

change.

MARTHA PAGEL, DIRECTOR, WATER RESOURCES DEPARTMENT: For the record, on page 3 of the printed HB 2153 A-engrossed, lines 27-29, that section requires the applicant to meet all the ordinary standards that are applied to permit applications.

ADMIN. ZAVALA: That would include provisions of ORS 537.170 which is the public interest determination, among others.

MOTION: SEN. COOLEY: Moves to ADOPT the amendments conceptually and that HB 2153-A as amended be sent to the Floor with a DO PASS recommendation. VOTE: In a roll call vote, all members present vote AYE. Senators T.

Smith and Roberts are EXCUSED.

CHAIR DWYER: The motion CARRIES. Sen. Kintigh will lead discussion on the floor. - Closes the work session on HB 2153. - Opens the work session on HB 2155.

WORK SESSION ON HB 2155 WITNESSES: Martha Pagel, Director, Water Resources Department

059 ADMIN. ZAVALA: (introduces EXHIBIT A, B and C) explains the -A7 amendments. - explains the -A8 amendments and their purpose. - these were to address concerns of The Oregon Farm Bureau.

CHAIR DWYER: Do these amendments conflict in any way?

ADMIN. ZAVALA: There should be no conflicts.

091 MARTHA PAGEL: Some last minute corrections have been called to my attention. - The -A7 amendments, page 3, line 15: It is the consensus of the

interest groups to change "users" to "rights" - Explains reasons behind change.

CHAIR DWYER: Are there any objections to making that change? Hearing

no objections, SO ORDERED. MOTION: SEN. KINTIGH: Moves to ADOPT the A-7 and A-8 amendments. SEN. COOLEY: On the A-8 amendments, will Section 9 become Section 11?

ADMIN. ZAVALA: When the amendments are redrafted the sections will be renumbered.

SEN. COOLEY: Section 11 will still apply then that ORS 537.475 is repealed?

ADMIN. ZAVALA: Yes.

VOTE: Hearing no objections, the motion CARRIES.

MOTION: SEN. DWYER: Moves that HB 2155 as amended, be sent to the Floor with a DO PASS recommendation. VOTE: In a roll call vote, all members present vote AYE. Senators T.

Smith and Roberts are EXCUSED.

CHAIR DWYER: The motion CARRIES. Sen. Cooley will lead discussion on the floor. - Closes the work session on HB 2155. - Opens the work session on HB 3234.

WORK SESSION ON HB 3234 WITNESSES: Martha Pagel, Director, Water Resources Department Steve Sanders, Assistant Attorney General, Department of Justice Karen Russell, WaterWatch of Oregon Richard Whitman, Attorney Reed Marbut, Water Resources Department

128 ADMIN. ZAVALA: Explains EXHIBITS D and E

141 MARTHA PAGEL: introduces panel of witnesses. - All interest groups as well as the Department are in agreement on the proposed amendments before you. (The -A3 as further amended)

153 STEVE SANDERS: The purpose of the amendments is to illustrate that quasi-municipal uses of water either for water rights already granted as of January 1, 1993 or applications which were pending on January 1, 1993 for quasi-municipal uses of water would be permitted or "classified"

uses within a basin plan which defines municipal uses of water. - A second major purpose of the amendment would be to clarify that the

Water Resources Commission has the authority to define what uses are permitted within a classified use within the basin plan. - The provision allowing quasi-municipal uses under a municipal

classification is intended to "grandfather" permits already granted or pending while the Commission completes its rulemaking already authorized.

183 SEN. COOLEY: Any application pending before January 1, 1993 is affected by this legislation. -If I were to apply today what would happen?

SANDERS: You would have to wait until the Commission completes rulemaking. It is my understanding that the rules under consideration now, as proposed, would do exactly what this legislation is doing.

SEN. COOLEY: We are opening up quasi-municipalities which are not

granted now.

SANDERS: We have argued that a quasi-municipal use is now permitted in a basin plan that has a municipal use.

