

SENATE COMMITTEE ON  
WATER & LAND USE

Hearing Room  
Tapes - 44

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:

LC 2224  
LC 2295  
LC 2650  
LC 2854  
LC 3703

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

CHAIR JOHNSON: Calls the hearing to order. (1:35 p.m.)

WORK SESSION FOR THE PURPOSES OF INTRODUCING COMMITTEE BILLS

020 KAREN QUIGLEY, COMMITTEE COUNCIL: Describes LC 2295; 2854, 2650, 3703, See (EXHIBIT A).

036 SEN. CEASE: Who are the authors of these bills?

CHAIR JOHNSON: LC 2295 is at the request of the Wheat Growers, LC 2854 is at the request of PP & L.

CHAIR JOHNSON: LC 3703 is at the request of Umpqua Basin Water; describes problem.

LC 2650 is at the request of the Farm Bureau.

100 SEN. CEASE MOVES INTRODUCTION OF LC 2295, 2854, 2650 and 3703.

110 VOTE: HEARING NO OBJECTION THE MOTION CARRIES.

INFORMATIONAL HEARING ON LC 2224 (SB 674)

Witnesses: Martha Pagel, Director, Water Resources Department  
Rick Bastash, Water Resources Department  
Steve Applegate, Water Resources Department

130 MARTHA PAGEL, DIRECTOR, WATER RESOURCES DEPARTMENT: This is not a department bill; this bill was introduced at the request of the Oregon Water Resources Congress, (OWRC).

( We will describe the current process and the changes we have been working

on.

SEN. KINTIGH: Are the changes you'd like to see incorporated in this draft?

150 PAGEL: Many of them are, but there are points of difference.

SEN. CEASE: You are working with the congress on this bill?

PAGEL: We have been working with them; we are hoping to work through this bill.

180 RICK BASTASH, WATER RESOURCES DEPARTMENT: Uses overhead projector to describe the current process for water rights applications.

250 CHAIR JOHNSON: What is the standard for review of protest?

BASTASH: That is at the discretion of the Commission.

SEN. CEASE: There is concern with passing those protests on to the Commission; in this proposal there are suggestions of changing the role of the Commission?

BASTASH: Yes; the three areas of comment opportunity.

300 SEN. DWYER: I wish you would show where you folks differ; the priority date is set whether the application is complete or not?

PAGEL: Under the current process a person can file an application that is incomplete, but can get the priority date; this proposal changes that.

CHAIR JOHNSON: Of the 5000 permits held up, where on this chart are the held up; is there a problem area?

365 STEVE APPLGATE, WATER RESOURCES DEPARTMENT: We have concentrated on the technical review, as of January 1 we had 2500 applications with standing objections.

600 or so went through without objection and are issuing permits or denials on those.

PAGEL: (In response to Sen. Dwyer) This is the issue being considered in the Ways and Means committee; we have too few staff and the process has a lot of opportunity for things to stall out.

BASTASH: Continues with current process on overhead projector.

470 BASTASH: Describes their recommendations for new process.

TAPE 44, SIDE A

SEN. DWYER: What does it cost the Department to do the first tier review?

PAGEL : We think \$50.

055 BASTASH: Describing staff two, making the Division.  
( Describes Water Rights Application Proposal draft dated March 2, 1995; uses overhead.

105 CHAIR JOHNSON: Are you going to have fairly objective language with quantifiable standards?

BASTASH: Yes.  
( The time the public is notified is different here than in LC 2224.  
( Describes their proposal.

SEN. DWYER: Why do only two members get to make the contested case decision?

BASTASH: The Commission made that decision.

SEN. DWYER: How can you force a contested case?

BASTASH: If you are an applicant you can.

208 PAGEL: The contested case model will be reserved for those cases that really present disputed facts or major policy issues and are hoping not to schedule that in most cases.

SEN. DWYER: Alternative dispute process for those who aren't applicants?

PAGEL: The current process provides for it and it has turned out to be a "black hole" without timelines.

240 BASTASH: Continues with overhead, describing proposed process.

SEN. DWYER: The Circuit Court process is open to who?

BASTASH: In terms of Circuit Court standing, anyone can try to get in.

PAGEL: Under the LC draft even a commentor could be granted standing in the Circuit Court.

325 SEN. BRYANT: Clarifies that two commissioners can call for a contested case.

( I have trouble with any two being able to do that.

SEN. KINTIGH: The Director can send any case there?

BASTASH: Yes.

( We think we could impose a 45 day deadline on ourselves for the contested case.

380 BASTASH: Continues describing differences between Water Resources proposal and LC 2224.

470 GAIL ACHTERMAN, WATER RESOURCES CONGRESS: Testifies in support of LC 2224; submits written testimony, (EXHIBIT D).

TAPE 43, SIDE B

ACHTERMAN: The current division 11 process needs to be changed to get speedier reactions.

( The Director, Department staff and Legislative Counsel have all worked with OWRC.

( The fundamental concepts are ones we all agree on.

090 ACHTERMAN: The public notice is fine if the Department wants, but we see no reason to put that in statute; our draft only requires public notice

at the time of the draft order.

( The most significant difference is with the contested case.

ACHTERMAN: (In response to Sen. Dwyer) This approach is the standard under the Oregon Administrative Procedures Act.

( The significant difference is we strongly believe the decision for a contested case should be limited to the director or the applicant.

175 ACHTERMAN: I missed one thing in the draft, we need a minor modification in the language; we will need an amendment to fix this.

200 JAN BOETTCHER, WATER RESOURCES CONGRESS: One other error is that we intended there be no objection fee paid by the applicant and that didn't come across.

ACHTERMAN: Basin Plan comment.

ACHTERMAN: We put 120 days in not knowing realistically how long it would take; we need to work with the Department on that.

290 CHAIR JOHNSON: As you bring this to us, it should include overrides, retroactively and that we should be as specific as necessary.

Submitted by,

Reviewed by,

Kimberly Shadley  
Committee Assistant

Karen Quigley  
Committee Counsel

EXHIBIT SUMMARY:

- A - LC 2295, 2650, 2854, 3703 & 2224 submitted by staff, pp 8
- B - LC 2224: Informative material submitted by staff, pp 35
- C - LC 2245: Written testimony submitted by Pagel, pp 4
- D - LC 2224: Written testimony submitted by Achterman, pp 7