

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

February 16, 1993 Hearing Room D 1:00 p.m. Tapes 22 - 23

MEMBERS PRESENT: Rep. Chuck Norris, Chair Rep. Ray Baum Rep. Tim Josi
Rep. Nancy Peterson Rep. Bob Repine

MEMBER EXCUSED: Rep. Hosticka Rep. Markham Rep. VanLeeuwen

STAFF PRESENT: Catherine Fitch, Committee Administrator Pat
Zwick, Committee Coordinator

MEASURES CONSIDERED: HB 2341 - Public Hearing HB 2344 - Public
Hearing HB 2505 - Public Hearing

WITNESSES: Jan Boettcher, Oregon Water Resources Congress
Mark Madison, CH2M Hill Jerry Butler, NORPAC Foods Jim Myron, Water
Watch Martha Pagel, Director, Water Resources Department Bev Hayes,
Water Resources Department Larry Trosi, Oregon Farm Bureau Louise
Bilheimer, Oregon Rivers Council Liz Frenkel, Sierra Club

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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 22, SIDE A

005 CHAIR NORRIS: Calls the meeting to order at 1:07 p.m.
as a subcommittee.

Opens public hearing on HB 2341.

PUBLIC HEARING HB 2341

016 CATHERINE FITCH, COMMITTEE ADMINISTRATOR: Reviews provisions of HB
234 1 from preliminary staff measure summary (EXHIBIT A). 034 CHAIR
NORRIS: Announces that SWMG meeting will begin at 2:00 p.m.

038 JAN BOETTCHER, OREGON WATER RESOURCES CONGRESS: Testifies in
support of HB 2341 paraphrasing (EXHIBIT B).

085 CHAIR NORRIS: Announces a quorum present at 1:13 p.m.

086 BOETTCHER: Continues her testimony from (EXHIBIT B).

110 REP. MARKHAM: Asks for explanation of present law.

118 MARK MADISON, CH2M HILL: Explains process, using chalk board
drawing.

Supports HB 2341 because it extends to industrial users an option that

municipalities currently have.

200 JERRY BUTLER, NORPAC FOODS: Testifies in support of HB 2341.

Explains how his company became involved in the wastewater reuse program.

235 REP. MARKHAM: Do we need to grandfather in farmers you are concerned might lose their water rights?

240 BUTLER: Would appreciate that.

245 CHAIR NORRIS: Has NORPAC been involved in the program that makes sure that only aganomic nitrogen reaches the land?

268 BUTLER: NORPAC did have to make a payment to a farmer in the past for high nitrogen levels. DEQ now gives us the plans we are to operate

under when we are spray irrigating.

290 JIM MYRON, WATER WATCH: Reads written testimony expressing concerns with HB 2341, opposing the expansion to allow use of reclaimed water

from industrial facilities, and urging the legislature to revisit the existing statute to remedy existing defects in the notice and public involvement provisions (EXHIBIT C).

380 REP. PETERSON: Is there evidence that farmers are using reclaimed water in addition to their water right?

400 MYRON: There is no guarantee that the water right holder would leave his original water instream.

We have very little past history to guide us on this issue. Additional water in the past has tended to expand operations to additional land.

We would like a guarantee that when a user is using recycled water he is leaving his original water instream. TAPE 23, SIDE A

CHAIR NORRIS: Cites reclaimed water experiences in his district.

045 MARTHA PAGEL, WATER RESOURCES DEPARTMENT DIRECTOR: Summarizes written testimony in general support of HB 2341, and requesting the opportunity to work with the sponsors of the bill to prepare amendments to clarify

the bill (EXHIBIT D).

080 REP. PETERSON: Asks Pagel to respond to Rep. Josi's earlier question concerning the effect of the forfeiture provisions.

081 PAGEL: Reviews forfeiture provisions of the law.

090 REP. MARKHAM: Is annual certification of water use required?

095 PAGEL: No. We rely on complaints from other property owners and observations by watermasters.

105 REP. MARKHAM: Do people file certification every year to prevent challenges that they are not using their water?

107 PAGEL: Unable to answer.

110 REP. MARKHAM: What is the 80% availability rule?

112 PAGEL: Under an allocation policy adopted by the commission last Summer, a process is set up to determine whether a stream or water

source has already been over-appropriated. This is used as we consider new applications for new uses. Data showing average flows, existing water rights and amount of use is used to determine whether there is enough water available at least 80 percent of the time to serve the new application. If water is not available 80 percent of the time, it would be determined that the stream is already over-appropriated, and the recommendation would be to deny the permit.

