

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

April 22, 1993 Hearing Room D 1:00 p.m. Tapes 78 - 80

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

MEMBER EXCUSED: Rep. Nancy Peterson

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

MEASURES CONSIDERED: HB 2580 - Public Hearing and Work
Session HB 3009 - Public Hearing HB 3203 - Public Hearing

WITNESSES: Kip Lombard, Oregon Water Resources Congress
John Borden, Water Resources Department Anne Perrault, Water Watch Ron
Yokum, Douglas County, Oregon Cranberry Growers Alliance Rep. Sam
Dominy, District 44 Larry Trosi, Oregon Farm Bureau Doug Myers, Water
Watch Jim Myron, Oregon Trout Scott Ashcom, Oregon Strawberry
Commission, Oregon Raspberry and Blackberry Commission, Oregon
Blueberry Commission, Oregon Association of Nurserymen

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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 78, SIDE A

005 CHAIR NORRIS: Calls the meeting to order at 1:10.

PUBLIC HEARING ON HB 2580 022 FITCH: Explains HB 2580 which would
permit water right holders to rotate water from field to field
without the need to apply for a

transfer from the Water Resources Department. The Department can deny
the rotation if it would cause injury to another water right holder.

050 KIP LOMBARD, Oregon Water Resources Congress: Brings amendments
which would replace the bill (Exhibit A). Clarifies that language on
page 1,

line 9 should read "intent by no later than January 1 for the ensuing
irrigation season." Submits testimony (Exhibit B).

067 REP. VanLEEUEWEN: When do you believe the irrigation season
starts?

070 LOMBARD: This language was proposed because irrigation seasons vary.

092 CHAIR NORRIS: What you're reading is only pertinent to individual users, not districts?

095 LOMBARD: It applies only to individual water right holders, not to those under districts.

112 The proposed amendments are to address the intent of the original bill and provide a process for individual water users to rotate the use of

water on lands that they own.

Secondly, we're proposing an amendment to add drainage districts to the list of districts who can take advantage of the process set out in HB

3111 from the '91 session.

Thirdly, we're filing an amendment to extend the deadline for the filing of a HB 3111 petition to July 1, 1994.

122 We are proposing to gut the bill and insert Section 2. An owner must notify the Commission in advance when different lands are desired to be irrigated.

The following conditions must be met: The use shall be the same as established in the right or permit, the point of diversion shall remain the same; the total rate, duty and acreage under the right or permit shall not be exceeded; the use on alternate acreage shall not impair or interfere with existing water rights; and the owner shall measure and report annually to the Department the owner's use of water under the right or permit, and the use shall be subject to all other conditions as may be included in the water right or permit.

165 REP. JOSI: Can you define "measure and report" for me?

167 LOMBARD: "Measuring" is the ability of the water user to quantify the amount of water that they are diverting and using over a given period of time. There are different ways to do this. We are saying they must

account for and report annually to the Department the amount of that water use.

177 REP. JOSI: How do we eliminate error in this measuring system?

190 LOMBARD: It does depend on honesty.

197 JOHN BORDEN, Water Resources Department: Under separate statute, the Department has authority to require measurement to the satisfaction of

the water master.

210 REP. JOSI: Is there a problem with accountability in terms of improper reporting of water usage?

217 BORDEN: At this time, we don't have reports coming in.

222 REP. MARKHAM: How would shifting water use interfere with existing uses? Is that an anticipated problem?

230 BORDEN: If the return flow went to a different place.

234 REP. MARKHAM: Today, does the law say you'll report if you're asked to?

240 BORDEN: Only government entities are required to report.

245 REP. MARKHAM: Why is this in there?

247 LOMBARD: It was in the original bill to make it more palatable.

253 REP. VanLEEUEWEN: What is the mechanism set up for the individual user to measure that water now?

258 LOMBARD: Some may have to install headgates or equipment to do this. It will happen at the person's point of diversion.

289 REP. MARKHAM: Why require a report if the Department doesn't want it?

296 LOMBARD: This is a safeguard to ensure the permitted rate and duty are not exceeded.

309 REP. VanLEEUEWEN: What are the petitions in HB 3111 you're referring to?

311 LOMBARD: HB 3111 set up a one time opportunity for districts to remap the districts and identify where water is actually being applied. The

records would then be current.

370 Drainage districts were left out of the provisions of HB 3111, even though they also provide irrigation water. We included them in the HB

2580 amendments.

397 CHAIR NORRIS: We're trying to allow some flexibility. Some trade-offs might have to be made.

TAPE 79, SIDE A

030 LOMBARD: There are some additional changes to the amendments.

037 BORDEN: On line 4 of the amendments, after the first "of" insert "the land to which". On the second "of" on line 4, delete "of." On the same line insert "is appurtenant" after "a water use permit." On the same line, after "water" delete "to which such owner is entitled."

After the word "on" insert the word "alternate."

060 LOMBARD: On section 2, on line 9, after "intent" delete the rest of line and insert "by no later than January 1 for the ensuing irrigation

season."

