

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

April 15, 1993 Hearing Room D 1:00 p.m. Tapes 73 - 75

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. Dennis Luke

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

MEASURES CONSIDERED: HB 2822 - Work Session HB 3234 - Public Hearing SB 129 - Public Hearing and Work Session

WITNESSES: Sen. Denny Jones, District 60 Martha Pagel, Department of Water Resources John Borden, Department of Water Resources Mike Dewey, Destination Resort Coalition Richard Whitman, Destination Resort Coalition Reed Marbut, Water Resources Department Doug Meyers, Water Watch Jerry Schmidt, Oregon Association of Realtors, The Oregon Groundwater Association, Resort at the Mountain Bev Hayes, Department of Water Resources Dave Nelson, Oregon Dairy Farmers Association Larry Trosi, Oregon Farm Bureau Richard Kosesan, Water for Life

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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 73, SIDE A

005 CHAIR NORRIS: Calls the meeting to order at 1:08.

WORK SESSION ON HB 2822 034 CATHERINE FITCH: Summarizes progress on HB 2822 which entitles the holder of a pre-1914 water right to natural flows of waters to receive

amount of water necessary to adequately irrigate all appurtenant lands, rather than limiting holder to rate and duty of water established in adjudication decree. Distributes amendments contained in Exhibit A.

061 SEN. DENNY JONES, District 60: The amendments look fine, as far as I'm concerned.

090 MARTHA PAGEL, Department of Water Resources: We recommended the amendments in Section 1 to help limit the scope of the bill.

122 JOHN BORDEN: Department of Water Resources: We had recommended very similar amendments in Section 2.

123 PAGEL: The language added in Section 4 would probably help the provision, but it still creates a pretty significant workload issue.

124 BORDEN: That's correct, if the bill is not limited to those river miles, we see opportunity for a number of people to complain about

unavailability of water that they had not previously experienced.

128 BORDEN: Our recommendation had been to delete Section 3 and 4.

134 REP. JOSI: If we made Section 2 more site specific, would the amended sections 3 and 4 be okay?

135 BORDEN: Section 3 would then have less impact with the amended first two sections.

136 PAGEL: If all of the provisions of the bill were limited to those river miles, that would be along the lines of the amendments we originally

worked with.

144 We had serious concerns about the bill. Those concerns about the bill are reduced if the bill is made site specific. We still have policy

concerns with the bill.

164 MOTION: REP. JOSI: Moves the proposed amendments dated 4/15/93 for Section 1.

172 CHAIR NORRIS: Repeats the motion.

173 BORDEN: The amendment on line 5 of Section 1 of the amendment, really applies to Section 2.

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

210 MOTION: REP. JOSI: Moves the adoption of Section 2 with the amendment of lines 5-8 of the Section 1 amendments, which would delete "a river" and insert "the Malheur River between river mile 78 and river mile 86 or a tributary that joins the Malheur River between river mile 78 and river mile 86."

224 CHAIR NORRIS: Repeats motion.

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

217 MOTION: REP. JOSI: Moves the adoption of Section 3 of the proposed amendments dated 4/15/93.

221 CHAIR NORRIS: Repeats motion.

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

225 MOTION: REP. JOSI: Moves the adoption of Section 4 with the proposed revision to include specific geographic designation for the Malheur River and then insert the sentence at the end "So long as such credit may be made without injury to another water right holder."

229 CHAIR NORRIS: Repeats motion.

230 VOTE: CHAIR NORRIS: Hearing no objections, the AMENDMENTS are ADOPTED.

235 MOTION: REP. JOSI: Moves HB 2822, as amended, to the full committee with a DO PASS recommendation.

237 CHAIR NORRIS: Repeats motion.

239 VOTE: On a roll call vote, all members present vote AYE. REP. PETERSON is EXCUSED.

244 CHAIR NORRIS: Closes work session on HB 2822.

PUBLIC HEARING ON HB 3234

266 CATHERINE FITCH: Summarizes work on HB 3234 which specifies when quasi-municipal water use is considered municipal use for acquisition

and exercise of water right. Proposed amendments are contained in Exhibit B.

