

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

April 1, 1993 Hearing Room D 1:00 p.m. Tapes 58 - 60

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

VISITING MEMBER:

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

MEASURES CONSIDERED: HB 2155 - Work Session HB 2108 -
Public Hearing

WITNESSES: Richard Koesan, Water for Life Becky Kreag,
Water Resources Department Martha Pagel, Water Resources Department Tom
Simmons, Water Watch Scott Peters, Assistant to Rep. VanLeeuwen Fred
Lissner, Water Resources Department Jerry Schmidt, Oregon Association of
Realtors

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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 58, SIDE A

008 CHAIR NORRIS: Calls the meeting to order at 1:11.

WORK SESSION ON HB 2155

020 CATHERINE FITCH: Gives overview on past work on HB 2155 which
defines the terms and policies of water conservation. Submits proposed
copy of

amended bill (Exhibit A).

072 RICHARD KOESAN, Water for Life: Proposes to delete subsection
(g) on page 3 which states "Other measures if any, proposed to
provide an

in-stream benefit or to facilitate use of water under the original water
rights; and." We want this conservation program to focus on just

conserving water, not for other purposes.

088 BECKY KREAG, Water Resources Department: Our department does not
support this amendment because we wanted other measures included

which may

improve stream flow and delivery of water which may not result in conserved water that may be allocated.

118 REP. JOSI: I think the fear is that additional regulations will be proposed by the Water Resources Department that people can't live with.

133 BECKY KREAG: The Department is not involved in putting the application together.

139 REP. JOSI: Doesn't the Department make suggestions for additions to the conservation plan?

146 KREAG: The additional measures proposed here are totally at the discretion of the applicant.

155 REP. JOSI: What if we said "other measures, if any, proposed by the applicant..."

157 KREAG: Certainly.

161 MARTHA PAGEL, Water Resources Department: That would serve our intent.

175 REP. BAUM: We should ask what the proponent of the amendment thinks of this change.

170 KOSESAN: We would still support the deletion.

185 TOM SIMMONS, Water Watch: We do not think this is good law.

200 CHAIR NORRIS: It seems that "none" would be an appropriate answer to "other measures, if any..."

220 MOTION: REP. JOSI: Moves we leave line (g) in, but insert the words "by the applicant" between the words "proposed" and "to."

225 CHAIR NORRIS: Repeats the motion.

240 REP. BAUM: The issue is that they're concerned about the Department mandating some unknown measures.

257 REP. VanLEEUEWEN: How does subparagraph (h) fit into what has just been said?

259 REP. BAUM: That's only to evaluate.

261 CHAIR NORRIS: It leaves it open for the approving authority to go back and solicit additional information, which I think is a pretty typical

situation.

262 VOTE: On a roll call vote, REPS. BAUM, JOSI, MARKHAM, VanLEEUEWEN and CHAIR NORRIS vote AYE. REP. REPINE votes NAY. REPS. HOSTICKA and

PETERSON are EXCUSED.

270 CHAIR NORRIS: The AMENDMENTS are ADOPTED.

280 MOTION: REP. BAUM: Moves to delete subsection (g) from page 3 of the proposed bill.

281 CHAIR NORRIS: Repeats motion. Asks for discussion.

285 REP. BAUM: I'm not comfortable with the instream benefit use or to facilitate use of water under the original water rights. That seems to

be what we're doing with this bill anyway. We're promoting conservation. This doesn't contribute anything to the application. And I think it's fraught with uncertainty and some danger.

300 VOTE: On a roll call vote, REPS. BAUM, MARKHAM, REPINE, and VanLEEUEWEN vote AYE. REP. JOSI and CHAIR NORRIS vote NAY. REPS.

HOSTICKA and PETERSON are excused.

310 CHAIR NORRIS: The AMENDMENTS are ADOPTED.

316 KOESAN: Water for Life suggests the deletion of "or provide a recognized in-stream benefit" on page 4, subparagraph (3) (b), so the

language is restricted to conserved water.

