

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

March 23, 1993 Hearing Room D 1:00 p.m. Tapes 49 - 51

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

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

MEASURES CONSIDERED: HB 2822 - Public Hearing HB 2109 -
Work Session HB 2995 - Public Hearing HB 2487 - Public Hearing and Work
Session

WITNESSES: Rep. Peter Courtney, District 33 Paul
Donheffner, State Marine Board Rod Ingram, Oregon Department of Fish and
Wildlife Pete Bond, State Parks Greg Damitz, Molalla River Watch Rep.
Denny Jones, District 60 Martha Pagel, Water Resources Department Steve
Applegate, Water Resources Department Kip Lombard, Oregon Water
Resources Congress Richard Kosesan, Water for Life Reed Marbut, Water
Resources Department Rep. Tom Brian, District 9 James Funk Harley
Higgins

[--- 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 49, SIDE A

008 CHAIR NORRIS: Calls the meeting to order at 1:15.

PUBLIC HEARING ON HB 2487

010 CATHERINE FITCH: Gives background on HB 2487 which would
establish an Oregon "Adopt-a-River" program similar to the
"Adopt-a-Highway" program aimed at keeping rivers clean using volunteer
labor.

015 REP. PETER COURTNEY, District 33: Testifies in favor of HB
248 7 (Exhibit A).

102 PAUL DONHEFFNER, State Marine Board: Testifies in favor of HB
248 7. Similar programs have been instituted in other states.

134 Other agencies will need to be involved.

140 Recommends amendments (Exhibit B).

163 ROD INGRAM, Oregon Department of Fish and Wildlife: Testifies in favor of HB 2487. Reads testimony in Exhibit C.

183 PETE BOND, State Parks: Supports the bill. State Parks will cooperate however we can.

197 REP. VanLEEUEWEN: The private landowner has been left out of the list of parties who must be consulted. Will the debris be picked up from the

waterside on private land?

202 DONHEFFNER: This will not authorize trespassing on private lands.

209 REP. COURTNEY: Permission of the landowner would be required.

319 CHAIR NORRIS: Do we incur liability if people get hurt?

223 REP. COURTNEY: I don't think you can ever be sure that we're clear of liability.

241 BOND: In our beach clean ups, we communicated to the volunteers the hazards. There is minimal liability.

265 REP. JOSI: The landowner needs to be considered in assigning sections of the river.

281 REP. COURTNEY: That may need to be included.

289 GREG DAMITZ, Molalla River Watch: Speaks in favor of HB 2487. Outlines the yearly program instituted to clean up the Molalla River. Reads

Exhibit D.

390 CHAIR NORRIS: Closes public hearing.

WORK SESSION ON HB 2487

395 MOTION: REP. JOSI: Moves to adopt -3 amendments to HB 2487.

397 CHAIR NORRIS: Restates motion. Hearing no objection the amendments are adopted.

402 MOTION: REP. JOSI: Moves to amend HB 2487-3 amendments by adding on line 24 "and private landowners."

407 CHAIR NORRIS: Restates motion.

411 REP. VanLEEUEWEN: Is it better that the landowners be there, or not? What authority does it give the State Marine Board if the landowners are there?

417 CHAIR NORRIS: It only says they shall coordinate and cooperate with them. To me, that suggests they should not just go in unannounced.

422 REP. VanLEEUEWEN: Do they have the power to take a scenic easement, or condemn and take a use easement if they want to?

426 CHAIR NORRIS: I don't see it under this bill.

430 REP. VanLEEuwEN: What powers of condemnation do you have on private properties?

441 DONHEFFNER: The Marine Board has no powers of condemnation as an agency.

TAPE 50, SIDE A

030 The proposed amendment would make it clear that we would be working with private landowners. We don't intend to provide a license to volunteer

groups to enter private property.

041 REP. MARKHAM: You wouldn't have any authority under rule-making to try to dictate private landowners?

042 DONHEFFNER: No.

043 REP. JOSI: Expands motion to include the words "litter from" and add them to line 6 between the words "clean" and "the".

