

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

May 27, 1993           Hearing Room D 1:00 p.m.   Tapes 103 - 106

MEMBERS PRESENT:           Rep. Chuck Norris, Chair Rep. Ray Baum Rep.  
Carl Hosticka Rep. Tim Josi Rep. Bill Markham Rep. Nancy Peterson Rep.  
Bob Repine Rep. Liz VanLeeuwen

STAFF PRESENT:            Catherine Fitch, Committee Administrator Sue  
Nichol, Committee Clerk

MEASURES CONSIDERED:            HB 3358 - Public Hearing and Work  
Session HB 3357 - Public Hearing and Work Session SB 1010 - Work Session  
HB 2970 - Public Hearing

WITNESSES:                Bill Penhollow, Association of Oregon Counties  
Dan Bolt, Wasco County Public Works Joe Strahl, Jackson County Martha  
Pagel, Department of Water Resources Reed Marbut, Department of Water  
Resources Doug Myers, Water Watch Kip Lombard, Oregon Water Resources  
Congress Steve Applegate, Department of Water Resources Doug Heiken,  
Water Watch Clinton Reeder, Oregon Wheat Growers League

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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. [--- Unable To Translate  
Graphic ---]

TAPE 103, SIDE A

005    CHAIR NORRIS:  Calls the meeting to order at 1:12.

PUBLIC HEARING ON HB 2970

016    CATHERINE FITCH:  HB 2970 as amended allows public agencies to  
register a water use for road maintenance and construction in lieu of  
securing a water right permit (Exhibit A). Amendments have been  
submitted (Exhibit B).

020    BILL PENHOLLOW, Association of Oregon Counties:  Reads  
testimony in support of HB 2970, as amended (Exhibit C).

113    DAN BOLT, Wasco County Public Works:  Reads testimony in support  
of HB 2970 as water is needed for gravel road maintenance (Exhibit D).

167    REP. JOSI:  Would the registration have to be renewed every year?

172    PENHOLLOW:  The application would be made once. The Water  
Resources Department could restrict the water use after annual  
review, if

necessary.

184 REP. JOSI: Where does it say that it will be a one-time permit?

190 PENHOLLOW: We presumed that the registration would continue as long as the Department didn't rescind it.

205 JOE STRAHL, Jackson County: Testifies in favor of HB 2970, as amended. This problem has affected Jackson County for a number of years. We have been using a limited license for a number of years. The limited

licenses do work, but they were not created to deal with road maintenance.

269 The amount of water that we use is minor.

274 REP. PETERSON: What is the water used for?

277 STRAHL: In order to knit the gravel together, you need the water to react with the soil. If water is used the first time, it will last a

long time.

294 Our water use is about 10 million gallons per year.

300 REP. PETERSON: How was the \$500 fee estimated?

304 PENHOLLOW: We worked that out with the Department.

314 CHAIR NORRIS: Would the \$500 apply for all the locations throughout the county?

318 PENHOLLOW: Yes.

355 REP. MARKHAM: Did you have to draw up a special map, or did you use the county map?

363 STRAHL: We used a county map.

377 REP. JOSI: How would your registration affect instream water right priority? 390 PENHOLLOW: I believe our registration is subordinate to all other uses.

400 REP. JOSI: You may have built some problems in that you can't solve?

405 PENHOLLOW: I'm not sure how that will affect us.

TAPE 104, SIDE A

012 PENHOLLOW: This was the language as we had initially drafted it, "the use of water registered under this section shall not have priority over water right exercised according to a permit or certificate and shall be subordinate to all future permitted uses."

025 REP. VanLEEUEWEN: Will they get the water they need?

049 MARTHA PAGEL, Department of Water Resources: We have talked with the counties about this problem. We are aware that the current system

doesn't meet their needs. We have concerns about the language of the bill. We are concerned about establishing a new water interest and a new fee. We would like to deal with the problem within the existing structure.

076 REP. JOSI: How can you handle a renewal process with your current workload?

086 PAGEL: Yes, that does create a problem. This water use does need to be tracked and monitored.

100 CHAIR NORRIS: Is there any possibility of a fix under current law?

104 REED MARBUT, Department of Water Resources: It is probably not possible under existing law, except under a limited license.