070 BORDEN: On line 12, after "the" insert "type of."

079 LOMBARD: I think there are adequate protections for public interest and other water users.

088 CHAIR NORRIS: Would the permanent record of the water right still be appurtenant to the originally described lands?

092 LOMBARD: Yes. Also, the period of non-use is still being counted while the water is rotated to another area. If you were to rotate off the

original parcel for five successive years you would lose the water right.

097 CHAIR NORRIS: Line 14 on the first page would make that clear. Do you think most people would understand that?

099 LOMBARD: We could add some language to make that clearer if you wish to do so.

103 REP. JOSI: Would they have to apply each year?

LOMBARD: Yes.

108 REP. JOSI: They'd have to use the water on the appurtenant land within five years or they'll lose the right?

110 LOMBARD: Yes, they must either go back and water the original area or apply for a transfer application.

117 REP. JOSI: If they're watering their contiguous 40 acres, wouldn't that be a record of using the water, even though it wasn't on the appurtenant land?

118 LOMBARD: It would be a record of using the water, but it wouldn't be a record of using the water under the conditions of the permit or

certificate.

125 REP. JOSI: I see people jeopardizing their permits by rotating their water longer than five years without rotating back to the appurtenant

land. There should be some notification that they could be in jeopardy of losing their rights.

135 LOMBARD: The majority of people understand that if they don't use it, they will lose it. The statute is clear that this rotation

doesn't

fulfill the requirement for water use on the appurtenant lands.

Administrative rules could include a warning form stating that this does not satisfy use for the five year requirement. 156 REP. MARKHAM: If a person got this waiver four years in a row and then asked for a transfer, is that enough time to stop the forfeiture of the water right?

159 BORDEN: I believe it would be.

190 ANNE PERRAULT, Water Watch: Needs more time to review the amendments before commenting. Has questions about the amendments.

278 CHAIR NORRIS: A permit is the first step in getting a certificated right.

285 PERRAULT: Will reserve comments until questions are answered.

311 RON YOKUM, Douglas County, Oregon Cranberry Growers Alliance: Concerned with the amendments because the cranberry farmers wanted the ability to increase the acreage with the same amount of water as the original bill would allow.

375 REP. MARKHAM: Have you talked to the Water Department about the cranberry problem?

380 YOKUM: I've talked to Mr. Borden and he was aware of the problem, but didn't know how to address it.

384 CHAIR NORRIS: Closes public hearing on HB 2580.

PUBLIC HEARING ON HB 3009

415 REP. SAM DOMINY, District 44: Explains and supports HB 3009 which replaces Water Resources Commission discretion with a requirement to

conduct hearings on in-stream water right applications whenever a hearing is requested, or when a right may affect public interest.

Allows circuit court review of commission order establishing in-stream water right.

TAPE 78, SIDE B

030 REP. VanLEEUEWEN: How does this require 3-1/2 more FTE positions?

035 REP. DOMINY: I don't know the answer. If you have to notify more people, it will take more effort to notify all those who will be

affected.

040 LARRY TROSI, Oregon Farm Bureau: Reads testimony in support of HB 3009 (Exhibit C).

095 DOUG MYERS, Water Watch: Testifies in opposition of HB

300 9. Summarizes testimony in (Exhibit D).

150 TROSI: We feel that the Water Resources Department has been determining how they will handle these cases under ORS 537.180, which directs them

to hold a contested case hearing. We feel they should go to a public hearing process so all the issues can be addressed in public.

166 MARBUT: ORS 537.170 sets out the process, 537.180 says that the public hearing conducted should be conducted according to the standards for a

contested case.

198 REP. VanLEEUEWEN: But this legislation on lines 9 and 10 says "notwithstanding ORS 537.180 the public hearing required under

subsection 1 of this section shall be conducted with ORS 537.170." So

that means that it will be held as a public hearing, not as a contested case.

200 MARBUT: That's true, however, what it says is that any order that issues from such hearing will be deemed to be an order in other than a

contested case.

220 REP. VanLEEUEWEN: It says it shall be reviewable, it doesn't say they have to review it.

223 TROSI: The process we are proposing already exists. We are saying that this particular process provides for the public hearing. We're not

creating a new process. We're saying this is already in existence.

238 MEYERS: Continues testimony.

260 JIM MYRON, Oregon Trout: Testifies in opposition of HB 300 9. Summarizes testimony in Exhibit E.

281 REED MARBUT, Water Resources Department: Summarizes testimony in (Exhibit F). Expresses concerns with the bill.

233 CHAIR NORRIS: I don't read it as a mandatory hearing every time.

235 MARBUT: You're right. What I'm saying is that it takes the discretion away from the Department.

TAPE 79, SIDE B

002 CHAIR NORRIS: Who can participate in contested case hearings?

007 MARBUT: Almost anyone interested in the water.

012 CHAIR NORRIS: Is the contested case open to only two parties

or to anyone who is interested?

015 MARBUT: There are two types of parties in a contested case.

020 REP. VanLEEUWEN: You are mandated by rule to conduct a contested cases?

022 MARBUT: The legislature has mandated that the Department holds contested cases where there is a public interest issue.

