

SENATE COMMITTEE ON WATER POLICY

June 15, 1993 Hearing Room 137 3:00 p.m. Tapes 57 - 58

MEMBERS PRESENT: Sen. Bill Dwyer, Chair Sen. Bob Kintigh, Vice-Chair Sen. Wes Cooley
Sen. Frank Roberts Sen. Tricia Smith

MEMBERS EXCUSED: None

STAFF PRESENT: Lisa Zavala, Administrator Pamella Andersen, Committee Clerk

MEASURES CONSIDERED: HB 2107 HB 2153 HB 3234

[--- Unable To Translate Graphic ---] These minutes contain materials which paraphrase and/or summarize statements made during this session

TAPE 57, SIDE A

004 CHAIR DWYER: Calls the meeting to order at 3:13 p.m. - Opens the public hearing on HB 2107.

PUBLIC HEARING ON HB 2107 - EXHIBITS A and B

WITNESSES: Martha Pagel, Water Resources Department Tom Paul, Water Resources Department Susan Schneider, City of Portland Louise Bilheimer

021 MARTHA PAGEL: (Introduces EXHIBITS A and B) Offers testimony in support of HB 2107. - The issue is problems that arise when new projects that would result in wetland or stream restoration benefits come

forward. - Our backlog keeps us from maintaining the time lines required for

other agencies. 051 - Explains how the bill would allow departure from the ordinary process. - This was negotiated by the same working group

CHAIR DWYER: Was everyone on board?

PAGEL: I believe so. 067 SEN. SMITH: The A-engrossed version includes reservoirs on page 2, section 4(2), which I don't find in the

PAGEL: That section refers to reservoirs that would be part of these

types of projects for wetland or stream restoration. - The distinction is these would be ponds created in the future rather

than existing reservoirs. - These might include livestock watering ponds.

SEN. SMITH: How big is 9.2 acre feet?

091 CHAIR DWYER: Explains the size.

PAGEL: You can have only 10 of these smaller than 9.2 acre feet.

SEN. SMITH: We are only addressing reservoirs that are used for

creating wetlands?

PAGEL: Storm water projects would be included.

SEN. KINTIGH: How does this storm water work? - Is it to store or spread the storm water?

TOM PAUL: Yes, it is to store and spread storm water. - Some municipalities are faced with managing water quality and storm

water runoff.

120 SEN. KINTIGH: Not very much storm water could be taken care of by 9 acre feet.

PAUL: For the purpose of a single water right filing, the 9 acre feet

is significant in how many reservoirs can be included in a single

application.

SEN. KINTIGH: If a city had a large quantity of storm water to dispose

of they could have a number of these projects somewhere?

PAUL: That is correct. - A storage project could be larger than 9.2, but they would be limited to a single application.

140 SUSAN SCHNEIDER: Offers testimony in support of HB 2107-A. - The city is required by DEQ to meet the limits of the total maximum daily load

160 SEN. KINTIGH: Would you be owning that land or entering into agreements with farmers?

SCHNEIDER: Our preference would be to own the land, but we would enter

into whatever agreement was necessary.

175 LOUISE BILHEIMER: Offers testimony in support of HB 2107. - Notes the benefits of the legislation.

198 DOUG MYERS: Offers testimony in support of HB 2107. - Notes the advantages of the bill.

207 JONI LOW: Offers testimony in support of HB 2107. - Lists specific cities that will benefit from this bill.

CHAIR DWYER: Closes the public hearing on HB 2107. - Opens the public hearing on HB 2153.

PUBLIC HEARING ON HB 2153 - EXHIBITS C and D

WITNESSES: Martha Pagel, Water Resources Department Tom Paul, Water Resources Department Kevin Hanway, Special Districts Doug Myers, Water Resources Department

225 MARTHA PAGEL: (Introduces EXHIBIT C and D) Offers testimony in support of HB 2153. - Explains the need for the bill. 256 - Except for "and."

SEN. KINTIGH: Under the definition of "off channel," would that include an intermittent stream?

PAGEL: The approach taken here does not hinge on whether the stream is intermittent or perennial.

SEN. KINTIGH: Describes a particular type of stream and asks whether it would be permissible.

410 PAGEL: This bill only addresses existing ponds. - Elaborates on the impact of the bill on his specific scenario.

CHAIR DWYER: Why are we grandfathering reservoirs that may not be exempt under the 9.2?