124 CHAIR NORRIS: I'm concerned that any solution won't be worked through the system.

129 PAGEL: I think we can get this worked out quickly.

175 REP. PETERSON: Is there a way to work out the problems with the limited license for this purpose?

194 MARBUT: The limited license presents certain problems in this type of use. The limited license is site specific.

220 REP. JOSI: Would you consider how this will impact instream water rights?

228 MARBUT: This would have no effect on any water right. Even if an instream water right was filed in the future, it would still be superior to this use.

234 REP. JOSI: I'm concerned that there are applications for instream water rights that exceed what is actually there. That would preclude any

other use. That would shut the counties down.

242 MARBUT: That's correct.

248 REP. JOSI: Can we fix that in this bill?

250 MARBUT: I haven't thought that through.

252 CHAIR NORRIS: I think the counties realize they would be the last priority. What if we passed this bill with a two-year sunset?

258 PAGEL: It would give us a chance to see how it works, and you a chance to renew it.

311 DOUG MYERS, Water Watch: Reads a list of groups who are against these amendments. These amendments should have been considered in HB 2153.

324 Jackson County has been using a limited license for years. There needs to be a more deliberate look at it.

362 KIP LOMBARD, Oregon Water Resources Congress: The provision in the draft that alludes to the public agency withdrawing water from a

conveyance or storage facility should include a provision that they have permission from the owners of the facilities or conveyances. This will

not have any significant adverse impact on instream water rights.

400 CHAIR NORRIS: Closes public hearing on HB 2970.

TAPE 103, SIDE B

PUBLIC HEARING ON HB 3358

013 FITCH: HB 3358 would allow irrigation districts to transfer perfected water rights and to have the supplemental use permits travel with them. Amendments have been suggested from Oregon Water Resources Congress.

022 KIP LOMBARD, Oregon Water Resources Congress: Explains proposed amendments (Exhibit E). The amendments amend the definitions of primary and supplemental water rights. The new section 2 addresses the

Hermiston/Umatilla problem as a transfer problem.

074 REP. MARKHAM: What do lines 24 through 27 do?

081 LOMBARD: We felt it would be beneficial to put these definitions in.

101 STEVE APPELEGATE, Department of Water Resources: We are supportive of HB 3358, as amended.

111 CHAIR NORRIS: I have concerns that this will adversely affect the basaltic wells.

120 APPELEGATE: I would not foresee any adverse impact. 126 DOUG HEIKEN, Water Watch: Reads testimony in opposition to HB 335 8. Suggests amendments to require that the transfer applicant provide proof of beneficial use of the supplemental water permit before it can be transferred (Exhibit F).

213 This isn't related to the conservation statute.

227 CHAIR NORRIS: Closes public hearing on HB 3358.

PUBLIC HEARING ON HB 3357

230 FITCH: HB 3357 addresses the interest of parties in having land that is not described in a water right permit actually being included in that

permit, once the permit is certificated.

280 LOMBARD: Submits amendments (Exhibit G).

281 CHAIR NORRIS: Would this apply only to surface water and only to districts?

282 LOMBARD: It applies only to districts. There is no distinction between surface water and groundwater.

320 REP. MARKHAM: Is the measure summary what it really does?

322 LOMBARD: Yes.

342 CHAIR NORRIS: You will be doing this without enlarging the total number of acres or without enlarging the amount of water?

345 LOMBARD: Correct, without increasing the rate, duty, or total number of acres authorized under the permit.

376 REP. MARKHAM: How do you do that without increasing the acreage?

381 LOMBARD: Explains how this would be done.

384 Gives detailed explanation of amendments.

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041 REP. JOSI: All these things are just for consideration, but it doesn't necessarily mean that they rule for or against it?

048 LOMBARD: Correct.

050 Continues explanation of amendments.

139 REP. JOSI: The statement of findings would be used as a tool?

145 LOMBARD: Yes. It would be used if we wanted to appeal.

210 PAGEL: We offer general support of the amendments. We haven't had time to review them. We do have some specific concerns that are, as yet,

unresolved.

257 We would add a subsection K which would relate to whether or not the water is being used efficiently and without waste.

266 This bill was submitted because the current system forces us to go to litigation when a person has a complaint about how their final

certificates are issued.

298 REP. HOSTICKA: How far back are some of these representations alleged to have been made?

304 APPLGATE: Some may be as far back as 1909.

327 CHAIR NORRIS: Asks if the Congress can support these amendments.

338 PAGEL: Restates amendments. On line 17, insert "for instream values." And then add subsection K which would add a provision whether the water is being applied efficiently without waste.

