

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

March 30, 1993 Hearing Room D 1:00 p.m. Tapes 54 - 57

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

MEMBER EXCUSED: Rep. Nancy Peterson Rep. Ray Baum

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

MEASURES CONSIDERED: HB 3357 - Public Hearing HB 3358 -
Public Hearing HB 2772 - Public Hearing

WITNESSES: Kip Lombard, Oregon Water Resources Congress
Jim Carver, Oregon Water Resources Congress Bruce Estes, Oregon Water
Resources Congress Bob Reutor, Westland Irrigation District Laura
Schroeder, Oregon Water Resources Congress Doug Heiken, Water Watch
Martha Pagel, Department of Water Resources Steve Applegate, Department
of Water Resources Rep. Liz VanLeeuwen, District 37 David Van Essen, Van
Essen Nursery Co. Jill Zarnowitz, Oregon Department of Fish &
Wildlife Doug Meyers, Water Watch Larry Hill, Northwest Sports
Fishing Industry Association

[--- 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 54, SIDE A

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

PUBLIC HEARING ON HB 3357

021 CATHERINE FITCH: Summarizes HB 3357 which would authorize the
Water Resources Commission to include land not described in permit
when

issuing a water right certificate, subject to certain requirements

(Exhibit A).

044 KIP LOMBARD, Oregon Water Resources Congress: Outlines permit
procedure (Exhibit B).

098 REP. JOSI: Permits for municipalities and irrigation districts
cannot be canceled because the project doesn't begin in a year?

100 LOMBARD: That's correct.

102 REP. JOSI: Do they have any restrictions?

105 LOMBARD: The Water Resources Department can answer that better than I can. I think they do have some restrictions.

207 The Water Resources Department has deviated from the original permits historically.

208 Two areas in the state are going through the proof survey process and being proven up, certain irrigations in the Umatilla Basin and three

irrigation districts in the Rogue Basin. Water Watch wrote to the Department, stating their position that certificates ought not to be issued for lands not covered by the original permits that were being subjected to the prove up process. The Water Resources Department's response has been to take a more restrictive position on what can and cannot be proven up, for the purposes of issuing a final certificate.

280 JIM CARVER, Oregon Water Resources Congress, Former Employee of Water Resources Department: Gives the history of the policies of the Water

Resources Department (Exhibit C).

TAPE 55, SIDE A

053 REP. JOSI: The total acres did not exceed what was on the permit, correct?

059 CARVER: Yes, that's correct.

064 REP. JOSI: The problem now is some of the extraneous lands?

076 CARVER: The department's policy is to include land that could have been contemplated as part of the project.

079 BRUCE ESTES, Oregon Water Resources Congress: Gives additional information on the historical perspective of water right process.

168 Reads into the record a case of Sun Country Water. Also submits other correspondence which demonstrates the Department's policies (Exhibit D).

218 REP. VanLEEUWEN: What was your concern?

224 ESTES: I told people, when I was an employee, that the policy was that if a permit was issued for a certain amount of acres, and you do, in

fact, irrigate that number of acres, but they're not in the same location as your permit called for, that you could prove up on those acres in the location you found them at the time of completion. You

cannot exceed the quantity of water or the rate of application or the duty of water that was involved.

231 REP. MARKHAM: What is supplemental ground?

236 ESTES: Where a water reservoir went on land that already had an existing right.

254 LOMBARD: Asked Bill Caldwell from the Medford Irrigation District to speak. The Medford Irrigation District is the district that has been

most affected by the growth and development of the City of Medford.

265 REP. MARKHAM: Are those three districts south of the Rogue River?

267 LOMBARD: Yes, they are in the Bear Creek drainage. They do not get into the Sam's Valley.

282 BILL CALDWELL: Shows map of Medford and its development.

358 REP. VanLEEUWEN: In the areas that were irrigated in the early days, are those now houses?

363 CALDWELL: The east is all high value housing.

372 LOMBARD: Explains development of Medford.

405 CALDWELL: We, in Jackson County, are 16th in the state in producing agriculture crops.

TAPE 54, SIDE B

010 LOMBARD: There will be some area in the Medford system not covered by permits.

022 BOB REUTOR, Westland Irrigation District: The district has 800 acres not identified on the original application. So almost 60% of the 1961

permits are not being allowed. We were advised that these permits could be moved to better land, to take advantage of new technologies, to save the water rights because of freeways, and urban sprawl.

