a very complex adjudication with massive federal claims. Asks that the U. S. government fund the federal claims.
265	Chair Tarno	Asks if asking the federal government to absorb some of the costs, will weaken the resolution.
271	Sen. Kintigh	Comments that there is precedent for the federal government to pay legal costs.
277	Marbut	<p>Comments on all the federal agencies who will make claims, none of which have to pay fees:</p> <ul style="list-style-type: none"> <li>* Bureau of Indian Affairs (BIA),</li> <li>* U. S. Forest Service, Bureau of Land Management,</li> <li>* National Fish &amp; Wildlife Service, Crater Lake National Park, and other bureau claims</li> </ul>
315	Marbut	<p>Estimated Oregon's fees in Klamath Basin would be over a million dollars</p> <ul style="list-style-type: none"> <li>* Wants fees included in resolution</li> <li>* Does not want legal questions raised</li> <li>* Irrigation districts must focus on cooperation in adjudication</li> <li>* Trying to avoid litigation with tribes and irrigators by negotiation</li> <li>* Adjudication of waters diverted in Oregon and administered in California</li> <li>* Cooperation will be much faster and less costly than litigation</li> </ul>
372	Chair Tarno	Asks about water resources amendment
380	Marbut	Asking for federal funding and for Water Resources Department to cover adjudication, and suggests changing tone of language to endear cooperation not invite litigation.
426	Chair Tarno	Asks to have amendments so that bill can be out by next Tuesday
<b>TAPE 48,A</b>		

019	Sen. Wilde	Asks about the language that Mr. Marbut is referring to
023	Marbut	Refers to line 8, page 2, as an example of refocusing
029	Marbut	Comments on the irrigators anger in the basin and that some of the language is somewhat inflammatory
043	Sen. Nelson	Asks how many water rights will be adjudicated
047	Marbut	Responds there are many irrigators and many water districts involved. There could include 25,000 claims, and that does not include any of the massive number of federal claims.
060	Sen. Fisher	Asks about the notices sent out and how many
063	Marbut	Responds he does not know how many, but it will be very costly
092	Jan Lee	<p>Oregon Water Resources Congress, and representing Klamath Water Users Association, relates what SR 3 will do</p> <ul style="list-style-type: none"> <li>* Protection of state water rights</li> <li>* Amendments proposed to request for financing</li> <li>* Changing to more cooperative language would mean Congressman Smith should approve</li> <li>* Klamath basin has 230,000 acres at risk</li> <li>* SR 3 is seen as setting a precedent</li> <li>* Supports SR 3</li> </ul> <p><b>(EXHIBIT A)</b></p>
151	Sen. Kintigh	Asks about the Forest Service's request for water and duplication of water rights with other natural resource agencies
162	Chair Tarno	Asks if anyone else wishes to testify on this issue; closes public hearing on SR 3; work session next Tuesday
172	Chair Tarno	Says SB 392 will be held over and opens public hearing on SB 431
<b><u>SB 431</u></b> <b><u>PUBLIC</u></b> <b><u>HEARING</u></b>		
183	Mark Volmert	Gives background on SB 431
202	Tom Cropper	Portland, Multnomah Activists Solutions, comments on three appeals by property owners in Portland that would be affected by SB 431
300	Sen. Fisher	Comments that the burden of proof should be on the landowners.

307	Tom Cropper	Responds that the neighborhood will be burdened with the cost of appealing
322	Sen. Fisher	Believes they should have the burden of proof
<b>TAPE 47, B</b>		
010	Cropper	Continues on burden of proof
009	Sen. Wilde	Comments on quality of life issues that should be addressed. The right to appeal should be upheld. The bill seems wasteful and asks why we need this bill.
041	Sen. Ferrioli	Comments that the burden of proof is always on the applicant of the appeal. Says expansion of neighborhoods and urban growth is a problem
070	Cropper	Asks who has the right to make the land use changes; speaks for the neighborhood as having these rights
110	Kevin Campbell	The Victory Group Inc, introduces Mike Farthing, Land Use Attorney, and Dave Hunnicutt, Oregonians in Action <ul style="list-style-type: none"> <li>* -2 amendments rectify problem caused by local government</li> <li>* -2 amendments ease the burden on landowners imposed by the land use appeals process <b>(EXHIBIT B)</b></li> </ul>
127	Chair Tarno	Calls committee at ease 9:45 AM to get copies of -2 amendments; reconvenes at 9:50 AM
154	Dave Hunnicutt	Oregonians in Action (OIA) gives an example to clarify issue of bearing the burden of proof. <ul style="list-style-type: none"> <li>* Applicant must meet county's 14 criteria in applying</li> <li>* Then a land use hearing occurs at the county</li> <li>* County can then impose additional comprehensive plan rules at the hearing</li> <li>* Findings of the hearings are summarized</li> <li>* Appealing to Land Use Board of Appeal (LUBA) can result in a</li> <li>* Remand to the county which is further delay and cost;</li> <li>* SB 431 should promote efficiency and ease the burden on land owners <b>(EXHIBIT C)</b></li> </ul>
236	Sen. Burdick	Asks if the applicants have access to the local government attorney
247	Hunnicutt	Responds that it varies by city and county

