

SENATE COMMITTEE ON WATER POLICY

March 30, 1993      Hearing Room 137 3:00 p.m.      Tapes 27 - 28

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

MEMBERS EXCUSED: Sen. Frank Roberts

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

MEASURES CONSIDERED:              SB 92 SB 451

[--- 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 27, SIDE A

004      CHAIR DWYER: Calls the meeting to order at 3:13 p.m. - Opens the work session on SB 92.

WORK SESSION ON SB 92

ADMIN. ZAVALA: (introduces EXHIBIT A) Reviews history of the amendment process of this bill. - Lists participating parties that met to develop amendments. 022      - Reviews the specific amendments.

SEN. DWYER: Where did this language to SB 92-4 section 6 come from?

ADMIN. ZAVALA: I believe from the Water Resources Congress.

CHAIR DWYER: It looks like a water marketing scheme to me.

068      SEN. COOLEY: Individual water users appear to be cut out of this option agreement.

KIP LOMBARD: These option agreements are limited to certain entities. - Lists those entities. - We stayed with existing law in concept.

- Individuals seeking to obtain water on a temporary emergency basis are authorized to proceed under the other provisions of the statute by seeking temporary permits, temporary transfers, emergency permits, emergency transfers or exchanges.

SEN. COOLEY: Wouldn't it be beneficial to use the term "water users" instead of "districts or water suppliers" so that everyone is included?

093      LOMBARD: The working group didn't intend for this to apply to

everyone. - We tried not to change current law relative to option agreements. - The procedure applied for here involves a process of drafting the

agreement, submitting it to the department, publishing it with notice, public hearings and public interest determinations. - We felt the option agreements should be limited to the entities currently eligible.

SEN. COOLEY: In eastern and southern Oregon we have some single owner water users, some of which are larger than districts. Including that terminology would cover a broader spectrum, including them.

123 BARRY NORRIS: The working group discussed this in some detail. - We considered limiting these option agreements to water suppliers. - If these large blocks were opened up to all users, the range would

include these larger users down to the smallest users. - The reason for the options was to allow these public bodies to

collect small water rights into blocks to more efficiently use the

water during times of drought. - If these options were open to private users it would be more like a

marketing scheme.

147 ADMIN. ZAVALA: Continues with review of the changes indigenous to SB 92-4. - The language regarding the water right permit or certificate was made consistent to read "owner's permitted, certificated or decreed water right." - Section 7 allows the commission to require curtailment plans of state agencies or political subdivisions. - The working group reached agreement on these changes.

LOMBARD: I sat through the process last summer when the department first convened the working group. - Some of the original proposals were to discard the option agreements, altogether. - I believe agricultural water users will benefit as much as anyone with these statutes.

190 SEN. SMITH: Joins the meeting.

SEN. COOLEY: I would like to address some areas. - On page 1, line 12, I would like to return to the original language

on uses of water. - Remove the word "all."

CHAIR DWYER: That is acceptable.

SEN. COOLEY: Why is page 1, line 16 removed?

LOMBARD: Both the prior law and the amended law dealt with the question of preference. - We questioned the term as to what context,

applications, or uses?

Did it mean preference to the exclusion of others? - We did not intend that.

232 SEN. COOLEY: I understand. - On page 2, line 24, I would like to change "public interest" to

"public health and safety."

ADMIN. ZAVALA: Those phrases have two different meanings.

SEN. COOLEY: During a drought we are concerned specifically about health and safety.

CHAIR DWYER: We are concerned with the public interest, also. - A finding has to be made that something is detrimental; it is not done in a closet.

SEN. SMITH: What kinds of situations is the department interested in covering under public interest?

NORRIS: This was intentional wording. - We have to make a finding. - There are a lot of public interest issues we have to consider with any permit we issue. - Lists issues that have to be considered. 264 - There is a whole broad range of issues on which information must be solicited from outside users and parties.

SEN. COOLEY: Wildlife, etc., are already protected by in-stream water rights. - This is strictly to address the priorities in a drought situation. - We are not looking at the public interest, that is open to broad public interpretation.

CHAIR DWYER: I think "public interest" is appropriate.

SEN. COOLEY: On page 2, line 44, change "shall" to "may."

324 NORRIS: The work group felt any time comments were made about possible injury, an investigation should be made followed by a finding.

CHAIR DWYER: I think "shall" is good because it assures a person the department will investigate their case. - It is in the citizen's best interest.

SEN. COOLEY: Every time an application is approved by the department, a protest is raised. The entire investigative process must take place, consuming staff time.