047 Over \$1 million may be lost from the production that could have occurred on these 800 acres.

065 Shows examples of water rights that were moved (Exhibit E).

098 LOMBARD: Calls Laura Schroeder up to show information on Umatilla Basin problem.

110 LAURA SCHROEDER, Oregon Water Resources Congress: Explains situation in Umatilla district where irrigation was moved and can no longer be

included in the permit.

153 CHAIR NORRIS: Meeting recessed at 2:12 for a few minutes.

Meeting reconvened at 2:15.

159 LOMBARD: Because of continuing litigation, the presentation will be cut short.

179 We feel the Department's policy has changed which will be harmful for Oregon agriculture.

186 REP. MARKHAM: Will this bill take care of the problem?

190 LOMBARD: Yes.

192 REP. HOSTICKA: Is this bill designed to move out the case, or to deal with problems in the future?

196 LOMBARD: It is designed to take care of pending cases.

200 CHAIR NORRIS: I would prefer that discussion regarding pending cases does not take place.

202 REP. HOSTICKA: I'm asking whether this will change the court results which were decided under a different law than they started the case

under. I think that is a legitimate question for the legislature to ask.

206 LOMBARD: There is a lot left to be argued in this case. The intent of the bill is to put into statute what we understood the practice had

been.

218 REP. MARKHAM: I don't think the Attorney General can tell us what we can listen to.

225 LOMBARD: As an attorney, I do not want people's cases to be jeopardized.

231 DOUG HEIKEN, Water Watch: Opposes HB 3357 because it would allow irrigation districts to increase water use and harm the public interest. Reads testimony in Exhibit F.

336 REP. JOSI: In the issuance of permit, does the Water Resources Department go out and quantify what the map says? Is there a period

between the application of the permit and the allowance of the permit

where the boundaries are made that are different than the application of the permit?

351 HEIKEN: Yes. The application is submitted by the water user and describes where they think they want to apply the water. Between the

time the application is submitted and the time the permit is issued, a technical review occurs. This technical review determines if there is water available and if it is in the public interest to grant the use. The public interest determination is done on a hypothetical basis.

384 REP. JOSI: You say this will allow irrigation districts to use more water than originally allowed. My impression was that the same amount

of land would be irrigated?

407 HEIKEN: I said it will allow more water use than entitled by the permit.

TAPE 55, SIDE B

010 REP. VanLEEuwEN: You make it sound simple to apply for a new permit. Are you aware of the backlog in applying for a permit?

018 HEIKEN: I'm aware of the problem, but this wouldn't be fair.

020 REP. VanLEEuwEN: What difference does it make if they don't irrigate any more acres or have any more water?

024 HEIKEN: It makes a difference to me because there will be less water in the stream if they're allowed to irrigate lands not described in their

permit.

025 REP. VanLEEuwEN: Not if they're not allowed more acres to be irrigated or more acre-feet of water .

030 HEIKEN: The certificate is allowing more acres of water right than would be allowed if the certificate was limited to the land described in the permit.

030 REP. VanLEEuwEN: But not more water.

031 CHAIR NORRIS: I want to point out that the certificate does not authorize a greater rate and duty of water or greater acreage than is

authorized by the terms of the permit.

034 HEIKEN: There may be instances where the land now being irrigated is farther from the stream.

043 MARTHA PAGEL, Department of Water Resources: In our view, there has not been a policy change.

071 Reviews information from Water Resources Congress Work Session Agenda contained in Exhibit A, page 7.

093 We would recommend that an additional public policy review be required if water right is moved.

114 REP. HOSTICKA: Is there an event that initiates the final proof survey?

120 STEVE APPELEGATE, Department of Water Resources: The expiration of the completion date in the permit.

131 REP. HOSTICKA: Mr. Lombard's testimony said that irrigation districts weren't subject to cancellation. Do they have expiration dates too?

