

HOUSE COMMITTEE ON  
NATURAL RESOURCES  
SUBCOMMITTEE ON ENERGY & ENVIRONMENT

Hearing Room  
Tapes - 47

MEMBERS PRESENT:

Rep. Leslie Lewis, Chair  
Rep. Lisa Naito, Vice-Chair  
Rep. Bill Fisher  
Rep. Dennis Luke  
Rep. Chuck Norris  
Rep. Terry Thompson  
Rep. Judy Uherbelau

MEMBER EXCUSED:

STAFF PRESENT:

Mark Bauer, Committee Administrator  
Sandy Ceballos, Committee Assistant

MEASURES HEARD:           HB 2006 Public Hearing and Work Session  
                              HB 2697 Work Session  
                              HCR6 Public Hearing and Work Session

These minutes contain materials which paraphrase and/or summarize  
statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings,  
please refer to the tapes.

TAPE , SIDE A

005     CHAIR LEWIS: Opens the meeting at 6:35 PM.

008     Opens PUBLIC HEARING on HB 2006

Witnesses:

SPEAKER BEV CLARNO, House District 55  
SENATOR NEIL BRYANT, Senate District 27  
ROBERT MACROSTIE, Gen. Manager, Deschutes Valley Water Dist.  
LAD HENDERSON, Manager, Santiam Water District  
JAN BOETTCHER, Exec. Dir., Oregon Water Resources Congress  
CHUCK SMITH, Dir. Debt Management Division, Dept. of Treasury  
JOHN SAVAGE, Director, Department of Energy

Witnesses Continued:

LARRY GRAY, Oregon Department of Energy

009     SPEAKER CLARNO: Introduces Sen. Bryant and Bob MacRostie.

010     SEN. BRYANT: Speaks in support of HB 2006. Addresses the committee  
regarding the intent of the proposed legislation and briefly discusses the  
amendments which need to be made.

037     SPEAKER CLARNO: If any of the members of the committee have any further  
questions when the public testimony is complete, please call on us and we  
will be happy to answer any questions.

042     REP. LUKE: Asks if these bonds were the result of some of the hydro  
projects.

047     BOB MacRostie, GENERAL MANAGER, DESCHUTES VALLEY WATER DISTRICT:  
Testifies in support of HB 2006 [EXHIBIT A].  
Addresses the issue raised by Rep. Luke regarding where the bonds came  
from.

097     Explains the bond process of Deschutes Valley Water District. Says that  
they felt the bill was a better solution to their problem than litigation.

147     Explains how the provisions of HB 2006 would affect their bond issues,  
and the savings involved.

194     SEN. BRYANT: Summarizes the issues involved in HB 2006.

The injustice is that the bonds are ten year bonds, DOE knew that the districts planned to refinance those bonds at a lower rate. As soon as that date approached, Mr. MacRostie contacted them to confirm the refinancing from 10% to about 6%. DOE had already refunded the bonds without notice to the district; DOE turned around and bought taxable bonds which would cause serious restraints for the use of the dollars generated in the future because of the state tax.

-Discusses the disparity in treatment.

237 SEN. LUKE: Asks Sen. Bryant to explain the dash one amendments.

240 MACROSTIE: Explains the dash one amendments [EXHIBIT B].

260 REP. LUKE: What does this amendment do?

261 MACROSTIE: What it does is it narrows the field. They have only refunded one older bond with a new taxable refunding bond, and that was the

one which we had borrowed from.

-It allows our company to have one years' debt service in reserve, that the

state holds, that is there for us. You apply this to the remaining principle and then we would pay the rest of it off, plus whatever prepayment premium that was in your original bond purchase agreement.

-Explains his companies personal case and what they would owe with the refinancing.

287 SEN. BRYANT: The key is the word "taxable", as far as limiting what we are trying to do.

312 MACROSTIE: Their is a part of the law that states if you refund a tax exempt issue with another tax exempt issue, that you have to pay us a proportion of the savings; to the borrower.

