

SENATE COMMITTEE ON
WATER & LAND USE

Hearing Room
Tapes 12 - 13

MEMBERS PRESENT:

Sen. Rod Johnson, Chair
Sen. Neil Bryant
Sen. Ron Cease
Sen. Bill Dwyer
Sen. Bob Kintigh, Vice-Chair

STAFF PRESENT:

Karen Quigley, Committee Counsel
Kimberly Shadley, Committee Assistant

MEASURES HEARD:

SB 305 PPW
SB 54 PUB
SB 55 PUB
SB 56 PUB

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 12, SIDE A

CHAIR JOHNSON: Calls the hearing to order. (1:06 p.m.)

WORK SESSION ON SB 305

020 CHAIR JOHNSON: There are significant amendments being made to SB 305; at this point a hearing or work session would be unproductive.

PUBLIC HEARING ON SB 54

Witnesses: Jerry Schmidt, Oregon Association of Realtors
Martha Pagel, Director, Oregon Water Resources Department
Reed Benson, Water Watch

060 JERRY SCHMIDT, OREGON ASSOCIATION OF REALTORS: Submits and summarizes written testimony in support of SB 54, (EXHIBIT A).
(Describes re-classification of water, line five, page two of SB 54.
(There is a notice provision.

SEN. CEASE: Are you suggesting the Commission has made a judgment under one statute and then later reversed it through the other statute?

SCHMIDT: It is with Campbell Ranch and the Water Resources Department; the

court found that they didn't follow procedure and the case was overturned.

157 SEN. DWYER: Define notice for me.

SCHMIDT: I left that open to give the Department some latitude in rule making.

(In SB 56 I got into specifics with the notice; on this one I didn't have the answer as to what adequate notice was.

SEN. DWYER: If you rely on SB 56 you are doing a lot of mailing.

197 SEN. BRYANT: It would be good to leave it to the Department.

CHAIR JOHNSON: The separate concern is who decides who is affected in every case.

SEN. BRYANT: You need to define that word.

SCHMIDT: I agree; LC did define affected area "the area from which the water is to be withdrawn...".

230 CHAIR JOHNSON: I would like you to work on this more.

250 MARTHA PAGEL, DIRECTOR, WATER RESOURCES DEPARTMENT: Submits and summarizes written testimony, (EXHIBIT B).

(Describes actions the agency can take.

(Describes orders and contested cases to clarify for Senator Cease.

SEN. CEASE: What kinds of objections do people have?

PAGEL: One group relates to whether we should be issuing water rights at all and sometimes it is related to fish screens.

(Review is available.

(For out of stream water rights the objections are from those who don't want it issued at all.

(In stream objections are from those who don't like the use.

420 SEN. BRYANT: In the Deschuttas Basin there are blanket objections filed; on most ground water applications Water Watch files a complaint?

PAGEL: Yes.

460 PAGEL: (In response to Sen. Dwyer) This bill deals with rule making we would do to withdraw an area all together.

TAPE 13, SIDE A

040 PAGEL: We aren't talking about takings.

(If you want to use water in this state you must do it according to state law; there are statutory exemptions.

(Describes what the Department would have to do if the bill were law; see Exhibit B.

070 SEN. BRYANT: What is the process now for covering exempt users?

PAGEL: Describes process.

(Our Department maintains a mailing list of anyone who wants to be notified.

SEN. CEASE: How often are we dealing with people who buy property with an

understanding that they will have water?

PAGEL: That does happen; we have an opportunity to put people on notice; it is a growing issue and that is why we would like to make this determination by rule.

145 PAGEL: Describes the Parrett Mountain situation; we withdrew the area from new domestic wells going in and that brought forth a lot of legal questions.

(We can accomplish withdrawal by rule or order.

(The process we used on Parrett Mountain was rule making; continues describing process.

232 REED BENSON, ATTORNEY, WATER WATCH: Testifies in opposition to SB 54 and SB 56.

(We feel rule making, rather than contested cases, is more appropriate.

(Reclassification is the wrong direction to be heading.

PUBLIC HEARING ON SB 56

Witnesses: Jerry Schmidt, Oregon Association of Realtors
Martha Pagel, Director, Water Resources Department
Reed Benson, Water Watch

298 JERRY SCHMIDT, OREGON ASSOCIATION OF REALTORS: Discusses Parrett Mountain situation.

(It is not a wise use of state funds to get involved in land use decisions.

(Submits and summarizes written testimony, see Exhibit A.

427 SCHMIDT: The Department has the tools; the state has the responsibility to monitor the resources and make sure uses are allowed by law.

TAPE 12, SIDE B

040 SCHMIDT: I have an amendment, line 10, see Exhibit A.

SEN. CEASE: You are dealing with the question of authority to withdraw?

