

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON WATER

May 25, 1993 Hearing Room D 1:00 p.m. Tapes 99 - 102

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 3512 - Public Hearing and Work
Session HB 2341 - Public Hearing and Work Session HB 2580 - Public
Hearing and Work Session HB 3146 - Public Hearing and Work Session HB
2933 - Public Hearing and Work Session

WITNESSES: Kip Lombard, Oregon Water Resources Congress
Don Rice, Association of Lower Columbia River Flood Control Districts
Tim Hayford, Multnomah County Drainage District, Sandy Drainage
District, Lower Columbia River Flood Control Association Larry Trosi,
Oregon Farm Bureau Richard Glick, Independent Hydro Developers Bob Hall,
Portland General Electric Martha Pagel, Department of Water Resources
Rick Craiger, Department of Water Resources Reed Marbut, Department of
Water Resources Joni Lowe, League of Oregon Cities Steve Applegate,
Department of Water Resources Susan Schneider, City of Portland Marion
Millard Anne Perrault, Water Watch Jean Borland, Representing Rep. Larry
Campbell

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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 99, SIDE A

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

PUBLIC HEARING ON HB 3146

027 CATHERINE FITCH: HB 3146 provides a procedure for
reorganization of drainage districts and diking districts into
public Chapter 554

corporations for drainage or for flood control. Amendments have been
prepared by the Oregon Water Resources Congress (Exhibit A).

049 KIP LOMBARD, Oregon Water Resources Congress: Explains the
purpose of draining and diking districts. The amendments provide the
ability for

these districts to convert into a 554 corporation which would be exempt from Measure 5 tax limitations. This bill would provide a smoother transition into a 554 corporation.

140 REP. JOSI: Currently it requires unanimous consent for an entity to become a 544 corporation, correct?

156 LOMBARD: It doesn't require unanimous consent to become a 554 corporation, but most subsequent actions require unanimous consent.

190 CHAIR NORRIS: Has the attorney general been contacted?

191 LOMBARD: I have not contacted the attorney general.

192 DON RICE, Association of Lower Columbia River Flood Control Districts: I've been in contact with John Defrank at the Department of Revenue and he's been in contact with the attorney general's office on this issue.

They were saying okay.

196 REP. JOSI: It was the attorney general's idea to take care of it this way.

206 LOMBARD: I had not meant to say we had no contact with the attorney general's office. We had not passed this final draft past the attorney

general's desk, but it was their opinion, originally, that this would be the appropriate way to do this.

215 REP. MARKHAM: How is the water district organized today?

216 LOMBARD: A drainage district and a diking district is formed through a petition process. This may or may not involve an election. The voting

in both types of districts is based on acreage. In a 554 corporation, voting is based on acreage.

228 REP. MARKHAM: What are these districts that are not incorporated yet?

230 LOMBARD: They are formal Oregon associations, they are recognized and formed under a statute.

232 REP. MARKHAM: Are they already 554 corporations? 233 LOMBARD: The difference in them is the voting procedure.

244 REP. MARKHAM: Would these amendments change the vote necessary?

249 LOMBARD: It would only apply to those districts that are converting to 554 corporations.

257 REP. HOSTICKA: How is this constitutional since it is now a private corporation and everyone doesn't have to agree?

261 LOMBARD: None of the other types of districts require unanimous

consent in formation. You don't need unanimous consent for every action of the

554 corporation.

299 REP. JOSI: You're not indicating routine maintenance in long term indebtedness?

300 LOMBARD: No.

301 REP. JOSI: The non-operating indebtedness will still need unanimous consent?

308 LOMBARD: No, they would need two-thirds.

310 CHAIR NORRIS: The conversion from a district to an improvement company tends to obliterate the incurred charge issue?

320 LOMBARD: Right. We're just trying to get into the safe haven that is not under Measure 5 limitations.

338 REP. VanLEEUEWEN: What is non-operational debt?

352 LOMBARD: This would be more like capital improvement type debt.

TAPE 100, SIDE A

002 DON RICE, Association of Lower Columbia River Flood Control Districts: Supports the bill with the amendments.

024 TIM HAYFORD, Multnomah County Drainage District, Sandy Drainage District, Lower Columbia River Flood Control Association: Also agrees

with the bill.