333 PAGEL: If subsection (g) is deleted, we don't object to this deletion.

348 MOTION: REP. JOSI: Moves to delete the words "or provide a recognized in-stream benefit" from subparagraph (3) (b) on page 4 of the proposed bill.

352 VOTE: On a roll call vote, all members present vote AYE. REPS. HOSTICKA and PETERSON are EXCUSED.

372 KOESAN: Supports an addition on page 5 of "Water allocated to the state shall replace a proportionate part of the existing instream water right, rather than increasing the flow rate or volume of the instream

water right" at the end of subparagraph (4), page 5.

TAPE 59, SIDE A

001 PAGEL: Believes the state should have full discretion on the remaining 25% of conserved water. Does not support this addition.

019 REP. JOSI: Where does it imply that the water would go first to the needs of instream water rights, and if that wasn't the case, it could be appropriated to a downstream water right?

024 KREAG: Page 7 talks about the allocation of the water.

030 REP. JOSI: Is the wording "does not exceed the amount necessary to support public uses" the place where it implies that water would go

first to the needs of instream water rights. 032 KREAG: Yes, and the last sentence describes that if it isn't needed for that, then it would become available for appropriation. Those two

amendments fit together in one concept. The one on page 5 would base it on existing instream water rights, and at this time, not all existing instream water rights fully reflect the public needs for instream flows. We have applications pending and other needs not being met. In most cases, we envision that the conservation piece will have an earlier priority date and will be beneficial by creating an earlier priority date for that instream use.

048 REP. JOSI: The state would automatically transfer the water to a right not being met or to a pending application, wouldn't it?

059 PAGEL: The problem in tying it to existing instream water rights is that it doesn't allow us to expand instream water rights.

067 CHAIR NORRIS: It says it shall replace a proportionate share of the instream water right.

068 PAGEL: This language works together with the language on page 7.

073 REP. JOSI: How can you justify this language if you have an instream water right that is not being met?

079 KOESAN: We don't want the conserved water automatically augmenting an instream flow if it is not necessary.

090 REP. JOSI: What do you mean by "not necessary?"

093 KOESAN: If we have an existing instream flow, I believe we could continue to augment an instream flow over the years.

097 I think the second point is that with instream water rights you do have a public process.

106 REP. JOSI: Could you comment on that, Martha?

109 PAGEL: The minimum instream right may not be sufficient to meet needs today. We think this addressed the problem we have in many places today where the diversion of minimum stream flows did not provide sufficient

instream flow for sustainable resource management over time.

129 REP. JOSI: This addresses it in a small way. We don't know how many applications will be involved in this.

135 PAGEL: We're looking to this program to provide incentive. The issue of what you do with instream flows is extraneous to this.

144 REP. VanLEEUEWEN: We are encouraging people to conserve water and then we take what was their water right away and give it to someone else. Is that how it is?

150 CHAIR NORRIS: It's at the initiative of the water right holder.

155 REP. JOSI: Through the plan they get an additional allocation of water, that's the incentive.

160 PAGEL: The current law doesn't create an incentive to conserve. This program allows the person to keep 75% of the water saved to put to other uses.

172 REP. NORRIS: What can happen to the water dedicated to the state?

181 KREAG: The proportion allocated to the state will be converted to an instream water right or it reverts to the stream and becomes available

for appropriation.

190 CHAIR NORRIS: What about appropriation to junior users who have been short previously?

193 KREAG: The junior users would not be harmed.

206 REP. BAUM: If you have a junior rightholder downstream, this 25% goes back into the river. Who gets the benefits of that 25%? Would the

instream water right get first crack at this, circumventing the prior appropriation doctrine?

224 KREAG: The purpose of the legislation is to create that conserved water. The junior users are protected as they always were.

255 REP. BAUM: Those with senior rights would get the water before the state gets the conserved water.

276 PAGEL: If there was someone downstream that was senior, he would have a right to the water ahead of the conserver.

300 REP. BAUM: What if you have one between the conserver and the instream water right?

302 PAGEL: The one with the oldest priority date has the right to call the water.

332 REP. VanLEEUEWEN: Doesn't the proposed language on page 5 make the intent more clear?

343 REP. BAUM: I think what the amendment does is credit the existing instream water right with the amount of water conserved, is that

correct?