328 SEN. BRYANT: What this allowed DOE to do, rather than share the savings with the borrower, they could internally keep that money.

-That is not equitable to the users of this particular water company.

336 REP. NORRIS: When was the date you first became obligated with this bond?

341 MACROSTIE: We first became obligated on 9-1-85.

342 REP. NORRIS: Didn't I hear you say that these bonds had a ten year term?

344 MACROSTIE: Yes. There are two sets here. The state sold theirs in 1983; and we technically sold our one bond in 1985. We don't have a call date on our bond.

-Explains the payoff obligation to Rep. Norris pursuant to his previous question.

-Responds to Rep. Norris on the element of a taxable and non taxable issue in the bill.

382 REP. FISHER: Your right to call depended upon the first bond?

394 MACROSTIE: We feel we should have participated in it, but we have no right to it. It was the state's bond and they decided to exercise the call

option, and then refunded that bond with another taxable bond.

-Explains the process over again to Rep. Uherbelau.

TAPE 45, A

020 JOHN SAVAGE, ACTING DIRECTOR, OREGON DEPARTMENT OF ENERGY. : Testifies in opposition to HB 2006 [EXHIBIT C].

-Passage of HB 2006, could harm the financial stability of the state's Small-Scale Energy Loan Program.

-Summarizes his written testimony.

070 -Continues to testify on how this bill would negatively impact their funding.

-Responds to Rep. Norris in regard to complaints from the people in the Hood River area; I don't know, Mr. Gray would probably have the answer.

98 LARRY GRAY, OREGON DEPARTMENT OF ENERGY: Responds to Rep. Norris that one of the irrigation districts in Hood River has expressed their concern to us regarding their desire to prepay their loan. As John Savage mentioned, we have had several requests to prepay loans.

116 SAVAGE: Continues to testify regarding contingency borrowing tactics. Mandating the ability of clients to pre-pay their loans would not allow our

program to be self supporting.

131 REP. UHERBELAU: With the amendment what would be the level of prepayment?

135 SAVAGE: As I understand it, there would be 10 borrowers.

140 REP UHERBELAU: What amount of money does that represent for prepayment.

145 GRAY: "On the order of \$11 to \$12 million dollars."

148 REP. UHERBELAU: So less than the \$14 million dollars which you calculated from four potential borrowers, out of 145.

150 GRAY: Yes that is correct.

145 REP. LUKE: How many projects would be continuing in the next 10 years?

153 SAVAGE: Feels they have come to the maximum.

157 REP. LUKE: When you talk about long term stability of this program, you're nearly at the end now.

170 SAVAGE: If we shut down now, we would have to make bond payments through the year 2019.

180 REP. LUKE: So you don't anticipate on selling any more bonds, because you don't anticipate any more projects. You are merely concerned with paying of the bonds which you have already issued.  
-There were two bond sales talked about; the 1993 was a large bond sale.

192 GRAY: The original issue was in 1983, the call date on those bonds was late 1992.  
-The sale was roughly \$14 million dollars which was used primarily to fund the Deschutes Valley project.

199 Discusses the approximate bond rate with Rep. Luke; refinance rate. The cost for the bond sale; typically we add about a 1% spread to our loans.

212 REP. LUKE: You in effect paid off the bonds by refinancing, but did not offer the water company the opportunity to pay down their loan.

222 GRAY: That is correct. You originally asked what we did with the difference in the initial bond rate and the refunding. That difference was to make up for the difference in interest rates. We did not contact the district when we sold the bonds.

251 REP. LUKE: Are there principle payments made on these bonds at all or are they supposed to put that money in reserve and then when the call date comes they pay the bond down? Is there yearly payments or is there one big payment?

253 GRAY: The payments are monthly. The district does maintain reserves which we hold for them in the event of loan losses.

