

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

April 20, 1993 Hearing Room D 1:00 p.m. Tapes 76 - 77

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

MEMBER EXCUSED: Rep. Ray Baum Rep. Nancy Peterson

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

MEASURES CONSIDERED: HB 2110 - Public Hearing and Work
Session HB 2155 - Public Hearing and Work Session HB 3295 - Public
Hearing and Work Session

WITNESSES: Reed Marbut, Water Resources Department Martha
Pagel, Water Resources Department Jack Hammond, Canby Utility Board,
Clairmont Water District, The Cities of Sandy and Gladstone Bob Hall,
Portland General Electric Tom O'Connor, Eugene Water and Electric Board
Richard Kosesan, Water for Life Larry Hill, Northwest Sportfishing
Association Doug Myers, Water Watch Dale Pearson, Fish Service Jim
Myron, Oregon Trout Dave Nichols, Oregon Department of Fish and
Wildlife

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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 76, SIDE A

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

PUBLIC HEARING ON HB 2110

016 REED MARBUT, Department of Water Resources: Testifies in favor
of HB 2110 which requires the federal government to pay fees
when a

registration or proof of claim is filed with the State Water Resources
Department for a federally reserved water right. Summarizes testimony
contained in Exhibit A.

055 REP. JOSI: In an adjudication, who issues the decreed right?

057 MARBUT: The circuit court judge issues the decree based upon
evidence taken at the adjudication hearing, and the findings submitted
by the

Department, as a result of the claims made by the claimants.

061 REP. JOSI: And the Department conducts the hearing?

063 MARBUT: The Department does conduct preliminary hearings prior to the circuit court adjudication on contests. Two-thirds of the state has

been done. Adjudication is done basin by basin.

115 CHAIR NORRIS: Is this filing in the Klamath Basin for a specific quantity of water for the federal government?

119 MARBUT: The issue of the lawsuit in the Klamath revolved around the question: Does the State of Oregon have jurisdiction to require the

federal government to file claims?

127 REP. JOSI: So it was the federal government that had the pre-1909 water right?

130 MARBUT: Yes, they will say they have a pre-1909 water right.

235 Explains amendments which clarifies that registration endorsement is not an entitlement to all of the benefits of a certified water right granted by the Department. Until adjudication occurs, the party would not be

entitled to the Department's regulating water to make sure the right is met. It also relieves the Department of the responsibility of validating the registrant's claim until adjudication (Exhibit B).

TAPE 77, SIDE A

035 When we receive a surface water registration, we intend to examine it enough to be sure it is complete and in proper form, we will indorse it, which means we will put it into the record, and we will send that

indorsement out for people to see that we have done that. We'll mail a copy to the person who filed the registration. We will include that individual in any further proceedings so that when we start the adjudication they will automatically get notice. We will allow them to continue to use the water, but we will not treat it as a water right of record.

058 CHAIR NORRIS: What's the definition of "indorse"?

060 MARBUT: Acknowledgement or receipt, and that it is in proper form.

076 REP. JOSI: What are the implications of PGE's claim on Willamette Falls?

082 MARBUT: Explains history of claims on Willamette Falls.

097 REP. JOSI: Do all claims have to be adjudicated?

100 MARBUT: All pre-1909 claims must be adjudicated.

105 REP. JOSI: What's the backlog?

108 MARBUT: We've been at it since 1909.

119 REP. MARKHAM: PGE got ahead of everyone else didn't they?

124 MARBUT: We do have earlier claims, but theirs is very early.

126 REP. MARKHAM: The volume of PGE's claim is tremendous, isn't it?

128 MARBUT: Yes, the claim is very large.

130 REP. HOSTICKA: Is navigation a use that the feds can obtain a reserve on?

134 MARBUT: For example, there is a claim on the locks at the Willamette.

150 REP. HOSTICKA: Can the feds claim that we have to leave water in the river to float the ships up to the docks in Portland?

153 MARBUT: Yes, it's likely, they can make that claim. There is a question whether we have the authority to bring them to our court to

make them put that claim to us in a written form.

154 MARTHA PAGEL, Water Resources Department: The federal government always has the right to claim that amount of water needed for navigation.

