

SENATE COMMITTEE ON
WATER & LAND USE

Hearing Room
Tapes - 34

MEMBERS PRESENT:

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

STAFF PRESENT:

Karen Quigley, Committee Counsel
Kimberly Shadley, Committee Assistant
Mitch Hack, Senate Floor Staff

MEASURES HEARD:

SB 494

SB 501

SB 513

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

008 VICE-CHAIR KINTIGH: Calls the hearing to order. (1:08)

PUBLIC HEARING ON SB 494

Witnesses: Gail Achterman, Oregon Water Resources Congress
Jan Boettcher, Oregon Water Resources Congress
Bruce Estes, Professional Land Surveyor and Certified Water Right Examiner
Ladd Henderson, Santiam Water Control District
Martha Pagel, Director, Water Resources Department
Bob Maine, Water Resources Department, Bend Oregon
Todd Hiedgerken, Executive Director, Water for Life
Doug Myers, Water Watch
Reed Benson, Attorney, Water Watch
Kip Lombard

013 GAIL ACHTERMAN, OREGON WATER WATER RESOURCES CONGRESS: Testifies in support.

(Submits written testimony, (EXHIBIT A).

046 ACHTERMAN: The intent here is that the water use would still be reported annually to the Water Resources Department as measured at the point of diversion from the natural stream or reservoir.

(Section three will require anyone who wants to protest a transfer, other than district transfers, would have to file that within thirty days.

095 VICE CHAIR KINTIGH: Is the rate for the district or individual holders?

ACHTERMAN: It is set for the district as a whole under their water rights.

VICE-CHAIR KINTIGH: Could these changes be made annually?

ACHTERMAN: That would be up to the district.

120 SEN. DWYER: Why limit the ability of the public from being able to protest?

(Why are we getting rid of the filing and examination fees on page four?

(Why are we eliminating a penalty for falsifying maps and how that benefits the public?

(Refers to situation in the Umatilla Basin.

ACHTERMAN: In terms of the situation in West Linn, Teal in the Umatilla basin, this bill wouldn't affect that; describes situation.

(This allows irrigation districts to be treated the same as other municipalities in the state.

175 JAN BOETTCHER, OREGON WATER RESOURCES CONGRESS: Testifies in support.

(Potentially one can't participate in the transfer process unless injury can be shown; this wouldn't take away the ability to comment.

(We will propose an amendment on line thirteen and fourteen; we would add "representatives" in case there is an attorney involved.

(In response to Subsection O, page four, line six to nine; both that section and subsection three on line thirty six are part of the existing 3111 process that was adopted in 1989.

(That language is removed because we would no longer have the 3111 process

which is repealed in section six; these sections weren't in our original work, but were added by Legislative Counsel to clear up conflicts in existing statutes.

223 SEN. CEASE: The removal of the word "commission"; what is the intent?

ACHTERMAN: The Oregon Water Resources Congress is proposing that the bulk of the administrative work associated with issuing water rights and administering water rights would be handled by the department and not explicitly by the commission.

SEN. CEASE: Page three; what is the intent of 5?

ACHTERMAN: The holder of an in-stream water right is the Department of Water Resources and if they were concerned that an in-stream water right was going to be adversely affected, or presumably the Department of Fish and Wildlife or DEQ or the Parks and Recreation Department could bring this

potential adverse affect to the attention of the Water Resources Department.

(There is a policy question that the legislature needs to resolve; anyone else who had comments on the proposed transfer and it's potential affects who didn't hold an existing water right wouldn't be able to be a party to a

protest proceeding, but could comment.

ACHTERMAN: Line thirty eight, page two; the newspaper notice isn't required for changes in place of use or changes in the point of diversion that are less than one quarter mile where there are no intervening diversions.

288 SEN. DWYER: Describes danger in the bill.

ACHTERMAN: You need to distinguish between section two of the bill which only relates to the districts ability to shift water to different lands within the district.

(SB 494 only authorizes the District Board of Directors, as opposed to the

Department, to allow shifts in places of use within the existing boundary.

(The change in the point of diversion couldn't be done by the irrigation district.

SEN. BRYANT: Gives history of HB 3111 (1989).

(SB 494 is a different approach; there is no intent that there be an expansion of water rights.

(The limit in protesting only relates to the internal use of the water right, it couldn't affect streams in existence, for example.

SEN. DWYER: I appreciate the history, but I think we're going overboard when trying to take the public out of it.

ACHTERMAN: The purpose we are seeking is addressed by section two of the bill and I want to make sure that we don't confuse the two pieces.

(Section three is a different policy issue.

SEN. CEASE: Section three would cut the protests in half as some of the environmental groups wouldn't be able to protest; is that the intent?

ACHTERMAN: Yes, except for comments.

SEN. CEASE: It would take the public out, remove more than half the protests and say to the public that they have no business being in the process unless they have a direct immediate interest.

482 ACHTERMAN: Oregon doesn't have a public interest test on transfers of water rights; Oregon has a no injury test on transfers of water rights.

TAPE 33, SIDE A

047 BOETTCHER: Testifies in support of SB 494.
(Submits written testimony, (EXHIBIT B).

132 BRUCE ESTES, PROFESSIONAL LAND SURVEYOR AND CERTIFIED WATER RIGHT EXAMINER: Testifies in support.

(Refers to maps hung on the wall for the members to see.