249 REP. FISHER: Why do you have the right to refinance bonds if the district doesn't have the same right?

256 SAVAGE: The right for us to refund bonds, but the inability of the borrower to pre-pay?

261 REP. FISHER: They don't have the same right which you have.

263 GRAY: Because the loan agreement stated they could prepay the loan only with the consent of the loan program. The loan and bond documents do not specify the requirement of the loan program to notify the district or to involve the district in any decision with respect to how the DOE manages its bond funds.

290 REP. FISHER: So you are saying that you have the right to refund and make money off of them and you are "holding them hostage" to make up for any of your fore loans which you have previously made or for other things which may go awry. They are essentially bailing the DOE out with no hope of recourse?

280 SAVAGE: We are in a bind.  
-Explains the prepayment decision making process.

312 REP. FISHER: Why if you had a loan at a high interest rate, and you wanted to get rid of it, why, in turn, the person who was saddled with it beyond you, could not also pay you off, and you would have been free from the whole thing.

329 REP. THOMPSON: Reads from the statement from Bob MacRostie. Asks if they were arrogant in their dealings with them.

348 SAVAGE: We should have contacted them before the refunding took place.

Regardless, I believe that our decision would have been the same.

360 REP. LUKE: The federal government put out funds for people to go out and do hydro projects. Most weren't worth the effort or the time they put into them. The program is a mess. I Can understand how the department is in a predicament. But good projects should not have to pay for bad ones.

393 REP. UHERBELAU: The bottom line is the taxpayer is the one going to have to pay if your program fails. However, there's also the problem about

the Deschutes. I understand from your testimony that before the word taxable was added, you had no way of knowing how many might want to prepay.

Are we setting up a precedent where they are not taxable bonds.

427 SAVAGE: That's a possibility.

TAPE 44, SIDE B

015 REP. NAITO: When did this turn into a "pass through"?

025 GRAY: Mr. MacRostie sees the program as a "pass through" bond program.

Now the program is viewed as it must be as a pooled loan program in which the state takes on the risk that it will not be repaid.

040 SAVAGE: In terms of increasing federal restrictions on the program, Mr. MacRostie is right.

048 REP. NAITO: Asks if there is a comparison with a secondary mortgage lender. Under the terms of their loan they are not allowed to do this.

058 SAVAGE: There is some debate whether it is legal or not legal.

065 REP. LUKE: If Deschutes Valley is allowed to pay off their bond to you, are you allowed then to pay off some bonds or does the money go into a fund because of the maturity date problem?

075 GRAY: How can we find an investment that will have the same return?

083 REP. LUKE: Tries to get a clarification on the difference in the interest rates.

092 GRAY: Your logic is correct.

093 REP. LUKE: You need that cash flow because you have some bad loans.

99 GRAY: Reduced interest rate is a product of the same drop in interest rates.

105 REP. LUKE: For the record, these were bad projects, and many were told not to do them.

110 GRAY: Water conditions at the time when these loans were made have completely changed.

127 REP. THOMPSON: Asks if these projects were based on the average water flow.

130 GRAY: They were based on decades of water flow.

135 REP. FISHER: You put the entire risk of the state on the back of the rate payers on these better loans. Is that not true?

143 GRAY: I would have to take issue with that. They are not obliged to back the project if it fails, the State of Oregon is.

158 REP. FISHER: Feels that what they're dealing with is a state run pyramid scheme.

163 SAVAGE: Yes we have some problems, we wish we could have resolved them.

We came up with this so we would not have to go to the taxpayers.

175 REP. NORRIS: Thinks this goes back to the Northwest Power Act. Is there not some way to pay off this debt short of this bill. There must be a way to work this out.

187 SAVAGE: I go back to when we were looking at this decision. I didn't feel like I could counter, it was yes, or no for the 3 per cent.