048 CHAIR NORRIS: Hearing no objection, the amendments are adopted.

050 MOTION: REP. JOSI: Moves HB 2487, AS AMENDED, to the full committee with a DO PASS recommendation.

053 CHAIR NORRIS: Restates motion.

055 VOTE: In a roll call vote, all present vote AYE. REPS. BAUM and PETERSON are EXCUSED.

060 CHAIR NORRIS: The motion CARRIES.

062 CHAIR NORRIS: Closes work session on HB 2487.

PUBLIC HEARING ON HB 2822

070 REP. DENNY JONES, District 60: Recommends amendments to HB 2822 which would allow the holder of a pre-1914 water right to receive the amount

of water necessary to adequately irrigate all appurtenant lands, rather than limiting holder to rate and duty of water established in

adjudication decree, if abundant water is available. The amendments are included in Exhibit E.

106 REP. HOSTICKA: You would be taking out the words "surface waters of the state?"

111 REP. JONES: No, we'd leave in "the surface waters of the Malheur River" so we would take out the words "the state."

147 Section 4 is the reason for the whole bill. It gives us

credit for return flows. We only use 15% of the water diverted.

157 MARTHA PAGEL, Water Resources Department: Explains amendments suggested in Exhibit F. We had recommended deleting Section 3, but we have since

seen the language that was proposed by the Water Resources Congress, and with those amendments, Section 3 would be agreeable to us.

177 We had concerns about Section 4 because it would significantly change the way water rights are administered. It would create a significant

field burden for our staff. The fiscal impact is virtually eliminated with the deletion of Section 4.

182 STEVE APPLGATE, Water Resources Department: We are concerned about the language in Section 4, which would need a very complex accounting

process for measuring water used.

200 CHAIR NORRIS: Section 1 seems to express that it wouldn't be a question of using up that rate and duty as long as there was abundant water. Is

that correct?

202 REP. JONES: That was the reason I put the word in there, and there may be a better word. The problem is, that in order to supply some instream water rights, if water is measured at the head of the ditch, then once

we use up our three acre-feet, we are done.

240 CHAIR NORRIS: Is it practical to measure those return flows?

244 REP. JONES: Ours has been measured and it showed that we only used 15% of the water that we turned in at the head of the ditch.

252 CHAIR NORRIS: Is it the Department's opinion that you wouldn't be able to administer Section 4?

258 APPLGATE: It would be a very complicated and costly process to measure the actual amount of water used.

282 REP. REPINE: Is the fiscal impact on the bill as originally submitted?

284 FITCH: Yes.

285 CHAIR NORRIS: The one we have would be for all the rivers in the state, as the bill is in its original form.

293 REP. JOSI: We're just speaking about nine miles of river now, correct?

300 APPLGATE: That's correct. The cost for that nine miles of river would be minimal.

309 CHAIR NORRIS: Might we acquire some technological information that may have some statewide application?

319 APPLGATE: This may have some use for other rivers, although each is different.

323 REP. VanLEEuwEN: Water Resources Department agreed last meeting that the water returned to the stream is a major portion of that which is

diverted so they wouldn't have to go out and measure it.

326 PAGEL: Amending the bill to only cover a small portion of a river would significantly reduce the fiscal impact. It would significantly change

water policy in the state.

350 REP. REPINE: Do we already have the information required in Section 4?

366 APPLGATE: The return flow characteristics from the study area could be significantly different than the area covered by Section 4.

382 PAGEL: Annual review would be necessary to calculate the return flows.

391 REP. JOSI: On Section 4, line 26, could we insert the "Malheur River" between the words "used" and "under" to define this further?

404 REP. VanLEEuwEN: In Rep. Jones' amendment, there is not the mileage of the river. Is the area Rep. Jones is talking about within the mileage

suggested by the Water Resources Department?

415 PAGEL: It is within the mileage.

TAPE 49, SIDE B

007 REP. JONES: The intent was to have the whole river included in the scope of my amendments.

059 CHAIR NORRIS: You disagree with the amendment specifying certain river miles?

063 REP. JONES: Yes.

074 REP. JOSI: On Section 4, line 26, could we include those mileage restrictions?

085 PAGEL: We would prefer not to see this special consideration given to this area.

098 We feel the amendments proposed by us and the Water Resources Department are consistent with current practice and law.