283 MIKE DEWEY, Destination Resort Coalition: Discusses the problem that the bill addresses.

323 RICHARD WHITMAN, Destination Resort Coalition: This bill solves some problems that exist because of some quirks in some Water Resource rules. We are trying to clarify that quasi-municipal and commercial uses of

water are allowed.

364 We proposed the amendments to give the Water Resources Department some discretion in defining commercial and quasi-municipal uses. It also

gives them the discretion to decide where those uses should be allowed.

379 The amendments specify that these uses are allowed throughout Oregon, unless the Commission decides to hold a hearing, in a basin, and

declassify those uses within that basin. 397 Explains the amendments. Summary is also contained in Exhibit B.

TAPE 74, SIDE A

023 REP. JOSI: Why did you drop Section 1?

025 WHITMAN: Because we feel the Commission should have the opportunity to go through the rule-making process and decide whether there are other

factors that need to be considered in defining quasi-municipal use.

029 REP. JOSI: It still doesn't make sense. Are you afraid you may have left something out?

034 WHITMAN: Yes, for example, right now, the definition of quasi-municipal is very broad. I feel the Commission should have the discretion to make those inclusions or deletions.

049 DEWEY: We felt it would be appropriate for the Water Resources Department to make their rules with these parameters.

056 REP. NORRIS: Have you done some coordination with the agencies on this?

060 WHITMAN: We have gone through it with Water Resources and the Attorney General's office.

086 REP. HOSTICKA: What's the definition of "commercial use?"

090 WHITMAN: There is none in the bill.

094 DEWEY: There is an industrial use.

098 REP. HOSTICKA: Why is including commercial uses necessary?

101 WHITMAN: The concern is, in defining quasi-municipal use, the Commission may exclude certain types of uses, such as a rural store, or a rural gas station, etc. Right now, if they exclude it from

quasi-municipal use, there is no other use category that those things can fit within.

187 DEWEY: This would not affect prior rights or water availability.

194 REP. MARKHAM: Would this give a lot more certainty in your applications?

200 WHITMAN: Yes, this would remove these technical challenges we've been facing.

210 REP. JOSI: Why do you have to reclassify the application to something like irrigation, that has substantial limitations on usage?

216 WHITMAN: One of these communities received a permit for irrigation and domestic use, but no commercial use, so they can't develop a restaurant.

242 PAGEL: We're not prepared, today, to fully support this language, but we do see it as an improvement.

271 We agree there is a problem with confusion about us issuing quasi-municipal uses.

311 REED MARBUT, Water Resources Department: In general, we feel the bill is moving in the right direction. We are working on the definition for

quasi-municipal.

339 REP. MARKHAM: Did you not want destination resorts in the bill?

348 PAGEL: We want the discretion to determine if a given destination resort would be included in a quasi-municipal use.

359 MARBUT: Many destination resorts have golf courses, which are major water users for irrigation.

387 REP. MARKHAM: You're saying you don't want to get in the land use business?

391 MARBUT: Yes.

397 PAGEL: We also have a concern with the revised Section 4 of the bill; we don't want these quasi-municipal conversions done automatically.

TAPE 73, SIDE B

007 REP. MARKHAM: Will this bill get rid of a lot of litigation?

011 MARBUT: Yes, it will prevent litigation over ambiguity.

016 DOUG MEYERS, Water Watch: Remains opposed to the bill.

041 REP. JOSI: If this bill passed, wouldn't the process still have to be observed?

048 MEYERS: I can't answer that.

063 REP. LUKE: What proof do you have that there is a shortage of water in the Deschutes Basin?

069 MEYERS: There are places where nobody knows where the water is coming from. I can supply specific information on that later.

077 REP. NORRIS: Would there be anything in the bill that would forego the process of determining water availability or existing water rights?

080 PAGEL: No. Any application would still go through our regular water right process. One of the concerns that has been raised is whether

these quasi-municipal water rights would receive the preferences that municipal rights receive. The quasi-municipal uses would not receive preferences over instream rights.