200 REP. TARNO: Asks if they thought the proposed amendments would improve their situation.

206 SAVAGE: Says he thinks they can live with it financially.

218 REP. UHERBELAU: Asks if the hang up was the 3 percent?

220 SAVAGE: One was the unknown as to how many dollars we were talking about, and the other "hang up" was the 3 percent.

225 REP. LUKE: What do these amendments do to this biennium's budget.

229 GRAY: There would be a reduced amount in available funds.

236 SAVAGE: Says if they could just get back to normal water flow they feel they would be all right.

239 CHUCK SMITH, DIRECTOR DEBT MANAGEMENT DIVISION, OREGON STATE TREASURY: Reads from written testimony [EXHIBIT D].

-Responds to Rep. Luke as to whether HB 2006 effects any other bonds other than the one's for small scale hydro-projects; responds in the negative.

-Also comments on the possibility of effectiveness from the proposed amendments.

298 JAN BOETTCHER, EXECUTIVE DIRECTOR, OREGON WATER RESOURCES CONGRESS: Represents irrigation districts throughout the state. Hydro projects have 100 years life, so seven bad years is not the life of the project.

373 REP. UHERBELAU: Do you agree that the proposed legislation with the amendments would only effect a few of your members?

378 BOETTCHER: The dash 2 amendments would not effect any of our members.

389 REP. LUKE: You mentioned the weatherization programs they've been trying to get you to do. Asks where the money comes from.

390 BOETTCHER: Responds she is not able to answer that question.

-Responds to Chair Lewis regarding the amendments and the changes in language.

454 LAD HENDERSON, MANAGER OF THE SANTIAM WATER DISTRICT: Gives history of how the hydro project program originated. Staff and cost of the program continues, but they are not interested in funding new programs.

TAPE 45, SIDE B

058 Closes PUBLIC HEARING on HB 2006

Opens WORK SESSION on HB 2006

067 MOTION: REP. LUKE: Moves dash 1 amendments to HB 2006.

VOTE: Hearing no objection the MOTION CARRIES.

077 MOTION: REP. LUKE: Moves HB 2066 to the full committee with a DO PASS recommendation

085 REP. UHERBELAU: Will also move to pass this out to the full committee.

But feels that those not dealing with the taxable issues may well come back.

093 REP. THOMPSON: Says he will vote for this bill as well, but what worries him is that if there had been adequate water there, the commotion on this early pay off discussion may not have been necessary.

104 REP. FISHER: Gets sick and tired of programs that are government, pork barrel, boon doggle plans.

VOTE: 7-0

AYE: Representatives Fisher, Luke, Naito, Norris, Thompson, Uherbelau, and Lewis.

Closes WORK SESSION on HB 2006

Opens PUBLIC HEARING on HCR6

Witnesses:

MIKE GRAINEY, Asst. Director, Oregon Department of Energy

STEVE MYERS, Democratic Party of Oregon, Legislative Standing Committees

108 MIKE GRAINEY, ASSISTANT DIRECTOR, OREGON DEPARTMENT OF ENERGY: Speaks in support HCR6. Introduces written testimony [EXHIBIT E].

240 REP. LUKE: Asks if the fish wouldn't be easier to catch in the Columbia river if they glowed.

249 STEVE MYERS, DEMOCRATIC PARTY OF OREGON LEGISLATIVE COMMITTEE: Speaks in support of HCR6.

278 Closes the PUBLIC HEARING on HCR6

Opens the WORK SESSION on HCR6

Witnesses:

MIKE GRAINEY, Assistant Director , Oregon Department of Energy  
STEVE MYERS, Director, Democratic Party of Oregon, Legislative Standing

Committees

141 MARK BAUER: Explains the desired action in passing this bill.

150 MIKE GRAINEY, ASSISTANT DIRECTOR, OREGON DEPARTMENT OF ENERGY: Provides

a brief background in regard to the Hanford Clean-up [EXHIBIT E].

-Current federal law determines who participates in the actual clean-up process.

-Responds to changes in language to HCR6 with regard to the Tri-Party Agreement.

