

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

February 25, 1993 Hearing Room D 1:00 p.m. Tapes 28 - 31

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

MEMBER EXCUSED: Rep. Nancy Peterson

VISITING MEMBER: Rep. Patti Milne

STAFF PRESENT: Catherine Fitch, Committee Administrator Pat Zwick, Committee Coordinator Sue Nichol, Committee Clerk

MEASURES CONSIDERED: HB 2340 - Public Hearing HB 2149 - Public Hearing and Work Session

WITNESSES: Kip Lombard, Oregon Water Resources Congress Dan Wilson, Tualatin Valley Irrigation District Bev Hayes, Water Resources Department John Borden, Water Resources Department Tom Simmons, Water Watch Doug Heiken, Water Watch Larry Trosi, Oregon Farm Bureau Jean Cameron, Oregon Environmental Council Terry Witt, Oregonians for Food and Shelter Amy Patton, DEQ Rep. Patti Milne Dan Dority III Dan Dority Jr. Marilee Clark Jonathan Snell Ves Garner, Luckiamute Domestic Water Group

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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 ---]

Jerry Schmidt, Oregon Association of Realtors Dan McCulloch, Oregon Federation of Independent Schools

and Seventh Day Activists Schools Joni Low, League of Cities Chuck Davis, Springfield Utility Board

TAPE 28, SIDE A

007 CHAIR NORRIS: Calls the meeting to order at 1:05.

PUBLIC HEARING ON HB 2340

015 CATHERINE FITCH: Summarizes HB 2340. The subcommittee requested that HB 2340, 2342 and 2343 be merged into one bill and that the concerns of Oregon Water Resources Congress and the Farm Bureau be worked out.

These changes are contained in Exhibit A.

HB 2340 addresses voting rights, renaming Water Resources Congress, enabling districts to provide water for domestic and municipal purposes, and allowing districts to apportion water and maintain facilities on member properties.

035 HB 2342 allows irrigation districts to have access to member properties for facilities maintenance and water apportionment.

037 HB 2343 addresses district recovery of lien costs.

043 KIP LOMBARD: Summarizes amendments requested by the Oregon Farm Bureau and the Oregon Water Resources Congress.

070 Requests additional amendment that would eliminate, "...and up to 80 acres; and four votes for more than 80 acres" on line 15 of page 2 of

Exhibit A.

147 REP. HOSTICKA: Addresses question to the Chair: "Are you intending to move these bills?"

142 CHAIR NORRIS: Possibly.

151 REP. HOSTICKA: I would like a copy of the court case which was referred to earlier regarding the weighted voting system.

159 LOMBARD: I will supply that.

163 Explains the changes made in Sections 3, 6, 7 and 8 of the bill requesting authorization for irrigation districts, drainage districts

and water improvement corporations to provide for or furnish water for industrial, domestic or municipal purposes.

200 Summarizes different industries' uses for water that may be provided for under this bill.

294 DAN WILSON, Tualatin Valley Irrigation District: Reviews requests for water for different uses which they cannot legally supply now. Gives

example of having to illegally provide water to fight a fire.

353 REP. JOSI: Where do you get your water?

360 WILSON: Hague Lake, a Bureau of Reclamation storage facility in Western Washington County. We deliver 12,000 acres of water under high pressure pipeline. The water is metered. We know exactly where it goes.

375 REP. JOSI: Are there other water users for Hague Lake?

380 WILSON: Yes, the cities of Beaverton, Hillsboro, and Forest Grove own 25% of the lake, Unified Sewage Agency owns 25% of the lake and we own

50% of the water in the lake.

390 REP. JOSI: So it's all appropriated?

392 WILSON: Yes, it's a storage project that's all contracted for. We had about 4,000 acre-feet of carryover for the irrigation part of it this

year. The city had about 5,000 acre-feet of carryover. Unified Sewage Agency used every drop of their water, because of the drought issue, for pollution control.

