

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

March 11, 1993 Hearing Room D 1:00 p.m. Tapes 39 - 42

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

MEMBER EXCUSED:

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

MEASURES CONSIDERED: HB 2341 - Public Hearing and Work Session HB 2580 - Public Hearing HJM11 - Public Hearing HJR 35 - Public Hearing

WITNESSES: Sen. Rod Johnson, District 23 Kip Lombard, Oregon Water Resources Congress Doug Meyers, Water Watch Tom Simmons, Water Watch Reed Marbut, Water Resources Department Bev Hayes, Water Resources Department Steve Applegate, Water Resources Department Scott Ashcom, Oregon Association of Nurserymen Larry Trosi, Oregon Farm Bureau Jill Zarnowitz, Oregon Department of Fish and Wildlife Susan Schneider, City of Portland Gary Conkling, Tektronics Rep. Dave McTeague, District 25 Dale Pearson, Legislative Aid for Rep. McTeague Bob Eaton, Salmon for All, Inc. Kay Brown, Department of Fish and Wildlife Dan TenUyck, Reynolds Metal Company

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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 39, SIDE A

005 CHAIR NORRIS: Calls the meeting to order at 1:07.

PUBLIC HEARING ON HB 2580

040 CATHERINE FITCH: Summarizes HB 2580 which allows the holder of a water right to use that right at any contiguous location owned by the holder

of the right, if no injury occurs to other right holders (Exhibit A).

Also submits fiscal impact statement (Exhibit B).

050 SEN. ROD JOHNSON, District 23: Explains and supports HB 2580.

080 REP. VanLEEUEWEN: Doesn't Section 2 refer back to law that was passed already where it allows you to do something else with the water for a

period of time?

085 REP. MARKHAM: I don't know how that got in the bill either.

087 FITCH: Section 2 clarifies that only if you transfer the right to property you do not own, that you need to go through the application

process.

096 REP. VanLEEUEWEN: Are you aware that the fiscal that says it will take 3-1/2 full-time equivalent? Do you agree that this change should do

that?

101 SEN. JOHNSON: I'm not aware of that. Any fiscal impact would be offset by the increased production farmers and ranchers would get by using the water in the most efficient manner.

134 REP. REPINE: Do you think it's worthwhile to send this on its way again?

134 SEN. JOHNSON: Absolutely.

135 REP. MARKHAM: We can assure ourselves that Sen. Johnson will successfully carry this on the senate side, is that correct?

140 SEN. JOHNSON: Yes.

143 KIP LOMBARD, Oregon Water Resources Congress: Expresses support for HB 2580. Concerned that open ditch systems would require metering.

Suggests "measured" would be a better term for use in the bill.

188 REP. MARKHAM: Why does water need to be measured if it's still part of your original water right?

197 LOMBARD: That provision may have been put in there at the request of others.

205 REP. VanLEEUEWEN: Why does the bill contain the provision that it must be area contiguous to the property?

212 LOMBARD: The bill is designed to allow transfer of water to area contiguous to property which the right was granted to so the water

doesn't need to be moved far away.

233 CHAIR NORRIS: Reminds the subcommittee that this is a public hearing.

240 REP. JOSI: How complicated is the transfer permitting process? Must it be gone through every year?

243 LOMBARD: Yes, the transfer must be applied for every year. It can take 18 months for the transfer to be granted.

254 REP. JOSI: What are the requirements for transfer?

256 LOMBARD: The basic test is, will this move injure other users? Water can't be transferred to a different basin except under extreme

circumstances.

276 REP. JOSI: Who would determine whether the transfer would injure another user?

283 LOMBARD: The Water Resources Department.

286 REP. JOSI: If we pass this law, then they would not be involved.

287 LOMBARD: That's correct. The only place that injury would occur would be in return flows.

316 REP. JOSI: Suggests other users be notified before a transfer occurs so objections can be expressed before injury occurs.

