

SENATE COMMITTEE ON WATER POLICY

February 9, 1993 Hearing Room 137 3:00 p.m. Tapes 6 - 7

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: Work Session on LC 2232 SB 92

[--- 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 6, SIDE A

003 CHAIR DWYER: Calls the meeting to order at 3:08 p.m.

WORK SESSION ON LC 2232

006 CHAIR DWYER: Opens a work session for the purpose of introducing LC 2232.

MOTION: SEN. COOLEY: Moves to introduce LC 2232 as a committee bill.

010 VOTE: CHAIR DWYER: Hearing no objection it is so ordered. All members are present.

CHAIR DWYER: Closes the work session.

PUBLIC HEARING ON SB 92 - EXHIBITS A, B, C and D

WITNESSES: Martha Pagel, Director, Department of Water Resources Jan Boettcher, Oregon Water Resources Congress Barry Norris, Administrator, Technical Services Division, Department of Water Resources Anne Perrault, WaterWatch

012 CHAIR DWYER: Opens the hearing on SB 92. - Tell us what this bill does and why we need it.

023 MARTHA PAGEL: (introduces EXHIBITS A and B) Provides history of current law. - Bill's intentions. - This issue was heard by interim policy committees on House and Senate sides. - Task force was called to develop principles reflected in the bill. 066 - One key issue is to allow the Water Resources Department the ability to respond quickly to emergencies. 076 - Public review of and participation in replacement water resources desired to be improved. 083 - Key issues the task force addressed.

112 SEN. SMITH: In which section of the bill is the 14-day time frame located?

PAGEL: This is located on page 3 of the printed bill, line 23.

132 PAGEL: Continues review of bill. - An expedited process was intended for transfers and issuance of

permits. - What kind of public interest determination does the Department of

Water Resources make? 148 - Should the process involve more public participation? - Questions have been raised about the original intent of the law with

respect to municipal water suppliers contracting for water. 177 - The bill is not intended to result in expansion of existing water rights. 190 - Last year's drought conditions tested the process to the maximum.

204 SEN. ROBERTS: I assume intent of the emergency provisions is to provide a different authorization for the use of water in an emergency than

exists under normal water rights. Explain how any decision could fail to be injurious to any water right.

215 PAGEL: The substitute water source called upon is usually ground water. Staff can analyze such and determine if that will leave water unavailable for other users.

222 BARRY NORRIS: Another example would be we have issued permits for water out of reservoirs.

229 SEN. ROBERTS: If an existing water right were exercised to the full legal extent, and that water were diverted, would not that injure that

water right and the insistence upon the use of that pre-existing water right interfere with the redistribution of water which seemed to be demanded by the emergency condition?

233 NORRIS: That is correct in that situation; it would injure another water right and we would not issue that emergency use permit.

241 SEN. ROBERTS: It is your interpretation of this bill that in no case a person's pre-existing water right would be injured?

250 CHAIR DWYER: Page 3, line 5 indicates if a negative impact is expected, the request can be rejected.

275 SEN. SMITH: Section 4(2)(c), line 39 notes an existing or proposed well. Is this section only talking about wells?

267 NORRIS: This statement speaks specifically to wells; however,

transfers and permits pertain to service water, stored water and wells alike.

290 SEN. SMITH: This subsection speaks of allowing the applicant to demonstrate use of the well will not cause substantial interference. Is that only with reference to this proposed well?

NORRIS: That is correct, only the well.

CHAIR DWYER: Well drilling may impair an existing water right.

311 PAGEL: When a well is drilled, the Department conducts a determination as to whether it will interfere substantially with surface flows. Part of what we are trying to assure here is in issuing emergency water rights we are not depleting the stream flows to a harmful extent.

343 JAN BOETTCHER: (introduces EXHIBIT C) Two provisions in the current statute should remain: ORS 536.723 and ORS 536.770. - Offers revised language and additions to the proposed bill (Exhibit

C). 402 - Water banks were established in districts where storage was available. 420 - Gives examples of how the drought statute has been used. - Allow the good tools to remain but narrow the section of concern.

TAPE 7, SIDE A

003 CHAIR DWYER: Martha, have you had a chance to look at this language?

010 PAGEL: I have skimmed it.

CHAIR DWYER: Do you recall the working group wishing amendment rather than repeal of this section?

PAGEL: There was a great deal of discussion in the working group as to whether these provisions could be a useful tool. - I think that providing expedited transfers and emergency permits

would bring the changes indicated here to specify that an underlying water right is required. That would help avoid the unintended results of last summer.

024 CHAIR DWYER: Why don't we fix that, accordingly.

PAGEL: That would fix the problem and extend the opportunity to use these options and agreements. - The Department's position was that statute was intended to address

community drinking water supplies. If it is intended to expand the language to include irrigation districts, this language would solve that.

033 CHAIR DWYER: Do you have a problem with that?

PAGEL: Our commission has recommended the approach of SB 92, instead.

038 SEN. COOLEY: If we leave out the opportunity for different groups to participate in this process, we will encourage additional legislation. The spirit of the presentation is to try to address other concerns all at one time rather than promoting legislation directed toward individual problems.

052 PAGEL: I see the committee's point. This language would address the problems that otherwise would be there.

CHAIR DWYER: Would you like the opportunity to speak to your chair? We could hold this until that time.

PAGEL: I will be consulting with our commission by teleconference on February 22. I could speak with them individually prior to that time.

062 SEN. ROBERTS: It would be helpful to have a comparison between the effects of the proposed Section 6 and the amended ORS 536.770. Perhaps

the proposed Section 6 does everything necessary that the amended ORS 536.770 would do.

092 CHAIR DWYER: This is a good place to start and move toward consensus.

SEN. ROBERTS: We cannot afford to make water a fighting point. We have to find something that recognizes the conflicting interests, particularly in water emergencies.

110 BOETTCHER: There was one party that kept this from complete consensus.

SEN. SMITH leaves the meeting at 3:35 p.m.

114 ANNE PERRAULT: We feel strongly that ORS 536.770 needs to be repealed. - Reviews some of the changes that could hurt the resource. - The drought statute should be focused on facilitating distribution of already allocated water. 128 - The statute should not be used to allow increased allocation of water for out-of-stream uses to the detriment of in-stream uses.

139 CHAIR DWYER: You feel it does that?

PERRAULT: The Department's proposed changes to the drought statute take care of most of our concerns raised last year. Our focus is on the provision the Congress would like to retain. - The expedited transfer process allows activity which would not be

allowed outside drought conditions. - Listed the specific allowances of the bill.

SEN. SMITH rejoins the meeting at 3:50 p.m.

157 PERRAULT: The State does not have an active cancellation program. - One of our biggest concerns is that persons entering into an option

or agreement show that water has been used during the last five

years. The Department's proposal does require that. - The Congress' proposal allows the public no avenue to stop action. - The proposed amendment has no provision for protection from injury to existing rights. 180 - Mostly, we feel the intentions of this bill are good. - Listed particular items they support.

197 CHAIR DWYER: Closes the public hearing. - This item will be held over.

208 CHAIR DWYER: Adjourns the meeting at 3:55 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Lisa Zavala Clerk  
Administrator

EXHIBIT LOG:

A Testimony on SB 92, Martha Pagel, 6 pages B Testimony on SB  
92, Martha Pagel, 3 pages C Testimony on SB 92, Jan Boettcher, 2  
pages D Testimony on SB 92, Anne Perrault, 2 pages