

SENATE COMMITTEE ON WATER POLICY

April 6, 1993      Hearing Room 137 3:00 p.m.      Tapes 30 - 31

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

Sen. Tricia Smith

MEMBERS EXCUSED: Sen. Frank Roberts

VISITING MEMBERS:            Rep. Sam Dominy

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

MEASURES CONSIDERED: SB 1053 HB 2344

[--- 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 30, SIDE A

004      CHAIR DWYER: Calls the meeting to order at 3:09 p.m. - Opens the public hearing on SB 1053. - Senator Kintigh sponsored this bill.

PUBLIC HEARING ON SB 1053 - EXHIBITS A through C

WITNESSES:            Larry Trosi, Oregon Farm Bureau Donald Hansen, Creswell Ed Hemenway, Cottage Grove Chris Lindseth, Monroe Jim Evonuk, Eugene Jim Myron, Oregon Trout Doug Myers, WaterWatch Karen Russell, WaterWatch Tom Simmons, WaterWatch Scott Ashcom, Oregon Association of Nurserymen Reed Marbut, Department of Water Resources

015      LARRY TROSI: Offers testimony in support of SB 1053. - Lists the purposes of the bill and what it allows. - Explains the present system and why it needs to be changed.

- His association is seeking to create an expedited process by which this type of secondary permit would target only Army Corp of Engineers or Bureau of Reclamation contracts.

052      CHAIR DWYER: Isn't there an A.G. opinion on which right takes precedence?

TOM SIMMONS: The opinion was no one has precedence. - Priority is based upon the priority date.

CHAIR DWYER: If I have a contract right with the Army Corp of Engineers, doesn't it take precedence over an in-stream water right?

SIMMONS: I don't believe that is the case.

ADMIN. ZAVALA: What is the intent of the legislation with respect to the priority date given to the permit?

080 TROSI: The priority date is based on the date of storage. - These applications are purely for supplemental water rights in situations where existing water rights are not being met due to lack of water availability. - The date the water was contracted from the Bureau of Reclamation is

the actual date the stored water was originally given. - Most of these contracts are for a limited amount of time.

SEN. COOLEY: Do all applicants have the same right at the same time? Is there a fee charged for this?

105 TROSI: There is an actual water use charge through the Bureau of Reclamation and the Water Resources Department also has a charge. - People who have water contracted through the Bureau of Reclamation

all have the same priority date because it is based on the date the water was stored in the reservoir.

108 SEN. SMITH: Joins the meeting.

SEN. COOLEY: What if ten persons all apply on the same date, and there isn't enough water?

TROSI: I don't think the contract would be granted if water was not available. It is supplied on a first come, first serve basis.

130 CHAIR DWYER: Is it true that if I have contract rights with the Army Corp of Engineers on the Willamette River and there is low streamflow,

my contract rights are satisfied despite any in-stream water rights down stream?

REED MARBUT: That is not exactly the case. - This issue of senior or junior rights does not generally apply with

water from reservoirs. - The date one obtains a primary water right to store water in a

reservoir is the date upon which priority is determined for the

filling of the reservoir. - Once water is in the reservoir, it is determined to no longer be part of the original stream source. - The reservoir owner then allocates water from the reservoir. 164 - If the reservoir owner is a federal agency, the use of the water must comply with state requirements. - After contracting with a federal agency,

parties seeking water rights then apply to the department for a secondary use permit. - Their "priority date" from the application for that permit impacts

nothing, it is just a placeholder, as the date of filling of the reservoir is the essential priority date. - This bill only addresses supplemental rights which are attached to

the parties already existing, but deficient primary rights. - In such cases, water availability is not an issue, as that is determined by the contract.

SEN. COOLEY: Is there a time period attached to these applications, such as for a specific growing season?

200 MARBUT: They are as for any other use. - Notes specifics of limits for various uses. - Application need only be made once.

SEN. COOLEY: If the water is unavailable for use for 5 years, is the party's right forfeited?

MARBUT: If water is unavailable for use, that would toll forfeiture.

237 CHAIR DWYER: What is the difference between a supplemental right and secondary permit?

MARBUT: Lists the differences between the two, both of which are addressed in the bill.

TROSI: This narrows the field of a secondary permit to just federal projects.

REP. SAM DOMINY: You are proposing the waiver of the fee and the map. - What kind of revenue loss impact does that have? - Is a new map still required with the applications?

272 MARBUT: As long as this is a supplemental right, no map would be required, according to existing law. - The Department is reluctant to support this bill without some sort of fee. - With a 90-day turnover requirement on these applications, a fee is

necessary to support staffing.

REP. DOMINY: What would an application cost?

MARBUT: That would vary; an approximate cost would be \$300.

308 CHAIR DWYER: Why does the Army Corp of Engineers charge ten times more for drinking water than irrigation?

MARBUT: When the federal government builds a dam, taxpayers fund the project. - It has been determined taxpayers are willing to subsidize certain

purposes which are irrigation, navigation and flood control. - For other uses, it is expected the cost of the reservoir must be repaid along with interest.