262	Sen. Burdick	Asks if this is a safeguard when it exists
254	Mike Farthing	<p>Land Use Attorney, Eugene, gives personal background on land use experience</p> <ul style="list-style-type: none"> <li>* Represents applicants who have to go through a land use process</li> <li>* Gives examples of LUBA appeals</li> <li>* Simplest LUBA appeal costs \$5,000</li> <li>* <b>(EXHIBIT D)</b></li> </ul>
<b>TAPE 48, B</b>		
004	Farthing	<p>Continues on issues</p> <ul style="list-style-type: none"> <li>* Supports state-wide land use planning</li> <li>* Speaks to rural population who have to pay large sums in land use cases</li> <li>* Recommends looking at HB 2643 and talks about standing rule</li> <li>* Appellant has to have some effect special to them, over and above the general population</li> </ul>
039	Chair Tarno	Asks for any more questions
040	Charlie Swindells	<p>1000 Friends of Oregon, comments on:</p> <ul style="list-style-type: none"> <li>* SB 431 confuses existing law</li> <li>* Appellant already carries burden of proof</li> <li>* LUBA's procedures</li> </ul>
089	Swindells	Continues presentation on local government's decisions and LUBA's interpretations
109	Swindells	Continues explaining -2 amendments effect. SB 431 adds redundancy and confusion to the present law.
202	Swindells	Continues explaining the process of appealing land use rights.
213	Sen. Ferrioli	Asks if LUBA is in a position to make the a decision. LUBA could only remand or reverse if the applicant proves an issue.
229	Swindells	When you go to LUBA, you are the appellant. The petitioner demonstrates why the decision is not correct. Local interpretation of the law can be appealed to LUBA who decides if the local government decision has basis.
269	Sen. Ferrioli	Asks if LUBA is only making the decision on the weight of the local government's interpretation

310	Swindells	Continues on local government's decisions which may * not adequately address issues if the local law * not be clear on the issue * LUBA's interpretations can have significant impact
376	Sen. Nelson	Asks about changing language on page 4, line 22 of the -2 amendments, would it make a difference if the wording "would have changed the local government" was changed to "could have changed" or "may change"
369	Sen. Wilde	Asks about page 5 of the -2 amendments, is that existing statute; it's existing, I just wanted to make sure
386	Chair Tarno	Asks for any more testimony
<b>TAPE 49, A</b>		
005	Joel Yarbor	Columbia County Commissioner, comments on two cases where LUBA made their own interpretations: * Lincoln County case * Columbia County case * Frivolous appeals in Columbia County are 75 percent frivolous and petty and costly to the county
043	Farthing	Comments on the increasing complexity of land use
079	Chair Tarno	Closes public hearing on SB 431
095	Chair Tarno	Adjourns meeting at 10:42 AM

Submitted By, Reviewed By,

Nancy Masee, Mark Volmert,

Administrative Support Administrator

**EXHIBIT SUMMARY**

**A - SR 3, written testimony, Jan Lee, 27 pp**

**B - SB 431-2, written testimony, Kevin Campbell, 2 pp**

**C - SB 431-2, written testimony, David Hunnicutt, 2 pp**

**D - SB 431-2, written testimony, Michael Farthing, 2 pp**

**E - SB 431-2, amendments, staff, 6 pp**

**F - SB 431-2, written testimony, Charlie Swindells, 4 pp**

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