040 LARRY TROSI, Oregon Farm Bureau: Supports the bill.

042 CHAIR NORRIS: Closes public hearing on HB 3146.

WORK SESSION ON HB 3146

046 MOTION: REP. JOSI: Moves the -1 amendments to HB 3146.

049 CHAIR NORRIS: Restates motion. 050 VOTE: CHAIR NORRIS: Hearing no objections, the AMENDMENTS are ADOPTED.

052 MOTION: REP. JOSI: Moves HB 3146, as amended, to the full committee with a DO PASS recommendation.

066 REP. VanLEEUEWEN: When you look on page 5, apparently this is just a window put in here for these few years until people take action on it?

072 REP. JOSI: Yes.

077 FITCH: They must be dissolved prior to that time in order for this measure to affect them.

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

BAUM and MARKHAM are EXCUSED. REP. MARKHAM later votes AYE.

085 CHAIR NORRIS: The motion CARRIES.

087 CHAIR NORRIS: Closes work session on HB 3146.

PUBLIC HEARING ON HB 3512

100 CATHERINE FITCH: HB 3512 originally related to conditions on water rights that were granted on hydro projects. The original sponsors of HB 3512 have withdrawn their request for that measure. Prior to their

withdrawal, there was a recommendation for an amendment. It would have an effect on the Lorella pumped water storage project (Exhibit B). The amendments relate to a relationship between the Water Resources Commission and the State Energy Facility Siting Council and duplicate permit approval.

122 RICHARD GLICK, Independent Hydro Developers: Supports the bill.

133 REP. MARKHAM: Why do you want the bill?

134 GLICK: There is a duplication of regulation that could be avoided.

150 REP. MARKHAM: Are we giving the Water Resources Department more power?

152 GLICK: No.

153 CHAIR NORRIS: The amendment has wiped out all of the original bill, and it appears we have taken existing statutory language and added

subparagraph "e." Is this the main part of the amendment?

166 GLICK: Yes. These are amendments to ORS 543 which is the portion that deals with hydroelectric regulation by the Water Resources Commission.

170 CHAIR NORRIS: This suggests that the Commission will act in consultation with the Energy Facility Siting Council, but is not bound

by them, correct? 174 GLICK: Yes. We believe it is appropriate for the Water Resources Commission to balance all interests and all issues.

185 REP. JOSI: What is the Energy Facility Siting Council?

188 GLICK: Describes focus of the Siting Council.

200 REP. JOSI: Who makes up the Siting Council?

216 BOB HALL, Portland General Electric: It is a seven member

civilian board. Explains their duties.

259 REP. HOSTICKA: Is this bill affected by the Senate bill that reorganizes the Energy Facility Siting Council?

265 GLICK: This shouldn't be affected by that.

285 CHAIR NORRIS: PGE has withdrawn their interest in the bill?

290 HALL: That's correct.

300 REP. VanLEEUEWEN: Who is the Council on pages 11 and 12?

310 GLICK: That refers to the Energy Facility Siting Council. It gives them the authority to consult with the Water Resources Commission.

333 REP. HOSTICKA: Explains the background of the original law.

348 CHAIR NORRIS: How will this facilitate the pump storage project?

350 GLICK: They will only have to deal with one agency instead of two. It will simplify the administrative process.

365 REP. MARKHAM: Are you going to put this in over in the Senate?

373 HALL: No. We intend to work with Water Resources Department over the interim on this issue and hydro relicensing.

385 MARTHA PAGEL, Department of Water Resources: Speaks in support of the bill. We feel there is general support for the bill.

407 REP. HOSTICKA: Does this bill, in any way, change the standards by which these facilities are sited?

408 PAGEL: No.

TAPE 99, SIDE B 004 REP. MARKHAM: What was Sen. Timm's interest in this bill?