330 ADMIN. ZAVALA: On secondary permits, what are the priority dates?

MARBUT: We attach priority dates to the secondary permits to determine who gets the stored water when the supply is insufficient to satisfy all the permits. - In the case of federal contracts, allocation is determined by the bureau, and priority dates are not considered.

SEN. KINTIGH: Theoretically, the bureau doesn't issue that contract if there is no water.

MARBUT: They are also concerned, by law, with endangered species.

387 DON HANSEN: (introduces EXHIBIT A) Offers testimony in support of SB 1053. - Reviews statistics on Exhibit A which includes flow summaries,

environmental impact studies and a list of permit divisions by priority date. - States his purpose is to emphasize the need for stored water

components to maintain necessary flow, otherwise contracts will be necessary.

TAPE 31, SIDE A

SEN. COOLEY: Are the permits on the second page primary or secondary permits?

HANSEN: Those are primary permits.

030 ED HEMENWAY: (introduces EXHIBIT B) Offers testimony in support of SB 1053 as it would expedite certain water right applications. - Notes his farming experience and water use. - It became important for them to consider a federal contract because

they became junior to other permits. 050 - Provides history of applying for a contract for water use and the accompanying cost. - They had to pay for water that under normal circumstances would

naturally flow to them. - They have been unable to use their investment to date due to the slow processing of their application. - Notes the policy statement on his federal contract with respect to

treatment during a water shortage.

081 CHRIS LINDSETH: Offers testimony in support of SB 1053. -

Reviews his experience applying for supplemental water last year. - The state is claiming any water taken from within a quarter mile of

the river is state river water. - I am worried the state may move that boundary further inland.

132 JIM EVONUUK: Offers testimony in support of SB 1053. - Recounts his family's water history and experiences in applying for

water. - Explains why he applied for federal water.

162 JIM MYRON: (introduces EXHIBIT C) Offers testimony in opposition to SB 1053. - Believes the bill may result in further over-allocation of the

state's water resources. - Public interest determinations are necessary and this bill would

eliminate that requirement. - The bill may seriously affect the contested case hearings for the

conversion of existing minimum stream flows to in-stream water rights.

200 DOUG MYERS: Introduces Karen Russell representing WaterWatch.

KAREN RUSSELL: Offers testimony in opposition to SB 1053. - Lists three reasons they oppose the bill: - it leaves the public out of the process; - it eliminates the public interest determination; - it would set a policy regardless of what the federal government does.

249 SEN. COOLEY: States she is incorrect in adding pollution abatement to the original intention of the federal reservoir projects. - With minimum stream flows, the methodology for determining such is

the only aspect being contested.

317 SEN. KINTIGH: You are inferring use of water for food production is not in the public interest. - If we are going to shut more water off we won't be able to feed

hungry people. - They should be as important as certain fish species.

335 REP. DOMINY: How do we resolve applications within 90 days and continue to have an open process?

RUSSELL: We would be willing to discuss development of a quicker process.

368 REP. DOMINY: I first became aware of this issue while observing the state cutting off water use in about 30 days by means of a disputed

resolution process, which was not an open process.

401 TOM SIMMONS: Offers testimony in opposition to SB 1053 from a

public policy viewpoint. - The issues raging around water relate to the tremendous imbalance

between public and private uses of water. - Supplemental rights are only needed because the stream is

over-appropriated. - This bill is not intended to address a backlog issue. - This bill circumvents the process for determining whether the

issuance of the water right is in the best interests of the public. - Agriculture is not the only use for water. - Notes Salem's water needs for pollution abatement.

TAPE 30, SIDE B

029 SEN. COOLEY: This bill addresses the entire state, not just the Willamette basin. - Notes the percentage of water diverted from the total amount. - When the law relative to minimum perennial streamflows was enacted in 1956, applications for those using existing water were grandfathered.

064 SIMMONS: Oregon has issued about 80,000 water rights for consumptive use and 500 for in-stream uses. - This bill may exacerbate the problem if we don't do a public interest determination.

CHAIR DWYER: Don't you think the Corp of Engineers make some sort of public interest determination?

SIMMONS: They don't go through any process other than determining what water is available and whether they are in compliance with existing law. - The new Secretary of the Interior will be reviewing the balance of private and public uses of water.

100 SCOTT ASHCOM: Offers testimony in support of SB 1053. - I am familiar with the filing procedure for these applications. - The underlying primary water right has undergone a public interest

review. - No change in use is permitted by the supplemental certificate. 117 - Notes specific case of contracted water use on the McKenzie River. - There is a right and wrong way to apply for these contracted waters. - SB 1053 specifies the right way to do this. - The amount of staff review necessary to approve such a right is

negligible.

144 SEN. SMITH: It appears this is so necessary in drought for food production, you shouldn't consider other downstream uses. - Why should we allow an expedited process for an industry that is

nonessential for maintaining life?

ASHCOM: Nursery stock serves an aesthetic purpose and enhances the human experience.

179 SEN. SMITH: Can you balance that with pollution abatement,

in-stream uses, etc. upon which this bill may have a detrimental effect?

