

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

April 8, 1993 Hearing Room D 1:00 p.m. Tapes 65 - 68

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: Rep. Marilyn Dell

STAFF PRESENT: Catherine Fitch, Committee Administrator Pat
Zwick, Committee Coordinator Sue Nichol, Committee Clerk

MEASURES CONSIDERED: Informational Meeting - Water
Availability Report - Water Resources Department Water Right
Application Backlog - Water Resources Department

WITNESSES: Rep. Tim Josi, District 2 Les Helgeson,
Friends of the Nestucca Quentin Borba, Friends of the Nestucca Barry
Norris, Department of Water Resources Rick Cooper, Department of Water
Resources Martha Pagel, Department of Water Resources Reed Marbut,
Department of Water Resources Steve Hottoby, Oregon Association of
Nurserymen Scott Ashcom, Oregon Association of Nurserymen Jan Boettcher,
Oregon Water Resources Congress Karen Russell, Water Watch of Oregon
Larry Trosi, Oregon Farm Bureau David Moon, Water for Life Marvin Decker
Kit Jensen, Representing Glen Waters Steve Schneider, Oregon Groundwater
Association

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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 ---]

Ted Pulliam, Oregon Groundwater Association Walter Brosamle

TAPE 65, SIDE A

005 CHAIR NORRIS: Calls the meeting to order at 1:05.

PUBLIC HEARING ON HB 3079

015 REP. TIM JOSI, District 2: Testifies on HB 3079 which removes
part of the Nestucca River from the scenic waterway system. This is the
second

time this bill has been around.

060 LES HELGESON, Friends of the Nestucca: Testifies in favor of HB
307 9. Summarizes testimony in Exhibit A.

100 QUENTIN BORBA, Friends of the Nestucca: Testifies in favor of HB

307 9. Reads testimony contained in Exhibit B.

133 REP. JOSI: Can you explain what happened since the last legislative session in terms of the rule-making process?

135 HELGESON: Explains compromise that was reached, but then wasn't instituted.

160 REP. JOSI: Would it be your opinion that the different classifications that are available don't fit the Nestucca River?

164 HELGESON: Yes.

165 REP. JOSI: Did you try to work with Parks Department to develop a designation that would better fit the particular characteristics of the Nestucca?

166 HELGESON: Yes.

167 REP. JOSI: And you weren't successful?

169 HELGESON: No, the Parks Department said the river doesn't fit the program.

172 REP. JOSI: You wanted to create a new designation which would take priority over the introduction of this bill. Do you still feel this

way?

177 HELGESON: No.

180 REP. JOSI: You'd be willing to sit down with the new Parks and Recreation Director?

182 HELGESON: Yes.

193 CHAIR NORRIS: Closes public hearing on HB 3079. COMMITTEE OVERVIEW WRD WATER AVAILABILITY STUDY

230 BARRY NORRIS, Water Resources Department: Gives presentation on water availability analysis conducted by the Water Resources Department.

Once we can define what is flowing, then we can determine how much water is available for further development or additional uses.

A state-wide model was prepared to describe existing flows.

245 Describes water availability support structure.

Ground cover, soils, precipitation, elevation, rainfall, and runoff data is collected into water availability model to determine natural flow.

333 CHAIR NORRIS: Would the data base be available to the general public?

334 BARRY NORRIS: Yes.

Water availability equals natural flow available (80% of the time) minus total of consumptive uses, minus instream water rights.

TAPE 66, SIDE A

010 Basin characteristics are: area, soils, slope, sub-basins, elevation, perimeter, ground cover and rainfall. The Robinson model included three basin characteristics: soil, rainfall and area of the basin. The new

model uses up to 31 basin characteristics in any one area, and it's made significant achievements in accuracy for the model.

045 Improvements have been defined in the water availability program that will make a significant difference in the outcome of our model. The

base model has been developed. It is ready to be proofed in the North Coast.

062 This statistical model for western Oregon will be completed by October 1993. Northeast Oregon will be completed by April 1994 and the rest of

the state will be modelled by April 1995.