SEN. COOLEY: If we were not to approve this, all quasi-municipal applications would be set on hold?

SANDERS: There might be a "cloud" over them.

SEN. COOLEY: If we pass this legislation, up until January, 1993 there would be no cloud involved in this process?

SANDERS: That would be my view.

SEN. COOLEY: We are allowing water districts to reallocate possible irrigation water to municipal use.

SANDERS: No. Because irrigation districts have not applied for....(did not finish statement)

SEN. COOLEY: No, I said if they did apply.

SANDERS: If an irrigation did apply for a quasi-municipal use and if the Commission determined that what they were applying for was, in fact, a quasi-municipal use, it is true that they would be entitled to get a permit if they otherwise met the public interest test.

PAGEL: If the irrigation district were authorized to do that you would have to look at the authority of the district.

SEN. COOLEY: My concerns are I want to protect the agricultural interests in water in areas where they are being pushed by urban growth.
- Elaborates.

270 SANDERS: This bill does not address that question, except indirectly by removing any cloud there may be if someone objected to cranberry growing as an irrigation use, as that crop has been defined separately. - Elaborates.

SEN. COOLEY: You think cranberry growing is unusual use?

SANDERS: Cranberry growing uses an unusual amount of water sporadically. - this clarifies that the Commission has the leeway to determine when a different or innovate use of water for an agricultural use will

qualify under the basin plan.

308 PAGEL: The Department and Commission has taken a common sense

approach to this issue. -The classifications are very broad categories with sub categories.

SEN. COOLEY: How many quasi-municipal applications are pending?

REED MARBUT: There are perhaps less than a dozen pending.

356 KAREN RUSSELL: Notes concern with specific section of the bill which they believe will expand the Commission's authority in the basin

planning process. - classifications require hearings. - WaterWatch filed a lawsuit which challenged the agency's issuance of

water rights not defined in basin plans as they define their own

classifications. - Concerned that the language in subsection 3 would allow the agency to adopt a basin plan with classifications and specific intents as to

what the classifications meant and then, through a separate

rulemaking process not in the basin, redefine those classifications. - Feel strongly that this section should be removed. - With that exception, WaterWatch does not have a problem with the

legislation as amended.

407 PAGEL: It was our intention to deal with the specific problems of the pending applications and the quasi-municipal permits already issued. - The Commission believes it has the authority to proceed with

rulemaking to clarify the linking with basin programs and uses. - If this bill is to apply to pending applications and permits already

issued, we want to ensure there is no intention to limit the ability to proceed as the Commission would have otherwise.

SANDERS: This is not intended to expand the Commission's authority.

RUSSELL: If that is clearly the only intent of this section, we would

feel more comfortable with this language out, but would be okay with it going forward.

TAPE 60, SIDE A

027 RICHARD WHITMAN: Representing entities who have pending applications for quasi-municipal use. - Responds to Sen. Cooley's concerns about irrigation districts - This measure doesn't have much effect on that. - The conversion of agricultural lands to other uses there are other

means of addressing that.

CHAIR DWYER: (directed toward Ms. Russell) Do you have any suggested language for subsection 3?

043 RUSSELL: Either deletion or some language that refers specifically to subsection 2. Something to the effect "The Commission may, by rule,

determine the specific uses permitted within the classified uses referenced in subsection 2".

SANDERS: My objection to that would be that it might suggest that the Commission would not have authority to determine for other kinds of uses.

PAGEL: One alternative might be to change the wording in subsection 3 to say that "nothing in this act is intended to limit or otherwise affect the Commission's existing authority" - I would prefer "nothing in this act is intended to limit existing

authority of the Commission by rule to determine the specific uses permitted within a classified use."

CHAIR DWYER: Lets go with it as it is.

MOTION: SEN. KINTIGH: Moves to ADOPT the A-3 amendments as further amended.

VOTE: Hearing no objections, the motion carries.