PAGEL: Section 4 describes the process for the larger ponds which cutoff we used to get consistency with the dam safety requirements. - We have created amnesty, but not outright grandfathering, because of their size and that they are on channel. 450 - They would be processed as any other application, including determinations as to i
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PAGEL: Continues review with section 5.

014 TOM PAUL: States which reservoirs do and do not require the CWRE map.

PAGEL: Continues review with section 6. 030 - Reviews section 7.

SEN. KINTIGH: In most of these, wouldn't the actual use of the water be minimal?

PAGEL: There is an assumption they are not causing injury to other users but we are not assuming that for the record.

CHAIR DWYER: I might be angry if I had a 1900 water right and you built several impoundments without water rights, allowing you to have wate

046 SEN. KINTIGH: I was envisioning it going through the ponds rather than being removed from the stream.

PAGEL: That is an issue people don't understand. - Our intention was not to penalize those creating ponds without knowledge of the need for water rights, and yet not to give them an undue advantage. - Reviews section 8 relative to civil penalties.

064 SEN. SMITH: What happens to those persons who don't apply for this permit but have existing ponds?

PAGEL: If it comes to our attention, they are subject to penalties. - They would not be allowed to continue use, and they would have a new priority date.

SEN. SMITH: How do you intend to let people know that they have this amnesty period available?

PAGEL: We will have to rely on our watermasters, interest groups, soil and water conservation districts, agricultural groups and extension offices. - We are giving everyone until 1995 to comply.

086 SEN. SMITH: Does the agency intend to pursue those not in compliance?

PAGEL: We will pursue them according to the policies we have in place. - We have recently adopted new management directives which set o priorities for enforcement.

- We have limited staff to address violations, so we would have to focus on the more serious violations that impact others.

CHAIR DWYER: A good number of these are owned by the federal government and the state forest.

113 PAGEL: Continues review of section 9, dealing with new reservoirs.

SEN. ROBERTS: What is the secret behind the 9.2 acre feet?

PAUL: The statute specifically calls out those numbers. - I don't know there is a secret. - A size larger than that might be problematic

CHAIR DWYER: A structural engineer probably conducted some sort of pressure test to determine that figure.

SEN. KINTIGH: What if a person digs a hold in or beside a stream with a drag line; is that different?

PAUL: Yes, there are other rules. - The Division of State Lands governs the fill removal. 149 - We have issued water rights for sumps groundwater.

PAGEL: This brings to mind "pump chances." - Clarified for the record the department's position that those don't require a water right, but putting the water to use does.

PAUL: We look at whether they are creating an area to store water for future use.

180 KEVIN HANWAY: We submitted one of the numerous exemptions bills on the house side for rural fire protection districts. - Explains wh

189 DOUG MYERS: WaterWatch does not support this bill, but we do not oppose it as presently constituted. - We would like to submit amendm

CHAIR DWYER: Closes the public hearing on HB 2153. - Opens the public hearing on HB 3234.

PUBLIC HEARING ON HB 3234 - EXHIBITS E and F

WITNESSES: Martha Pagel, Water Resources Department Reed Marbut, Water Resources Department

Senator Neil Bryant, District 27 Mike Dewey, Ball, Janick and Novik, representing destination resort coalition

213 MARTHA PAGEL: We have participated with the proponents, though this is not a department bill.

REED MARBUT: (Introduces EXHIBIT E) Offers testimony in support of HB

3234. - Explains what the bill does relative to amending current basin

statute definitions. - Notes inclusion of "quasi-municipal" use.

CHAIR DWYER: What is this designed to remedy?

MARBUT: This is designed to remedy a quirk under current law. - Permits cannot be issued for uses in the basin plan that are not

delineated as "classified" uses. - Rule revisions in process will allow us, where our basin program

identifies a use, to interpret that to mean we can grant

quasi-municipal uses where municipal is a classified use. - There are many uses that are like cities but are not incorporated municipalities.

258 CHAIR DWYER: What if I want to develop 400 acres with residential housing? - Can I call myself a quasi-municipal use and get wa

MARBUT: It is not that simple. - The purpose of the definition is to allow multiple types of uses in a city-like environment. - These can

SEN. SMITH: Why are we doing this?