168 JACK HAMMOND, Canby Utility Board, Clairmont Water District, The Cities of Sandy and Gladstone: Testifies in favor of HB 2110 with proposed

amendments. Reads testimony in Exhibit C.

Also submits statement by the Special District Association in support of the bill as amended (Exhibit C).

229 BOB HALL, Portland General Electric: Testifies in favor of the bill, as amended. Reads testimony in Exhibit D.

338 If the Water Resources Department would complete the mini adjudication of our filing on the Willamette, we would have the ability to call back water from the junior water users. We don't want the ability to call on the mini adjudication.

345 The "we" who arrived at this solution were Mr. Hammond, Mr. Balforth, the Water Resources Department and many users and user groups on the

Willamette River. 363 REP. VanLEEuwEN: What do you mean when you say

you're returning to a pure filing of a registration statement to capture the historic memory

of those rights? Are you saying you're giving up those pre-1909 rights?

368 HALL: Absolutely not. Registration statements had to be filed for pre-1909 rights so oral history no longer had to be relied upon.

TAPE 76, SIDE B

029 TOM O'CONNOR, Eugene Water and Electric Board: Testifies in favor of HB 2110, with amendments. This bill is critical.

072 MARBUT: Referring to a letter from the Confederated Tribes of the Grand Ronde, the tribes do not have to pay fees for any of their water uses,

according to the federal district court in Portland. If that holding holds up in the ninth circuit, then their concerns about having to pay fees will not be there. It will be a federal decision whether they have to pay fees or not. This bill will not affect that. They do not have to register, they only have to be involved in the adjudication.

097 CHAIR NORRIS: Closes public hearing on HB 2110.

WORK SESSION ON HB 2110

101 MOTION: REP. JOSI: Moves the amendments from Water Resources Department to HB 2110.

105 CHAIR NORRIS: Repeats motion.

110 REP. VanLEEUEWEN: I see an error in the typing. On the bottom of page 1, "their hers" should be "their heirs." I don't think this amended

version tells me how it changes the pre-1909 requirements. I don't know how the junior rights are handled. Is it a whole new adjudication process?

125 CHAIR NORRIS: There are two elements in this set of amendments. The first one is nailing down that any federal applicant for water rights

would have to pay a fee. The last part says that anyone who has a valid claim to a pre-1909 right, can come in without a proof that they had use of this water, then that would be a senior right that could be established as a vested, certificated right, senior to virtually anything later than that date.

140 REP. VanLEEUEWEN: What is PGE giving up?

142 CHAIR NORRIS: They are willing to give up some time for the

Department and others to work this out before they claim all their water.

150 PAGEL: This would apply to any pre-1909 claim. This maintains the status quo until we get through the adjudication process.

160 REP. JOSI: It allows for an indorsement rather than an actual certificate of use?

166 PAGEL: That's close. The indorsement simply says that it is complete and in our records.

176 REP. VanLEEUEWEN: The end result of adjudication is what?

179 PAGEL: Either the court validates the entire claim or a portion of it, or it decides that it is not a valid claim.

186 REP. MARKHAM: Does this make it easier for water districts to get bonds if the cloud is cleared up that PGE has over them?

195 MARBUT: Absolutely.

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

200 MOTION: REP. JOSI: Moves HB 2110, AS AMENDED, to the full committee on Natural Resources with a DO PASS recommendation.

210 CHAIR NORRIS: Repeats motion.

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

218 CHAIR NORRIS: The motion CARRIES.

227 CHAIR NORRIS: Closes work session on HB 2110.

PUBLIC HEARING ON HB 2155

230 CATHERINE FITCH: Summarizes work done on HB 2155. Amendments have been proposed by Water for Life and are contained in Exhibit E.

254 RICHARD KOSESAN, Water for Life: The purpose of the amendment is to address the situation of the water being automatically returned to

instream flow.

