

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

March 4, 1993      Hearing Room D 1:00 p.m.      Tapes 33 - 35

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

MEMBER EXCUSED:              Rep. Ray Baum Rep. Nancy Peterson

VISITING MEMBER:              Rep. John Meek

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

MEASURES CONSIDERED:              HB 2155 - Work Session HB 2822 -  
Public Hearing HB 2834 - Public Hearing

WITNESSES:              Rep. Denny Jones, District 6 Martha Pagel,  
Water Resources Department Reed Marbut, Water Resources Department Kip  
Lombard, Oregon Water Resources Congress Doug Meyers, Water Watch Kit  
Jensen, Attorney representing Dr. Roland Walters Dr. Roland Walters  
Dick Verboort, Civil Engineer Rep. John Meek, District 5 David Moon Ron  
Yokum, Oregon Cranberry Farmer's Alliance Bev Hayes, Department of Water  
Resources

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

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 33, SIDE A

005      CHAIR NORRIS:      Calls the meeting to order at 1:08.

PUBLIC HEARING HB 2822 016      CATHERINE FITCH:      Gives summary of HB 2822  
which does four things: 1. It allows pre-1914 water right holder to use  
unlimited water during

water surplus, provided there is no injury to another right holder. 2.  
It allows pre-1914 water right holder, during low water periods, to

apply all available water to only a portion of lands under their right

and not have any part of their right cancelled for non-use. 3. It  
requires irrigation districts to release enough stored water at

the point of diversion to satisfy rights of all entitle persons. 4. It  
requires Water Resources to credit the amount of return flow in

determining the rate and duty limits of a water right. (Exhibit A)

027      REP. DENNY JONES, District 6: Testifies in favor of HB 2822 as it

would give credit to those who didn't use all the water that was metered to

them.

095 REP. MARKHAM: How many times have you made a run at this bill?

099 REP. JONES: I've introduced it in two sessions.

108 REP. MARKHAM: What does the third point mean, "requires irrigation districts to release enough stored water?" Is there a fight on that?

110 REP. JONES: No, it means they must release enough to fulfill the normal surface water right.

121 CHAIR NORRIS: What does "abundant" mean?

125 REP. JONES: When there is a shortage, we don't expect any special favors. We would still like credit for the return flow.

138 REP. HOSTICKA: Would there be more appropriate terms to use instead of "abundant water" or "sufficient water"?

147 REP. JONES: "Probably sufficient" may be a better term.

152 REP. MARKHAM: Are the departments going to dump on this?

157 REP. JONES: I don't know what the Water Resources Department will do. The Warm Springs Irrigation District and the Vale Oregon Irrigation

District both testified last session in favor of it.

173 MARTHA PAGEL, Water Resources Department: States concerns with HB 282 2 (Exhibit B). It may allow senior water right holders to take water that has historically been used by junior water right holders.

210 REP. HOSTICKA: What would prevent someone from applying for a new water right if there's more water around?

215 PAGEL: In most cases, users could apply for more water rights under the existing law. The only impediment may be if nothing has changed with

the cropping and use.

223 REED MARBUT, Water Resources Department: It would be possible to apply for another right, although in many cases, when it appears that water is available, it is not really available.

247 REP. HOSTICKA: The bill says "shall receive the amount of water necessary to adequately irrigate the land." Isn't that what the rate

and duty is supposed to specify?

252 MARBUT: In theory, that's what the decrees do.

259 REP. HOSTICKA: If there's extra water around then you can

use the amount of water necessary to irrigate. I still don't understand why

they can't just apply for another water right.

269 MARBUT: This bill asks "at the time the irrigator wants to use water, is there abundant water" which is different than "is there abundant

water sufficient to grant a right to take it?"