393 REP. JOSI: What did you do with your carryover?

396 WILSON: Left it there.

400 REP. JOSI: Can't you let Unified Sewage Agency use it?

406 WILSON: No, the Bureau of Reclamation owns the water and it's their decision to let someone else use the water.

417 REP. JOSI: Would you object to a policy that would allow Unified Sewage Agency to use some of your excess water?

420 WILSON: No. They did request this fall, and they were allowed to buy up to 3,000 acre-feet.

TAPE 29, SIDE A

004 REP. HOSTICKA: Does the individual have to have the water right and then the irrigation district delivers the water?

010 LOMBARD: Most of the irrigation districts have the legal title to the water right in the name of the district. Some have it in the name of

the Bureau of Reclamation. In some districts, the legal title to the water right is in the name of the landowner.

030 In the districts where the water right is in the name of the district, the district has the legal ownership

and the landowners have the beneficial ownership. The district holds those in trust for the owners. 050 REP. HOSTICKA: What does "provide" mean?

057 LOMBARD: Current statute allows provision of water for temperature control. In the Rogue Valley all water for temperature control is in

the name of the landowner.

075 Where the right is in the name of the district, the use of the right is still proscribed by the water rights law.

103 REP. HOSTICKA: If "convey" was substituted for "provide for

and furnish" would it change the meaning?

112 LOMBARD: No, I don't think so.

113 Continues to explain recommended amendments.

293 BEV HAYES, Water Resources Department: Expresses concerns of HB
234 0, 2342 and 2343. Reads testimony (Exhibit B).

245 Recommends amendments.

365 JOHN BORDEN, Water Resources Department: Explains role of
Water Resources Department with Irrigation Districts (Exhibit C).

TAPE 28, SIDE B

006 CHAIR NORRIS: Can't the district exercise control over the
individual landowner who has a water right?

010 BORDEN: Yes, through the timing and quantity of water delivered.

015 Continues to explain role of irrigation districts and the
Water Resources Department.

088 REP. VanLEEUEWEN: What is the department doing to plan for more
water storage?

093 HAYES: The Commission has adopted a statewide water storage
policy. We are currently working in the Willamette Basin to reserve
water for

economic development. We are working with Polk, and Lincoln County in
their effort to construct a reservoir to provide municipal water. As
well, we are working with the Department of Fish and Wildlife on some
education materials on what needs to be done to insure fish passage.

105 REP. VanLEEUEWEN: What did you mean, "reserving water"?

109 HAYES: Reserving water for storage for some additional
economic development.

117 REP. HOSTICKA: If an irrigation district has a parcel divided
that is no longer irrigated, can the district do something else with
that water if a right had been granted?

128 BORDEN: I believe the right still belongs to the land. If it
comes up to five years of non-use, the district may be able to use it
in other

areas.

139 REP. HOSTICKA: Could it be transferred to industrial or
municipal use?

142 BORDEN: With the language we suggested, it would not be
possible.

150 CHAIR NORRIS: Have you conferred with the congress about your recommended amendments?

156 HAYES: Yes, we have worked with them.

165 CHAIR NORRIS: Have conservation plans been mandated?

169 HAYES: Not yet.

172 CHAIR NORRIS: Does your modification presuppose that there will be conservation plans?

173 HAYES: It was more general. If a district were to expand their delivery system, we would like to see that they're doing it efficiently.

178 REP. VanLEEUEWEN: How does this amendment relate to the bill on water conservation?

188 HAYES: HB 2155 is an incentive program.

192 REP. VanLEEUEWEN: It seems you're requiring the whole district to have a conservation plan approved by the Water Resources Department.

198 HAYES: A conservation plan is required only when they want to expand their delivery system.

210 REP. VanLEEUEWEN: What would have to be in that conservation plan?

215 HAYES: We have model conservation plans.

230 REP. VanLEEUEWEN: I need more explanation of what would be required before accepting the plan requirement as part of this bill.

235 CHAIR NORRIS: Can this be expanded upon, what a district may be expected to do?

238 HAYES: I can't give you specifics. The conservation plan needs to be flexible.

255 CHAIR NORRIS: Can you come back with this information?

257 REP. HOSTICKA: The issue of the conservation plan seems to be a separate issue. If we just said an irrigation district and then struck

all the language "which has a conservation plan", what would be the difference in terms of the powers that were granted?