MOTION: SEN. KINTIGH: Moves HB 3234 as amended, be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote, all members present vote AYE. Senators T. Smith and Roberts are EXCUSED.

CHAIR DWYER: The motion CARRIES. Sen. Bryant will lead discussion on the floor.

CHAIR DWYER: Closes the work session on HB 3234. - Opens the public hearing on HB 3679.

PUBLIC HEARING ON HB 3679 - EXHIBIT F

WITNESSES: Reed Marbut, Water Resources Department

139 REED MARBUT: (introduces EXHIBIT F) Offers testimony in support of HB 3679. - notes that the bill clarifies the Director has the discretion to

accept filing of federal water rights without accompanying fees. - Clarifies wording of HB 2110.

CHAIR DWYER: Closes the public hearing on HB 3679. Opens the work

session on HB 3679.

WORK SESSION ON HB 3679

MOTION: SEN. COOLEY: Moves that HB 3679 A, be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote, all members present vote AYE. Senators T. Smith and Roberts are EXCUSED.

CHAIR DWYER: The motion CARRIES. Sen. Cooley will lead discussion on the floor.

CHAIR DWYER: Closes the work session on HB 3679. - Opens the public hearing on HB 3203.

PUBLIC HEARING ON HB 3203 - EXHIBIT G

WITNESSES: Scott Ashcom, Oregon Association of Nurserymen, Oregon Strawberry Commission, Oregon Caneberry Commission, Oregon Blueberry Commission Martha Pagel, Water Resources Department Ron Yockim, Oregon Cranberry Farmers Jim Myron, Oregon Trout Doug Myers, WaterWatch Karen Russell, WaterWatch

167 SCOTT ASHCOM: Offers testimony in support of HB 3203. - introduced at our request to assist the department in solving a problem with water rights backlog. 209 - We wish to gain fairness; a secondary issue we wish to address is the amount of time the department takes to process the applications. - The real issue is fairness. - About 200 applicants in the Willamette Basin would have had the

permits approved if they have been processed under rules in effect

when the applications were received. - Those will now probably be denied. - This bill attempts to bring fairness to that process. - Notes the -A2 amendments which propose to delete all language in the

-A engrossed bill. - Those amendments merely address the issue of eliminating retroactive

application of rules to the processing of water right applications.

The A2 amendments also allow the Water Resources Department to continue to use the Division 11 Administrative Rules relating to

processing of water right applications. - The A2 simply eliminates retroactivity to both surface and

groundwater applications. 282 - It is a state policy for land use planning permits not to apply rules retroactively.

CHAIR DWYER: What is the Director's opinion on this issue?

PAGEL: With respect to the issue of "retroactivity", we would be very concerned about a statute saying there would be no ability whatever to

have rules go into affect on a date different than the date of adoption.
- The Departments and Commission's position is this is not retroactive.
- Elaborates. - Once the department gives notice that it intends to change the rules, we experience a "run on the bank". - That is what happened in the Willamette Basin plan. - It does not apply to applications on file when we gave notice. - It does apply to applications that came in during the period between

the notice and the final rulemaking. - We have acknowledged that the allocation policy has had a retroactive effect that is unfair and we are trying to correct that by formal

rulemaking.

CHAIR DWYER: How do we address this problem?

PAGEL: To those affected by the Willamette Basin plan, the Commission reviewed the process and we are aware some may not have gotten the notice. There would not be a remedy under the Commission's recommendation because they believe there was fair notice given. - (Introduces EXHIBIT G and H)

ASHCOM: The argument that the Willamette Basin plan rules were not retroactively applied to the applications received after the notice was issued doesn't hold up. The rules in the Willamette Basin were retroactively applied.

PAGEL: The notice I was referring to was the notice of March, 1991 of intent to amend the Willamette Basin Plan.

409 ASHCOM: Changes were made in the rules up until the last minute.

CHAIR DWYER: What about the public interest determination?

PAGEL: Mr. Ashcom's amendments would retain the provision for public interest determinations and we support that change.