216 REP. FISHER: On line 15 of the first page; "...whereas the Columbia River...", I think that if we take a look at the geographical map, we will find that it flows by the reservation, not through the reservation.

224 GRAINEY: Rep. Fisher the Hanford nuclear plant is on both sides of the river.

227 REP. NAITO: Is some of the nuclear waste currently leaking into the Columbia River. How close is some of the waste?

232 GRAINEY: There are contaminated trenches within yards of the Columbia River, and also the area called the K-Basin where there is high level fuel near the river that has been known to leak and also the high level waste tanks further inland and have leaked into the ground water.

253 REP. LUKE: If we get a radioactive leak into the Columbia, wouldn't it be easier to find the fish because they would be glowing?

266 STEVE MYERS, VICE CHAIR of the DEMOCRATIC PARTY of OREGON, LEGISLATIVE STANDING COMMITTEE: Our committee is in support of this concurrent resolution.

288 MOTION: REP. NORRIS: Moves Conceptual Amendments to HCR6, on line 6 of page 2 that after the word "agreement", we add "or any successor to".

299 REP. THOMPSON: This is one concurrent resolution that I am going to enjoy voting yes to.

309 REP. NAITO: Says the Hanford issue was the first political issue she got involved with.

It is very important to focus our efforts in regard to the clean-up of this potentially disastrous site.

VOTE: Hearing no objection the MOTION CARRIES.

MOTION: REP. NORRIS: I move HCR6 to the full committee AS AMENDED to the full committee with a DO PASS recommendation.

VOTE: 7-0

AYE: Fisher, Luke, Naito, Norris, Thompson, Uherbelau, and Lewis.

Closes the WORK SESSION on HCR6

Opens the WORK SESSION on HB 2697

Witnesses:

GARY GUSTAFSON, Division of State Lands  
WILLIAM H. HOLMES, Sandy River Property Owners Association

048 WILLIAM H. HOLMES, SANDY RIVER PROPERTY OWNERS ASSOCIATION: States they

have tried to focus on the procedural aspects.

-Placing the questions of navigability in the hands of the State Land Board

and require no assertion regarding navigability unless, either a court of competent jurisdiction has determined the title vested in Oregon, or that certain procedures which had been outlined in the bill had not been followed.

-Introduces conceptual amendments to HB 2697. Explains the affect of the proposed amendments.

110 REP. NAITO: With the direction we intend to take on this bill we may need a fiscal impact statement as well as a subsequent referral.

111 REP. LUKE: What is the objection of the Division to section 8.

114 GARY GUSTAFSON, DIRECTOR, DIVISION OF STATE LANDS: States the division goes to litigation only when they have to.

125 REP. LUKE: Say the challenge doesn't come for a year to year and a half, is there a time limitation?

129 GUSTAFSON: No time limit. The only way to get through a conflict is through the court process.

134 REP. FISHER: Says he can see this will take care of future problems, what about the problems of the past.

140 HOLMES: States there are only two circumstances under which the Division could assert title. One is through the courts and the other is through the administrative process.

152 REP. FISHER: To a certain extent this is a retroactive bill.

157 REP. LUKE: Says the Division has promised to back off the Sandy for now.

164 MOTION: REP. LUKE: Moves the conceptual amendment to HB 2697, suggest section 8 be placed in a separate amendment.

181 GUSTAFSON: Says he didn't get the latest hand engrossed version until noon today. There are a couple of areas which don't track with the intent of the work group. On section 4, sub 1, the very last sentence reads "neither the division nor the board may make any declaration of navigability or claimed interest except in compliance with such rules." The majority of our water way leases and our easements and our licenses that we have in areas that we believe are navigable, exist in areas where there have been no navigability declaration.  
-This language could jeopardize the position we have taken because of the lack of navigability declaration.

213 HOLMES: States that they can be relatively specific about leases and easements, so that it doesn't cause a problem.

219 REP. NORRIS: What would happen if we knocked out the words "or claimed interest"?

226 REP. LUKE: Reads the suggested change again for the record with the exception of the deletion of the words "or claimed interest".