104 REP. HOSTICKA: Do return flows come back to a ditch or do they seep back into the river?

109 APPLGATE: Some are subsurface flows, some don't seep it at all, some run off back to the river.

117 REP. HOSTICKA: Are there intervening users?

120 APPLGATE: Probably.

130 REP. HOSTICKA: I'm wondering if it would be a friendly, or unfriendly amendment to add at the end of Section 4 the words "so long as such

credit may be made without injury to another water right holder?"

158 KIP LOMBARD, Oregon Water Resources Congress: Submits proposed amendments (Exhibit G).

190 CHAIR NORRIS: Closes public hearing on HB 2822.

WORK SESSION ON HB 2109

220 CATHERINE FITCH: Summarizes work on HB 2109 thus far which would authorize Water Resources Department to negotiate with any federally

recognized Indian tribe that may have a federal reserved water right claim in Oregon.

239 MOTION: REP. HOSTICKA: Moves HB 2109 to the full committee with a DO PASS recommendation.

253 RICHARD KOSESAN, Water for Life: Concerned that the Department would not initiate negotiations for two years. Also believes the Department

could conduct these negotiations without the legislation.

268 REED MARBUT, Department of Water Resources: We could initiate some informal discussions with the Umatilla tribes, but legislation would be required to undertake formal negotiations. The tribes feel that it is

essential for the state to have this authority before they can proceed.

278 CHAIR NORRIS: Does this position stem from the idea that they are a sovereign entity?

286 MARBUT: Yes.

300 It took slightly over two years for Warm Springs to prepare for their negotiations. They cannot begin that process before the state has

authorization to begin negotiations.

305 CHAIR NORRIS: What would be the appropriate court, references made to that on lines 27 and 28 of the bill?

310 MARBUT: That is standard language, because we do not know

until the settlement agreement is secured where that will go forward. Many of the results end up in a federal forum because of appropriations to Congress, authority of the tribes to negotiate, and questions about whether the

settlement agreement meets the requirements of the McCarren amendment.

328 REP. MARKHAM: Is this procedure precedent setting for other states?

337 MARBUT: It is a standard procedure to have a state agency to coordinate this negotiation.

355 REP. MARKHAM: What does your attorney general say?

357 MARBUT: The right must fit within state law.

377 REP. MARKHAM: Can we negotiate with present water right holders with the tribe?

383 MARBUT: No. Settlement agreements usually work within the confines of existing rights.

TAPE 50, SIDE B

010 KOSESAN: One question that remains is, if the negotiation process is completed, it would not prevent one party from circumventing that

negotiation process if they were displeased with it. The other question is that the Indian tribes could not go forth for a period of two years without this legislation. I think that what this legislation does is allow Indian tribes to acquire federal assistance through the BIA.

019 CHAIR NORRIS: The question may be instead, should they consider getting funds through the BIA for negotiation or litigation?

034 CHAIR NORRIS: Restates motion.

047 REP. VanLEEUEWEN: I'm still not sure how much water will be affected. Also, someone mentioned that this would allow them to borrow money from someone?

050 CHAIR NORRIS: Mr. Kosesan mentioned that this would, perhaps, allow them to get a grant from the Bureau of Indian Affairs to finance their

negotiation process.

057 REP. HOSTICKA: I think Rep. VanLeeuwen's concern would be served by passing this bill and negotiating with the tribes about what rights they want to assert rather than letting them go to court and getting a

federal decree saying they have these rights. I believe this bill would put us in a better position.

MARBUT: Submits map of Indian Communities (Exhibit H).

VOTE: In a roll call vote, all present vote AYE. REPS. PETERSON AND BAUM are EXCUSED.

074 CHAIR NORRIS: Calls a recess at 2:40.

Reopens meeting.

PUBLIC HEARING ON HB 2995

079 CATHERINE FITCH: HB 2995 exempts drip irrigation systems from certain regulation of ground water if it is used for irrigating orchard or

nursery that is metered and does not exceed 15,000 gallons per day.

092 REP. TOM BRIAN, District 9: Supports HB 2995 in order to solve the problem of Mr. Funk's orchard.

114 JAMES FUNK, Farmer: Gives testimony in support of HB 2995. Summarizes testimony in Exhibit I.

188 CHAIR NORRIS: Did you apply for a water right before you made this investment?

190 FUNK: No, I thought that was taken care of when I developed my farm management plan.

197 If I had a 15 acre water right, I would have a lot more water allocated to me than I need. I can irrigate my crop for less than 15,000 gallons

per day using the drip irrigation system.