100 CHAIR NORRIS: Is there any way to convert this model from 80% exceedance to 50%?

098 RICK COOPER, Department of Water Resources: Yes, it could be, but it would require some work.

114 REP. MARKHAM: Why was the old system changed?

115 MARTHA PAGEL, Water Resources Department: The Department adopted a new water availability policy this past summer. The 50% standard gives the

impression that there is water available when it's not.

145 REP. JOSI: If you went to an 80% standard, would you not issue permits if the water was not available?

151 PAGEL: The policy allows certain exceptions, but generally it will not issue rights above what is available.

171 REP. VanLEEUEWEN: Under what authority did they adopt the new water availability policy?

183 PAGEL: I don't have the statutory reference in my head.

COMMITTEE OVERVIEW WATER RIGHT APPLICATION BACKLOG

208 MARTHA PAGEL: We have communicated that processing the backlog of water right applications to Water Resources is our number one priority. We

recognize the effects that it has on the public and on us.

256 REED MARBUT, Water Resources Department: Virtually every state in the west has similar backlog problems. Everyone who has an interest

in the

water is allowed to participate in the allocation process.

304 CHAIR NORRIS: There's no criteria for standing in these issues?

305 MARBUT: There is some criteria for standing, but they have to do with timing, not who you are.

310 CHAIR NORRIS: Must those who are included in the process be residents of Oregon?

312 MARBUT: No, they just have to have interest in the water. It is a very broad standing rule.

333 REP. VanLEEUEWEN: Do we have that language in the rule before us?

345 MARBUT: No, I can get you that information. It was a case dealing with Trojan. It set a very broad standard for participation in

administrative actions.

356 REP. JOSI: What has been your experience with different parties slowing down the process?

357 CHAIR NORRIS: Will you get to that in your presentation?

360 MARBUT: There are three windows of opportunity for interested parties to be involved. The first window occurs when we receive an

application, we put it in public notice. That usually happens within one week.

The next window of opportunity is the technical review process. There is a 60-day period for objection after this technical review is issued.

TAPE 65, SIDE B

046 REP. JOSI: What happens if you don't deny the objection?

052 MARBUT: We look at the issue and either deny the application, or modify the terms of the application.

055 REP. VanLEEUEWEN: What is a bona-fide public interest issue?

059 MARBUT: The issues are listed in statute and in our rules.

066 REP. VanLEEUEWEN: And the rules do not exceed the statute?

067 MARBUT: No, the rules set out the kinds of information that we will receive to indicate what might cause a public interest issue.

077 REP. VanLEEUEWEN: You could deny every permit out there, using the terminology just used?

080 MARBUT: In issuing a water right, the Commission must

review the anticipated uses of water. This is in the statute.

085 REP. VanLEEuwEN: How far in the future do you consider anticipated needs?

088 MARBUT: It is something that needs to be considered. It is not mandatory to deny a permit because of these future uses.

097 REP. MARKHAM: What percent of applications are objected to? Do you have a wild guess?

098 MARBUT: It depends on the category of the right. Very few are objected to if they are for water for storage or to a groundwater source not

associated with a surface water source. For those applications that are for live flows from natural flow of the stream, almost all are objected to.

103 REP. MARKHAM: Is there a pattern of obstruction for it?

105 MARBUT: Obstruction is not an issue, I believe. The objections are very complex and address bona fide public interest issues.

Those that are protested go to the Commission for a hearing. If an application was granted, there is not a provision for a contested case hearing. If it is denied, there is a provision for a contested case hearing.

161 CHAIR NORRIS: How many pending cases were put under the new rules?

168 MARBUT: It would have been about 1200. They will fare better under the new rules.

214 REP. MARKHAM: What is your point of going to court on denial?

215 MARBUT: It can go to court at several points. Explains the court process.

238 REP. VanLEEuwEN: What was the backlog of permits applied for in June when the new rules were instituted?

243 MARBUT: In late July, it was 2700. There are a number of those that are instream uses. And there are a number that are for uses that won't

be contentious.

262 REP. VanLEEuwEN: Where did you use the 1,000 - 1,200 figure?

263 MARBUT: About 1,000 - 1,200 of those applications asked for live flows from streams.

268 REP. VanLEEuwEN: What was the third window?

270 MARBUT: The 30 day protesting period after the denial of the objection.

We structured a processing program for the state. We've established teams to work on this.