260 HAYES: These are only clarifying amendments. They don't give any additional power.

261 REP. HOSTICKA: So we could accomplish that by deleting the language "which has a conservation plan" and adopting all the other language?

263 HAYES: Right.

278 TOM SIMMONS, Water Watch: Testifies against HB 2340. The weighted voting rights arrangement is oppressive. Also, concerned that we're

setting up districts to sell their "waste" water rather than returning it to stream use.

TAPE 29, SIDE B

004 DOUG HEIKEN, Water Watch: If a district has water allocated which it no longer needs for the purpose originally intended, the water should

return to the jurisdiction of the State Water Resources Department for reallocation.

010 REP. HOSTICKA: Regarding amendments submitted by the Water Resources Department, would these change how you feel about the bill?

017 HEIKEN: These seemed to be just a clarification of present law.

022 SIMMONS: Requiring a water conservation plan is within the scope of the Water Resources Department right now, an additional law is not needed.

030 REP. REPINE: How do they have that authority now?

036 SIMMONS: I was referring to the bill as it was originally written.

040 LARRY TROSI, Oregon Farm Bureau: Summarizes recommended amendments found in Exhibit A.

078 Would like to allow a member of an irrigation district to have input as to cost of measuring devices.

PUBLIC HEARING ON HB 2340 CLOSED

PUBLIC HEARING ON HB 2149 OPEN

117 JEAN CAMERON, Oregon Environmental Council: Explains draft amendments (Exhibit D). Also submits copy of ORS 536.125 which this bill would

amend (Exhibit D).

179 The amendments would coordinate development of local ground water protection programs, including voluntary local wellhead protection

programs.

203 TERRY WITT, Oregonians for Food and Shelter: Testifies against HB 214 9. Summarizes written testimony (Exhibit E). 265 AMY PATTON, DEQ: Explains amendments recommended by DEQ (Exhibit F).

290 CHAIR NORRIS: Why shouldn't any governmental entity be exempt from an obligation to pursue a groundwater protection program?

295 PATTON: It could be.

300 CAMERON: These amendments are in addition to the other amendments and are voluntary.

309 CHAIR NORRIS: Is there a fiscal problem here?

313 WITT: Everything we need is already in current statute. Funding hasn't been available to carry it out.

340 CHAIR NORRIS: Do you agree, Ms. Patton, that current statutes allow us to do everything that has been suggested?

349 PATTON: Current statutes do not specify what a wellhead protection program should include. They do not establish a wellhead protection

task force to coordinate the program and they do not require a report to the legislature on the status.

356 WITT: One of the sections under that provision gives the Strategic Water Management Group the authority to establish any technical advisory committee or task force necessary to carry out those mandates.

365 CHAIR NORRIS: Could some progress be made on the issue of wellhead protection within the jurisdiction of the existing statutes?

377 CAMERON: The federal mandate must be complied with for a wellhead protection program. The language we brought forth today does not do

that.

398 CHAIR NORRIS: Is there a federal requirement out there that is mandatory?

402 PATTON: There is a requirement out there. EPA has come out with a guidance document for comprehensive groundwater protection programs

that they would like each state to have implemented. If these are not implemented, funding and grant cuts would be made.

435 CHAIR NORRIS: Did that come out of the new administration, or is that a holdover?

437 PATTON: That's a holdover that's been worked on for a couple of years.

440 CHAIR NORRIS: So it's a guidance about what they would like the states to do, it's not a mandate?

442 PATTON: There's no authority for it at this time.

TAPE 30, SIDE A 017 WITT: There has significant activity relative to wellhead protection in the state.

043 REP. VanLEEUEWEN: What are the threatened funds that would be withheld?

047 PATTON: EPA would find a way to hold back funds in the groundwater programs that they currently fund, sometime down the road.

057 REP. VanLEEUEWEN: What are the specifics?

059 PATTON: There is nothing in writing. EPA has no authority to carry out threats and so it's not definite. It is something that we've heard.

067 REP. VanLEEUEWEN: So on that possibility, DEQ has requested this bill?

071 PATTON: We brought the bill forward because we have a federal mandate to have a wellhead protection plan.

079 REP. VanLEEUEWEN: What was the deadline date for compliance? Which committee were you working with?

080 PATTON: We have worked with the Wellhead Protection Advisory Committee.

087 REP. HOSTICKA: Would the funding mentioned in the memo from the League of Oregon Cities (Exhibit G) be dependant upon these activities?

