

SENATE COMMITTEE ON WATER POLICY

July 15, 1993 Hearing Room 137 3:00 p.m. Tapes 61 - 62

MEMBERS PRESENT: Sen. Bill Dwyer, Chair Sen. Bob Kintigh,
Vice-Chair Sen. Wes Cooley

Sen. Frank Roberts Sen. Tricia Smith

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

MEASURES CONSIDERED: HB 2340 HB 3358

[--- Unable To Translate Graphic ---] 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 61, SIDE A

004 CHAIR DWYER: Calls the meeting to order at 3:12 p.m. - Opens the work session on HB 2340

WORK SESSION ON HB 2340

01 KIP LOMBARD: Submits and reads written testimony (EXHIBIT A) and references the -A7 amendments (EXHIBIT B) - notes vote by mail - SB 947 which was not heard by the elections committee - elections laws are from 1917, with little changes - the laws deal with constitutional voting problems existing since 1978

CHAIR DWYER: was constitutional basis Reynolds versus Simms?

LOMBARD: no - elaborates 047 - this bill has been amended to increase thresholds on land ownership and its affect on votes per person

CHAIR DWYER: why do we allow proxies?

LOMBARD: pretty well accepted practice - since 1895.... has been in the law - ownership of land is entitled to only have one person represent the land - only one person could represent a corporation - these changes clarify and ensure - notice provisions and time periods were archaic in the old law 074 - notes other provisions in the bill as it came over from the House - we deleted provisions to which there were objections - irrigation user associations - we deleted reference to specific organizations - provision in section 14 of the bill - we narrowed that at the request of parties, you now have specific purposes for which you can enter land 100 - language at Sen. Cooley's request included (page 18, section 16, lines 26 - 29) - continues describing the amendments

CHAIR DWYER: prime rate charged by banks

SEN. COOLEY: explains

CHAIR DWYER: reads language in bill regarding prime rates

SEN. COOLEY: there is an Oregon prime rate - elaborates

CHAIR DWYER: want to ensure we are clear - we are talking about the average Oregon prime

135 LOMBARD: we are asking that sections 19-22 be deleted

SEN. COOLEY: on page 6, section 4, line 12 -- what does 50 mean?

LOMBARD: 50 landowners - this has been understood historically - if you have 5000 landowners, you only need 50 to sign a petition - if you have 10 landowners, you only need 5 to sign a petition

SEN. COOLEY: page 9, lines 11-16 -- please explain language

157 LOMBARD: explains

174 JAN BOETTCHER, OREGON WATER RESOURCES CONGRESS: Notes a specific corporation now reforming

SEN. COOLEY: they are now reforming?

BOETTCHER: yes, clarifies

SEN. COOLEY: page 10, section 6, first line -- please explain

LOMBARD: we have added a provision that if you have unanimous consent of all landowners, you don't have to hold an election - the exception is if you have a unanimous decision

SEN. COOLEY: my real question is how do you know you have a unanimous agreement --- do you have a petition?

LOMBARD: yes, see: section 4, page 6

SEN. COOLEY: page 17, section 12, do we normally include an allowance for associations to form districts?

LOMBARD: I believe it's normal - the counties are allowed to join AOC, cities, LOC, etc. - it has been in statute - historically, whether public entities can expend public funds to these types of organizations.... probably need statutory authority

230 SEN. COOLEY: in section 14, user rights - notes specific methods

LOMBARD: I think it is open to question - districts have rights of access where they have legal easements - there are many private laterals - sometimes districts run into problems - typically, there are many hobby farmers who leave all day; if there is a problem (i.e. break) someone needs to go out and turn it off - not absolutely clear that the district has the right to go down each lateral and do any thing at the headgates

SEN. COOLEY: can districts put water across private land without user rights?

LOMBARD: yes

SEN. COOLEY: certain people don't like this 277 - I was under the

assumption there must be an easement across the property

LOMBARD: they are turning off the water at the head of the lateral now

SEN. COOLEY: is the district responsible for individual landowners?

LOMBARD: we get calls, where people don't understand why neighbors won't let water by their property

SEN. COOLEY: reads phrase in section 15 - are we doing something here we haven't done before? LOMBARD: I have advised districts that they probably could do this under the generic statute that says that districts may provide in their by-laws and rules for the equitable distribution of water... which is pretty broad. - notes situation last year - cutback in allocation of water - in most instances there are not controllable headgates

SEN. COOLEY: isn't it the responsibility of the district to know how much water they are giving to users?

