

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

March 16, 1993 Hearing Room D 1:00 p.m. Tapes 43 - 46

MEMBERS PRESENT: Rep. Chuck Norris, Chair Rep. Ray Baum Rep. Carl Hosticka Rep. Tim Josi Rep. Bill Markham Rep. Bob Repine Rep. Liz
MEMBER EXCUSED: Rep. Nancy Peterson
STAFF PRESENT: Catherine Fitch, Committee Administrator Sue Nichol, Committee Clerk
MEASURES CONSIDERED: HB 3146 - Public Hearing HB 3234 - Public Hearing SB 129 - Public Hearing
WITNESSES: Rep. Tim Josi, District 2 Rep. Tony Federici, District 1 Warren Nakkela, Association of Lower Columbia River Flood

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

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation :

Martha Pagel, Water Resources Department Reed Marbut, Department of Waster Resources Becky Kreag, Department of Water Resources Terry Penho

TAPE 43, SIDE A

005 CHAIR NORRIS: Calls the meeting to order at 1:10.

PUBLIC HEARING ON HB 3146

023 CATHERINE FITCH: Gives summary of HB 3146 which would provide procedures for reorganization of drainage districts and diking d

027 REP. JOSI, District 2: Distributes Exhibit B which gives the background of the Lower Columbia Flood Control Districts.

065 If districts are placed under Measure 5 restrictions, the districts ability to raise money would be seriously inhibited.

080 The Corps of Engineers wrote a letter saying that there were minimum standards that the dikes, levees, and pumping stations have to
emergency flood assistance.

087 CHAIR NORRIS: Do the Corps of Engineers provide any funding?

089 REP. JOSI: I can't answer that.

090 REP. TONY FEDERICI, District 1: Speaks in support of HB 3146. Reads Exhibit C.

137 WARREN NAKKELA, Association of Lower Columbia River Flood Control Districts: Testifies in support of HB 3146. Explains the forma
operation of drainage and diking districts (Exhibit D).

172 CHAIR NORRIS: Is the help from the federal government substantial?

174 NAKKELA: At one time it was substantial.

213 TIM HAYFORD, Multnomah County Drainage District and Sandy Drainage District: Speaks in support of HB 3146. 232 REP. JOSI: Wh

234 HAYFORD: 1948.

237 CHAIR NORRIS: With the upstream dam system we now have in place, is there any likelihood of a repeat occurrence of the Vanport flo

239 HAYFORD: The threat is not as great as it was. Our systems plan for 100 year storms. The threat from the Columbia River has 1
however, the threat from internal flooding has increased because of

increased development.

254 REP. JOSI: What is the average capacity?

257 HAYFORD: We have an average pumping rate of about 30,000 to 35,000 gallons per minute, 24 hours a day.

265 REP. BAUM: You will reorganize under ORS 554, according to this bill. How will this protect you from the limitations of Ballot Measu

272 DON RICE, Association of Lower Columbia River Flood Control Districts: HB 3146 facilitates a process that kind of exists alrea
facilitates the transition between the drainage or diking district and a flood control corporation. The current rules are virtually impossi
to implement.

291 REP. BAUM: You're making it easier for districts to create a corporation where they can assess their members voluntarily?

299 RICE: The operation of the district will be identical. There are some differences between the 551 diking district and the corp
although the process is similar. The bill allows the existing district

to organize without going through a full election process. There are no new obligations on the land.

322 REP. BAUM: Could private districts be included in these corporations?

340 RICE: I'm not sufficiently familiar with other types of districts to know if these could be included.

348 REP. JOSI: Would this inclusion upset the applecart?

355 REP. BAUM: I don't think so, because they will simply want to take advantage of being a public entity of sorts.

370 Do we have a firm decision that the 544 corporation is outside the Ballot Measure 5 limitations?

374 RICE: Our understanding that the 544 classification, as a non-governmental unit, was established by the Oregon tax cour

decision was appealed to the Oregon Supreme Court, and we're awaiting the results of that. 377 REP. BAUM: Would the 544 corporation still qualify as a "special district?"

384 RICE: Yes.

391 HAYFORD: Those are only non-profit corporations.

397 REP. BAUM: But the tax court has said that for the purposes of Ballot Measure 5, they're not non-governmental units.

TAPE 44, SIDE A

008 CHAIR NORRIS: Would you still have power to direct payment of all the beneficiaries of this thing?

015 RICE: The 544 corporation has the power to either do self-billing, or to levy fees through the county tax collector system. I think districts would continue to use the county assessor to collect the fees.