303 REP. VanLEEuwEN: What is the longest pending permit? What is the average?

312 MARBUT: The average is slightly under two years. That figure is warped because there is a huge number submitted in the past year and a half.

Most of the applications are less than two years old and they are a mix of groundwater, groundwater associated with surface water, direct flow surface water, use of stored surface water, and water to be stored.

364 REP. JOSI: How does the application for instream water rights tie in?

366 MARBUT: They are like any other application in that when they are competing for the same water they must be done in their order. When

that application is issued, it is a water right. It has a priority date.

TAPE 66, SIDE B

015 REP. JOSI: With the Doctrine of Prior Appropriations, if 50% of the water is appropriated and they asked for 80%, then they wouldn't get the 80%?

018 MARBUT: Correct. They would fall in line with their priority like everyone else.

021 REP. JOSI: Do instream water rights go through the same type of application process as you have just described?

022 MARBUT: The processes are parallel. The data and information is different.

037 CHAIR NORRIS: Do you handle permits in order by source?

041 MARBUT: Yes. We tried to balance the application workload by the caseworkers.

048 CHAIR NORRIS: We're thinking in terms of both surface water and ground water applications?

051 MARBUT: Yes, we are.

052 CHAIR NORRIS: Do you ever suggest a ground water permit instead of a surface water permit?

054 MARBUT: Yes, we do a lot of that.

062 PAGEL: That is a policy that is important to the Department to work with applicants to find alternatives.

We make exceptions to the first-in, first-out rules when there may be public health issue.

082 CHAIR NORRIS: Do municipalities have the same priorities as anyone else?

084 MARBUT: Yes, except for emergency or public health issues.

091 CHAIR NORRIS: Are there specific factors that led up to this backlog problem?

094 MARBUT: Drought, endangered species, shortages in Western Oregon.

122 CHAIR NORRIS: Did the pre-1909 applications contribute to the backlog?

124 MARBUT: No, but it did raise questions to the Department from the public.

143 REP. JOSI: Questions the adjudication process.

145 MARBUT: Explains the adjudication process.

Hands out copies of the November 19th staff report concerning the backlog (Exhibit C) and a breakdown of the pending applications (Exhibit D).

185 PAGEL: Explains the significance of 1909. That is when water rights were required.

212 STEVE HOTTOBY, Oregon Association of Nurserymen: Concerned about the backlog.

229 SCOTT ASHCOM, Oregon Association of Nurserymen: Reads testimony in (Exhibit E). Also submits proposed amendment to HB 3203, which he

believes would solve the backlog problem. Included also is a list of all pending applications, a letter to Sen. Timms answering questions regarding the backlog (Exhibit E).

Also submits a copy of the application process procedures (Exhibit F).

377 JAN BOETTCHER, Oregon Water Resources Congress: The biggest problem we see is the sixty day objection period. Summarizes testimony in (Exhibit G) including a proposed amendment to ORS 537.170 to deal with the

backlog. Part of this delay is caused by "computer generated" letters from one

group which opposes almost every application submitted. Examples of some of these letters are submitted in (Exhibit H). Also submits copy of the application/permit process flow chart (Exhibit H).

TAPE 67, SIDE A

042 REP. VanLEEuwEN: Does every water right receive a seven page, generic objection?

047 BOETTCHER: Those are the ones I have seen when I've gone to the Water Resources Department and asked to see some of the letters of objections. They were policy oriented questions and not specific to the application.

059 KAREN RUSSELL, Water Watch of Oregon: There's nothing new about the issue of the backlog. We feel the push to eliminate the backlog is

essentially a push to allocate the last of Oregon's water.

101 REP. JOSI: Just because you have the right, doesn't mean you can use it, isn't that correct?

108 RUSSELL: The issue of over-allocation comes in when there is no more water left to be given to additional water rights.

