

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

May 6, 1993 Hearing Room D 1:00 p.m. Tapes 88 - 90

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

MEMBER EXCUSED: Rep. Ray Baum

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

MEASURES CONSIDERED: HB 3234 - Public Hearing and Work
Session HB 3358 - Public Hearing

WITNESSES: Kip Lombard, Oregon Water Resources Congress
Ed Brookshier, City of Hermiston Steve Applegate, Water Resources
Department Steve Sanders, Attorney General's Office Reed Marbut, Water
Resources Department Doug Heiken, Water Watch Anne Perrault, Water Watch
Joni Low, League of Oregon Cities Kevin Hanway, Special Districts
Association of Oregon Susan Schneider, City of Portland Mike Dewey,
Coalition of Destination Resorts Richard Whitman, Coalition of
Destination Resorts Terry Penhollow, Sunriver Utility Becky Kreag, Water
Resources Department Martha Pagel, Water Resources Department Doug
Myers, Water Watch Karen Russell, Water Watch

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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 88, SIDE A

005 CHAIR NORRIS: Calls the meeting to order at 1:15.

PUBLIC HEARING ON HB 3358

020 CATHERINE FITCH, Committee Administrator: HB 3358 would
create a process for transferring a supplemental water right.

040 KIP LOMBARD, Oregon Water Resources Congress: Submits amendments
for HB 3358 (Exhibit A). The original bill withdrew the 1991 amendment
to ORS

545.010 which inserted the word "certificated" in the transfer
provision, which had the effect of limiting the ability of the
Department to transfer water rights to only those that were under a

certificate. The original bill also provided a process for allowing the transfer of water rights and supplemental water use permits.

065 REP. JOSI: Supplemental permits are not certificated?

067 LOMBARD: Not yet.

079 REP. JOSI: That wasn't the intention of the 1991 legislation?

080 LOMBARD: Correct.

089 The amendments address these questions in a simpler way.

159 Our intent is, if a district qualifies for the HB 2991 transfer process, they can use it. There are separate qualifications in that process and

it doesn't apply to all district transfers.

190 ED BROOKSHIER, City of Hermiston: Speaks in favor of the bill, with amendments, because it would allow Hermiston, along with other

municipalities, a more flexible and sensible environment in which to develop needed municipal water supplies (Exhibit B).

234 REP. JOSI: Who holds the certificated right?

237 BROOKSHIER: It's not a right, it's a permit held by the Port of Umatilla. It's a municipal and industrial permit. We are working in

concert with the port. We are partners in the cost of development.

249 REP. JOSI: Couldn't the City of Hermiston access that water with the law the way it is written now?

250 BROOKSHIER: No, neither the City or the Port can do this because it's a surface permit. We are not proposing to build a standard surface

system. We're trying to build something a lot less expensive in an area 75 feet from the river. That's considered a groundwater use.

266 REP. MARKHAM: It's considered groundwater because you're going down in a well to tap it?

266 BROOKSHIER: Correct.

300 REP. REPINE: You say the cost would be \$69,000 to use the surface process. What would be the cost to put the wells in?

305 BROOKSHIER: No, the \$69,000 is the cost to do it the cheap way. The other way tops the \$10 million mark.

328 STEVE APPLLEGATE, Water Resources Department: The previously submitted amendments are agreeable to the Department. We'd like to have time to

review the latest amendments because we are a bit concerned that these amendments may have the effect of limiting some of our past practice in this regard.

367 CHAIR NORRIS: Are you suggesting some concern for broadening it beyond the municipal entity and making it a more general application?

368 APPLGATE: I think the Department may be interested in doing that, but we need some time to look at the issue.

374 STEVE SANDERS, Attorney General's Office: There has been some question about the Department's authority to authorize changes in points of

diversion. Our idea with the amendments that the Department is proposing (Exhibit C) is to clarify, with respect to municipalities, that either in the permit stage or in the perfected stage, that if you are taking the same water, a municipality ought to be able to take the water from underneath or near the stream which cuts down on the filtering cost. This contemplates that a permit has already been granted.

418 CHAIR NORRIS: I think we do need to recognize the transfer issue if we use this relating clause.

420 SANDERS: Correct, and the Department's amendments do focus on the transfer issue.

TAPE 89, SIDE A

016 CHAIR NORRIS: Would we be thinking in terms of transferring it from a surface to a groundwater right, or merely transferring the point of

diversion from a surface area to a well-like structure?