019 CHAIR NORRIS: You would be empowered to include everyone involved?

023 RICE: That's why we're asking for this bill to be passed, so every landowner would be included in the new corporation.

029 REP. BAUM: Did you say that you would be able to collect your assessments through the county assessor's office?

030 RICE: That is correct, under the 544 statutes.

031 REP. BAUM: Was that a function of last session's bill that passed?

033 RICE: No, that has been a historic means of collecting revenue for these districts.

034 REP. BAUM: Do you have a legal opinion that says you can do that?

036 RICE: I believe it's in the 544 statutes.

037 REP. BAUM: But, that was before Ballot Measure 5.

040 RICE: Also representing Oregon Farm Bureau. We also handed out an example that shows the impact of assessing drainage fees put in compression (Exhibit D).

066 CHAIR NORRIS: Do you have a salinity problem in these areas that you have reclaimed?

067 HAYFORD: Yes.

069 CHAIR NORRIS: Do you attempt to remove or neutralize that in any way?

069 HAYFORD: We are starting to deal with this problem.

083 CHAIR NORRIS: None of these lands would feature any natural tributaries to the Columbia, would they?

085 NAKKELA: It would be impractical to put in any dams.

091 RICE: There is also a LC draft 3095 which would make a constitutional amendment that will exempt drainage and diking districts from Measure 5 limitations. We also have some proposed amendments.

109 CHAIR NORRIS: You can describe them to us briefly.

112 RICE: On line 11, "some newspaper" would be changed to "a newspaper of general circulation" On page 2, line 2, ORS 554.040 "or" changed to "and." On page 2, lines 3 and 4 we would change that to include both drainage and flood control. So the language would be "the article shall declare that the corporation is organized for the purpose of either draining or protecting land by flood control or both drain read "the property and income of a corporation organized under this act shall be exempt from taxation." On page 3 at the end of paragraph 5, 548.950 do not apply to a district dissolved under this act."

143 CHUCK HAGLAND, Clatsop County Flood Control Association: Speaks in favor of HB 3146.

158 PALMER HENNINGSEN, Diking District 9: Speaks in favor of HB 3146. If we don't get our dikes up to standard, we can't get help from

183 CHAIR NORRIS: What kind of help are they giving you?

186 HENNINGSEN: We've had a breach in the dike that they've come in and helped fix. They're supposed to do it if it endangers life and

198 LANCE BARNETT, Director, Diking District 9: Supports HB 3146. Because of funding problems, I will have to fix up my dike myself because

215 CHAIR NORRIS: Do these dikes require maintenance?

220 BARNETT: Yes.

226 CHAIR NORRIS: What if there were no more dikes?

227 HENNINGSEN: In our district, we might be under water for two or three days, but it would eventually go out.

231 JAN BOETTCHER, Oregon Water Resources Congress: Speaks in favor of HB 3146. Agrees with Rep. Baum that private entities could be brought

Districts that pulled out of 550 have been told that they can no longer use county tax assessment procedures as a collection vehicle.

279 These districts would have to go to direct billing.

299 REP. JOSI: What do you mean by "letting people out of the district"?

304 BOETTCHER: If the water right is given up, it is easier to get out of the assessment.

331 CHAIR NORRIS: Do you think this bill will rectify the situation where those in the district have to be given the opportunity to get

339 BOETTCHER: There may have to be some more safeguards put in the process.

341 REP. JOSI: Sees a dilemma in people being able to get out of the responsibility of being in a drainage district.

350 BOETTCHER: Yes, that would be a problem.

360 DAVID DICKENSON, Northwest Oregon Resource Conservation and Development Area: The Corps of Engineers pays 75% of costs of maintaining funds are eliminated.

408 CHAIR NORRIS: You're saying the Corps pays 75% of costs?

412 DICKENSON: That has been the ratio for most of the projects I've worked on, including construction and maintenance.

TAPE 43, SIDE B

012 CHAIR NORRIS: Asks if Jan Boettcher will continue to work on this.

018 HAYFORD: All the districts collect a fee on a per-acre basis. After Measure 5, we are at an ad valorem tax base. This results in gulf in the intent of the legislation and the end result.

040 LARRY TROSI, Oregon Farm Bureau: We have been working on this problem with the Association of Flood Control Districts.

073 CHAIR NORRIS: Closes public hearing on HB 3146.

PUBLIC HEARING ON HB 3234

090 CATHERINE FITCH: Gives background on HB 3234 which specifies when in Water Resources Department basin planning a quasi-municipal water right, but with limited preferences from those allowed municipal uses.