125 REP. JOSI: Over-allocation doesn't necessarily mean over-usage?

140 RUSSELL: I see over-allocation as having no water left to meet additional needs.

142 REP. JOSI: There's over-allocation as far as the paperwork, but not in practice?

145 RUSSELL: There is over-allocation in terms of practice. It's over-allocated in practice and on paper in some places.

155 REP. HOSTICKA: Wants information from Water Resources Department on how this backlog has fared over history.

165 CHAIR NORRIS: Water Watch has filed a number of objections. Is that routine or selective?

167 RUSSELL: It's not routine. We do extensive research to raise public interest concerns to the Water Resources Department.

180 LARRY TROSI, Oregon Farm Bureau: This is costing farmers much money and time.

250 REP. DELL: How many of your members will have their applications denied because the rules have changed during the delay?

258 TROSI: Probably quite a few.

290 DAVID MOON, Water for Life: Instream water rights are protected. The rules that applied at the time of application should apply. Permits

should be granted if the water is available the majority of the time.

The Bureau of Reclamation contract applications should be expedited.

TAPE 68, SIDE A

023 MARVIN DECKER: Explains his problems with his well permit (Exhibit I).

066 CHAIR NORRIS: Is your permit still pending?

068 DECKER: I have had no notification.

095 KIT JENSEN, Representing Glen Waters: Explains pending case of his client. Was not notified of technical review.

135 STEVE SCHNEIDER, Oregon Groundwater Association: Causes include retroactivity and ability of anyone to protest. Possibly, a fee may be

charged to those who protest. Our view is that the Water Resource Department caused the problem.

200 TED PULLIAM, Oregon Groundwater Association: The whole procedure must be changed to take care of the backlog.

225 WALTER BROSAMLE: Summarizes his case, contained in (Exhibit J).

265 MARTHA PAGEL: The effect on retroactivity has had solutions proposed.

295 REED MARBUT: Took notes of individuals' cases so we can respond to them.

310 CHAIR NORRIS: Could you distribute information to the various interested parties?

320 MARBUT: We can give information immediately, if needed. In 30 days we will have a better idea of how things are going.

330 REP. REPINE: It's time to act on the problem.

360 PAGEL: The statutory reference to the Commission's authority for setting those policies is 536.220 through 536.310, in response to Rep.

VanLeeuwen's earlier question.

368 CHAIR NORRIS: Closes hearing.

Meeting adjourned at 3:45.

Also submitted for the record: - Letter from Dan Upton, Willamette Industries, Inc. regarding HB 307 9 (Exhibit K). - Letter from John Annen, Oregon Hop Growers Association (Exhibit L). - Letter from Chris Linbeth (Exhibit M). - Letter from Mark Gehring, Gehring Farms (Exhibit N). - Letter from Ray Rivelli, Rivelli Farms, Inc. (Exhibit O). - Letter from Elmer Cook, Cook Family Farms, Inc. (Exhibit P). - Letter from Bob Gutmann, Gutmann Nurseries, Inc. (Exhibit Q). - Letter

from Tom Fessler (Exhibit R). - Letter from Steve Schmidt, American Ornamental Perennials (Exhibit S). - Letter from David Malpaas, Muddy Creeks Irrigation Project (Exhibit T). - Letter from Ron Bentz, Blue Den Ranch (Exhibit U).

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 3079 - Testimony - Les Helgeson - 16 pages B -
HB 3079 - Testimony - Quentin Borba - 4 pages C - Information
- Reed Marbut - 14 pages D - Information - Reed Marbut - 1
page E - Testimony and information - Scott Aschom - 16 pages F
- Information - Scott Aschom - 6 pages G - Testimony
and information - Jan Boettcher - 3 pages H - Information -
Jan Boettcher - 9 pages I - Testimony - Michael Decker - 17
pages J - Testimony - Walter Brosamle - 7 pages K -
Letter - Dan Upton - 1 page L - Letter - John Annen - 1 page M
- Letter - Chris Linbeth - 1 page N - Letter - Mark
Gehring - 1 page O - Letter - Ray Rivelli - 1 page P -
Letter - Elmer Cook - 1 page Q - Letter - Bob Gutmann - 1
page R - Letter - Tom Fessler - 1 page S - Letter -
Steve Schmidt - 1 page T - Letter - David Malpaas - 1 page