284 REP. JOSI: Doesn't this bill make sure no other users are harmed, in line 9?

292 MARBUT: This would be difficult to enforce.

317 REP. MARKHAM: Would it be better to limit this to one area instead of the whole state?

330 PAGEL: That would be more comfortable if it would be narrowed down.

343 REP. MARKHAM: Have you been to the area that Rep. Jones is concerned about?

345 PAGEL: Many of our staff have been there. It does have some unique characteristics with some unique problems.

358 MARBUT: We are aware of this unique situation.

368 REP. MARKHAM: Do your studies match Rep. Jones's data on the amount of water actually used in flood irrigation?

375 MARBUT: I don't have specific figures, but no doubt Rep. Jones' numbers are accurate.

400 CHAIR NORRIS: I may ask for this bill to be narrowed down to the area Rep. Jones is referring to.

TAPE 34, SIDE A

003 KIP LOMBARD, Oregon Water Resources Congress: I believe Section 2 is already in the law. Suggests that pre-1914 limitation is deleted.

015 Has concerns with language in Section 3. This would interfere with management prerogatives necessary during drought or extreme

circumstances?

049 REP. MARKHAM: Does the water district board have authority to make these decisions concerning the amount of water they will release?

052 LOMBARD: Yes, the constraint they have is that they must treat everyone equally.

062 CHAIR NORRIS: Mr. Lombard, will you meet with Rep. Jones to work out Section 3, please.

076 DOUG MEYERS, Water Watch: Opposes HB 2822 because it's

contrary to historical water policy.

107 REP. MARKHAM: Why doesn't Rep. Jones apply for excess water rights?

108 MEYERS: I don't know.

116 CHAIR NORRIS: Public hearing on HB 2822 closed.

PUBLIC HEARING HB 2834

134 CATHERINE FITCH: Summarizes HB 2834 which would exempt time devoted to crop rotation, land sale and plantings not requiring watering from

calculation of whether a water right is to be forfeited for five successive years of non-use. Summarizes Exhibit C.

160 MARTHA PAGEL, Department of Water Resources: States concerns with HB 2834. We believes HB 2834 would need further clarification to prevent

users from camping on water rights. Summarizes testimony in EXHIBIT D.

192 REP. VanLEEuwEN: This bill would allow us to conserve water when irrigation isn't necessary, instead of running the water just to

preserve our water rights.

210 PAGEL: The Department is supportive of the bill as far as it's concerned with conservation. We want to discourage abuse of the current provisions.

224 REP. VanLEEuwEN: What is wrong with the bill? Doesn't it basically encourage conservation?

234 MARBUT: The way this is phrased, in particular, the "for sale" stipulation, sets up a broad potential for abuse that would be difficult to enforce.

269 REP. VanLEEuwEN: In the Willamette Valley people have to irrigate, even when it's not necessary, just to preserve water right.

283 PAGEL: Without clarification on a specific rotation schedule, it would be difficult to monitor use to protect other users.

307 REP. VanLEEuwEN: Agriculture can't be forced into a box. Flexibility is vital in agriculture.

320 PAGEL: We want to work for the water users. I'm not aware of a problem where a user's rights have been cancelled, but would be willing to work on any problems out there.

338 REP. JOSI: Maybe some amendments can be added that would narrow down the language. Would that be possible?

353 MARBUT: Yes, we would like to meet with sponsors of bill.

368 KIT JENSEN, Attorney representing Dr. Walters: We believe the current statute does not encourage conservation. There is no room for

negotiation with Water Resources Department once termination procedures have been started.

TAPE 33, SIDE B

022 DR. ROLAND WALTERS: Speaks of his case where he bought nursery property where water rights are in the process of being terminated. (Exhibit E)

050 REP. VanLEEUWEN: Where do the rights go, to Fish and Wildlife?

054 JENSEN: Yes, there is no further stream use available for agricultural purposes in this area.

055 CHAIR NORRIS: Is it a surface right or is it from wells?

057 JENSEN: Surface.

072 DICK VERBOORT, Civil Engineer: Speaks in support of HB 2834. Discusses cases of lost water rights under current policy (Exhibit F).