349 KOSESAN: I believe that's correct.

350 MOTION: REP. BAUM: Moves to amend page 5 by adding "Water allocated to the state shall replace a proportionate part of the existing

instream water right, rather than increasing the flow rate or volume of the instream water right." at the end of subsection (4).

353 CHAIR NORRIS: Repeats motion.

405 VOTE: On a roll call vote, REPS. BAUM, MARKHAM, REPINE, VanLEEUEWEN and CHAIR NORRIS vote AYE. REP. JOSI votes NAY. REPS. HOSTICKA and

PETERSON are EXCUSED. 406 CHAIR NORRIS: The AMENDMENTS are ADOPTED.

TAPE 58, SIDE B

007 KOESAN: Recommends on page 6 deletion of "In evaluating proposals involving any modification of water rights or other instream flow

protection measures in addition to that required by allocation of conserved water, the commission shall seek to assure that in-stream benefits will be provided." We don't believe this language is necessary.

019 KREAG: The next sentence doesn't mean anything then.

037 REP. BAUM: Delete "such" and insert "conservation" before "proposal" in subparagraph (5).

035 MOTION: REP. BAUM: Moves to accept deletion on page 6 which would delete the words, "In evaluating proposals involving any modification of water rights or other in-stream flow protection measures in

addition to that required by allocation of conserved water, the commission shall seek to assure that in-stream benefits will be provided."

045 VOTE: CHAIR NORRIS: Hearing no objection, the AMENDMENTS are ADOPTED.

050 MOTION: REP. BAUM: Moves that on line 4 of subparagraph 5 the language "such a proposal" be deleted, and we add "a conservation proposal" to replace that language.

055 VOTE: CHAIR NORRIS: Hearing no objection, the AMENDMENTS are ADOPTED.

038 KOESAN: Supports deletion of "It shall be presumed that the conversion to an in-stream water right would provide a public benefit to the extent that the amount converted does not exceed the amount necessary to

support public uses as determined by the commission in consultation with the State Department of Fish and Wildlife, Department of Environmental Quality, or the State Parks and Recreation Department." from subparagraph (7) on page 7.

061 PAGEL: This deletion would be consistent with what has been done. We would no longer be able to support the bill.

093 REP. BAUM: Wasn't the purpose to increase instream water rights?

102 PAGEL: We wanted to be able to address the possibility of increases in instream water rights. We don't want to be constrained from considering new instream water rights.

117 REP. BAUM: Where are we doing that?

120 PAGEL: The word "existing" does that.

122 REP. BAUM: It doesn't say you shall have no more rights.

129 KREAG: Irrigated land can be on a stream that doesn't have an instream water right.

137 REP. BAUM: Why should the state have water rights granted automatically instead of going through the process like everyone else?

140 PAGEL: Part of the idea of the bill was to bring water back into the system without taking it away from an existing water right holder.

155 REP. VanLEEUEWEN: It seems that Fish & Wildlife applied for water rights greater than what was there in many streams. How many streams have

rights granted to the state that are greater than the flow in the stream?

170 KREAG: Maybe 1/4 of the ones that are in place are greater than the amounts in the stream.

182 CHAIR NORRIS: Summarizes what has been decided up to this point.

212 It seems that either a mandate or opportunity existed for any of that conserved water to be applied to an instream water right, either

existing or non-existent.

218 REP. VanLEEUEWEN: Does that mean we've done conflicting things here?

220 CHAIR NORRIS: I think it makes it pretty inclusive.

222 KOESAN: If we delete the word "existing" before instream water rights on page 5, then we will have some flexibility.

240 PAGEL: We want to have the flexibility to add to the instream water rights, if that's appropriate and necessary. Which would be done by not approving the Water for Life option on page 5, but approving the option on page 7.