Applicant would then have the opportunity to demonstrate whether there was a high public interest in issuing that water right and show that it could be conditioned to protect the instream.

135 CHAIR NORRIS: Would a farmer be held to no more water than the original amount of his basic permit even if he used recycled water?

145 BEV HAYES, WATER RESOURCES DEPARTMENT: Not sure of the answer. Believe he would apply for a secondary water right which would reflect the

amount of water needed to put the land to beneficial use.

170 CHAIR NORRIS: Asks Jan Boettcher and Martha Pagel or her designee to work on HB 2341 to refine the provisions and include other interested

parties in the discussion.

188 LARRY TROSI, OREGON FARM BUREAU: Expresses interest in being involved in the work group on HB 2341.

198 CHAIR NORRIS: Closes public hearing on HB 2341.

Opens public hearing on HB 2344.

PUBLIC HEARING HB 2344

225 FITCH: Reviews provisions of HB 2344.

250 MARTHA PAGEL, WATER RESOURCES DEPARTMENT: Paraphrases written

testimony in general support of the concept of HB 2344, giving background of the

measure and offering proposed amendments (EXHIBIT E).

300 REP. PETERSON: Asks for explanation of scenic waterways program.

310 PAGEL: No other uses are allowed when minimum flows are not being met.

325 REP. PETERSON: How would this bill change that?

330 PAGEL: By specifically saying that it is o.k. to grant a new use when those flow levels are not being met so long as other conditions are met.

Diack flows do not have the legal standing that an instream water right would have. They are not formally established flows, but guidelines the commission has established after consulting with other agencies and going through a public process.

340 REP. PETERSON: Asks for an example of someone living on a scenic waterway who was not grandfathered in, and suddenly needs more water.

345 PAGEL: Gives a few examples.

370 CHAIR NORRIS: There is substantial private land along scenic waterways.

380 REP. JOSI: Is the study conducted on every river?

400 PAGEL: Yes.

405 REP. JOSI: What is the criteria for measuring the need for recreational purposes?

408 HAYES: Explains what data the department used when determining flows necessary to support recreational uses.

TAPE 22, SIDE B

005 PAGEL: The Diack flows are guidelines. A person can challenge them and present factual evidence to lead to a different conclusion. 013

HAYES: The Diack findings and flow information affect all uses above the scenic waterway and not just within the scenic waterway, so you can have a situation in which you have a tributary to a tributary to the

John Day and because the water would make its way down to the scenic waterway you are not able to issue permits in the upper reaches of the scenic waterway.

030 REP. BAUM: This does not only impact instream water rights. Speaks of incident in his district.

059 PAGEL: Concludes her testimony from (EXHIBIT E).

080 BOETTCHER: Oregon Water Resources Congress fully supports the bill in whatever form the committee decides to adopt it.

091 MEYER: Water Watch believes that the bill, should it pass, should be limited to existing homes, and future construction should apply for a

water right. Asks what happens on the sunset date of the bill. Asks what "any stream" means. Concerned that de minimis will affect flows.

120 CHAIR NORRIS: Have you considered this issue as a limited license or should we be talking about a permit?

125 PAGEL: My suggestions would be premised on moving away from the limited license and considering issuing a water right for these purposes. The

limited license is an existing provision of law that does not apply to the kinds of uses we are talking about here. We are suggesting an approach that says if this is truly a de minimis use, a hardship, and will not undermine the underlying values of the scenic waterway, we should be able to consider issuing a water right for the use.

140 CHAIR NORRIS: Asks Pagel to draft an amendment.

Closes public hearing on HB 2344.

Opens public hearing on HB 2505.