335 LOMBARD: I'm willing to work on this with the originators of the bill.

355 DOUG MEYERS, Water Watch: Testifies against HB 2580 as this would be detrimental to junior right holders.

TAPE 40, SIDE A

019 TOM SIMMONS, Water Watch: Testifies against HB 2580.

021 REP. JOSI: What is the doctrine of prior appropriation?

032 SIMMONS: States that the right is attached to property described in the water right permit. The right requires beneficial use without waste.

The Water Resources Department is to manage and control all the waters of the state. They need to know where it is in order to do that.

045 This could damage junior water right holders.

076 CHAIR NORRIS: You have these objections even though there would be no increase in acreage irrigated?

085 SIMMONS: We don't know that would be the case.

092 REP. MARKHAM: How can a farmer use more water than he's allowed?

096 SIMMONS: Others don't know how much he's using in order that they might regulate him.

100 REP. MARKHAM: That's why you have county employees watching this for.

108 SIMMONS: Under this process there is no examination of the benefits of this transfer.

116 REP. MARKHAM: The original water right runs back into the river, correct?

118 SIMMONS: If there is any excess associated with an existing water right, it is supposed to go back into the system, subject to

appropriation.

119 REP. MARKHAM: Why wouldn't that happen if he had another ten acres that he wanted to move this water unto? It would still be running back into

the creek.

123 SIMMONS: I don't know if it would or not. The problem is expanding existing water rights through the system here to include more lands and the use of more water than is allowed in the existing water rights.

127 REP. MARKHAM: So the efficiency of the farmer does not come into play?

131 SIMMONS: That's exactly what comes into play; that's how he expands the existing water right. We are legalizing a use of water that expands an

existing water right. By doing this we are violating the doctrine of prior appropriation.

135 REP. MARKHAM: We may be doing that, if successful.

137 CHAIR NORRIS: We've heard the word "transfer" being used in referring to the use of water within a given water right at a different location. Are we really talking about a "transfer" in the technical sense in water law?

139 REED MARBUT, Water Resources Department: "Transfer" is a technical term. It's a change in place of use, a change in point of diversion or

change in nature of use.

150 CHAIR NORRIS: Is a transfer also a change in use by the same owner?

152 MARBUT: Yes, that is the appropriate term.

153 CHAIR NORRIS: So what we're talking about in Section 1 wouldn't necessarily be a transfer, would it?

155 MARBUT: No, it would not.

159 BEV HAYES, Water Resources Department: The Department has several concerns with HB 2580 but believes those concerns could be worked out

and we would be eager to work out those problems. Reads Exhibit C.

216 STEVE APPELGATE, Water Resources Department: We believe interest in these uses would be generated by passage of the bill. Maps should be

required. It would be difficult to enforce.

252 CHAIR NORRIS: An FTE would be about 80 hours a month?

256 APPELGATE: Yes, that would be close.

260 CHAIR NORRIS: You believe there are some merits of the bill, but that it needs some amendments?

265 HAYES: Yes.

268 CHAIR NORRIS: Are those statutes cited in the bill, the general statutes under which the average citizen would apply for water rights?

283 REED MARBUT, Water Resources Department: No.

288 CHAIR NORRIS: Is that acquisition of water by a citizen covered anywhere in that paragraph?

292 MARBUT: No.

295 CHAIR NORRIS: Is Section 5 where the bill applies to the average farmer?

302 MARBUT: Sections 1 and 2 also apply to the average citizen.

307 CHAIR NORRIS: I want a provision that insures that there would be no expansion to the amount of water authorized or the amount of acres that could be legally irrigated.

317 HAYES: That would help.

321 REP. BAUM: Do the permits and certificates, on their face, establish the water right and rate and duty?

324 MARBUT: The right is established by the certificate. It is also established by a permit, however, many rights, as they are developed, do not develop precisely as they are set out in the permit.

345 REP. BAUM: My question was, do all permits or certificates establish the rate and duty?

352 HAYES: The rate and duty was established for a particular piece of land. If you're going to move the water to a new land, we want to make

sure you're not enlarging the right.