006 CHAIR NORRIS: Because it would facilitate the development of a pump storage 1,000 megawatt project down in Klamath County in his district

that these people have to okay.

013 REP. VanLEEUEWEN: How many staff do you have working on hydroelectricity and what are you really doing?

015 RICK CRAIGER, Department of Water Resources: Two staff work on hydroelectric projects. Explains the duties of his area.

027 REP. MARKHAM: Have any of these 50-year cycle hydro projects come in that you have had to relicense?

028 CRAIGER: The first one expires in 1996.

029 REP. MARKHAM: Do you envision a more involved process than the original licensing process?

030 PAGEL: We intend to work with the utilities and other interests

in the interim to evaluate what we think the process is under current law and

whether we would want to bring forward any proposed changes to the legislature in the 1995 session. We recognize that we haven't had any experience in relicensing so we will be looking at that carefully.

040 REP. MARKHAM: I'm concerned that there will be long fights about it. Is that a possibility?

042 PAGEL: We've been working on putting together processing rules for applications.

056 CHAIR NORRIS: Cogeneration plants can be provided water from an already existing legitimate municipal industrial supply. They do not have to

have their own separate water right to operate that cogeneration plant. Is that correct?

064 MARBUT: Correct. Cogeneration plan is deemed in our rules and regulations as an industrial use and municipalities can supply

industrial use.

070 CHAIR NORRIS: Closes public hearing on HB 3512.

WORK SESSION ON HB 3512

081 MOTION: REP. JOSI: Moves hand engrossed by staff amendments dated 5/25/93 for HB 3512.

090 CHAIR NORRIS: Restates motion.

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

092 MOTION: REP. JOSI: Moves HB 3512, AS AMENDED, to the full committee with a DO PASS recommendation.

093 CHAIR NORRIS: Restates motion.

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

099 CHAIR NORRIS: The motion CARRIES.

100 CHAIR NORRIS: Closes work session on HB 3512.

102 REP. MARKHAM: Asks for unanimous consent to suspend the rules so I can vote affirmatively on HB 3146.

104 CHAIR NORRIS: Is there objection? Hearing none, so ordered.

105 VOTE: REP. MARKHAM votes AYE on HB 3146.

PUBLIC HEARING ON HB 2341

110 FITCH: HB 2341 permits reuse of reclaimed water from industrial sources without having to obtain a water use permit. Amendments from the Water

Resources Congress address reclaimed water from groundwater sources only.

141 KIP LOMBARD, Oregon Water Resources Congress: Summarizes testimony and proposes amendments (Exhibit C). Most municipal water sources are from

surface water. The original bill raised concerns about downstream users losing availability of water. We've narrowed the scope of the bill to groundwater only.

214 CHAIR NORRIS: This says it can be from other sources besides food processing?

225 LOMBARD: Yes.

234 REP. PETERSON: Is the municipal part out of the bill?

243 LOMBARD: The municipal part has not been changed.

252 JONI LOWE, League of Oregon Cities: Steve Hall with the City of Ashland says these amendments are agreeable.

261 STEVE APPLGATE, Department of Water Resources: Is supportive of the amendments. This bill clarifies that if they reuse water from

groundwater sources, they don't need a permit. If they wanted to use water from an industrial facility that originated from surface water, then they would be required to get a permit. That's under existing statutes.

289 CHAIR NORRIS: That would give the person who might be worried about a decrease of their stream flow because of this a chance to participate in the hearing.

290 APPLGATE: Correct.

291 CHAIR NORRIS: Asks Susan Schneider, with the City of Portland, if she is comfortable with the bill?

291 SUSAN SCHNEIDER, City of Portland: Yes.

292 CHAIR NORRIS: Closes public hearing on HB 2341.

WORK SESSION ON HB 2341

302 MOTION: REP. JOSI: Moves the amendments to HB 2341 dated May 20, 1993 by the Water Resources Congress.

306 CHAIR NORRIS: Restates motion.

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

314 MOTION: REP. JOSI: Moves HB 2341, AS AMENDED, to the full committee with a DO PASS recommendation.

318 CHAIR NORRIS: Restates motion.

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

322 CHAIR NORRIS: the motion CARRIES.

323 CHAIR NORRIS: Closes work session on HB 2341.

PUBLIC HEARING ON HB 2580

327 FITCH: HB 2580 would permit individual water right holders to use water on contiguous property that they own even though it is not included in

their water right certificate. Amendments to HB 2580 would specify this would occur when a rotation plan is approved by the Water Resources Department, and only for water right holders, not permit holders (Exhibit D).