LOMBARD: yes, but they can't tell that unless you have someone standing at the diversion, they have no way of knowing

SEN. COOLEY: there are no headgates?

LOMBARD: in most instances, no

355 SEN. COOLEY: cost factor - you are telling me we are not holding easements - I would rather see something where we have water running under districts, that they obtain easement rights - then we could say we want controlling devices on the easements

LOMBARD: your practical problem is these people hold water rights and we can't hold up their rights

SEN. COOLEY: I'm not advocating that - I don't understand how we're passing water without easements

LOMBARD: we are

SEN. COOLEY: the logical thing would be for the district to obtain easements so we can maintain control - we seem to be bypassing that aspect - maybe we should consider that in here, as that appears to be the problem

400 LOMBARD: agrees that would be worth exploring

SEN. COOLEY: section 16

LOMBARD: the problem is the person in the middle of the ditch

SEN. COOLEY: the way I read this now, it appears we can do something about those people that refuse to participate

LOMBARD: we can, yes

TAPE 62, SIDE A

SEN. COOLEY: would like to see changes made by the Water Resources Congress for section 14 - elaborates on changes he would like to see

made - include notices to relieve anxiety of these people?

LOMBARD: we talked to the farm bureau 033 - notes where this situation would arise... when the landowner is gone, in which case we wouldn't want to be charged with a cumbersome requirement of notice - farm bureau was satisfied with this

SEN. COOLEY: reword it: that in emergency entry would be fine and if there were not an emergency there would be a notification process

LOMBARD: suggests: (1) "in the absence of an emergency the district shall provide reasonable notice to the landowner of their intent to...

SEN. COOLEY: 24 hours?

LOMBARD: that would be a problem....

SEN. COOLEY: in an emergency no one would object - for a clean-out.... - the county surveyor puts out a 24 hour notice on your mailbox - on this, an emergency, they would not object - for a clean-out crew.... or maintenance there is anxiety - elaborates on his concern

088 CHAIR DWYER: what about "prior to entry upon private land where no easement exist... " - would that give comfort?

SEN. COOLEY: yes

LOMBARD: that would be fine

discussion on emergency situations

CHAIR DWYER: we can adopt that conceptually and have counsel draft appropriate language

110 SEN. COOLEY: section 15a "lockable"?

LOMBARD: notes experience in Gold Hill

SEN. COOLEY: no other objections

MOTION BY: COOLEY MOVES CONCEPTUALLY TO ADOPT THE AMENDMENTS TO SECTION 14 HB 2340-A7 AS FURTHER AMENDED

VOTE: NO OBJECTIONS

MOTION: COOLEY MOVES HB 2340, AS AMENDED, TO THE FLOOR WITH A DO PASS RECOMMENDATION

VOTE: PASSES UNANIMOUSLY. CARRIED BY COOLEY

CHAIR DWYER: Closes the work session on HB 2340 - Opens the public hearing on HB 3358

PUBLIC HEARING ON HB 3358

WITNESS: Representative Chuck Norris, District 57

155 REP. CHUCK NORRIS: addresses section 2 of the bill - the Port of Umatilla holds a water permit which was granted in 1978 - this is a surface permit - they wanted to create a well-like structure; elaborates

- reads language in lines 12-13 - the hole you dug and which you want to put the pump is hydraulically connected to the stream by which it is located - I see some advantages all over the state if you had a surface permit - there is more to the bill than that --- which the Water Resources Department could address more technically

CHAIR DWYER: how do we ensure that the use of the water beneath the land surface of the river will not have additional affects on the surface water?

REP. NORRIS: the water in the well is connected to the water in the river

CHAIR DWYER: do we conduct dye tests to determine if they are hydraulically connected? - we are talking about ground and surface water and are assuming they are hydraulically connected - why are we assuming, when we really don't know?

210 REP. NORRIS: I suppose by chemical test

SEN. KINTIGH: how deep or how large would the well be?

REP. NORRIS: I think about 60 foot well (depth) (one of the alternatives)

SEN. KINTIGH: fish screening... 226 CHAIR DWYER: the advantages of using this system, the standards are different for surface than groundwater in the clean water act

REP. NORRIS: another advantage...

CHAIR DWYER: standards

244 CHAIR DWYER: Closes the public hearing on HB 3358 - Adjourns the meeting at 3:58 p.m.

Submitted by,

Pamela Berger Assistant

EXHIBIT LOG:

A Testimony on HB 2340 - Kip Lombard - 4 pages B Proposed
Amendments HB 2340-A7 - Staff - 24 pages