034 CHAIR NORRIS: What would this do to the backlog?

036 MARBUT: I think this would exacerbate the backlog.

040 CHAIR NORRIS: Asks Trosi if he agrees that this would exacerbate the problem of the backlog?

045 TROSI: We could go back and take another look at this. I have a hard time believing that a contested case hearing has been designed to

include many people.

072 REP. VanLEEUWEN: I think more than one person has to put in an appeal when a rule change is made?

077 MARBUT: When an order is issued, the person affected by the order can appeal the order. When rule is made, anyone can challenge the rule.

105 CHAIR NORRIS: Closes public hearing on HB 3009.

PUBLIC HEARING ON HB 3203

111 FITCH: Explains HB 3203 which specifies that "receipt of an application" for a water right means the delivery of a form provided by the state to the Water Resources Department, with accompanying fees,

regardless of whether the application is complete or defective (Exhibit G)

132 SCOTT ASHCOM, Oregon Strawberry Commission, Oregon Raspberry and Blackberry Commission, Oregon Blueberry Commission, Oregon Association

of Nurserymen: Urges adoption of HB 3203 with proposed amendments.

Reads testimony and submits amendments contained in Exhibit H. The amendments would require that all applications be processed under rules in force at the time application was made and would require that the public interest test is satisfied if the water use applied for is allowed by the appropriate basin plan rules and water is available at the location applied for a majority of the time.

263 REP. HOSTICKA: How will it reduce the amount of time that

applications are processed?

269 ASHCOM: My understanding is that it would cut the cost of processing by 50%.

280 REP. HOSTICKA: Isn't there potential for abuse that people may come in with bogus applications just to get a priority date?

290 ASHCOM: Yes, that is speaking to the original bill.

303 KIP LOMBARD, Oregon Water Resources Congress: Proposed amendments are contained in Exhibit I. These amendments would add a condition to

simplify the process and expedite review. Our approach does not go as far as the Nurserymen's proposal and we would like it considered, if necessary, for an alternative.

390 REP. HOSTICKA: Are you also submitting your proposal as a complete substitution of the bill?

394 LOMBARD: Yes.

400 REP. HOSTICKA: Is there any relationship between this and the bill we heard earlier in that this presumption would also apply to applications for instream water rights?

410 LOMBARD: I believe those burdens are already there for people applying for instream water rights.

TAPE 80, SIDE A

010 CHAIR NORRIS: What's your opinion on that provision from the Nurserymen that includes all applications filed shall be processed under the rules of the Commission in force at the time the application was filed?

012 LOMBARD: I believe we can support that.

016 DOUG MYERS, Water Watch: We would oppose the original HB 3203. States his concerns about the proposed amendments.

044 JIM MYRON, Oregon Trout: Summarizes testimony against the original bill in Exhibit J. States concerns with amendments.

075 MARTHA PAGEL, Water Resources Department: Distributes testimony on the original bill in Exhibit K. States concerns about amendments.

150 MARBUT: Retroactive application of rules should be evaluated depending on what those rules do.

169 CHAIR NORRIS: Are there applications pending that were received before the rules were changes?

174 MARBUT: There have been some.

183 CHAIR NORRIS: There is a perception that changing rules and making them retroactively applicable is a major contribution to the backlog.

How do I answer that concern?

189 MARBUT: Explains new rules and how their adoption affected the backlog.

211 REP. HOSTICKA: Do basin plans usually have a laundry list of uses with little priority given to different uses?

220 MARBUT: They are all so different.

222 REP. HOSTICKA: It seems the Water Resource Congress amendments say that if a use in on this list then they are in the public interest. This

seems to go beyond what the basin plan is trying to say.

228 MARBUT: Explains how the public interest standard is applied to basin plans.

242 REP. HOSTICKA: Could you bring in a couple basin plans for us to look at to see what we're talking about?

300 CHAIR NORRIS: Closes public hearing on HB 3203.

WORK SESSION ON HB 2580

304 LOMBARD: We have found some concern raised about our amendments. We need another week or so to work out agreement on specific points.

321 CHAIR NORRIS: Closes work session on HB 2580.

Meeting adjourned at 3:25

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 2580 - Proposed amendments - Kip Lombard - 7 pages B
- HB 2580 - Testimony - Kip Lombard - 2 pages C - HB
3009 - Testimony - Larry Trosi - 2 pages D - HB 3009 -
Testimony - Doug Myers - 2 pages E - HB 3009 - Testimony - Jim
Myron - 1 page F - HB 3009 - Testimony - Martha Pagel - 2
pages G - HB 3203 - Preliminary Staff Measure Summary - 3
pages H - HB 3203 - Testimony and proposed amendments - Scott
Aschom - 3 pages I - HB 3203 - Testimony and proposed amendment -
Kip Lombard - 1 page J - HB 3203 - Testimony - Jim Myron -
1 page K - HB 3203 - Testimony - Martha Pagel - 2 pages