018 SANDERS: We're contemplating transferring only the point of diversion. The statutory references in the Department's amendment define whether a water right is a ground water right or a surface water right.

Historically, the law has always distinguished between ground water and surface water and created separate rules for each. The idea behind this statute is that it doesn't matter whether you call it a ground water right or a surface water right.

035 REP. MARKHAM: What if farmer Brown wanted to do the same thing?

040 SANDERS: That would not be authorized by this statute.

042 REP. MARKHAM: Why shouldn't he be able to do the same thing?

044 SANDERS: The Department wants some time to consider it.

049 CHAIR NORRIS: If we do this for municipal use permits, would that then permit the use of that water for any customer of the city or of the

port, i.e. a food processing plant which we could say was an industrial use. Would there be any restriction as to the category of customers

that those municipal entities could supply?

054 REED MARBUT, Water Resources Department: We envision these amendments would not change the underlying water right and the use that was

permitted under that underlying water right, only the point of diversion would be changed.

087 DOUG HEIKEN, Water Watch: Does not feel that supplemental permits should be treated differently than any other water permit. Testifies in opposition of HB 3358.

137 ANNE PERRAULT, Water Watch: We're suggesting that supplemental permits are just like any other permits and should, therefore, go through the

same process.

147 REP. PETERSON: How would someone misuse a supplemental permit?

152 HEIKEN: A supplemental permit may only be developed 50%. If it's transferred, the entire right will be transferred. If the permit was

taken to certificate first, then the certificate will be limited to the actual acres used and the amount of acres actually used.

160 PERRAULT: That's what the certification process is for. It gives the Department a chance to take a closer look and cut back.

163 JONI LOW, League of Oregon Cities: The concept has some merit, especially since the amount and the source of the water would not

change. We may want to insure that changing the point of diversion will not alter the hydrology and adversely impact other users.

180 KEVIN HANWAY, Special Districts Association of Oregon: Supports the bill as it would result in obvious savings.

193 SUSAN SCHNEIDER, City of Portland: Supports the approach being taken in this bill. Reads testimony in support of the bill (Exhibit D).

210 KIP LOMBARD: One issue our amendments were addressing was to allow diversion of a surface water source from what would be considered a

ground water means, i.e. a well or running well. The second issue was

allowing a municipality to transfer a point of diversion under a permit,

which is currently not authorized.

245 There is a significant difference in the Department's amendments and our amendments. The Department's draft speaks very narrowly to a transfer

of a point of diversion from a surface point of diversion to an underground point of diversion. Our draft says a municipality may change their point of diversion or water intake source regardless of whether it's via another surface water point of diversion or an underground point of diversion.

266 CHAIR NORRIS: Asks that the Department get together and work on this bill to bring it back in a week.

290 CHAIR NORRIS: Closes public hearing on HB 3358.

PUBLIC HEARING ON HB 3234

300 FITCH: HB 3234 would specify when a quasi-municipal water use would be allowed under a basin program. Copies of the proposed amendments are

submitted (Exhibit E).

326 MIKE DEWEY, Coalition of Destination Resorts: Agreement has been reached on most of the amended version of the bill.

339 Only three basin plans outline quasi-municipal uses. This legislation would provide for the opportunity for commercial uses and

quasi-municipal uses to be included in those plans unless otherwise amended outside of the plan. We believe it's appropriate to include commercial uses within this bill. Agreement has not been reached on commercial uses being included.

358 RICHARD WHITMAN, Coalition of Destination Resorts: Agreement has been reached by those interested parties except for inclusion of provisions

relating to commercial uses of water. Hands out a list of which uses of water are allowed in basin plans

(Exhibit F) shows.

398 REP. JOSI: Quasi-municipal use is your destination resort, correct?

400 WHITMAN: It is defined by Water Resources Commission rule. It says it's a water supply system for typical uses that you find in a

municipality. I feel that it would include destination resorts and a lot of water supply companies that haven't formed under the particular district laws. 412 REP. JOSI: Can you give me an example of one?

414 WHITMAN: I think the largest in the state is Avian Water Company, outside of Bend.

420 DEWEY: We attempted to define quasi-municipal with an inclusion of destination resorts in our previous amendments. As a compromise, we

have taken that out of the bill, allowing the Commission the authority to define quasi-municipal.