361 REP. BAUM: That would be covered by the map.

266 HAYES: I'm not understanding your question.

367 REP. BAUM: We're not changing the amount of water we're allowing them to use by this transfer. All we're changing is location.

375 HAYES: The point is not all water granted in a right is used

all the time.

387 REP. BAUM: I don't think this is an ownership issue, it just is transferred to a different piece of land. That's what I thought it was,

maybe I'm missing the point of the bill.

399 APPLEGATE: Water rights are not exercised all the time. What appears to be available in the streams is not always equal to the water rights

of record.

TAPE 39, SIDE B

002 REP. BAUM: Why is this an issue now?

006 APPLEGATE: We believe this would expand the amount of water used since it can be rotated to another acreage.

016 CHAIR NORRIS: Diagrams and explains what this bill would allow.

030 HAYES: Agrees something needs to be done but believes junior right holders will be injured. We would like to put some safeguards in the

bill.

042 REP. VanLEEUEWEN: Can't all of this be done already?

051 MARBUT: The first part deals with the transfer process. Subsection 4 has to do with the new irrigation district alternate acreage petitioning process, which doesn't apply to the general water user, just within the district. So there is no provision in the current law which is similar

to what we're trying to do here.

060 REP. VanLEEUEWEN: In the first section, you would move it once, and then it would be with that other piece of property. This proposal lets you

change back and forth?

061 MARBUT: Yes, that's correct.

065 We don't believe the bill says what Chair Norris's diagram does. It doesn't limit the transfer to an equal acreage.

075 REP. MARKHAM: What does rate and duty mean?

077 MARBUT: Rate is the flow, duty is the acre-feet.

082 SCOTT ASHCOM, Oregon Association of Nurserymen: Explains what an irrigator has to go through to transfer his water right when rotating

crops. Testifies in favor of HB 2580.

134 REP. JOSI: Are there places where water is overappropriated?

136 ASHCOM: It depends on what is meant by overappropriation.

145 REP. JOSI: What does it mean?

148 ASHCOM: To some it means that there are more water rights issued than there is water in the stream. This concept is weather dependent and so

is unreliable as a fact.

168 REP. JOSI: So you're saying, at any given time, there may be an overappropriation or there may not be an overappropriation, so our

concern is the instream and junior water rights. My concern is that a transfer would not jeopardize instream or junior water right holders.

Would you agree with that?

170 ASHCOM: I do agree with that. I do believe current protection is adequate.

182 CHAIR NORRIS: Closes public hearing on 2580.

WORK SESSION ON 2341

190 CATHERINE FITCH: Gives summary of HB 2341 and amendments. (Exhibit D). HB 2341 would permit reuse of reclaimed water from industrial sources.

234 KIP LOMBARD, Oregon Water Resources Congress: Supports amendments on page 1 and the amendments on lines 7-12 on page 2.

245 CHAIR NORRIS: What does the Farm Bureau disagree with in the rest of the bill?

247 LARRY TROSI, Oregon Farm Bureau: There is concern that to provide a conveyance facility or channel to deliver the returned water to injured rightholders would be too difficult to get easements and would be

expensive. Our additional amendments address that issue.

309 CHAIR NORRIS: Section 7 is hard to understand.

318 REP. MARKHAM: Suggests this is diagrammed.

324 : LOMBARD: Diagrams what is being spoken of.

TAPE 40, SIDE B

024 TROSI: Further explains what would take place.

050 CHAIR NORRIS: Is it the avoidance of this situation that prompted subsection 7?

051 TROSI: Yes.

065 CHAIR NORRIS: What does subsection 7 do that was not done with the modifications made earlier in the page?

067 TROSI: The amendments up to line 20 would be acceptable if that would speed this process up.

072 CHAIR NORRIS: Do any of the others see any problem in this part?

075 LOMBARD: The problem is if the downstream users want the diverters to put the water back in stream, it must be treated.