251 CHAIR NORRIS: Would you feel that would give us a more workable tool?

257 REP. BAUM: Wouldn't removing the word "existing" on page 5, along with the wording on page 7 give you the flexibility you need?

271 PAGEL: This doesn't address pending applications in the backlog if we include language that we could only substitute for an older priority

date on an established water right. We wouldn't be able to hold onto the conserved water until we completed the process of reviewing the application and establishing a new instream water right. That ability would be retained if we rejected the Water for Life option on page 5 and accepting the language on page 7.

319 REP. VanLEEUEWEN: I don't think we want to include future water rights.

335 MOTION: REP. BAUM: Moves to delete the word "existing" from the amendment we adopted for Water for Life, subparagraph (4), page 5.

337 CHAIR NORRIS: Repeats motion. Hearing no objection, the AMENDMENT is ADOPTED.

368 REP. BAUM: This would accomplish the goal of giving water to instream rights which was not available.

395 PAGEL: Are you saying that section (7) would apply if there were no instream water right and no application pending?

400 REP. BAUM: Until enough conservation takes place that it exceeds the instream water right, we are just allocating water to the instream

right.

405 PAGEL: So you're saying if there is an existing instream water right, then this new priority substitutes for a proportion for it? If there is not an instream water right, this conserved water would be converted to create an instream water right?

408 REP. BAUM: That's if the Commission decides that the conversion would be of no public benefit.

410 PAGEL: And if there were an instream water right, but we felt it wasn't sufficient, we would not be able to add ...

412 REP. BAUM: You would have to apply like everyone else, but then if you get enough of this conservation, you'd eventually get it without having to apply if it exceeded your original rights.

422 PAGEL: And if we were in the process of applying, this conserved water would not go to that?

TAPE 59, SIDE B

024 CHAIR NORRIS: Summarizes what the amendments have done to this point.

030 REP. VanLEEuwEN: I don't see any other user having a chance at getting a water use or water right out of the thing.

038 REP. BAUM: That's right, but if we don't do something like this, it won't get through the process.

057 Does Mr. Kosesan agree?

060 KOSESAN: Yes. It should be remembered that this is only speaking of 25% of the conserved water and the state can alter the 75%-25% split if it's advantageous.

066 MOTION: REP. JOSI: Moves to delete the sentence on from subparagraph (7), page 7 which states, "It shall be presumed that the conversion to an in-stream water right would provide a public benefit to the extent that the amount converted does not exceed the amount

necessary to support public uses as determined by the commission in consultation with the State Department of Fish and Wildlife, Department of Environmental Quality, or the State Parks and Recreation Department."

074 VOTE: CHAIR NORRIS: Hearing no objection, the AMENDMENT is ADOPTED.

082 PAGEL: We are not comfortable with the Cranberry Farmers option on page 8.

092 MOTION: REP. VanLEEuwEN: Moves modification on page 8 which would modify subsection (7) to read "The water allocated to the state under subsection (4) of this section shall be converted to an in-stream

water right or reserved for future economic development. Any water right or portion of a water right transferred to the state and not

converted to an in-stream water right or reserved for future economic development shall revert to the public and again become available for appropriation."

102 KOSESAN: Water for life would prefer that this not be incorporated.

109 REP. MARKHAM: Spoke with a cranberry representative who proposed the amendment who said he was comfortable with the bill if this amendment

wasn't included.

122 SCOTT PETERS, Assistant to Rep. VanLeeuwen: The cranberry alliance is in full support of it.

140 REP. MARKHAM: I talked to Mr. Yokum this morning and he was comfortable if we didn't accept this.

144 REP. VanLEEUEWEN: Withdraws motion.

145 REP. BAUM: What is the handwritten note in my copy?

154 FITCH: ORS 778.000 is an error that was left out of the original version. The original version did not include international ports.