360 HEIKEN: Summarizes testimony in opposition to HB 3357 and submits amendments (Exhibit H).

TAPE 105, SIDE A

059 Illustrates the problem by explaining preliminary final proof survey maps.

086 REP. JOSI: What you're trying to imply that they've done something totally different than what the original application stated. In

testimony, we've heard that they often got a verbal approval of these changes.

095 HEIKEN: This is a pattern of water use that doesn't conform. This is an enforcement problem.

133 REP. HOSTICKA: How long will this controversy go on?

137 LOMBARD: This issue just came up.

145 CHAIR NORRIS: Closes public hearing on HB 3357.

WORK SESSION ON SB 1010

150 FITCH: SB 1010 gives the Department of Agriculture authority to plan and implement agricultural water quality management plans.

Coincidentally, HB 3620 had recommended that the Soil and Water Conservation Districts play a role in that.

183 PHIL WARD, Department of Agriculture: Submits amendments that reflect a more defined role for the Soil and Water Conservation Districts relating to these water quality plans (Exhibit I).

220 REP. MARKHAM: What are the programs that will be implemented?

222 WARD: The non-point source water quality control programs relative to agriculture.

248 CHAIR NORRIS: What is your finding regarding the argument that DEQ didn't even have to do this?

255 WARD: This has clearly been established that DEQ has the authority to do. The Attorney General outlines DEQ's legal authority to do this

(Exhibit J). Under federal clean water law, in water quality limited basins, when total maximum daily loads are established, then DEQ is required to see that an enforceable plan to address those pollutants is implemented. This bill allows the Department of Agriculture to fulfill that requirement.

274 REP. MARKHAM: Who proposed the heavy fines on page 30?

275 WARD: They were part of the original portion of the bill. They have been modified to conform to some of the concerns of the agriculture

industry.

291 REP. MARKHAM: Are you concerned that people can buy off the fine and then go ahead and pollute?

295 WARD: I think there is ability to take care of the problem so people won't be motivated to go ahead and pollute.

300 REP. MARKHAM: Can you charge them with criminal penalties?

310 WARD: No, but DEQ would have that authority.

315 CHAIR NORRIS: What would you consider to be reasonable attempts to notify the landowner and how much of a potential invasion of private

property are we looking at?

328 WARD: Currently when we investigate concerning the confined animal feeding program, the first thing we do is to attempt to contact the

person that is operating the dairy. We never go forward on a person's property if they have denied us access. Existing law says DEQ has the authority to enter upon and inspect any public or private property for the purpose of investigating either an actual or suspected source of water or air pollution.

366 REP. MARKHAM: What if someone says you can't enter their property, do you get the sheriff?

374 WARD: Yes.

377 REP. PETERSON: Does that mean the Department of Agriculture can tell the individual to change their agricultural practices? 390 WARD: It's not our intent to tell people how to farm. There may be an instance where we have to recommend that someone has to get enough holding facility for wastewater. Landowners may appeal.

TAPE 106, SIDE A

020 CLINTON REEDER, Oregon Wheat Growers League: Submits amendment which would allow the fine revenues from this program to be appropriated to

the Department for use in educational programs (Exhibit K).

042 REP. MARKHAM: Do you envision the Department of Agriculture running this water quality management demonstration project?

048 REEDER: It seems that there's leeway in there to work with the extension service or commodity groups and foster an educational program that might involve any interested parties.

050 REP. MARKHAM: Are you satisfied with the fines?

051 REEDER: The industry feels water quality needs to be given serious attention.

067 WARD: We'd be willing to work with local entities to implement these educational programs.

072 MOTION: REP. JOSI: Moves the -A6 AMENDMENTS to SB 1010.

073 CHAIR NORRIS: Restates motion.

074 VOTE: CHAIR NORRIS: Hearing no objections, the AMENDMENTS are ADOPTED.

075 MOTION: REP. JOSI: Moves the hand-engrossed amendments to SB 101 0.

080 CHAIR NORRIS: Repeats motion.

082 VOTE: CHAIR NORRIS: Hearing no objections, the AMENDMENTS are ADOPTED.

085 MOTION: REP. JOSI: Moves SB 1010, AS AMENDED, to the full committee with a DO PASS recommendation.

088 CHAIR NORRIS: Restates motion.

089 VOTE: On a roll call vote, all members are present and vote AYE.

095 CHAIR NORRIS: Closes work session on SB 1010.

WORK SESSION ON HB 3358

100 MOTION: REP. JOSI: Moves the hand engrossed amendment for HB 335 8 dated 5/24/93 by Oregon Water Resources Congress. 108 CHAIR NORRIS: Restates motion.