212 REP. VanLEEUEWEN: What are the county requirements on how many dollars per acre you must make in order to live on the land?

224 FUNK: \$500 per acre.

241 REP. MARKHAM: Why can't you get a water right?

244 FUNK: The permit process has been removed from this area.

250 REP. MARKHAM: Do you feel the Water Resource Department will re-evaluate this situation?

254 REP. BRIAN: I'm not sure.

269 REP. HOSTICKA: What percentage of the investment was buildings?

278 FUNK: About \$50,000 is in buildings, not including the manufactured home for the manager.

280 REP. HOSTICKA: How much of the land has trees on it now?

282 FUNK: About 3-1/2 acres.

282 MARTHA PAGEL, Department of Water Resources: Concerned that the measure would contribute to additional groundwater decline problems and

potentially harm other water right holders. Reads testimony in Exhibit J.

355 REP. VanLEEuwEN: How many gallons of water would I be able to use if I were living on those 15 acres?

366 REED MARBUT: 15,000 gallons of water per day for domestic use.

375 REP. VanLEEuwEN: So if I were living there, I could use the water for domestic use, but since he's using it to produce fruit, he can't use it?

380 MARBUT: That's true, the exempt uses do not include irrigation and this is irrigation.

382 PAGEL: The domestic use allows up to 15,000 gallons, but it is primarily to serve the household needs and limited lawn and garden

watering.

389 REP. VanLEEuwEN: Could he store rainwater, and what would he have to have to do that?

397 MARBUT: He would have to apply for storage, and then apply to use it. If the dam were big enough, he may have to submit plans for safety

reasons.

TAPE 51, SIDE A

021 REP. VanLEEuwEN: What are his chances of getting a permit to store?

025 MARBUT: I couldn't tell you that without knowing the details.

030 PAGEL: The chances of getting a permit for storage are greater than other options.

037 REP. VanLEEuwEN: Who does he need a permit from?

040 MARBUT: Only Water Resources Department and if it's on private land, permission for the landowner.

048 REP. MARKHAM: Why did Water Resources set a 5,000 gallon limit in the original Senate bill?

053 PAGEL: We recommended 15,000 to begin with, which came from the current exemption for domestic use.

058 CHAIR NORRIS: Is that bill strictly for domestic use, or other uses as well?

060 PAGEL: It would be for a wide range of uses that aren't specifically mentioned.

062 CHAIR NORRIS: Have we considered that this was a drip system?

066 MARBUT: Yes, this is a high value crop with a very efficient use of water.

068 CHAIR NORRIS: This being the case, the precedent may be less dangerous than it would otherwise be.

070 PAGEL: Yes.

082 HARLEY HIGGINS: Testifies in favor of HB 2995. Summarizes Exhibit K.

140 CHAIR NORRIS: Is this the first time you've run up against the requirement to have a permit or certificate for irrigation?

142 HIGGINS: Yes, and I'm sure there are a lot of nurseries operating outside the law.

158 REP. BRIAN: The scope of the bill can be narrowed so wasteful practices are not included.

215 REP. MARKHAM: Was that 5,000 gallons for domestic use only recommended in SB 90, or whatever use you wanted?

223 MARBUT: SB 90 would give the Commission more discretion in allowing other uses besides the specific exemptions.

249 CHAIR NORRIS: Closes public hearing.

257 Meeting adjourned at 3:45

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 2487 - Testimony - Rep. Courtney - 6 pages B -
HB 2487 - Amendments - Paul Donheffner - 2 pages C - HB 2487
- Testimony - Rod Ingram - 2 pages D - HB 2487 - Testimony -
Greg Damitz - 1 page E - HB 2822 - Amendments - Rep. Jones - 1
page F - HB 2822 - Amendments - Martha Pagel - 1 page G -
HB 2822 - Amendments - Kip Lombard - 1 page H - HB 2109 -
Information - Reed Marbut - 1 page I - HB 2995 - Testimony -
James Funk - 24 pages J - HB 2995 - Testimony - Martha Pagel -
2 pages K - HB 2995 - Testimony - Harley Higgins - 12 pages