(Exhibit F)

100 Amendments have been recommended (Exhibit G)

102 MIKE DEWEY, Destination Resort Coalition: We support HB 3234 with the amendments. Explains situation with destination resorts.

135 RICHARD WHITMAN, Destination Resort Coalition: Testifies in favor of HB 3234. Summarizes testimony in Exhibit H.

176 REP. JOSI: What are basin programs?

179 WHITMAN: Explains basin programs. Page 3 of testimony lists possible uses for each basin.

185 REP. JOSI: The basins themselves, actually dictate the types of uses allowed?

193 WHITMAN: The Water Resources Department holds a hearing on each basin and decides which uses would be allowed.

200 We feel that it is not appropriate to solve this problem through rule-making.

274 REP. JOSI: What type of water right are you referring to?

279 WHITMAN: In all the cases in my area, we're talking about wells and deep wells.

286 REP. JOSI: Are there ample quantities of water in these wells?

290 WHITMAN: There is an on-going question about long-term declines in ground water in Deschutes County. There is a study going on best evidence right now is that there is no connection between these wells and surface water sources.

295 DEWEY: This should not be involved in the decision.

304 CHAIR NORRIS: Are you wanting to equate quasi-municipal status with the municipal status as far as basin plans are concerned?

312 WHITMAN: Yes, that's correct. And as I will discuss in the amendments, it will do that for commercial uses as well.

315 REP. JOSI: Resort facilities are referred to as quasi-municipal entities?

324 WHITMAN: Yes.

328 Explains proposed amendments which add commercial uses. It specifies quasi-municipal as being used for multiple uses. (Exhibit G)

350 WHITMAN: Legally, you cannot have a rural commercial use of water in the State of Oregon, except for two basins.

353 REP. JOSI: Are laws being broken?

355 WHITMAN: I would expect so.

360 Continues to explain amendments.

380 DEWEY: We would work with the Water Resources Department to resolve any problems they may have with the definitions.

TAPE 44, SIDE B

005 JAN WICK, Avion Water Co.: This bill would give Avion's customers a legal right to the water they use. Testifies in favor of the

074 CHAIR NORRIS: What's the classification of rights you now hold?

078 WICK: There are different classifications.

082 CHAIR NORRIS: Can you expand service?

085 WICK: We may be constrained in the future.

091 MARTHA PAGEL, Water Resources Department: Does not believe the legislation is needed at this time as the Department is working to resolve the problem. Reads Exhibit I.

125 CHAIR NORRIS: Are quasi-municipal uses allowed in any basin where municipal uses are allowed?

127 PAGEL: Yes. On the basis of that policy, we have issued a number of permits for quasi-municipal uses. We have been challenged permits.

141 REP. MARKHAM: Who challenged this?

143 PAGEL: Water Watch of Oregon.

162 We have been trying to clarify our policy by starting to list quasi-municipal uses in our basin plans. We currently have a couple cases pending, one is a contested case.

163 REED MARBUT, Department of Water Resources: One case is in circuit court in Marion County.

158 REP. HOSTICKA: Is the only difference between municipal and quasi-municipal the distinction of who owns the pipes?

164 REED MARBUT, Department of Water Resources: Yes.

170 REP. HOSTICKA: I don't know why you made this type of distinction.

179 BECKY KREAG, Department of Water Resources: Explains the logic behind the different classifications.

212 REP. JOSI: Is a resort facility a quasi-municipal use?

219 MARBUT: Yes, they are in effect meeting the needs of the community.

229 REP. JOSI: There is then, a difference in uses?

240 MARBUT: There is not a different impact on the resource.

250 PAGEL: We support the end goal. Our concern is that the issue is more complicated than this bill can resolve. The Commission does authority to resolve this by rule-making.

283 REP. HOSTICKA: What was the reason behind different preferences?

290 MARBUT: They were to give cities flexibility in the acquisition, development and retention of their water rights.

308 REP. HOSTICKA: The general idea seems to be to favor a type of use, over another type of use.

310 MARBUT: The preferences were given to the type of entity. Municipality was often defined differently each time a preference was granted.