(The biggest concern we had was that the courts didn't allow the same acreage as on the maps.

(Uses overhead projector showing maps, testifying in support.

300 LADD HENDERSON, SANTIAM WATER CONTROL DISTRICT: (In response to Sen. Dwyer) We don't really care, we don't have a real position or love for that portion.

ACHTERMAN: Legislative Counsel felt that should be deleted; OWRC has never proposed that that be deleted.

HENDERSON: Our intent was to give the district a good starting point; to trace water rights was difficult not only for the Department, but the district.

396 SEN. DWYER: Why repeal ORS 541.329?

BOETTCHER: The 3111 process could be completed without that legislation so we didn't feel it was necessary to maintain that statute.

440 MARTHA PAGEL, DIRECTOR, OREGON WATER RESOURCES DEPARTMENT: Submits written testimony, (EXHIBIT C).

(The department understands the desire of districts to move water around; we thought we addressed those concerns a few years back with an expedited process, (2191).

(Our concern with SB 494 is that it seems to go too far or doesn't have the current safeguards.

TAPE 32, SIDE B

040 PAGEL: The measure does make changes in who can protest; we think that the current statute has worked well and don't see any need for that.
(Describes the delay on rule making referred to by Sen. Dwyer.

SEN. BRYANT: How would SB 494 be to the detriment of the district?

080 BOB MAINE, WATER RESOURCES DEPARTMENT, BEND: Describes situation in Deschutes area.

(I could imagine an irrigation district with this power transferring all the water from the low part to the high part, knowing the water would run down, irrigating more land.

(Increased demand on the water source would hurt junior districts that draw from the same water source.

125 SEN. DWYER: Expand the definition of water district?

PAGEL: We think it is intended for certain cooperative districts; LaPine Water Coop.

PAGEL: We would want to work on the language.

SEN. DWYER: I have concerns with extending boundaries.

190 PAGEL: It appears that the intent of the bill is for section two to apply to certificate water rights but as written it would apply to both permits and certificates.

SEN. BRYANT: I've asked Mr. Maine to work on conceptual amendments and we will work on some of the issues Sen. Dwyer has.

252 TODD HIEDGERKEN, EXECUTIVE DIRECTOR, WATER FOR LIFE: Testifies in opposition to SB 494.

(There is potential for injury to water users outside the district.

(The second issue is notification of transfers occurring.

(We would be supportive of the amendments from OWRC with the additional amendment on page two, line eleven, adding "duty".

290 SEN. DWYER: On the notice requirement, how is a person to know when the last appearance in the newspaper ?

SEN. BRYANT: In the notice we say the date of the last publication.

340 DOUG MYERS WATER WATCH: Introduces Benson.

REED BENSON, ATTORNEY, WATER WATCH: Testifies in opposition to SB 494. Submits written testimony, (EXHIBIT D).

(This bill is broader than 3111; describes differences.

TAPE 33, SIDE B

060 SEN. BRYANT: Have you protested any of the three petitions filed under 3111?

BENSON: We can't protest; we have talked with folks in Salem and Bend who have reviewed the petitions for Santiam and LaPine.

085 KIP LOMBARD: Testifies in support.

(This bill doesn't deal with nor allow out of district transfers.

(It is important to set some time frame for transfers.

(We need to provide a process for notice to those water users outside of the district that may be affected by the transfer process.

PUBLIC HEARING ON SB 513

Witnesses: Grace Gantt
Martha Pagel, Director, Oregon Water Resources Department

275 GRACE GANTT: Testifies in support; submits informative materials, (EXHIBIT E).

SEN. DWYER: How did they change the water right from five families to four?

GANTT: We've asked that.

343 MARTHA PAGEL, DIRECTOR, OREGON WATER RESOURCES DEPARTMENT:

(The first situation that came to mind with this bill is the Gantt's problem; I can offer our support for the kind of changes proposed here as they were caught in a difficult situation that resulted in a hardship for them.

(Describes situation.

GANTT: I feel there were a lot of discrepancies; the Water Resources Department says that with a cancellation there is a process to go through and none of that happened.

401 SEN. DWYER: There wasn't a cancellation, they just didn't give all the water that was requested in the permit, only certifying a portion of the water applied for.

GANTT: I went through five appeals for the right to build to find out that our water rights have been taken away?

PAGEL: The affect of the bill is a good one.

CHAIR JOHNSON: We need to change the law; this bill may be the right approach?

TAPE 34, SIDE B

PAGEL: Yes, we may want to do some word smithing.

050 CHAIR JOHNSON: I will close the hearing and ask you each to stay after the hearing to talk about this.

(We are adjourned. (3:01 p.m.)

Submitted by, Reviewed by,

Kimberly Shadley Karen Quigley
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

A - SB 494: Written testimony in support submitted by Achterman, pp 4
B - SB 494: Written testimony in support submitted by Boettcher, pp 3
C - SB 494: Written testimony submitted by Pagel, pp 4
D - SB 494: Written testimony in opposition submitted by Benson, pp 4
E - SB 494: Informative material submitted by Gantt, pp 7