ADMIN. ZAVALA: This situation is such that it would be in the best interests of the water right holder for an allegation to be

investigated.

SEN. COOLEY: It doesn't specify an "actual" water right injury, just "alleged" injury.

ADMIN. ZAVALA: You are right. It could be an in-stream water right or a public interest.

SEN. COOLEY: The department will be locked in with no discretionary ability.

SEN. SMITH: Does the department have a certain process in rule that you must follow? - Do you have discretion in how to investigate and how much time to

take?

396 NORRIS: We will have to develop a method by rule on how to investigate these allegations.

SEN. SMITH: Does the department have the concern stated by Senator Cooley? - Would situations without merit occupy your time? - Do you want an options process depending on the severity of the allegations?

NORRIS: Senator Cooley has made a good point. - Investigations of this kind slow us down a lot. - Whether there is a "may" or "shall," we will have to do some sort of

investigation of problems of this nature. - "May" might allow us more latitude in writing the rules.

SEN. SMITH: You think "shall" precludes you from having a more abbreviated form of investigation?

NORRIS: "Shall" might require a more formal type of proceeding in rule.

SEN. KINTIGH: "May" is acceptable.

SEN SMITH: "May" is acceptable.

TAPE 28, SIDE A

SEN. COOLEY: On page 3, line 7, delete the word "subject."

LOMBARD: We changed this because forfeiture is a process. - Reviews the process, listing specifics. - In the regular water right transfer process today, applicants must

show the water right has been used and is not subject to forfeiture

for nonuse. 049 - Tracking with the existing law, we drafted this language requiring the applicant show a period of nonuse has not occurred.

SEN. COOLEY: If any present water right holder did not use his water for two years would it be subject to forfeiture?

LOMBARD: No, there has to be five successive years of nonuse.

SEN. COOLEY: On page 3, line 15, change "shall" to "may."

CHAIR DWYER: That is acceptable.

SEN. SMITH: Is it your intent to move this bill today? - Could a department representative explain how they would adopt rules

differently for "shall" and "may?" - We need specifics about when they may and may not investigate. - I do not want an arbitrary process where the department might or

might not investigate similar cases. - There needs to be provision of another avenue by which the public can gain satisfaction.

093 ADMIN. ZAVALA: Even if there were an avenue for appeal, there would be no time to appeal during a drought.

SEN. COOLEY: If we use "may," staff can do informal quick checks without the requirements of a formal investigation.

120 LOMBARD: Gives the work group perspective on this issue. - We are dealing with temporary measures. - Emergency permits and emergency transfers are all temporary. - This would allow the granting of permits and transfers without the

customary hearing and waiting process. - It requires quick staff decisions as to whether this will be

injurious to existing water rights. - The trade-off for an expedited procedure is people can come in later

and state they are being injured. - Under the water law today, you can't get transfers or water rights if someone can show they are being injured. - Any comments that allege injury must give specific, substantiated

facts, and most of those will come in after the fact. - Under those circumstances, for the protection of the person holding

water rights, we are saying those must be investigated. - Investigation may take time, but in most instances it won't hold up

the process.

171 SEN. COOLEY: On page 4, section 6, line 33, insert "water user" in place of "water supplier."

ADMIN. ZAVALA: An individual water user can access emergency transfers

and emergency permits to gain water during a drought.

SEN. COOLEY: Then why do we exclude them from participation? - Gives example of an individual that would be excluded when a certain option arises.

195 DOUG MYERS: That appears to approach water marketing. - We would oppose that.

CHAIR DWYER: It becomes a water marketing scheme in a drought if we allow just anybody to sell water. - Water districts and suppliers have the ability to sell water, now.

SEN. SMITH: What is the effect of this section?

ADMIN. ZAVALA: Under ORS 536.770, a commission, public corporation or local government is allowed to purchase an option or enter an agreement for use of an existing permit or water right during continuing drought. - Currently, there is no process for reviewing or approving those options or agreements. - That was a source of contention during the drought of 1992 as some

transfers were viewed as injurious to other water right holders. - This legislation is an attempt to allow the department to approve

these option agreements to prevent existing water right holders from being injured.

SEN. SMITH: The purpose of the amendment is to provide a process to accomplish what can be done now?

LOMBARD: It provides more. - It delineates what entities are authorized to do this. - It allows formulation of the agreements in advance and a public

hearing and review process in advance. - It is a planning tool to reach conditional agreements. - What is new is it provides for the public review process. - There are limitations in the bill that do not exist in the law,

today. 251 - Notes agreements in eastern Oregon where water was being applied for on lands that didn't have underlying permits or water rights. - This would change, restricting any option agreement on application of water to lands that already have an underlying water right but are

having a difficult time accessing their water. - This adds some restrictions and some protections.