106 MARBUT: Quasi-municipal uses are not laid out in the statute now. There are a lot of uses that are "city-like" which we've not been able

to treat in an appropriate manner. Those preferences given to a city are not necessarily applicable in the quasi-municipal setting.

127 REP. VanLEEUWEN: How do these quasi-municipal rights compare to instream rights?

135 MARBUT: Under the law, a municipal right has a process that may allow them to have a preference over an instream right. Quasi-municipal uses

were never intended to have a preference over instream users. We would develop definitions to make that clear.

160 REP. MARKHAM: The definition of destination resort is very narrow.

168 MARBUT: It is better, from our point of view, that we look at the use, and not have the definition mask a use that we would like to be able to anticipate and condition the permit or whatever is needed.

186 REP. JOSI: The application would include public interest determination. What does that mean?

192 MARBUT: The concept is a cumulative impacts analysis of granting a water use.

200 PAGEL: We look at whether it is in the public interest to issue this right.

205 REP. HOSTICKA: Is there a rate and duty associated with a quasi-municipal use, or are they just allowed to take so much water at a certain point of diversion.

209 MARBUT: It is appurtenant to a particular piece of land. We can put conditions on the permit for conservation.

220 REP. NORRIS: Is there a relationship between the availability and authorization for water and land use planning?

225 PAGEL: Maybe not necessarily in this bill, but that's the direction we're heading.

234 JERRY SCHMIDT, Oregon Association of Realtors, The Oregon Groundwater Association, The Resort at the Mountain: These organizations support

the bill. I am hopeful that this will clarify that quasi-municipal is a legitimate use of the state's water.

254 REP. NORRIS: Closes public hearing on HB 3234.

PUBLIC HEARING ON SB 129

281 CATHERINE FITCH: Summarizes progress on SB 129 which clarifies that a water right permit is required before construction of an impoundment or diversion structure or dam. There is an amendment to address concern of manure lagoons being included (Exhibit C).

313 BEV HAYES, Water Resources Department: We submitted the amendment to try to take care of the concerns expressed by the dairymen to allow them to go ahead with construction of manure lagoons.

328 DAVE NELSON, Oregon Dairy Farmers Association: We believe (4)(a) would address our concerns about these lagoons. We believe (4)(b) raises some concern because of its ambiguity. Bev and I have agreed to drop

subsection (b) in the amendments.

372 VICE-CHAIR JOSI: Asks Bev Hayes to comment on subsection (b).

377 HAYES: We agree that (4)(b) isn't necessary.

381 LARRY TROSI, Oregon Farm Bureau: We desire the language, "upon the effective date of this bill make an application to the Department" be

added to Section 1, line 7, after the word "shall."

TAPE 74, SIDE B

014 Our comfort level with this bill is dwindling because of the backlog at the Water Resources Department. We would estimate this will take four

years for an individual to get a diversion built because of the backlog.

032 REP. VanLEEUWEN: Why is that time extended?

035 TROSI: We're currently backlogged about 2 to 3 years. The existing language said you had to make the application before the diversion would be made. This says you have to have the permit before the diversion is

made.

057 RICHARD KOSESAN, Water for Life: The concern would be, what would constitute an impoundment structure?

076 REP. NORRIS: Should people be permitted to begin construction before they have a permit in hand?

077 KOSESAN: I think they should be able to take that risk.

080 VICE-CHAIR JOSI: Do you think that's good state policy?

083 KOSESAN: I think there should be a difference between small and large facilities.

090 REP. MARKHAM: Is there a size or dollar volume involved in this?

092 VICE-CHAIR JOSI: I don't believe there is.

094 REP. HOSTICKA: There are a number of bills we're working on that would exempt certain small uses from needing a permit.

096 REP. NORRIS: The pond bills will be coming up next week.

111 REP. MARKHAM: What's a limited license?

114 FITCH: A limited license would be issued for 90 days and could be renewed for 90 days.

120 VICE-CHAIR JOSI: Closes public hearing on SB 129.

WORK SESSION ON SB 129

129 REP. VanLEEUEWEN: I think I heard opposition to the way this was written except for the area of taking care of the effluent ponds?