134 APPELEGATE: Yes. They are subject to cancellation for other requirements.

139 REP. HOSTICKA: I'm concerned with the ex post facto potential nature of the bill. What reference point could we use to refer to? 145 APPELEGATE: We could discuss a requirement that would apply prospectively.

149 REP. HOSTICKA: Is it common practice for irrigation districts to apply for more water than they need immediately to anticipate future needs?

156 APPELEGATE: Yes, I believe that is common.

163 REP. HOSTICKA: Are there any usual time expectations on the district applying water beneficially to the land?

169 APPELEGATE: Permits would be issued, allowing up to five years for the actual application of water to occur. That date can be extended in up

to five year increments for some time.

175 REP. HOSTICKA: Could someone come in now with an ancient application and start using water to the detriment of the public?

195 APPELEGATE: The only entity that could do that would be a municipality.

201 PAGEL: This bill could be made to apply to permits issued after a certain date.

212 CHAIR NORRIS: Encourages a work group get together to work out a consensus.

242 Closes public hearing on HB 3357.

PUBLIC HEARING ON HB 3358

250 CATHERINE FITCH: Explains HB 3358 which would create a process for transferring supplemental water right. It defines primary and

supplemental water rights. It clarifies districts' authority to transfer rights as an exception to regular transfers (Exhibit G).

289 KIP LOMBARD: Distributes testimony and suggested amendments (Exhibit H).

411 The bill adds to the statutes definitions of primary and secondary water rights. It will allow the transfer of a supplemental water use permit

along with the transfer of a primary right. It corrects the error of the 1991 session, deleting the condition of certificated water rights from those entitled to transfer, and adds a new phrase, defines it, and then adds it, "a water right eligible or subject to transfer." It clarifies that the HB 2191 procedures are an exception, in lieu of the regular transfer provisions today.

TAPE 56, SIDE A

049 DOUG HEIKEN, Water Watch: Opposes the bill because it specifically allows what the last legislative session disallowed. (Exhibit I)

084 CHAIR NORRIS: This idea of supplemental rights was in existence in the 70's.

088 MARTHA PAGEL, Department of Water Resources: We are supportive of the issue that is addressed by the bill. We agree that there are some

amendments that can clarify the intent.

106 CHAIR NORRIS: Can you see what you agree with and bring it back?

110 REP. REPINE: Was the action by the 1991 legislature by design, or a mistake?

121 APPLGATE: That was a last minute change. The effect of the change was that we needed to change the way we looked at rights that were subject

to transfer.

140 CHAIR NORRIS: Closes public hearing on HB 3358.

PUBLIC HEARING ON HB 2772

157 CATHERINE FITCH: Gives background on HB 2772 which would prohibit the Water Resources Commission from limiting use of water to certain times

of the year in new water rights or contracts issued after the effective date of this act; allows Commission to extend irrigation season for existing permits and rights, if extension will not impair or harm any water right (Exhibit J).

170 REP. LIZ VanLEEuwEN, District 37: This bill is designed so that people with irrigation rights can use that water when they need it.

193 DAVID VAN ESSEN, Van Essen Nursery Co.: Testifies in favor of HB

277 2. Crops are put at risk when water is cut off in the fall.

234 CHAIR NORRIS: What is the source of your water?

236 VAN ESSEN: The South Santiam.

337 CHAIR NORRIS: Do you have a permit or certificate directly out of the river?

238 VAN ESSEN: Yes.

251 MARTHA PAGEL, Department of Water Resources: We are open to making irrigation seasons more useful.

Section 1 would be useful authority.

293 We are concerned that our authority would be detrimentally limited by Section 2.

320 CHAIR NORRIS: What has been the extent of complaints about the limitation of irrigations seasons?

329 REP. VanLEEUEWEN: This would affect more than just the nursery industry.

349 PAGEL: That's correct. Also, last summer, many irrigators wanted to irrigate in order to restore what had been depleted because of the

drought. 364 CHAIR NORRIS: Does the current law prohibit this?