082 REP. REPINE: How did the stipulations for land sale and raising grain come to be in the bill? 094 JENSEN: None of us were involved in the specific drafting of the bill.

095 REP. REPINE: So the "for sale" clause was of no interest to you or your clients?

097 JENSEN: No, it would make more sense if the property had to be listed instead of just offered for sale.

099 REP. REPINE: Why would grain be included in the stipulations?

100 JENSEN: Grain is a frequent use of the agricultural land in this area.

108 CHAIR NORRIS: The specific reference to grain would probably be unnecessary as long as it's part of a legitimate rotation.

118 REP. REPINE: Would a nursery be construed as crop rotation?

123 CHAIR NORRIS: The nursery would probably use quite a lot of water.

129 REP. REPINE: Is nursery use an acceptable use of the water rights? Why are water rights being eliminated?

136 JENSEN: The land was previously used for grain farming and wasn't irrigated before it was sold.

148 CHAIR NORRIS: Were the neighbors use of water cut off when you started using the water?

154 JENSEN: No.

157 REP. JOSI: Wasn't this a case of an abandoned water right?

162 JENSEN: Yes.

164 REP. JOSI: I want to fix this law so water conservation will be encouraged, not so abandoned water rights can be reinstated.

175 JENSEN: This bill would make it so this wouldn't happen in the future.

176 REP. JOSI: Can't a water right be applied for?

186 JENSEN: No. Instream rights for agricultural uses are no longer granted in this area. The problem is that the Water Resources

Department can go back 15 years to determine a five year time frame where the water wasn't in use. This is hard to prove because sellers are hard to track down or they don't remember.

214 REP. MARKHAM: Did you get tripped up because of the Willamette Basin Plan?

221 JENSEN: Yes, otherwise we could go back and get another water right.

250 REP. REPINE: During grain crops, was the owner in contact with the Water Resources Department?

267 JENSEN: There was no evidence that this happened. I've found no evidence that there could have been any compromise of the rules for

conservation.

286 REP. MARKHAM: Wouldn't it be expedient to file evidence every year that a user had irrigated?

290 JENSEN: Yes, that would a good idea.

309 DOUG MEYERS, Water Watch: Gives background of cancellation provisions of current policy. Testifies against HB 2834.

397 KIP LOMBARD, Oregon Water Resources Congress: ORS 537.348 specifically authorizes a right holder who isn't intending to use that right over a

long period of time to sell, lease or gift their right for instream uses without losing their priority. TAPE 34, SIDE B

024 States concerns with HB 2834. These conditions can be abused.

030 REP. MARKHAM: You can't just go out and run the water?

034 LOMBARD: No, it has to be put on a legitimate crop.

056 The bill needs to allow for rotation of water rights within individual users like ORS 540.570 does for districts. We request repeal of ORS

540.570 paragraph 6.

078 A paragraph should be added that if non-use occurs because water is not available, then that doesn't effect a forfeiture.

096 REP. MARKHAM: Have people lost a water right because the water wasn't there?

094 LOMBARD: There is a case pending.

103 REP. HOSTICKA: Is there a definition of "rotation?"

107 LOMBARD: Rotation allows you to take the water appurtenant to one parcel and move it to other parcels without increasing the acreage rate or duty.

118 REP. HOSTICKA: What kind of evidence is needed to show you're in a rotation and haven't permanently changed your cropping pattern.

120 LOMBARD: The district must notify the commission within 60 days before the start of the irrigation season. Applications can be amended. They

must be renewed every year.

139 CHAIR NORRIS: It seems like clear and consistent communication on intent must be maintained to make this work.

153 LOMBARD: We do have to set up this tracking system so that the water master and everyone knows we've moved that water to a different parcel.