277 PAGEL: The shaded language is intended to be deleted. The bolded language in intended to be inserted.

290 CHAIR NORRIS: If we pass this amendment, can we all agree on the rest of the bill?

291 PAGEL: We would support the bill.

305 REP. VanLEEUEWEN: Was Water Watch also in agreement with it?

310 CHAIR NORRIS: They were not in agreement with it the first time through and I doubt if they've change their minds. 315 LARRY HILL,

Northwest Sportfishing Association: Would the conversion of the conserved water in the instream water right preserve the priority

date of the original water right?

327 CHAIR NORRIS: I think it would be the original priority date plus one minute.

336 DOUG MYERS, Water Watch: We want to make it clear that we do not support this bill.

353 CHAIR NORRIS: Closes public hearing.

WORK SESSION ON HB 2155

355 MOTION: REP. JOSI: Moves the amendments to HB 2155 dated 4/6/93.

356 CHAIR NORRIS: Repeats motion.

358 FITCH: This amendment is in addition to the amendments previously approved by this committee.

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

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

366 CHAIR NORRIS: Repeats the motion.

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

378 CHAIR NORRIS: The motion CARRIES.

380 Closes work session.

PUBLIC HEARING ON 3295

TAPE 77, SIDE B

005 CATHERINE FITCH: Summarizes progress on HB 3295 which establishes policy and standards for implementation of program for fish screening at water diversion. Amendments HB 3295-3 address the opportunity of

persons diverting more than 30 cfs to participate in the cost sharing program (Exhibit F).

020 DALE PEARSON, Fish Service: The -3 amendments are at the request for the Fish Screening Task Force. This allows us to include the over 30

cfs diverters in the program, on a case-by-case basis.

074 REP. MARKHAM: What does the \$.25 surcharge on the fish license go to?

075 PEARSON: It goes to the administrative costs.

088 REP. HOSTICKA: How much money are we talking about?

092 PEARSON: Last biennium we had \$280,000 of General Fund money. I would estimate about \$400,000 of angler's surcharge money. Total funds for

the next biennium would be \$900,000 to \$950,000.

099 REP. HOSTICKA: Would the small diverters have priority?

100 PEARSON: Yes, we intend to favor the small diverter.

109 RICHARD KOSESAN, Water for Life: The -3 amendments allow some flexibility to the program. They are not intended to impact the

requirement to screen diversions with a capacity of 30 cfs and over. We support the bill with the amendments.

123 JIM MYRON, Oregon Trout: Supports the -3 amendments because of their limited scope. Submits testimony (Exhibit G).

152 DAVE NICHOLS, Oregon Department of Fish and Wildlife: The Department has previously testified in favor on HB 3295. It supports the -3

amendments.

180 Since the \$.25 fishing license surcharge has been instituted, \$350,000 has been raised.

190 CHAIR NORRIS: Closes public hearing on HB 3295.

WORK SESSION ON HB 3295

195 MOTION: REP. JOSI: Moves -1 amendments to HB 3295.

200 CHAIR NORRIS: Repeats the motion.

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

204 MOTION: REP. JOSI: Moves HB 3295-3 amendments, (LC 2883) dated 4/19/93.

206 CHAIR NORRIS: Repeats the motion.

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

210 MOTION: REP. JOSI: Moves HB 3295, AS AMENDED, to the full committee with a DO PASS recommendation.

218 REP. VanLEEUEWEN: I think we need to be aware that the -3 amendments do not contain the -1 amendments.

VOTE: On a roll call vote, all members present vote AYE. REPS. BAUM

and PETERSON are EXCUSED.

235 CHAIR NORRIS: The motion CARRIES. The work session on HB 3295 is closed.

240 Meeting adjourned at 2:45

Also submitted for the record: - Testimony on HB 2155 from Jan Boettcher, Oregon Water Resources Congress (Exhibit H).

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 2110 - Testimony - Martha Pagel - 3 pages B -
HB 2110 - Proposed amendments - Reed Marbut - 10 pages C - HB
2110 - Testimony - Jack Hammond - 3 pages D - HB 2110 -
Testimony - Bob Hall - 2 pages E - HB 2155 - Proposed
amendments - Staff - 1 page F - HB 3295 - Hand engrossed
amendments - Staff - 5 pages G - HB 3295 - Testimony - Jim
Myron - 2 pages H - HB 2155 - Testimony - Jan Boettcher - 1
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