230 GUSTAFSON: Says he thinks that helps but I haven't had time to review this with the Attorney General's Office, to see if this kind of language would absolve us of these problems.

240 REP. NAITO: Is the intent to talk about future claims? Thinks it's just a matter of crafting the language so the navigability issue is clear.

248 REP. FISHER: Makes suggestion as to the change in the wording of the amendment; "neither the division or the board may make any future declaration...." and so on.

253 REP. UHERBELAU: Thinks a legitimate concern has been raised. Would like the Attorney General to see it.

265 REP. LUKE: We might be a little premature here. I thought that they had had some agreement and that they had worked something out after the work group. Evidently the homework has not really been done.

269 REP. NAITO: Perhaps we could have LC do as you have suggested, draft up through section 7 and do the 8 separately.

273 MOTION: REP. LUKE: Restates his motion to move the conceptual amendments to HB 2697 and then section 8 as a separate amendment.

278 GUSTAFSON: Believes that when they left the work session, some things were left undone. Discusses section 4, 2B regarding property owners and any other people who may have an affected interest.

294 REP. NORRIS: Doesn't think there is a restriction to just property owners in the language.

317 REP. LUKE: If they have "other interested parties", and they forget one interested party, is that going to make the Division go through the hearing process again?

312 GUSTAFSON: If they define other interested parties in the

administrative rule process, this definition of the "interested parties" will be sufficient.

326 REP. LUKE: What happens if the "interested parties" are listed in statute and there are groups which are left out?

331 GUSTAFSON: Says this has come up in prior matters and the problems have been taken care of in definition in the administrative rules process.

343 REP. LUKE: To me to notify property owners you do that by mail, to notify others you do that in the paper.

354 REP. UHERBELAU: Does that limit notice to affected property owners.

364 REP. LUKE: It is not a limiting factor here.

376 CHAIR LEWIS: Gives her general impressions on what giving notice means.

400 REP. LUKE: Still would like to move the amendments in concept. Understanding that they are going to be worked on a little bit.

409 REP. NAITO: Doesn't feel comfortable with voting on the amendments yet.

421 REP. LUKE: Withdraws his motion.

425 CHAIR LEWIS: Mr. Bauer will work with Mr. Holmes and Mr. Gustafson to work out the "rough edges" and will be brought back to committee in LC form.

434 CHAIR LEWIS: Mr. Gustafson, in your previous testimony, I thought that you had stated that you were not going to go out and seek navigability very often? Potential cost to the state would not be a great one.

443 GUSTAFSON: States they don't want to have to defend presumptions of navigability.

458 REP. UHERBELAU: Mr. Holmes, on the titles of your clients, did the title company put "subject to the interest of the state", in other words are they on notice under their title insurance policies?

TAPE 47, SIDE A

038 HOLMES: States it depends on when the title policies were issued.

Closes the WORK SESSION on HB 2697

CHAIR LEWIS: ADJOURNS the meeting at 9:03 PM.

Submitted by,

Reviewed by,

Sandy Ceballos,  
Committee Assistant

Mark Bauer  
Committee Administrator

#### EXHIBIT SUMMARY

- A -- Testimony on HB 2006 -- Robert MacRostie -- 3 pages.
- B -- Dash 1 amendments to HB 2006 -- Staff -- 1 page.
- C -- Testimony on HB 2006 -- John Savage -- 2 pages.
- D -- Testimony on HB 2006 -- Chuck Smith -- 2 pages.
- E -- Testimony on HCR6 -- Mike Grainey -- 2 pages.
- F -- Testimony submitted on HCR6 -- Oregon Hanford Waste Board -- 2 pages.
- G -- Testimony submitted on HCR6 -- Frank Gearhart -- 1 page.
- H -- Testimony submitted on HB 2697 -- John McNally -- 2 pages.