092 MARBUT: The purpose of SB 204 was to avoid the problem where cities, whose use of water injured downstream rightholders, needed to continue

to get that discharged water to those downstream users. It was never anticipated that we would be talking about miles of water diversion.

114 CHAIR NORRIS: Is the problem on lines 16-17 on page 2, that water be put into the natural water course?

122 MARBUT: Yes, the problem was that cities would have to either deliver water or treat it.

149 CHAIR NORRIS: If the water has been cleaned up, couldn't it be put back into the natural water course? Or are we assuming the water quality

will not be good enough to put it back into the stream?

154 MARBUT: This would give the cities the opportunity to provide other outlets for their water, where it would be too expensive to clean it up.

163 CHAIR NORRIS: The Farm Bureau doesn't want water reintroduced into a water course that is unfit?

168 TROSI: No, we are concerned about the public perception of our product if we use this water.

190 DOUG MEYERS, Water Watch: We would like to reserve our comments to the amendments until we are able to look over the amendments.

208 JILL ZARNOWITZ, Oregon Department of Fish and Wildlife: If the Farm Bureau's proposed amendments are considered, there are also concerns

with out of stream users' loss of water.

239 SUSAN SCHNEIDER, City of Portland: We would like a chance to comment on amendments when we have had a chance to review them. We have some

serious concerns about the bill at the moment.

244 GARY CONKLING, Tektronics: Tektronics is considering a water recycling program which would impact the amount of water returned to the



stream.

HB 2341 in the original version would have made this easier. I am concerned about the amendments as it might make such a water recycling program harder to implement.

274 CHAIR NORRIS: Closes work session and public hearing on HB 2341.

PUBLIC HEARING ON HJM11 AND HJR 35

307 REP. DAVE McTEAGUE, District 25: Testifies in favor of HJM 11 which would memorialize the Pacific Coast states, Idaho and British Columbia

to mark hatchery produced fish by clipping the adipose fin. Also testifies in favor of HJR 35 which would request the Governor to encourage intergovernmental cooperation for marking of hatchery fish and directs the Department of Fish and Wildlife to implement a fin marking plan and report progress to the Legislature.

360 This marking would allow hatchery fish to be differentiated from wild fish.

382 DALE PEARSON, Legislative Aid for Rep. McTeague: Explains adipose fin clipping. Reads Exhibit E.

TAPE 41, SIDE A

044 REP. JOSI: Is there greater mortality with inserting tag and clipping fin?

049 PEARSON: Doesn't know.

050 Continues to explain marking program.

073 CHAIR NORRIS: How are we defining "sequestered"?

075 PEARSON: It means that any fish with an adipose fin clipped must have a snout tag and the clip may only be used in these circumstances.

100 CHAIR NORRIS: Are you concurrently testifying on HJM11 and HJR 25?

105 PEARSON: Yes.

112 The Department of Fish and Wildlife has an amendment we consider friendly.

117 BOB EATON, Salmon for All, Inc.: Will testify after the Department of Fish and Wildlife testifies.

120 KAY BROWN, Department of Fish and Wildlife: Testifies in favor of HJM 11 and HJR 35. Reads Exhibit F.

156 The cost to Oregon would be \$2.4 million per year to clip the

adipose fins on all of our fish. It would be about \$10 million total to insert

coded tag in those fish.

187 CHAIR NORRIS: This bill doesn't list a fiscal impact statement.

192 BROWN: These bills in themselves don't have a fiscal impact. We need to make sure the other states do the same thing.

200 CHAIR NORRIS: What if we get other states to do this and then we don't have the money to do it?

206 BROWN: We will do several things to have the money to do this. We can cut hatchery production to save money and we will ask the federal

government for money for this.