TAPE 88, SIDE B

014 WHITMAN: One of the concerns that the Commission had was that the bill, as originally drafted, defined quasi-municipal use. They wanted the

discretion to do that, and we've taken out that limitation. There was another limitation in the original bill which said you can only take quasi-municipal use out of a basin if such and such criteria are met.

They didn't like that limitation on their discretion so we've taken that out. We've gone a long way to meet the concerns of the Water Resources

Commission. 024 REP. JOSI: So the Department wants the authority to define "quasi-municipal" uses?

029 WHITMAN: Correct. If they define quasi-municipal in such a way that commercial uses were excluded, this bill would still include those uses if we keep the commercial provisions of the bill.

039 REP. PETERSON: Why would these uses not be included in basins?

043 WHITMAN: Gives history of basin programs.

059 CHAIR NORRIS: Does quasi-municipal carry with it the connotation of the specific uses to which the water can be put?

061 WHITMAN: It includes domestic, irrigation of parks and recreation facilities, commercial, industrial and fire protection right now.

064 CHAIR NORRIS: So commercial is included in the legitimate uses of a quasi-municipal right?

068 WHITMAN: That's correct. The quasi-municipal rights are intended for small communities. The small restaurant or gas station doesn't really

fit under quasi-municipal.

080 CHAIR NORRIS: Does quasi-municipal include commercial use among

it's legitimate uses?

083 WHITMAN: Yes, it does under the current rule that the Department has.

096 There are a number of problems that this legislation tries to address by including commercial within it.

103 DEWEY: We are not asking for any preference in the granting of our water rights.

109 TERRY PENHOLLOW, Sunriver Utility: The commercial use application we made was denied in the Deschutes Basin.

122 DEWEY: The issue is whether commercial uses are included in this legislation.

130 CHAIR NORRIS: If commercial uses were allowed in all the basins, then you wouldn't be here today?

136 DEWEY: We wouldn't be here if the Commission's rule, defining quasi-municipal, stays the way that it is.

140 CHAIR NORRIS: If one has a quasi-municipal right, commercial uses would be included within that right, wouldn't they?

159 WHITMAN: That would be correct if this bill would pass right now and there were to be no changes in the Commission's rules. However, small

commercial entities, that aren't communities, may still have a problem. If the rules change, the problem would still exist.

165 DEWEY: But we have agreed to let the Commission define quasi-municipal as long as there is a commercial use available somewhere in the basin

plan.

170 REED MARBUT, Water Resources Department: Submits amendments (Exhibit G) which would delete all but two of the sections of the bill. The

amendments specify that where a basin program classifies municipal use, quasi-municipal use is also a use that may be made in that basin, unless the Commission modifies the basin program to specify otherwise.

213 If this amendment were adopted, it would say that where a basin program has municipal use, quasi-municipal would be a permitted use, unless the basin plan were modified to say, no, it's not permitted.

214 REP. JOSI: Who has the authority to modify the basin plan?

215 MARBUT: The Commission.

215 REP. JOSI: What about commercial uses?

218 MARBUT: This bill does not change the status of commercial as it exists at this time.

221 REP. PETERSON: The way your rules are now, quasi-municipal can include commercial?

225 MARBUT: Yes. We have not proposed that these rules would be changed.

240 CHAIR NORRIS: If this passed, the definitions would be in statute?

244 MARBUT: The relationship between municipal and quasi-municipal would be in statute.

255 The amendments also delete the definition of "municipal use."

260 CHAIR NORRIS: Is that definition elsewhere in statute?

262 MARBUT: No. That definition is in the rules of the Commission.

286 CHAIR NORRIS: So there's no existing statutory coupling of commercial and municipal?

290 MARBUT: That's correct.

312 CHAIR NORRIS: Is there any significance to the cited date?

314 STEVE SANDERS: That is referring to the date when the Commission first began to analyze whether quasi-municipal uses ought to continue to be

considered as a subset of municipal uses.

325 Gives history of municipal rights.

351 MARBUT: We do not intend to change our review and grant of commercial uses.

367 REP. VanLEEUEWEN: Are you saying that the basin program chart (Exhibit F) has no bearing on the actual uses that are approved?

389 MARBUT: As the basin programs have been updated, the analysis improves. We have historically granted commercial uses in all basins, and have not been challenged to date.