109 VOTE: CHAIR NORRIS: Hearing no objections, the AMENDMENTS are ADOPTED.

112 MOTION: REP. JOSI: Moves HB 3358, AS AMENDED, to the full committee with a DO PASS recommendation.

113 CHAIR NORRIS: Restates motion.



115 VOTE: On a roll call vote, all members are present and vote  
AYE.

119 CHAIR NORRIS: The motion CARRIES.

120 Closes work session on HB 3258.

WORK SESSION ON HB 3357

127 LOMBARD: He has reached an agreement with Water Resources  
Department; on page 3, line 17, after the phrase "water rights" insert  
"or instream values." We will not insert the Department's recommended  
subparagraph

"K." The matter of water use efficiency will be brought up in rule  
making. Our concern was that if an alternate land had been included in  
1940, it may not be, under today's standards, using the water most  
efficiently. More recent projects already address the issue of  
efficiency.

150 The Department wants to reserve the right to fine tune over  
in the Senate.

159 MOTION: REP. JOSI: Moves amendment to the hand engrossed  
version of HB 3357, dated 5/27/93, on page 1, line 17, insert  
"legally

established" between the words "the" and "boundaries."

165 CHAIR NORRIS: Restates motion.

166 VOTE: CHAIR NORRIS: Hearing no objection, the AMENDMENTS  
are ADOPTED.

170 MOTION: REP. JOSI: Moves amendment to the hand engrossed  
version of HB 3357; on page 3, line 17, insert "or instream values"  
before

"rights" and "significant."

178 CHAIR NORRIS: Restates motion.

179 VOTE: CHAIR NORRIS: Hearing no objection, the AMENDMENTS are  
ADOPTED.

190 MOTION: REP. JOSI: Moves the hand engrossed version of HB  
3357, as amended, to the full committee with a DO PASS recommendation.

197 CHAIR NORRIS: Restates motion.

190 REP. PETERSON: I may be voting no on this but may vote yes in  
full committee. I have some people I need to talk with. Some issues came  
up

that I am concerned about.

195 REP. HOSTICKA: I may vote no because I don't think this will solve the issue. It sounds like we have a number of these problems scattered

around the state. We're just now becoming aware of the problems. There are other ways that people can seek relief and coming to change the law in order to conform it to practice is a long complicated situation. I don't know if that's good policy if people have other ways to pursue resolution to these problems.

215 VOTE: On a roll call vote, REPS. JOSI, MARKHAM, REPINE, VanLEEuwEN and CHAIR NORRIS vote AYE. REPS. HOSTICKA and PETERSON vote NAY.

REP. BAUM is EXCUSED. 220 CHAIR NORRIS: The motion CARRIES.

223 Work session on HB 3357 is closed.

Meeting adjourned at 3:45.

Also submitted for the record: - Letter from Oregon Wheat Growers League, Oregonians for Food and Shelter, Oregon Water Resources Congress, Oregon Farm Bureau, Oregon

Seed Council, Oregon Dairy Farmers Association, and Oregon Association of Nurserymen in support of SB 1010 (Exhibit L).

Submitted by:

Reviewed by:

Sue Nichol  
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 2970 - Preliminary Staff Measure Summary - Staff - 1  
page B - HB 2970 - Proposed HB 2970-1 amendments - Staff - 2  
pages C - HB 2970 - Testimony - Bill Penhollow - 5 pages D  
- HB 2970 - Testimony - Dan Bolt - 3 pages E - HB 3358 -  
Testimony - Kip Lombard - 8 pages F - HB 3358 - Testimony -  
Doug Heiken - 7 pages G - HB 3357 - Testimony - Kip Lombard -  
10 pages H - HB 3357 - Testimony - Doug Heiken - 9 pages I  
- SB 1010 - Hand engrossed amendments - Phil Ward - 4 pages J  
- SB 1010 - Information - Phil Ward - 2 pages K - SB 1010 -  
Proposed SB 1010-A6 amendments - Clinton Reeder - 1 page L -  
SB 1010 - Testimony - Oregon Wheat Growers League - 1 page