175 MOTION: REP. JOSI: Moves the inclusion of "778.000" on page 12 between "953," and "a."

180 VOTE: CHAIR NORRIS: Hearing no objection, the AMENDMENT is ADOPTED.

182 MOTION: REP. JOSI: Moves HB 2155, AS AMENDED, to the full committee with a DO PASS recommendation.

184 CHAIR NORRIS: Repeats motion.

188 VOTE: On a roll call vote, all members present vote AYE. REPS. HOSTICKA and PETERSON are EXCUSED.

193 CHAIR NORRIS: Closes work session on HB 2155.

196 TOM SIMMONS, Water Watch: We participated in this process and had reservations all the way along. This does nothing for conservation, it

does nothing for instream flows, it is bad law. The process of rule writing is a nightmare. We need to privatize this.

PUBLIC HEARING ON HB 2108 250 CATHERINE FITCH: Gives a summary of HB 2108 which requires disclosure in real estate transaction of location of all wells on the property. It requires water quality analysis of a domestic well at the time the well is constructed. (Exhibit B)

275 REP. VanLEEUEWEN: According to the bill we're discussing, if you sell a piece of property, you, the seller, must have the well tested. Is that

what you said?

279 FITCH: No. Current law says you must have the well tested upon construction. HB 2108 would say that if you sell it, you must inform

the buyer of the location of all the wells.

299 REP. VanLEEUEWEN: Isn't it just wells for human consumption that must be tested?

300 CHAIR NORRIS: I believe that's the case.

302 FITCH: Current law says that you must tell the Water Resources Department that the well has been constructed.

317 MARTHA PAGEL, Department of Water Resources: Gives testimony in support of HB 2108. Reads Exhibit C.

372 REP. JOSI: What about existing wells that haven't been tested?

378 PAGEL: Current law requires testing of existing wells when the property is transferred.

395 FRED LISSNER, Water Resources Department: We wanted the well tested at the time of construction because contaminants are commonly introduced in wells during the construction process.

TAPE 60, SIDE A

006 CHAIR NORRIS: Could you estimate how many exempt use domestic wells were in the state right now?

007 LISSNER: About 150,000.

035 JERRY SCHMIDT, Oregon Association of Realtors: HB 3456 speaks to the same issue. We are trying to get out the information that if someone

has a well on their property, they need to contact the Water Resources Department.

057 CHAIR NORRIS: Are sellers required to reveal all wells they know about?

058 SCHMIDT: No, a lot of people are not aware of wells on their own property.

074 CHAIR NORRIS: How does HB 3456 relate to this bill?

071 SCHMIDT: HB 3456 speaks to these issues in more detail.

086 REP. MARKHAM: What are exemptions listed in line 8?

090 CHAIR NORRIS: Domestic, industrial not exceeding 5,000 gallons per day, irrigation not to exceed 1/2 acre lawn or garden, no more than 10 acres in a particular pool within a critical groundwater zone.

095 REP. REPINE: Can you explain the start cards?

099 SCHMIDT: The way I understand it is that when a driller starts a well, they pay a fee called a start card fee. That fee is set aside for a

specific use.

105 REP. REPINE: What are the uses?

107 SCHMIDT: The uses I know are in conjunction with well inspection or the well process. It can be used for identification of well logs.

110 REP. REPINE: This bill was to raise money to put investigators out in the field to catch bogus wells. Why do we have \$1 million in an account designed for policing?

124 PAGEL: This fund built up quickly. We've proposed to use additional portions of that money for inspections. We've also proposed to use a

part of that pot to computerize our well log records.

140 REP. REPINE: How many well inspectors were hired?

143 PAGEL: Five.

159 REP. MARKHAM: What's the penalty if you don't report?

161 HAYES: There isn't a penalty clause.

168 REP. MARKHAM: I'm referring to the notice that needs to be given to buyers.

170 PAGEL: We didn't think about penalties because we wanted to just encourage compliance. We'd be happy to address this issue.

206 CHAIR NORRIS: Closes public hearing on HB 2108.

Meeting adjourned 3:17.

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 2155 - Amendments - Catherine Fitch - 12 pages B - HB
2108 - Preliminary Staff Measure Summary - Catherine Fitch - 2
pages C - HB 2108 - Testimony - Martha Pagel - 2 pages