183 REP. JOHN MEEK, District 5: We have two standards out there relating to rotation?

188 LOMBARD: We have a law that applies to districts. It makes sense to apply this law to individuals also.

198 REP. MEEK: Testifies in favor of HB 2834. There's little encouragement in water right laws for conservation. Often people in my district pump

water so they won't lose water right.

273 CHAIR NORRIS: Calls up Martha Pagel again. Asks if she believes the bill has merit.

287 MARTHA PAGEL: Wants to work on language which will encourage conservation. Regarding grain crops, would desire to work on language.

In one case, land wasn't irrigated for 20 years. That water would need to be brought back. Regarding land sales, that could be addressed by clarifying language.

316 MARBUT: The evils of the appropriation doctrine can be addressed. Needs and intents need to be addressed.

355 CHAIR NORRIS: Would this be simply an expansion of HB 2191 to the individual appropriator?

362 MARBUT: The concepts could be brought into ORS 540, but maybe would be better in ORS 537.

371 CHAIR NORRIS: Can the Department continue to advise those involved in the problem?

380 PAGEL: It is a case before the court of appeals and basically out of our hands.

387 REP. REPINE: How would the Department help someone who had problems with water rights?

TAPE 35, SIDE A

002 PAGEL: There's not a lot we can do under current law.

003 REP. REPINE: How would you help me in a hypothetical situation in which I bought land which I thought I had water rights, but then the neighbors tell me I don't have a right to that water?

005 MARBUT: We would bring facts together, but may not have legal authority to resurrect a right that has been forfeited.

021 REP. REPINE: Is there any notification of whether a buyer has a right?

027 MARBUT: That is a matter between buyer and seller.

041 PAGEL: The forfeiture provisions have been in effect as long as the water code has been enacted. We don't track down people who have lost

their water rights.

061 CHAIR NORRIS: Suggests Ms. Pagel get a work group together.

066 DAVID MOON: I have been involved in a situation where a user was concrete lining his ditch and wasn't informed of forfeiture statutes.

111 CHAIR NORRIS: Closes public hearing on HB 2834.

WORK SESSION ON HB 2155

121 CATHERINE FITCH: Gives summary of work on HB 2155 to date. Explains amendments contained in Exhibit G. 210 REP. JOSI: At whose discretion would the water be converted to an in-stream water right or reserved for future economic development?

215 RON YOKUM, Oregon Cranberry Farmer's Alliance: That would be left up to the Water Resources Commission.

223 REP. JOSI: Your goal is to have it reserved for future economic development, but it would be left up to the Water Resources Department?



225 YOKUM: Yes, to balance public interest with public benefit.

232 FITCH: Continues to explain amendments.

267 CHAIR NORRIS: I have some information from the State of Washington on a water trust program that I would like the Department and any interested parties to consider before we proceed with HB 2155. There may be a

place for such a program.

327 BEV HAYES, Department of Water Resources: Submits statement by the Department of Water Resources opposing amendments made by Water For Life (Exhibit H.)

Meeting adjourned 3:25.

Also submitted for the record:

- Testimony on HB 2822 by Jim Myron on behalf of Oregon Trout, Inc.

(Exhibit I). - Testimony on HB 2834 by Jim Myron on behalf of Oregon Trout, Inc.

(Exhibit J).

Submitted by:

Reviewed by:

Sue Nichol  
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 2822 - Preliminary Staff Measure Summary - Catherine Fitch - 5 pages B - HB 2822 - Testimony - Martha Pagel - 2 pages C - HB 2834 - Preliminary Staff Measure Summary - Catherine Fitch - 1 page D - HB 2834 - Testimony - Martha Pagel - 1 page E - HB 2834 - Testimony - Dr. Roland Walters - 1 page F - HB 2834 - Testimony - Richard Verboort - 3 pages G - HB 2155 - Amendments - Staff - 13 pages H - HB 2155 - Testimony - Bev Hayes - 2 pages I - HB 2822 - Testimony - Jim Myron - 1 page J - HB 2834 - Testimony - Jim Myron - 1 page