096 PATTON: EPA's currently giving us a grant of approximately \$53,000 a year to develop a wellhead protection plan. That money is at risk if

EPA does not approve our wellhead protection plan.

108 WITT: Oregon Wheat Growers, Water for Life, Oregon Farm Bureau, Northwest Propane Association, Oregon Dairy Farmers Association, and

Boise Cascade are also in opposition to the bill.

133 REP. PATTI MILNE: Urges rejection of HB 2149. Reads Exhibit H.

178 DAN DORITY III: Speaks against HB 2149.

229 DAN DORITY JR: This legislation should make each government entity that files a wellhead protection plan also file an environmental impact

statement and an economic impact statement.

245 CHAIR NORRIS: Do you want to protect drinking water?

249 DORITY III: Yes, but I also want to protect agricultural land.

264 MARILEE CLARK: Believes her position has been covered and so will not testify.

275 JONATHAN SNELL: Testifies in favor of HB 2149. States how difficult it is to restore contaminated water to drinking water standards. Reads

Exhibit I.

382 CHAIR NORRIS: Is wellhead protection currently being prevented?

390 SNELL: There are financial barriers for something that is not mandated.

TAPE 31, SIDE B

005 VES GARNER, Luckiamute Domestic Water Group: Testifies in favor of HB 2149, as it was originally written.

053 JERRY SCHMIDT, Oregon Association of Realtors: Was signed up to testify, but declines.

055 DAN MCCULLOCH, Oregon Federation of Independent Schools and Seventh Day Activists Schools: Costs for small schools would be prohibitive.

Testifies against HB 2149.

080 JONI LOW, League of Cities: Endorses amendments that have been brought before the committee.

096 CHAIR NORRIS: Could the cities go ahead on their own?

100 LOW: Yes, those who have been working on it will continue to move ahead.

119 CHUCK DAVIS, Springfield Utility Board: Speaks in favor of the program. Believes costs have been overstated.

126 CHAIR NORRIS: Do you think you can proceed on your own?

127 DAVIS: Yes.

144 CHAIR NORRIS: Are you running into problems with the surrounding community?

148 DAVIS: Individuals have an aversion on additional infringements on their rights, but are glad to work with us on setting up a program.

155 REP. HOSTICKA: If someone contaminates, are they willing to pay cost of relocating a well?

159 DAVIS: No.

160 REP. HOSTICKA: Who should pay?

164 DAVIS: Ideally, the polluters should, realistically, we all do.

PUBLIC HEARING ON HB 2149 CLOSED

WORK SESSION ON HB 2149 OPEN

184 REP. JOSI: This concept is good, but the members have too many concerns about the effects of the bill.

MOTION: REP. JOSI: Moves to table HB 2149.

CHAIR NORRIS: REP. JOSI has moved to table HB 2149.

VOTE: In a roll call vote, REPS. BAUM, JOSI, MARKHAM, REPINE
VanLEEUEWEN AND CHAIR NORRIS vote AYE. REP. HOSTICKA votes NAY. REP.
PETERSON is excused.

CHAIR NORRIS: The vote is 6 to 1, the bill has been tabled.

Meeting adjourned at 3:30.

Also submitted for the record: - Memorandum from Jon Mangis, ODVA
Director (Exhibit J).

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 2340, 2342, 2343 - Hand Engrossed Amendments - Kip
Lombard - 10 pages B - HB 2340 - Testimony - Bev Hayes - 2
pages C - HB 2340 - Information - John Borden - 2 pages D
- HB 2149 - Draft Amendments - Jean Cameron - 2 pages E -
HB 2149 - Testimony - Terry Witt - 2 pages F - HB 2149 -
Draft Amendments - Amy Patton - 1 page G - HB 2149 - Memo -
Jean Cameron - 1 page H - HB 2149 - Testimony - Representative
Milne - 1 page I - HB 2149 - Testimony - Jonathan Snell - 2
pages J - HB 2149 - Memo - Jon Mangis - 1 page