MARBUT: An interpretation under chapter 536 relative to use

classifications requires that unless the use is listed, the commission

can't grant a water right. - The safest route appeared to be to amend the law.

SEN. SMITH: Why would the commission support this bill?

297 MARBUT: The commission has granted a great number of these types of rights. - They see there is a need for community water system

SEN. SMITH: Land use discussions argue against this.

PAGEL: Our commission has been given the responsibility for basin

planning. - Over time it has been recognized that municipal classification is

different from a defined municipality. - The land use questions should be dealt with in the land use planning

arena. - If we don't define municipal uses this way, we are creating an

impossible situation, precluding desirable growth from occurring.

352 SEN. COOLEY: The Senate recently passed a bill requiring land use permits to consider the availability of water.

- This appears to be in conflict with that. - The change in department focus is hard to understand.

373 CHAIR DWYER: Reads the summary of Exhibit E. - This seems to conflict with what you are testifying to now.

PAGEL: That was related to the earlier version of the bill. - We support the A-engrossed version and will supply a revised Exhibit

E.

SEN. ROBERTS: What definition would be adopted by the commission for

"quasi-municipal?"

416 MARBUT: Reads the definition to be adopted by the commission under the new rules.

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SEN. ROBERTS: What uses are not considered appropriate municipal uses?

015 MARBUT: Very few are not considered appropriate for a municipality. - Lists various appropriate uses. - Mining is an example of wh

PAGEL: Relative to reconciling the positions of the two bills, I don't

see them in conflict. - We are merely saying we will entertain an application, not

necessarily grant one. - The land use planning process will be considered and needs to be more cognizant of water availability issues. - Th

045 SEN. COOLEY: You are saying under this permit, during a drought the water needs of the municipality would supersede all other prio

PAGEL: That is the key issue. - The bill does not convey, outright, all the benefits of

municipalities. - Some of the benefits of a municipality would be appropriate to grant

to a quasi-municipality; others would not be.

SEN. COOLEY: You are saying all they have to do is incorporate to

supersede. - Would the agency and the state want to be in a position to grant

these, taking water away from human consumption?

080 MARBUT: There is a preference in ORS 536, if there is not enough water, for human and livestock consumption. - This would not change

CHAIR DWYER: What happens when quasi-municipalities incorporate? - Does that confer anything beyond what would normally be available?

MARBUT: At such time, they would enjoy all the benefits of the municipality. - Gives the possible example of the East Salem Water District.

CHAIR DWYER: What rights would it confer on the City of Salem that were not previously available?

111 MARBUT: Explains some of the advantages, noting they are not referred to as rights. - There is no provision for them to jump ahead

CHAIR DWYER: So a quasi-municipality that has incorporated can't impact my 1909 water right?

MARBUT: That is true, it cannot take a water right from a senior water right.

128 SENATOR NEIL BRYANT: If you became a municipality you might be able to condemn that water right.

MARBUT: Municipalities are able to condemn and pay for property and that includes water rights.

SEN. BRYANT: I want to continue the system as presently used by the department. - Recently there have been legal challenges relative to use of the term "quasi-municipal." - This addresses existing water system. - Many of these developments don't want to become cities. - We wish to legislatively tell the Water Resources Department what they have been doing is acceptable. - There are other housing developments outside the urban growth boundary of Bend that have their own quasi-municipal water systems used for domestic use on houses and lawns.

CHAIR DWYER: Is this groundwater or surface water?

SEN. BRYANT: It is usually well water.

CHAIR DWYER: That is not subject to the stringent requirements of the Federal Clean Water Act.

SEN. BRYANT: It is.

CHAIR DWYER: Surface water is subjected to a much greater test.

199 SEN. SMITH: The whole tenor of our land use laws is to encourage development within urban growth boundaries and not outside the boundary to develop outside an urban growth boundary.

SEN. BRYANT: It won't make it easier because you will still have to satisfy all the land use issues.

SEN. SMITH: One land use question is "Do you have water?"

SEN. BRYANT: This bill doesn't affect their ability to get water. - They can drill a well or purchase water.

224 SEN. SMITH: Wells aren't usually developed to provide water to a restricted community.

CHAIR DWYER: Large cities do use wells.

SEN. SMITH: Yes, but when building a new city, they will go with this rather than individual wells.

PAGEL: We have in the last 2 years put a priority on integrating water and land use planning while maintaining the distinction between the two. - The classification system incorporated into our basin plans should not be the deciding factor as to whether that development could occur.