SCHMIDT: That is correct.

SEN. DWYER: Page two, section six; if the findings allowed them to make the withdrawal, what do they gain?

(The other thing I see is that withdrawal only lasts two years?

SCHMIDT: That is correct; it is trying to hold everyone accountable to the system.

(It is an attempt to make sure that the Department goes back to reassess.

147 CHAIR JOHNSON: Why do you see the situation on Parrett Mountain as a land use issue as opposed to Water?

SCHMIDT: It was a land use dispute; people were saying that it wasn't an adequate use of the land and they went to LUBA to appeal.

(The effort wasn't to rectify a water problem, but to stop a subdivision.

200 MARTHA PAGEL, DIRECTOR, OREGON WATER RESOURCES DEPARTMENT:
Describes situation at Parrett Mountain and in South Salem.

(Submits and summarizes written testimony, (EXHIBIT C).

SEN. DWYER: There should be a way for Realtors or potential buyers to get lists of conditions; I see this giving a deadline to you in terms of moving

or not and it also is an automatic review process in two years.

(The automatic review requires the basis be the original information and I don't see that doing anyone any good.

PAGEL: The notion of review isn't one the Department would object to.
(The idea of a heightened level of notice isn't one we'd disagree with.
(Mr. Schmidt and I disagree with the intent of ORS 536.410.

340 PAGEL: We strongly recommend that you maintain the rule making action.

SEN. DWYER: What is the average length of time it takes to deliberate these decisions; what hardship does 120 days put on you?

PAGEL: The hardship is that current law requires us to give notice and hold hearings and it requires a certain amount of days; I would recommend that we want to make sure it is enough time to go through the rule making process.

SEN. CEASE: We are going to need to streamline the process without damaging the ability of the Department.

CHAIR JOHNSON: There are two issues, the withdrawal and the process for applications.

415 REED BENSON, WATER WATCH: Testifies in opposition to SB 56.
(We see this as an attempt to make it more difficult to withdraw water basins and this is the opposite direction we think this should go.
(We do think that rule making is the appropriate procedure.

TAPE 13, SIDE B

050 CHAIR JOHNSON: What would the cost difference be between orders and rule making?

PAGEL: The process in this bill would be prohibitive, not from the notice stand point, but there could be a huge cost if any of those people who received that notice then proceeded to request judicial review in the manner described here.

CHAIR JOHNSON: Is there language you can suggest?

PAGEL: Yes; I will get back to you.

PUBLIC HEARING ON SB 55

Witnesses: Jerry Schmidt, Oregon Association of Realtors
Martha Pagel, Director, Water Resources Department

090 JERRY SCHMIDT, OREGON ASSOCIATION OF REALTORS: Testifies in support of SB 55; SB 55 is a re-write of HB 2771 from 1993.
(Submits written testimony, see Exhibit A.
(The intent is to clarify the dispute resolution process.

136 MARTHA PAGEL, DIRECTOR, WATER RESOURCES DEPARTMENT: This is a concept we worked on last session and we do support the concept.
(We would offer amendments on line twenty of the bill, (4); we would suggest that the state enters into an agreement or contract.
(Submits and summarizes written testimony, (EXHIBIT D).

178 SEN. KINTIGH: Does it make much difference, intergovernmental agreements and contracts?

PAGEL: The contracts entered into for the use of this water are at established rates; this would be a rate negotiated by agreement.

210 SEN. DWYER: Will the state be able to sublet the water for drinking?

PAGEL: The rates charged for the use of water is by formula from federal law.

250 PAGEL: Line twenty, delete "Commission" and insert "state"; same line after "contract" add "or agreement".

275 SCHMIDT: Line twenty, the change from commission to state is much clearer; as for adding or inserting or agreement, I'd check with our legal counsel to see what effect it might have.

CHAIR JOHNSON: Please find the difference and bring it to us.

313 REED BENSON, WATER WATCH: We could probably support the bill with the changes in line twenty, suggested by Pagel.

CHAIR JOHNSON: We are adjourned. (2:50 p.m.)
Submitted by, Reviewed by,

Kimberly Shadley	Karen Quigley
Committee Assistant	Committee Counsel

EXHIBIT SUMMARY:

- A - SB 54, 55 & 56: Written testimony submitted by Schmidt, pp 5
- B - SB 54: Written testimony submitted by Pagel, pp 3
- C - SB 56: Written testimony submitted by Pagel, pp 3
- D - SB 55: Written testimony submitted by Pagel, pp 3
- E - SB 54: Preliminary Staff Measure Summary, SMS, submitted by staff, pp 1
- F - SB 55: Preliminary Staff Measure Summary, SMS, submitted by staff, pp 1
- G - SB 56: Preliminary Staff Measure Summary, SMS, submitted by staff, pp 1