366 APPELEGATE: There have been permits issued for out-of-season uses.

384 CHAIR NORRIS: Were these permanent permits?

389 APPELEGATE: They were new permits that were issued for use outside the normal season. They could be long term permits.

397 CHAIR NORRIS: Can you continue to do this as the law now exists?

400 APPELEGATE: Yes.

408 REP. VanLEEUEWEN: So there is an absolute need for this bill because there's no way that a person, even in an emergency situation, can get

relief within a few days' time from your department?

412 APPELEGATE: Short term relief can be received in the case of a declared drought. There is an opportunity to get an emergency permit for that

type of use. In the absence of a declared drought, you're correct.

424 REP. VanLEEUEWEN: People who applied during the last season were told to get in that long list of permittees and apply for a permit?

427 APPELEGATE: There were drought permits issued last summer in the Willamette Valley.

428 REP. VanLEEuwEN: How did they get them then?

430 APPLegATE: They made an application for a drought emergency permit.

TAPE 57, SIDE A

017 PAGEL: We processed drought emergency permits first.

025 REP. VanLEEuwEN: The average citizen isn't understanding this system.

034 PAGEL: I would acknowledge that the current process is complex. We are trying to improve the clarity in the information we're giving.

045 REP. VanLEEuwEN: I've had constituents last fall who were not advised that they could get emergency drought permits. They were told to get in line for a permit. That's not fair to them. Something's wrong.

054 CHAIR NORRIS: What do you think would be the consequence if no limits were put on the seasonality?

060 PAGEL: We would end up denying permits that we could, at this point, allow because we could have accepted the permits in the off-season.

072 REP. VanLEEuwEN: Could we write this bill so a permit could be granted in five days for emergency situations?

083 PAGEL: I don't think it would take a change in the drought statute that currently authorizes people who have a water right that's not being

served to get it from a different source. But if there's not water to serve them, in the first place, I don't think this would help them. I think we can look at extending the irrigation season.

090 REP. VanLEEuwEN: What is that drought statute?

095 REED MARBUT, Department of Water Resources: ORS 536.700 - 780 is the provision for drought permits, transfers, and drought agreements.

114 JILL ZARNOWITZ, Oregon Department of Fish & Wildlife: We oppose HB 277 2 as it would reduce fish habitat, resulting in the further decline of

fish populations. Reads testimony in Exhibit K.

157 DOUG MEYERS, Water Watch: Opposes HB 2772. Sections 2 through 7 would allow no conditioning of a water right for water availability.

185 LARRY HILL, Northwest Sports Fishing Industry Association: This isn't the best way to solve the problem. HB 2772 would affect how the Water

Resources Department determines what is in the public interest. Would

this affect rate or duty?

234 CHAIR NORRIS: I don't think it would affect rate or duty.

245 HILL: So if the current permit were for three months, and a quantity of water was associated with that, the same quantity of water could be

withdrawn over any time period that the user chose?

250 CHAIR NORRIS: I would think that would be prospective. I don't see any impact on previously issued permits.

255 HILL: The bill, in that case, would not have as great an effect as I thought it would have. However, the effect is still unacceptable

because the Department would not be able to implement a balancing test of public interest versus private water right applicant's interest in determining what the right will look like.

297 CHAIR NORRIS: Closes public hearing on HB 2772.

Meeting is adjourned at 3:50.

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 3357 - Preliminary Staff Measure Summary - Catherine Fitch - 3 pages
B - HB 3357 - Testimony - Kip Lombard - 20 pages
C - HB 3357 and 3358 - Testimony - Jim Carver - 2 pages
D - HB 3357 - Information - Bruce Estes - 5 pages
E - HB 3357 - Information - Bob Reutor - 2 pages
F - HB 3357 - Testimony - Doug Heiken - 2 pages
G - HB 3358 - Preliminary Staff Measure Summary - Catherine Fitch - 4 pages
H - HB 3358 - Testimony - Kip Lombard - 7 pages
I - HB 3358 - Testimony - Doug Heiken - 1 page
J - HB 2772 - Preliminary Staff Measure Summary - Catherine Fitch - 1 page
K - HB 2772 - Testimony - Jill Zarnowitz - 2 pages