268 SEN. BRYANT: Discusses the metering of water in the City of Bend. - I don't think taking away "quasi-municipal" would preclude development, just increase the cost.

SEN. KINTIGH: Would this not come into play when a small rural community with individual wells determines to install a water system?

302 SEN. BRYANT: Sure.

MARBUT: Lists the 98 existing quasi-municipalities, the biggest group of which is small communities that are unincorporated.

CHAIR DWYER: What was done to the bill to cause you to change your mind?

PAGEL: One key provision was the deletion from the original bill of the definition of "quasi municipal," leaving that to the commission to determine.

364 MARBUT: Discusses provisions of the original bill that were changed or deleted.

PAGEL: Clarifies the commission had a shared interest in fixing the

problem. - We have a number of permits issued under quasi-municipal, but they are currently snagged in legal debate.

424 MIKE DEWEY: (Introduces EXHIBIT F) Offers testimony in support of HB 3234. - References and reviews page 1 of Exhibit F which is a of quasi-municipal uses.

TAPE 58, SIDE B

029 DEWEY: Reviews how basins not approved for quasi-municipal use would have to be amended. - Mentions the lawsuit challenging the uses. - The bill would make the court cases moot.

048 SEN. COOLEY: On this summary, are all these quasi-municipal districts using wells, or a combination of wells and surface water?

DEWEY: They are using combinations.

SEN. COOLEY: This also includes surface water.

DEWEY: We wanted to make clear the definition should be promulgated by the department. - We also wanted to make clear water must be available. - We wanted to ensure there are no preferences.

CHAIR DWYER: How many of these surface water diversions are screened?

MARBUT: The fish screening law is administered by the Department of Fish and Wildlife. - I am sure these are not all up to date.

083 CHAIR DWYER: Next time, I want a chart like this to indicate which diversions are screened.

SEN. COOLEY: In reference to the chart, in column 4, what does "no" mean?

DEWEY: It means they are not classified for quasi-municipal use.

SEN. COOLEY: So this bill will say "yes" for those for which it now says "no?"

DEWEY: We are saying that. - There is also in the bill a provision whereby the commission may amend the plan if they believe a quasi-municipal use is not appropriate.

SEN. SMITH: The only way you can now have a quasi-municipal use is if it is included in the basin plan. - This bill changes that from a "you can't unless we say you can" to "you can unless we say you can't."

115 DEWEY: The basis of the litigation is: quasi-municipal is not defined in statute, which is what we are trying to clarify.

CHAIR DWYER: This is easier than amending a basin plan.

DEWEY: True. - We think this is a good piece of legislation for rural Oregon, which is yearning for some sort of development.

- It is LCDC's responsibility to determine if it is well planned and the commission's to determine whether the water is available.

147 SEN. COOLEY: Can you assure us this will not potentially impact our water rights in agriculture?

DEWEY: Gives a hypothetical situation of a destination resort working through the land use process.

177 MARBUT: These rights receive no elevated status different from another water right. - We see these as better protecting existing multiple permits would be coalesced into one water right.

202 SEN. COOLEY: You are saying this would not impact the prior appropriation doctrine?

MARBUT: Municipalities have no right to take water away from a senior water right.

SEN. COOLEY: Except when it comes to human consumption...

MARBUT: Without the ability to use the community system concept, any organization could form and file multiple water rights for differing uses. - With this they would only file one.

DEWEY: Clarifies Exhibit F was generated by his office and not by the Department of Water Resources.

230 KAREN RUSSELL: There have been references to the litigation brought by our group. - The reason they initiated the litigation was issued a water right for a use not classified in the applicable basin plan. - We were concerned about the policy implications, wishing to pr

the integrity of the basin planning process. - We opposed the bill on the House side but agreed not to here, given the agreement that the quasi-municipal uses referenced in this bill would not take preference over in-stream water rights and that quasi-municipal users would not be a subset of municipal users.

CHAIR DWYER: Closes the public hearing on HB 3234. 256 - Adjourns the meeting at 4:53 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Lisa Zavala Clerk

Administrator

EXHIBIT LOG:

A Testimony on HB 2107 - Martha Pagel - 2 pages B Water Resources Department Staff Summary of HB 2107 - Martha Pagel - 2 pages C