PUBLIC HEARING HB 2505

170 BOETTCHER: Expresses support for HB 2505.

180 FITCH: Reviews provisions of HB 2505 from preliminary staff measure summary (EXHIBIT F).

200 JIM MYRON, WATER WATCH: Paraphrases written testimony in opposition to HB 2505 (EXHIBIT G).

Submits written testimony from Oregon Trout in opposition to HB 2505 (EXHIBIT H).

250 LOUISE BILHEIMER, OREGON RIVERS COUNCIL: Expresses opposition to HB 2505 as printed. 310 Written testimony from Jill Zarnowitz in opposition to HB 2505 is submitted for the record (EXHIBIT I).

335 LIZ FRENKEL, SIERRA CLUB: Expresses opposition to HB 2505.

370 CHAIR NORRIS: Is this bill superfluous to ORS 536.310 (12)?

380 PAGEL: Does not believe that section goes as far as it sounds on its face so probably would not overcome all the issues that might be raised in the bill. Thinks a combination of statutes and existing

provisions

in the law do cover a lot of what we feel is intended by HB 2505.

Paraphrases written testimony supporting the general concept of HB 250 5 and providing background information, but questioning whether the bill

is needed in order to provide the intended results (EXHIBIT J).

TAPE 23, SIDE B

PAGEL: Continues her testimony.

035 CHAIR NORRIS: Thought exempt uses only applied to ground water and not to surface water.

050 PAGEL: You are correct. My written testimony is correct, but my oral statement was incorrect.

051 HAYES: There are no exempt surface water uses.

052 PAGEL: The problem with HB 2505 is that it is not clear whether we are trying to deal with existing uses under a water right that would be

junior to the instream water right, or new uses. If this is trying to change the prior appropriation doctrine by moving up the junior uses

ahead of the instream water right, it does present the questions asked

by previous witnesses. If this is to create a special exemption for new applications, concerned whether the bill is necessary to do that. If

there is a desire to make that a mandatory requirement, statutory change is required. If there is comfort in the fact that the commission has

the discretion to do that, believes that currently exists.

063 CHAIR NORRIS: In the event of drought emergency declaration, could priority still be given to domestic and livestock uses as long as there is water in the stream?

071 PAGEL: The emergency drought provisions set out a separate authority and would require a declaration by the commission to establish that kind of preference.

070 REP. MARKHAM: With or without a water right?

075 PAGEL: That is not clear in the drought statutes and to my knowledge has never been exercised. That question came up last summer, but it was not necessary to invoke it.

080 HAYES: A farmer does not need a water right to take his cattle to the stream to drink. 087 CHAIR NORRIS: If you believe this issue can be addressed under existing statutes, and would be willing to send me a letter to that effect with

an explanation, we might be able to dispense with the bill.

100 PAGEL: Would like to have clarification on what the bill is attempting to address.

105 CHAIR NORRIS: Refers to letter received from a soil and water conservation district which precipitated the measure.

110 HAYES: If a person is taking livestock to the stream to drink, no water right is required. Approval of an instream water right would not

interfere with that.

118 CHAIR NORRIS: There is an effort to keep cattle from the stream to reduce riparian area damage.

130 REP. MARKHAM: If the diagram on the chalk board were in a scenic waterway, would that be the same answer?

132 HAYES: Yes.

150 CHAIR NORRIS: Closes public hearing on HB 2505.

Notes agenda change for February 18 meeting.

160 PAGEL: Could bring preliminary amendments on HB 2344 to bring to February 18 meeting.

205 CHAIR NORRIS: Adjourns meeting at 2:45 p.m.

Submitted by:

Reviewed by:

Pat Zwick
Administrator

Catherine Fitch Assistant

EXHIBIT LOG:

A-HB 2341 - Staff PSMS - 1 page B-HB 2341 - Jan Boettcher Testimony - 4 pages C-HB 2341 - Jim Myron Testimony - 3 pages D-HB 2341 - Martha Pagel Testimony - 1 page E-HB 2344 - Martha Pagel Testimony - 7 pages F-HB 2505 - Staff PSMS - 2 page G-HB 2505 - Water Watch Testimony - 2 pages H-HB 2505 - Oregon Trout Testimony - 1 page I-HB 2505 - ODF&W Testimony - 2 pages J-HB 2505 - Martha Pagel Testimony - 2 page