358 MARION MILLARD: Reads testimony with suggested amendment (Exhibit E) that it be specific about who can use the provision.

TAPE 100, SIDE B

014 KIP LOMBARD: Reviews and explains proposed amendments (Exhibit D).

118 CHAIR NORRIS: Is it the intent that in line 14, sub 7 that the Commission shall issue an order.

120 LOMBARD: Correct. It is after the Commission makes a finding that the rotation plan can be implemented without injury.

122 CHAIR NORRIS: So they could have found all sorts of reasons why not, before that point and not be obligated to issue such order?

123 LOMBARD: Correct.

140 CHAIR NORRIS: On page 3, line 19 it says it can be renewed, "but each renewal shall be subject to the fees and information requirements, and

to the notice, determination and hearing provisions ..." It seems to me that it's going back to square one, that the renewal is not a foregone conclusion?

144 LOMBARD: That's correct.

155 REP. JOSI: Does the Department have to go through the public notice procedure?

158 LOMBARD: Yes, public notice and the determination process again.

170 REP. VanLEEuwEN: Questions how the process works.

190 LOMBARD: If you're changing your plan substantially, which is what you'd be doing if you added new lands, then you've got to go through the prior approval process for that new land.

209 REP. MARKHAM: Can you change the point of diversion?

210 LOMBARD: No.

316 REP. JOSI: How does this affect existing and future water rights?

321 LOMBARD: If the rotation plan will injure existing rights, it will not be approved. If future rights would be injured by the renewal of a

rotation plan, the rotation plan would probably not be renewed.

386 REP. JOSI: If a water right has been granted over the amount of the stream, that right could effectively block the rotation, couldn't it?

396 LOMBARD: That could happen, but it's probably unlikely.

TAPE 101, SIDE A

021 REP. MARKHAM: What else did you add to the bill?

024 LOMBARD: We added the addition of the drainage districts to the HB 311 1 process and the deadline to HB 3111.

030 STEVE APPLGATE, Department of Water Resources: We are in agreement with the current version. The fiscal impact has been reduced from 2.5

FTE to 1 FTE. 042 REP. MARKHAM: Would the fee cover that?

044 APPLGATE: Yes.

045 REP. VanLEEuwEN: Why does it take more staff?

046 APPLGATE: We may have to have more staff to review the applications.

057 REP. VanLEEuwEN: What is the fee?

058 APPLGATE: That would be \$50 for the application fee, \$30 for the first 10 acres and \$1 for each additional acre involved in the rotation. These already exist.

086 ANNE PERRAULT, Water Watch: Reads testimony with concerns about HB 258 0 (Exhibit F).

152 REP. HOSTICKA: I thought the earlier testimony was that if you

used the water on the new land, you didn't use it on the old land. You're

reading it to say that you can use it on both?

164 PERRAULT: By the language in the bill, it's not clear that the water will be moved permanently.

177 CHAIR NORRIS: My understanding was that during a given year, if the rotation plan was approved, the original land to which the right was

appurtenant and from which it was transferred, would not be used in any season during which the rotation was in effect? The contiguous parcel

to which it was transferred would be the exclusive beneficiary.

183 LOMBARD: That's correct. On page 5, line 4, subparagraph (g), we have the condition that the lands from which the water right is removed

during the period of alternate use shall receive no water and shall not benefit from irrigation of the alternate lands. You can't even have

runoff or return flow going unto that land. It's a whole season

program. You can't go back and forth within the same season.

200 REP. MARKHAM: Water Watch seems to be upset because not just anyone in the state can complain under the new bill, only the people who are

affected?