216 REP. JOSI: Won't you be closing down the a hatchery to save money for this program?

223 BROWN: Some hatcheries would be closed.

228 CHAIR NORRIS: You mention the U.S. Fish and Wildlife Service should be added to the list of agencies in HJM11?

230 BROWN: Yes.

230 CHAIR NORRIS: Why would they be involved here?

234 BROWN: The U.S. Fish and Wildlife Service has hatcheries on the Columbia River that release fish.

243 BOB EATON, Salmon for All, Inc.: Testifies against HJM11 and HJR 35. The bills and the resolutions are premature. The premise is that mixed

stock fisheries threaten wild fish. This is not totally true. Both types of fish are threatened by other factors. The wild fish need more protection from habitat than protection from harvest. We need assurance that this marking will return wild fish to harvestable levels.

292 Sport and commercial fishermen would be relying on hatchery produced fish. We have no guarantee that hatcheries will continue to operate.

320 I encourage that this be proceeded with slowly.

327 A similar bill died in committee in Washington this year because of the cost.

338 CHAIR NORRIS: Habitat issues don't relate to this bill. Do you think clipping would be a good idea?

355 EATON: If the goal of this was to return wild fish

populations to harvestable numbers and if there was assurance that state and federal

hatcheries would continue to be funded.

372 CHAIR NORRIS: The intent is to enhance wild fish populations.

374 EATON: We don't have any established goal to return salmon to harvestable numbers.

402 REP. JOSI: The purpose of marking is to bring the harvestable levels of fish and to develop a management program to do this.

416 EATON: This doesn't say this. The endangered species act says you need to bring the level up. This is a big difference between the level to

survive and the level to harvest.

430 REP. JOSI: How would this impact commercial fisherman?

439 EATON: Pretty significantly, because they could only catch hatchery fish. We're in a decline without an assurance that the hatcheries will

continue to produce fish.

460 CHAIR NORRIS: I wonder if we're reading more into this bill than is there. It doesn't say anything about only keeping the hatchery fish. I

don't see anything about releasing all wild fish in these bills, do you?

TAPE 42, SIDE A

043 EATON: The purpose in doing this is to move towards that scenario where only hatchery fish are kept.

044 CHAIR NORRIS: What would raise your level of acceptance in this type of program?

052 EATON: A statement that prioritizes maintaining hatcheries.

063 REP. VanLEEUEWEN: HJR 35 says one of its purposes is to manage fisheries in a manner to promote the selective harvest of hatchery fish and

protecting wild stocks.

073 Looks like the bill states how they will handle the management of the fish in HJR 35.

086 EATON: The federal government is involved more and more in the allocation and harvest of the fish.

090 CHAIR NORRIS: With the Endangered Species Act we'll see more and more federal intervention.

092 EATON: Not opposed to goals of the resolution. The ultimate decisions that will be made need to protect fish and fishermen.

091 REP. JOSI: It costs money to cut the fin off, and you're worried about that money being taken away from hatcheries?

100 EATON: There will be less fish because of finite funding and because of increased mortality.

113 JESSE VANDERZANDEN, Association of Northwest Steelheaders: Speaks in favor of HJR 35 and HJM11. (Exhibit G).

169 DAN TENUYCK, Reynolds Metals Company: Testifies in favor of HJM11 and HJR 35 as they are a critical first step in getting data necessary to

restore the fish populations. 182 CHAIR NORRIS: Closes public hearing on HJM11 and HJR 35.

Adjourns meeting at 3:45.

Also submitted for the record: - Testimony on HJM 11 and HJR 35 from Jim Myron representing Oregon

Trout (Exhibit H).

Submitted by:

Reviewed by:

Sue Nichol  
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 2580 - Preliminary Staff Measure Summary - Catherine Fitch - 1 page B - HB 2580 - Fiscal Impact Statement - Staff - 1 page C - HB 2580 - Testimony - Beverly Hayes - 2 pages D - HB 2341 - Amendments - Staff - 2 pages E - HJM 11 and HJR 35 - Testimony and information - Rep. Dave McTeague - 9 pages F - HJM11 and HJR 35 - Testimony - Kay Brown - 3 pages G - HJR 35 - Testimony - Jesse Vanderzanden - 3 pages H - HJM11 and HJR 35 - Testimony - Jim Myron - 1 page