ASHCOM: The measure as it came from the House is the one objected to, and the A2 amendments change those.

CHAIR DWYER: Have you seen the Departments amendments (A8)?

ASHCOM: Yes.

CHAIR DWYER: How do we reconcile the A2 and A8 amendments?

PAGEL: The amendments do two different things. -They are reconciled only in respect to public interest.

TAPE 59, SIDE B

PAGEL: We requested deletion of those references.

ASHCOM: The A2 amendments do just that. - They also include the concept of the department's amendments.

ADMIN. ZAVALA: Is the Department comfortable with the inclusion of the groundwater statutes in this bill?

PAGEL: The Department does not object to and would encourage consistency.

SEN. COOLEY: If we added ORS 537.620 to it would it also cover that issue?

PAGEL: In terms of the Department's amendments, the policy does not refer to groundwater. -For the nurserymen's proposal we would want to include both groundwater and surface water.

ASHCOM: The 80 percent exceedance standard is only applicable to surface water.

CHAIR DWYER: How do we reconcile this in regard to groundwater?

PAGEL: The Department's approach would be only to change the effect of the exceedance standard. That only applies to surface water so there is no need to address groundwater. - If you want to go further and have this bill affect the Willamette

Basin plan, you would go in the direction Mr. Ashcom has laid out for you. - We don't support that and would prefer the committee go in the

commission's recommended direction.

SEN. COOLEY: How do we address the backlog for groundwater applications.

PAGEL: Refers to Exhibit H. The workplan the Department is presenting has two components; 1) a management plan dealing with both groundwater and surface water and allows the department to produce the technical reviews. That is how I would suggest addressing groundwater. - The second part of the proposal would be to change the effective date of the water availability determination as outlined in the A8 amendments.

SEN. COOLEY: Then why do we have some groundwater applications pending?

PAGEL: There are other concerns that have to be reviewed.

SEN. COOLEY: But it does indirectly. - Isn't that why you haven't approved groundwater applications.

PAGEL: Not all groundwater uses interfere with surface water. - If they have a direct connection to surface water, we treat them as

though they were surface water. - Notes other factors that cause them to evaluate groundwater.

115 SEN. COOLEY: Part of HB 3203 is to put into statute some mechanism to require the Commission to review pending groundwater applications. - I will vote against this if groundwater is not included. - We have not been successful in getting the Commission to address

these problems. - We would like the bill to address both issues.

PAGEL: Only groundwater issues with respect to backlog are in the Willamette Basin. - It doesn't take a statute change at all, but staff time to deal with

that. - In Exhibit G, I have explained how we are reassigning existing staff

to move those applications. - The only ones held up because of rule requirements are those that are subject to the Willamette Basin plan.

SEN. COOLEY: Outside of the Willamette Basin plan, none of the groundwater applications pending have a rule making process that doesn't allow you to process them?

PAGEL: No.

SEN. COOLEY: We have three year old groundwater applications that haven't been addressed.

154 ASHCOM: I disagree with what the department has said. - The Division 11 rules are being applied retroactively on all

applications. - In that instance I have seen many applications for ground and surface water that had just about completed the process and were re-examined retroactively following the adoption of the new Division 11 rules. - The only pending groundwater applications that would be affected are

those in groundwater management areas. - By retroactively applying the Division 11 rules groundwater

applications all over the state were affected. - The fairness issue is broader and more general than who is affected

by the retroactive application of rules. - Is it ever fair to retroactively apply administrative rules to

pending applications? - it is not legal to do so in land use planning

statutes. - I am asking the broader public policy question.

PAGEL: I would say it can be fair for a Commission or Legislature to take that type of action. - I gave an example of Willamette Basin plan. - You must have a cut off date.

CHAIR DWYER: Your date of fairness is the date of notice?

PAGEL: A rule change is not inherently unfair. -I am pleased to see Mr. Ashcom's amendments would allow the Division 11 rules to be applied retroactively. -I think they are more fair and more clear.