265 CHAIR DWYER: (To Senator Cooley) How is your comfort level?

SEN. COOLEY: Not good. - I don't like "public interest." - I don't like the individual not having the option to participate. - I don't like the fact that the department has to perform a full

investigation. - All people have to do to prevent water use by someone else is file

appeals and claims. - The Water Department doesn't have enough people to handle the

workload.

CHAIR DWYER: We are talking about emergency drought legislation. - We are trying to give staff tools to prepare for something that may

be inevitable.

SEN. COOLEY: The bill is too limiting and restricting and will create problems down the road.

CHAIR DWYER: It will create problems down the road if we don't get this bill out.

SEN. COOLEY: Maybe we should consider one more work session.

CHAIR DWYER: You have to involve yourself in this process if you want your comfort level raised. - There are key words that strike fear in the hearts of both sides. - We can't resolve every word and every conflict.

317 - If I want to raise my comfort level completely, nothing the House sends over here will go anywhere. - (To Senator Cooley) Work with the work group and we will hear the

bill one more time. - Closes the work session on SB 92. - Opens the public hearing on SB 451.

PUBLIC HEARING ON SB 451-1 - EXHIBITS B

WITNESSES: Bev Hayes, Oregon Department of Water Resources Scott Ashcom, Oregon Association of Nurserymen

343 ADMIN. ZAVALA: (introduces EXHIBIT B) The bill was first heard by the committee March 11. - Amendments requested related to conservation practices and the

inclusion of the Oregon Department of Veteran's Affairs in the list of entities consulted in the statewide development of a water management plan.

SEN. SMITH: On page 1, lines 18a and b, state "recommendations for conservation practices." - How do you expect this to occur? - To whom would the recommendations be made? - What assurances are there local jurisdictions will follow the

recommendations?

BEV HAYES: I can't speak to the language of the bill, but I can review

the intentions of the department. - The department is drafting rules to set out a process whereby

everyone would be required to do conservation planning. - We feel we have the authority to require people to take conservation

actions.

SEN. SMITH: You are developing a rule to set out a process with which you can make requirements of water users?

HAYES: Yes. - Current law says we can allow beneficial use without waste, which

would indicate we can require parties to use water efficiently. - Previous proposed draft rules were very controversial.

SEN. SMITH: This does not appear to require you to do this. - I would like a requirement. - There is question as to whether we will see this bill again after it

leaves. - I would like more direct language to assure this will require

conservation requirements for water users.

HAYES: I would agree; this language doesn't accomplish that.

SEN. KINTIGH: This plan is to be submitted to the next legislature. We could review it then.

SEN. SMITH: I would prefer the plan include requirements for conservation rather than recommendations. TAPE 27, SIDE B

CHAIR DWYER: The plan can't require anything. - It is our responsibility to determine whether to accept the

recommendation and then require it as a condition of the plan.

SEN. COOLEY: This is a good approach for determining where we can conserve water and where we can add storage and maintain an adequate

water supply for the entire state. - Notes map displayed at a previous meeting showing where basins could

be established and water supplies retained. - I don't disagree with Senator Smith. - If we can find the funds to do this, we should. - Water is an important asset we need to manage.

SEN. SMITH: You can make me happy by deleting the words "recommendations for" on page 1, line 18a.

CHAIR DWYER: That is acceptable. - Closes the public hearing on SB 451. - Opens the work session on SB 451.



WORK SESSION ON SB 451

MOTION: SEN. SMITH: Moves to ADOPT the SB 451-1 amendments dated 3-25-93 and that SB 451-1 be further amended on page 1, line 18a, by deleting the words "recommendations for."

VOTE: CHAIR DWYER: Hearing no objection the amendments are ADOPTED.

SENATOR ROBERTS is EXCUSED.

MOTION: SEN. SMITH: Moves SB 451 AS AMENDED to the President's desk requesting a subsequent referral to the Committee on Ways and Means and with a DO PASS recommendation.

VOTE: In a roll call vote, all members present vote AYE. SENATOR ROBERTS is EXCUSED.

CHAIR DWYER: The motion CARRIES. - Closes the work session. 066 - Adjourns the meeting at 4:14 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Lisa Zavala Clerk  
Administrator

EXHIBIT LOG:

A Hand-Engrossed SB 92-4, Staff, 9 pages B Hand-Engrossed SB  
451-1, Staff, 5 pages