TAPE 89, SIDE B

019 BECKY KREAG, Water Resources Department: Explains the basin programs matrix (Exhibit F) and how the Department approaches these categories.

048 REP. REPINE: Would there be a way to define a quasi-municipal use so that a commercial use that is quasi-municipal in nature would be

included?

064 KREAG: We tried to address that by using a cut-off of flow.

076 CHAIR NORRIS: Are the basin plans sacred writ? According to the matrix, fire protection is allowed in only three basins, is

that

correct?

086 KREAG: That has not been the Department's interpretation.

094 CHAIR NORRIS: It looks like some interim amendments need to be made to cover some of these clear, immediate needs.

095 KREAG: That is what the Department is trying to do. Trying to list all the uses tends to put you in a trap. That's why we're trying to develop another approach.

102 MARTHA PAGEL, Department of Water Resources: What we are doing is trying to implement all plans. Except for some specific exclusions, we

interpret our plans in a very inclusive way. We have been issuing commercial permits for years in basins where it is not specifically mentioned.

134 REP. VanLEEUEWEN: What are the uses on the "black list"?

140 KREAG: What I mean is that the uses are not all spelled out in all cases, and it's a matter of the date when the basin plan was adopted,

not how we felt about the use.

145 PAGEL: We're looking at specifically excluding certain uses and allowing all others.

153 KREAG: Gives examples of potential exclusions.

160 SANDERS: This bill does not intend to grant to quasi-municipal uses the preferences given to municipal uses.

181 CHAIR NORRIS: Does existing law provide for meeting the objectives the proponents of the bill desired? If not, will the bill, with the

amendments, meet the objectives?

188 SANDERS: We believe that the Commission has authority, by its definition of municipal uses, to describe and authorize uses such as

resort destinations.

197 CHAIR NORRIS: Is it considered that destination resorts are important to tourism in the state?

199 SANDERS: Yes, it would be considered in the public interest determination. Public interest values take into account maximum

economic development with the use of the water.

200 PAGEL: We believe current law allows us to issue quasi-municipal permits. We agree with the proponents of the bill, that the bill in

respect to quasi-municipal uses, can clarify and perhaps eliminate some pending litigation.

221 DOUG MYERS, Water Watch: Introduces Karen Russell, legal counsel.

241 KAREN RUSSELL, Water Watch: We don't support the bill for general policy reasons. It violates our basin planning policy. Concerned about

how "municipal use" is defined because it may give preference to quasi-municipal uses.

350 Suggests acceptable amendments which would delete the reference to commercial use in Mr. Whitman's amendments.

361 CHAIR NORRIS: Closes public hearing on HB 3234.

373 CHAIR NORRIS: Mr. Whitman, what if the bill were amended to include the amendments proposed by the Department, would your concerns be met?

379 WHITMAN: No, because commercial uses would not be included in basin plans.

TAPE 90, SIDE A

010 Each basin plan must be amended to make these changes. This would be a three or four year process.

020 CHAIR NORRIS: Asks Reed Marbut how he feels about the amendments suggested by Water Watch.

023 MARBUT: It is our attorney's recommendation that we use the amendments proposed by us, not those by Water Watch.

035 CHAIR NORRIS: Is there a pending application for a destination resort?

038 WHITMAN: There are several pending applications for destination resorts.

043 CHAIR NORRIS: Can these pending applications be considered?

045 MARBUT: There is litigation concerning these. We feel that we would prevail in this litigation.

049 CHAIR NORRIS: If this bill would pass, with your amendments, would this open the gate a little more clearly?

055 MARBUT: It would allow us to continue to process the applications.

058 REP. REPINE: Do you really grant commercial use permits?

065 MARBUT: We have granted thousands of commercial applications.

071 REP. REPINE: So the example brought to the committee didn't fit the other criteria for a use in that basin?

074 MARBUT: I don't know why that particular case was denied. We have not denied a quasi-municipal use because it was quasi-municipal.

083 REP. HOSTICKA: Please comment on the comments by Water Watch that if we adopt your amendments, that quasi-municipal takes on the color of

municipal uses for all the preferences given to municipal uses.

087 MARBUT: That's incorrect. Current statute says preferences are not available for quasi-municipal uses.

095 REP. VanLEEUWEN: How far in the past have you granted commercial uses?

102 MARBUT: We have not turned down any application for a commercial use just because it was commercial.

120 REP. HOSTICKA: If Sunriver incorporated, would we need the bill?

123 MARBUT: There are quasi-municipal uses in every basin in the state. We've always treated them as a subset of municipal, with the exception

they don't get any preferences.

