

SENATE COMMITTEE ON WATER POLICY

May 4, 1993 Hearing Room 137 3:00 p.m. Tape 43

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: HB 2109 HB 2433-A

[--- 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 43, SIDE A

004 CHAIR DWYER: Calls the meeting to order at 3:12 p.m. - Opens the public hearing on HB 2109.

PUBLIC HEARING ON HB 2109 - EXHIBIT A

WITNESSES: Reed Marbut, Water Resources Department

009 REED MARBUT: (introduces EXHIBIT A) Offers testimony on HB 2109. - The purpose of the bill is to expand the current statutory provision

that allows the state to negotiate with the Warm Springs Tribes to

all federally recognized tribes in the state. - Offers background on the need for the bill. - Reviews the provisions of the existing statute.

SEN. SMITH: Joins the meeting.

MARBUT: Reviews the concept of federally reserved water rights. - References the landmark case: Winters vs. the United States. 050 - Notes the classic lawsuit in Wyoming over the water of the Big Horn River, which has lasted many years and has cost Wyoming \$1 million. - Oregon has only recently started the negotiating process with a tribe. - There are extreme benefits to the state from this negotiation. - The year 1855, the treaty date for Warm Springs, would be the priority date for the water rights. - Tribes are willing to relinquish some of their water rights. - We are currently in litigation with the Klamath tribe.

102 - Until the state has authority to negotiate, the tribes cannot do background work to prepare for negotiations because the federal

government will not appoint a negotiating team. - The department doesn't envision any real negotiating during this

biennium, only preparation work.

122 SEN. KINTIGH: It this limited to tribes with reservations?

MARBUT: Yes, it is. - Reviews the specifics of the Klamath Tribe reservation, which was

terminated and then came back into federal ownership. - The Supreme Court agreed that the tribe continue to have federal

reserved water rights for purposes of irrigation, hunting, fishing, gathering, etc.

SEN. KINTIGH: How does that fit with the purpose of the reservation?

MARBUT: "Stevens treaties" do include irrigation because the purpose behind the treaties was to turn the Indians into farmers. - In Oregon, fish cultures are also recognized.

148 SEN. COOLEY: Could you review the 1987 legislation of SB 137?

MARBUT: That bill has been codified in ORS 539.300 - 350. - This authorizes the director of the Water Resources Department to

enter negotiations to identify the nature and scope of the federal

reserve water rights of the Warm Springs reservation. - The eventual settlement must be submitted to a court for the water to be quantified. - Notes how the existing case with the Klamath Tribe impacts the

language being used.

SEN. COOLEY: HB 2109 just expands what you have with Warm Springs?

MARBUT: That's true.

CHAIR DWYER: Closes the public hearing on HB 2109. - Opens the work session on HB 2109.

WORK SESSION ON HB 2109

MOTION: SEN. COOLEY: Moves HB 2109 be sent to the Floor with a DO PASS

recommendation. VOTE: In a roll call vote, all members present vote AYE. SEN. ROBERTS

is EXCUSED.

CHAIR DWYER: The motion CARRIES. SEN. COOLEY will lead discussion on the Floor.

192 CHAIR DWYER: Closes the work session on HB 2109. - Opens the public hearing on HB 2344-A.

PUBLIC HEARING ON HB 2344-A

WITNESSES: Representative Chuck Norris, District 57 Bev Hayes, Water Resources Department Louise Bilheimer, Pacific Rivers Council Jim Myron, Oregon Trout Doug Myers, WaterWatch

205 REP. CHUCK NORRIS: Offers background on the bill as its sponsor. - Reviews specifics of the bill relative to human and livestock use of water. - Addresses the key additions from the amendments. 232 - You might want to allow great latitude as it will take very sensitive equipment to monitor human consumption, - The amendments don't substantially change the original bill.

275 BEV HAYES: Discusses the department's view of the amendments, noting their support.

289 LOUISE BILHEIMER: Addresses the amended bill. - Expresses her concern with changing regulations on scenic waterways because those waters are highly valued. - I believe this bill will still watch out for scenic waterways while allowing certain uses. - I have a certain level of comfort with this bill.

324 JIM MYRON: Oregon Trout believes the amendments address our concern with some of the undefined terms. - Removing the boldface material from page 1, line 6, seems to make the language flow better without causing violence to the policy statements. - We support the amended bill.

341 DOUG MYERS: We have concerns anytime water is withdrawn in or above a scenic waterway. - We like the amended version. - On page 2, line 30, we would like to see "may" changed to "shall."

CHAIR DWYER: Closes the public hearing on HB 2344-A. - Opens the work session on HB 2344-A.

WORK SESSION ON SB 2344-A

371 CHAIR DWYER: On the -A6 amendments, line 7, after "consumption" add "not to exceed .005 cubic feet per second per household, or livestock

consumptive uses not to exceed one-tenth of one cubic foot per second per 1,000 head of livestock. - On line 19, after "human consumption," draw a line through "not to exceed .005 cubic feet per second per household." - On page 2, line 2, after "consumption," delete "not to exceed

one-tenth of one cubic foot per second per 1,000 head of livestock." - We can change "may" to "shall" with respect to the commission adopting rules.

425 SEN. KINTIGH: What are the mechanics for measuring the small amount? HAYES: It is possible to put a metering system into a home and it is

not very expensive.

MOTION: SEN. COOLEY: Moves to ADOPT the HB 2344-A6 amendments dated

4-26-93 and that HB 2344-A be further amended: - on page 1, line 7, after "consumption" by adding "not to exceed .005

cubic feet per second per household, or livestock consumptive uses

not to exceed one-tenth of one cubic foot per second per 1,000 head

of livestock;" - on page 1, line 19, after "human consumption," by drawing a line

through "not to exceed .005 cubic feet per second per household;" - on page 2, line 2, after "consumption," by deleting "not to exceed

one-tenth of one cubic foot per second per 1,000 head of livestock;" - and by changing "may" to "shall" with respect to the commission

adopting rules.

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

SEN. ROBERTS is EXCUSED.

MOTION: SEN. COOLEY: Moves that HB 2344-A AS AMENDED, be sent to the

Floor with a DO PASS recommendation. VOTE: SENATORS COOLEY, KINTIGH and DWYER vote AYE. SEN. T. SMITH votes

NO. SEN. ROBERTS is EXCUSED.

CHAIR DWYER: The motion CARRIES. SEN. KINTIGH will lead discussion on the Floor.

455 CHAIR DWYER: Closes the work session on HB 2344-A. - Adjourns the meeting at 3:43 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Lisa Zavala Clerk
Administrator

EXHIBIT LOG:

A Testimony on HB 2109 - Reed Marbut - 2 pages