331 CHAIR NORRIS: How far are you from a definition of municipality?

335 PAGEL: The process should be completed by fall.

342 REP. JOSI: What's to stop anyone from challenging the rules you develop?

349 PAGEL: They would have to challenge the way we've made the rules.

367 CHAIR NORRIS: Would there be a definition of quasi-municipal that we could use in the bill?

375 MARBUT: We could work on this with the proponents of the bill to see if we could work something out.

TAPE 45, SIDE A

005 TERRY PENHOLLOW, Sunriver Utilities: Testifies in favor of HB 3234 so the process can be kept out of litigation.

042 AUDREY SIMMONS, Water Watch: Testifies against HB 3234. Gives background of the current procedures.

118 REP. JOSI: What about the quasi-municipal entities who are in a bind?

120 SIMMONS: I don't have the answer.

137 REP. JOSI: Are all basins overappropriated?

139 SIMMONS: Every basin in the state, at some time, is without water.

140 REP. JOSI: What about in Sunriver, we just had someone testify that they had plenty of water. Would you agree with that?

147 SIMMONS: We know little about the water in that area.

169 KEVIN HANWAY, Oregon Association of Water Utilities: Testifies in favor of HB 3234.

189 CHAIR NORRIS: Asks Mr. Dewey, who are the proponents of this bill?

195 MIKE DEWEY: The Destination Resort Coalition and other special districts.

203 CHAIR NORRIS: I think this can be worked out between you and the Water Resources Department.

209 CHAIR NORRIS: Closes public hearing on HB 3234.

PUBLIC HEARING ON SB 129

224 CATHERINE FITCH: Gives background on SB 129 which would require a water right permit before construction of impoundment, diversion structure.

246 BEV HAYES, Water Resource Department: Explains and testifies in favor of SB 129. Reads Exhibit K.

296 CHAIR NORRIS: What happened to facilities which were built and then couldn't get a permit?

300 HAYES: Gives example of a reservoir that was built before permit was granted and it presented a problem that needed to be worked out.

322 REP. MARKHAM: How big of an impoundment would be included?

328 HAYES: An impoundment of any size is included.

342 REP. VanLEEUWEN: Aren't you a couple years behind in issuing permits? 348 HAYES: Current estimates are 18 months to two years behind.

355 REP. MARKHAM: What if construction takes place before a permit is granted?
365 HAYES: Then they would be storing water illegally and we could require them to dismantle the facility.
376 REP. MARKHAM: Would the project still be considered for approval?
382 HAYES: We haven't denied them in the past.
390 REP. HOSTICKA: In the Rogue Basin people have been going in illegally and getting water. Does this address that issue?
400 HAYES: No.
TAPE 46, SIDE A
009 DAVE NELSON, Oregon Dairy Farmers Association: Concerned about how this bill will affect liquid manure impoundments.
024 ED HEMMINGWAY, Oregon Dairy Farmers Association: Concerned that liquid manure lagoons could not be built before the permit was granted would be time consuming since they are two years behind in granting permits.
055 CHAIR NORRIS: At what point do you appropriate water?
063 HEMMINGWAY: We don't have to. We use rainfall and washwater from washing utensils, which comes from the well.
072 CHAIR NORRIS: Are you putting surface water to beneficial use, or are you creating a surface water?
073 HEMMINGWAY: It depends upon the interpretation. As is currently interpreted, we have to have the water rights even though rainwater.
081 DON MOISEN, Oregon Dairy Farmers Association: Explains case where manure lagoon needs to be built to resolve problem with neighbor this bill goes through and the farmer has to wait at least 18 months for a permit, it will be a problem.
126 NELSON: These disposal systems may be mandated to any certain farmer at any time. If they must wait for two years for a permit, they would
140 CHAIR NORRIS: This may be a problem with food processors also. Maybe we need to exempt certain categories.
173 REP. HOSTICKA: Will we have an information meeting on why the backlog is there before we reject things just because of the backlog?
185 CHAIR NORRIS: It would be appropriate if Water Resources could give us a statement on that.
188 HEMMINGWAY: Even a few months' delay would be detrimental.
205 NELSON: Explains the number of permits needed to operate a manure lagoon.
228 LARRY TROSI, Oregon Farm Bureau: Recommends insertion of an effective date to the bill.
257 REP. JOSI: Would this affect aggregate operations?
257 HAYES: Yes, if a water right is needed for the operation.
280 CHAIR NORRIS: Closes public hearing on SB 129.
329 Meeting adjourned at 3:50.

Submitted by:

Reviewed by:

Sue Nichol

Catherine Fitch Clerk

Administrator

EXHIBIT LOG:

A - HB 3146 - Preliminary Staff Measure Summary - Catherine Fitch - 1 page B - HB 3146 - Information - Rep. Josi - 3 pages