127 DEWEY: There are no guarantees in the lawsuit that any party will be successful.

140 CHAIR NORRIS: If we look at the proposed amendments by the Water Resources Department, what violence would it do if we included

commercial uses?

142 MARBUT: We're reluctant to attach commercial in this area because it is then given some special designation. To distinguish one use may cause

problems.

161 REP. JOSI: Are commercial uses a subset of both quasi-municipal and municipal uses now?

162 MARBUT: Yes.

168 PAGEL: If commercial is included in the statute, then that may call into question all of these other permits that we've issued over the

years for things like fire protection and frost control and other things not specifically named in the statute. 189 DEWEY: I'm hearing that commercial uses are not in jeopardy. If that's the case, we will be happy to have that excised from the amendments.

200 CHAIR NORRIS: Closes public hearing on HB 3234.

WORK SESSION ON HB 3234

210 MOTION: REP. JOSI: Moves the proposed amendments to HB 3234 by the Water Resources Department.

211 CHAIR NORRIS: Repeats the motion.

212 REP. VanLEEuwEN: I still don't understand what is wrong with including commercial uses.

215 CHAIR NORRIS: We do have on the record that commercial is a typical subset of municipal. This is saying that quasi-municipal is embraced

within the definition of municipal.

218 REP. HOSTICKA: I'm willing to support the amendments based on the testimony that quasi-municipal does not get the same preferences as

municipal, but for the purposes of being defined in a basin program and having ability to issue a certificate, that's what we're trying to accomplish.

238 WHITMAN: New wording for Subsection 3, under Section 1 of the clean version should be: "The application is for quasi-municipal use, (delete "or commercial use") and the basin program otherwise allows municipal

use, in which case the proposed quasi-municipal use (delete or commercial use) shall be considered a classified use." This substitutes for the Department's amendments. It was proposed by the Department.

310 PAGEL: The purpose of using that language is to get at the issue that Rep. Hosticka raised, which would eliminate any possibility of applying the preferences for municipal classification to quasi-municipal.

323 REP. JOSI: Withdraws motion.

324 MOTION: REP. JOSI: Moves that we incorporate the new subsection (c) in the Water Resources Department amendments leaving in the

subsection 6.

337 CHAIR NORRIS: Repeats motion.

339 VOTE: CHAIR NORRIS: Hearing no objection, the amendments are adopted.

347 MOTION: REP. JOSI: Moves that we adopt the amended version of the proposed amendments to HB 3234 by the Water Resources Department.

360 CHAIR NORRIS: Restates motion.

361 VOTE: CHAIR NORRIS: Hearing no objections, the amendments are adopted. 363 MOTION: REP. REPINE: Moves that in the proper place in the bill, language for an emergency clause be added.

368 CHAIR NORRIS: Repeats motion.

370 VOTE: CHAIR NORRIS: Hearing no objection, the amendment is adopted.

373 MOTION: REP. JOSI: Moves that HB 3234, as amended, to the full committee with a DO PASS recommendation.

380 CHAIR NORRIS: Repeats motion.

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

396 CHAIR NORRIS: Closes work session on HB 3234.

398 KIP LOMBARD, Oregon Water Resources Congress: Progress has been made on HB 3357. Submits maps, correspondence, legislative policy and legal

memorandum relating to the bill (Exhibit H).

Meeting is adjourned.

Also submitted for the record: - Testimony from the Confederated Tribes on HB 3234 (Exhibit I).

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 3358 - Hand engrossed Amendments from Water Resources Congress dated 5/6/93 - Kip Lombard - 3 pages B - HB 3358 - Testimony - Ed Brookshier - 2 pages C - HB 3358 - Amendments from Water Resources Department - Steve Applegate - 1 page D - HB 3358 - Testimony - Susan Schneider - 1 page E - HB 3234 - Amendments dated 5/6/93 - Staff - 4 pages F - HB 3234 - Information - Richard Whitman - 1 page G - HB 3234 - Proposed amendments - Reed Marbut - 1 page H - HB 3357 - Testimony and information - Kip Lombard - 21 pages I - HB 3234 - Testimony - Christopher Eck - 2 pages