135 VICE-CHAIR JOSI: I think you did, but there may not have been agreement among the committee members about the opposition.

141 REP. NORRIS: I think it would be unwise to encourage beginning construction without a permit.

152 REP. VanLEEUEWEN: How do we address the issue of the backlog?

160 REP. NORRIS: The backlog is a concern.

166 MOTION: REP. NORRIS: Moves the amendment on page 2, inserting subsection (4)(a), excluding (4)(b).

179 REP. VanLEEUEWEN: I have a problem voting for this bill if the issue of building a storage facility is not addressed.

186 REP. NORRIS: It is being addressed, and in some conditions there may be some relaxation of the permit requirement.

196 REP. BAUM: What are we accomplishing by removing (4)(b)?

214 REP. JOSI: It removes some of the ambiguity about an application process through DEQ. It was agreed by all parties to remove that

amendment.

224 REP. BAUM: Was there concern about a deadline for the Department to act on these things.

232 HAYES: The amendment proposed by the Farm Bureau, which would say "upon the effective date of this bill", is agreeable to us. Existing ponds

will be able to continue to exist even though they are in the process of applying for a right.

249 REP. MARKHAM: What's the purpose of the bill, stopping people from gambling?

258 HAYES: Yes, there have been cases where people have gone forward with the construction of their impoundment and then couldn't get the permit

from us. This creates a problem for them.

265 REP. MARKHAM: I don't see the need for the bill. 270 REP.

HOSTICKA: Moves the previous question, which was to vote on (4) (a).

274 VOTE: VICE-CHAIR JOSI: Hearing no objections, the AMENDMENTS are ADOPTED.

278 MOTION: REP. HOSTICKA: Moves the Farm Bureau's language which says "upon the effective date of this bill" on line 7, page 1.

285 REP. VanLEEuwEN: I don't understand the amendment.

300 TROSI: When this bill is signed into law, this would apply. We wanted to clarify that.

302 REP. VanLEEuwEN: Would this amendment be effective on the effective date and after?

306 REP. BAUM: I would offer a friendly amendment to insert the word "after" so that line 7 would read, "surface waters of this state shall, after the effective date of this act."

315 REP. HOSTICKA: I would suggest that we adopt some words here with the provision that legislative counsel give us the correct words before this gets to full committee.

321 VOTE: REP. JOSI: Hearing no objection, the AMENDMENTS are ADOPTED.

325 REP. BAUM: Asks Mr. Trosi if this bill is all right.

329 TROSI: For the individual out there, you are probably extending the time it takes him to put his water to beneficial use by one year.

354 REP. JOSI: It also alleviates the risk of having to take that diversion out after it's been put in, correct?

360 TROSI: It's hard to plan ahead.

374 REP. JOSI: We've heard testimony that the backlog won't be here forever.

386 TROSI: We hope it won't be here forever, but I haven't seen a lot of direction in getting rid of the backlog.

390 REP. MARKHAM: I think government should stay out of private enterprise.

400 REP. HOSTICKA: Often, this is not on the person's own property. What happens when someone invests all this money and then says they have a

right to it since they have invested the money?

TAPE 75, SIDE B

008 JOHN BORDEN, Water Resources Department: This has been our experience. It's difficult to retrofit these projects. 020 REP. HOSTICKA: Isn't there a huge cement structure on the Deschutes River that still doesn't have a permit?

027 BORDEN: You may be right.

030 REP. HOSTICKA: What I recall happened is that since the Federal Agency gave them a permit to generate hydro-electricity there, that they

superseded the state.

054 REP. NORRIS: I don't think it should be illegal for a private citizen to take a chance.

064 HAYES: I think it would be best for us to take another look at the bill.

068 VICE-CHAIR JOSI: Closes work session on SB 129.

Meeting adjourned at 3:04.

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 2822 - Proposed amendments - Staff - 1 page B - HB
3234 - Proposed amendments and summary - Richard Whitman - 12
pages C - SB 129 - Proposed amendments - Staff - 3 pages