ASHCOM: The proposed rule change the commission has before it only addresses retroactive application of the allocation rule.

CHAIR DWYER: The Commission is dealing with retroactivity as it pertains to the water availability standard

ASHCOM: That is correct. We argue that if the Commission sees the unfairness of applying the water availability standard retroactively, then by what justification can it come to the conclusion that retroactive application of the Willamette Basin rules is not unfair?

CHAIR DWYER: How do we get at this problem?

PAGEL: If you are concerned with the application of the Willamette Basin plan to those who applied between the date we gave notice and the date the plan was adopted, you address it by adopting Mr. Ashcom's amendments. - The Commission does not believe that change is necessary.

268 RON YOCKIM: Oregon Cranberry Farmers. Offers testimony in support of HB 3203. - The House Water Policy Committee added a provision to address a concern affecting the cranberry growers. - Would like to see legislation allowing the Commission to accept applications for uses defined by rule within the basin plan. - Concerned the Commission may take too long to address this concern in the normal rulemaking process. - Proposes language. 340 PAGEL: We see there is ambiguity. - We are in the rulemaking process to correct that. - This is why we are opposed to any blanket law that prohibits retroactive rulemaking. If we complete the rulemaking and are not allowed to apply new rules to applications pending, those applicants will be greatly disadvantaged.

CHAIR DWYER: What about placing a time certain in the legislation?

YOCKIM: I recommended limiting it to a two year period.

PAGEL: That would give us flexibility, it would allow us to deal with

hard problems that come forward.

CHAIR DWYER: You wouldn't object to a time certain?

PAGEL: Right.

307 DOUG MYERS: Offers testimony in opposition to HB 3203-A and the proposed A-2 amendments. - If you have to amend the measure, then adopt the -A8 amendments.

JIM MYRON: Offers testimony in opposition to HB 3203. - We can support the A8 amendments.

CHAIR DWYER: What about the suggestion of a time certain?

KAREN RUSSELL: We would oppose those amendments strenuously.

TAPE 60, SIDE A B

CHAIR DWYER: Closes the public hearing on HB 3203. 042 - Ms. Zavala will facilitate a meeting of interested parties to come to consensus. - Opens the public hearing on HB 3273.

PUBLIC HEARING ON HB 3273 - EXHIBIT I

WITNESSES: Martha Pagel, Water Resources Department

PAGEL: (Introduces EXHIBIT I) Offers testimony in support of HB 327 3. - It does change the current requirements for use of a certified water rights examiner for application for use of water.

CHAIR DWYER: This measure will save people money.

ADMIN. ZAVALA: This measure applies both to groundwater and surface water.

CHAIR DWYER: Closes the public hearing on HB 3273. - Opens the work session on HB 3273. WORK SESSION ON HB 3273

MOTION: SEN. KINTIGH: Moves that HB 3273 be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote, all members present vote AYE. Senators T. Smith and Roberts are EXCUSED.

CHAIR DWYER: The motion CARRIES. Sen. Kintigh will lead discussion on the floor.

CHAIR DWYER: Closes the work session on HB 3273. - Adjourns the meeting at 4:57 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Lisa Zavala Clerk
Administrator

EXHIBIT LOG:

A Proposed LC Amendments to HB 2155 (HB 2155-7), Staff, 3 pages B
Hand engrossed amendments to HB 2155 (-7), staff, 6 pages C
Proposed LC Amendments to HB 2155 (HB 2155-8), Staff, 1 page D Hand
engrossed amendments to HB 2155 (-8), staff, 1 page E Hand engrossed
amendments to HB 3234 (A-3), staff, 1 page F Testimony of Water
Resources Dept, HB 3679, Martha Pagel, 2 pages G Testimony of Water
Resources Dept, HB 3203, Martha Pagel, 4 pages H Application Backlog
Workplan, Martha Pagel, 10 pages I Testimony of Water Resources
Dept, HB 3273, Martha Pagel, 2 pages