ASHCOM: It is my understanding that environmental groups would like to purchase water from federal agencies for the purpose of maintaining minimum streamflows, which would enhance the quality of the environment and make flows available for all purposes.

ADMIN. ZAVALA: Is it the intent to use stored water to replace water already allowed under an existing water right, or to supplement the existing water right?

208 ASHCOM: It is to replace water allowed under an existing water right in circumstances where the water would not otherwise be available because

of a drought.

CHAIR DWYER: Temporarily closes the public hearing on SB 1053. - Opens the public hearing on HB 2344.

PUBLIC HEARING ON HB 2344 - EXHIBITS D and E

WITNESSES: Rep. Chuck Norris, District 57 Mac Kerns Jim Myron, Oregon Trout Martha Pagel, Department of Water Resources Reed Marbut, Department of Water Resources

230 REP. CHUCK NORRIS: Offers testimony in support of HB 2344. - Notes intent of the bill. - A high percentage of riparian zones are in private ownership,

disallowing their use by others. - Reads page 2, line 21 of the bill, noting the amount of water listed

would not be enough for purposes of securing an FHA home loan. - The bill has a dual purpose of watering livestock and moving them

away from riparian zones.

303 SEN. COOLEY: Can we accomplish this under existing law?

REP. NORRIS: No.

CHAIR DWYER: This bill is to allow a di minimus withdrawal that won't affect the intent of the Scenic Waterway Act and still get around the "Diack" decision.

CHAIR DWYER: We don't want to open a door; we only want to allow a very di minimus use within that corridor, and limit the total amount.

336 MAC KERNNS: Offers testimony in support of HB 2344. - Gives specific instance where persons tried to do stream improvement

and were thwarted by the Scenic Waterway Act's impact on the stream.

SEN. SMITH: Does the Wheat Growers League see a benefit to wheat growers?

KERNS: Wheat growers also raise livestock and have land bordering streams with riparian zones. - Notes the Buck Hollow project on which wheat growers have made improvements.

388 JIM MYRON: (introduces EXHIBIT D) Offers testimony in support of HB 2344. - There are some phrases in the bill that need definition, such as

"significantly impair." - What standards will be used to determine significant impairment? - On page 2, line 29, would an applicant be expected to drill a well

should groundwater be available, before they apply for one of these permits?

CHAIR DWYER: Groundwater next to a stream affects the stream, so it would not be reasonable to include groundwater as a source.

MYRON: On lines 35 and 36, what is meant by preventing livestock from watering in or along the stream bed? - It seems the only way to prevent this is to erect a fence.

478 CHAIR DWYER: What about a small diversion out of the stream that fits within the scope of the bill?

MYRON: It may or may not prevent livestock from entering the stream.  
TAPE 31, SIDE B

CHAIR DWYER: Asks the sponsors of SB 1053 to work with interested parties in resolving conflicts.

030 MARTHA PAGEL: (introduces EXHIBIT E) Offers testimony on impacts in applying the court decision in Diack versus City of Portland. - We are prohibited from issuing any water within the scenic waterways or above them unless the flows are being met. - We are supportive of the amendments from the House.

CHAIR DWYER: Would you speak to legislative intent of the terms mentioned?

PAGEL: "Significantly impair" is in contrast to the current standard of "no impairment at all."

073 SEN. SMITH: Are the needed flow levels mentioned the minimum needed to accomplish the purposes set out in the statutes for scenic waterways so any reduction would have a detrimental impact?



PAGEL: Yes. It is true this would further detract from what is already sparse.

SEN. SMITH: How do the Departments of Parks and Recreation and Fish and Wildlife feel about this?

PAGEL: I consulted with them, the Governor's Office and DEQ. - Everyone is comfortable with the bill.

SEN. SMITH: How conservative will the commission be in interpreting and applying "significantly impair"?

100 PAGEL: I don't know. I could develop some examples.

CHAIR DWYER: What is the cumulative withdrawal the commission can consider?

PAGEL: One percent per month of average monthly flow. - Flows will vary dramatically by month but cannot exceed one percent

of the high flow level.

116 REED MARBUT: Offers testimony in support of SB 2344. - The concept of "significant" is subjective. - The process includes consultation with the other departments

impacted. - The current law prohibits us from issuing a water right unless levels are met absolutely.

SEN. SMITH: Is this written so that the language of subsection (a) would continue for subsections (b) and (c)?

PAGEL: Delineates the specifics for what is set out in the sections.

SEN. SMITH: Asks staff to check with Legislative Counsel to ensure such is the case. 170 CHAIR DWYER: Closes the public hearing on HB 2344. - Adjourns the meeting at 4:50 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Lisa Zavala Clerk

Administrator

EXHIBIT LOG:

A Corp of Engineers Flow Summary - Don Hansen - 13 pages B  
Testimony on SB 1053 - Ed Hemenway - 1 page C Testimony on SB 1053 -  
Jim Myron - 2 pages D Testimony on SB 2344 - Jim Myron - 2 pages E  
Testimony on SB 2344 - Martha Pagel - 6 pages