205 REP. JOSI: That's not true either. If there's an instream water right, anyone in the state could be affected by that, theoretically.

206 CHAIR NORRIS: Any person, whose use of water is affected, can protest the rotation.

215 PAGEL: Any person can comment on the application. Harm to actual users would be a basis that the rotation could be denied.

240 CHAIR NORRIS: Closes public hearing on HB 2580.

WORK SESSION ON HB 2580

242 MOTION: REP. JOSI: Moves the amendments to HB 2580 with the date 5/24/93 from the memo from Water Resources Congress.

246 CHAIR NORRIS: Restates motion.

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

251 MOTION: REP. JOSI: Moves HB 2580, AS AMENDED, to the full committee with a DO PASS recommendation.

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

BAUM and REPINE are excused.

257 CHAIR NORRIS: The motion CARRIES.

259 Closes work session on HB 2580.

PUBLIC HEARING ON HB 2933

262 FITCH: Amendments have been proposed to HB 2933 which would say that applicants for instream water rights are exempt from having to have an

application map prepared by a Certified Water Right Examiner and it

confirms that the final proof map be submitted to the Department must be prepared by a Certified Water Right Examiner (Exhibit G).

300 CHAIR NORRIS: Would this be for both surface and ground water or just surface water?

303 REED MARBUT, Water Resources Department: This is for any water right for consumptive use, out of stream. It would pertain to any application for a water right, including a well.

332 JEAN BORLAND, Representing Rep. Larry Campbell: Reads testimony in support of HB 2933 (Exhibit H).

372 REED MARBUT, Department of Water Resources: I misspoke earlier. This would amend the applications for surface water applications. This only

applies to applications to surface water. It allows an individual to

submit a map at the time of application which is of a lower quality, and not prepared by a Certified Water Rights Examiner. When the permit is

about to be issued, then we would require the Certified Water Right

Examiner map.

406 In order for this to apply to groundwater sources also, we would have to amend ORS 537.615 sub 2.

TAPE 102, SIDE A

013 REP. JOSI: Is there a need to amend the groundwater statutes also?

017 MARBUT: If there is a reason to amend the surface water statutes, the same reason would exist for groundwater sources.

046 PAGEL: We want a parallel application process concerning groundwater applications.

062 REP. VanLEEUEWEN: Why do they need to have the Certified water right map done when their land is small?

091 MARBUT: It's essential that the diversion and the use of the water is documented by a survey.

114 REP. MARKHAM: Is that when we created the Certified Water Right Examiner?

116 MARBUT: Yes.

137 REP. VanLEEUEWEN: Will this be retroactive?

141 MARBUT: We're trying to work out the problems with the folks mentioned by Speaker Campbell.

157 CHAIR NORRIS: Closes public hearing on HB 2933.

WORK SESSION ON HB 2933

170 MOTION: REP. MARKHAM: Moves the proposed amendments Hand Engrossed by Staff, dated 5/25/93.

172 CHAIR NORRIS: Restates motion.

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

176 MOTION: REP. MARKHAM: Moves HB 2933, AS AMENDED, to the full committee with a DO PASS recommendation.

177 CHAIR NORRIS: Restates motion.

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

186 CHAIR NORRIS: The motion CARRIES.

187 The work session on HB 2933 is closed.

Meeting is adjourned at 3:40.

Also submitted for the record: - Testimony in support of HB 3146 by Mike Simms, Tillamook County Creamery Association (Exhibit I).

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 3146 - Amendments - Kip Lombard - 5 pages B -
HB 3512 - Amendments - Staff - 13 pages C - HB 2341 - Proposed
amendments - Kip Lombard - 3 pages D - HB 2580 - Proposed amendments
and explanation - Kip Lombard 14 pages E - HB 2580 -
Testimony - Marion Millard - 1 page F - HB 2580 - Testimony -
Anne Perrault - 2 pages G - HB 2933 - Preliminary staff measure
summary and amendments - Staff - 5 pages H - HB 293 -
Testimony - Rep. Campbell - 2 pages I - HB 2933 - Testimony -
Mike Sims - 1 page