

SENATE COMMITTEE ON WATER POLICY

June 1, 1993 Hearing Room 137 3:00 p.m. Tapes 50 - 51

MEMBERS PRESENT: Sen. Bill Dwyer, Chair Sen. Wes Cooley

Sen. Frank Roberts

MEMBERS EXCUSED: Sen. Bob Kintigh, Vice-Chair Sen. Tricia Smith

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

MEASURES CONSIDERED: 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 50, SIDE A

004 CHAIR DWYER: Calls the meeting to order at 3:10 p.m. - Opens the work session on SB 92.

WORK SESSION ON SB 92

MARTHA PAGEL: Offers testimony in support of SB 92, which was introduced at the request of the department. - Its purpose was to clarify existing law relating to emergency

procedures relative to water rights when the Governor declares a drought. - During the last drought, certain problems arose which this bill was

intended to resolve. - The work group never reached full agreement on the provisions of the

bill. - Notes the range of amendments sought by various interested parties. - Notes the -5 amendments which the department considers a "bare bones" approach. - Reviews the specific provisions of the amendments.

058 CHAIR DWYER: (To Martha Pagel) Discuss the fee and the problems that precipitated this action.

PAGEL: One problem that is addressed by this "bare bones" approach is an option agreement that was used to allow the delivery of water to land that did not have an underlying water right. - The application fee for "other purposes" is \$200. - Notes a second problem resolved through clarifying administrative

procedures. - An abbreviated process for reviewing emergency drought permit

applications does not allow for the full public involvement that is ordinarily required, but still requires the public interest review be performed by the department. - The bill would spell out what that review would involve and how the

public would be informed. 087 CHAIR DWYER: (To Martha Pagel) Explain lines 13 through 16. - Does this allow water where it couldn't be used before? - Could they use water that was available on these lands?

PAGEL: It allows water where it couldn't be used before if the water is used to replace water not available to the local government or public corporation because of the drought. - They could only use this provision if the underlying right was not being served.

CHAIR DWYER: It appears to be more beneficial to have a drought.

BARRY NORRIS: The intent is that one public corporation could enter into an agreement with a private water right holder, and use that water.

CHAIR DWYER: Does this allow water right marketing?

NORRIS: Existing statute allows this already. - This clarifies that the recipient of the water be required to use it

only where they have an overlying permit. - They couldn't take it and irrigate new lands.

SEN. COOLEY: I thought individuals would be included in this process. - Weren't we going to add individuals as long as they followed the general concept of the rules?

126 PAGEL: We did discuss that. - The department agreed to that in discussion of the long version of

the bill where there were many other tradeoffs. - We were concerned at the outset about extending this to all

individuals from a workload standpoint. - We did agree, in the context of the full bill, we were better off

with no bill or with this "bare bones" version to clarify existing law. - This isn't intended to change existing law.

SEN. COOLEY: Does the current statute allow individuals to do this or is this restricted to local government and public corporations?

PAGEL: The Attorney General's office has interpreted ORS 536.770 to apply only to local governments or public corporations. - The opportunity to get an emergency permit applies to all water right

holders.

SEN. COOLEY: Is ORS 536.750 what you were referring to?

PAGEL: Yes, which authorizes temporary emergency permits for all.

SEN. COOLEY: This purchase option agreement only applies to local government and public corporations?

PAGEL: Lists to whom it applies. 176 SEN. COOLEY: This bill only clarified what is presently under ORS 536.770.

PAGEL: It adds a fee and a specific approval provision.

SEN. COOLEY: Under present statute, private individual irrigators do not have the privilege of an option agreement?

PAGEL: That is correct.

188 SEN. ROBERTS: There is the additional restriction in lines 14 through 16?

PAGEL: That is intended to clarify.

SEN. ROBERTS: It is to replace water not available to local government

because of the drought. - This has to be occasioned by a drought condition which makes it

impossible for the permit user to get the water they need which has already been granted so they can purchase it to take the place of water which is not available to them because of the drought.

209 ANNE PERRAULT: (WaterWatch) Offers testimony in opposition to SB 92. - We have serious concerns about how the drought statute was implemented last season. - We met with various parties to formulate amendments to the drought

statutes. - Agreement was reached with the Water Resources Congress on what this

bill should look like. - We are disheartened by the amendments. - This helps some, but does not address significant concerns we hold. - Notes an expedited drought process already exists and holds certain

safeguards. - This bill allows no ability for protest. - The other two sections of the drought statute with which we had

problems address the issuance of emergency use permits. - By this provision, you create a rush to the department in another

drought. - We also made changes to the expedited transfer section that are not

included in these amendments. - This doesn't do much, but it helps a little.

289 JAN BOETTCHER: (Water Resources Congress) Offers testimony in support of SB 92. - Pre-approval in advance proved helpful in the past; I assume that opportunity would be allowed by this language also?

PAGEL: The procedures we set out in discussions might be something we could consider under rulemaking. - That was a section upon which we had agreement as far as it applied

to local government and public corporations.

BOETTCHER: I would feel comfortable if it were in the legislative record that we were looking at that approach as well as any others that work for the department.

321 PERRAULT: We did reach agreement on that section and that would be something to look at also. BOETTCHER: Perhaps we could do that kind of approach in rulemaking. - I would be comfortable with the 770 section, with the thought the

process could be worked out in rulemaking.

PERRAULT: I would be most comfortable reverting to what we all agreed upon and clarify that by rule.

368 SEN. COOLEY: We didn't all agree. - If we go back to the -4 amendments, we are going back to public

corporations, the commission, local government and water districts. - If we are going to do that, lets add individuals as well.

CHAIR DWYER: Water districts are already public corporations so they don't need to be added.

PAGEL: It is there because our original version of SB 92 would take us back to original intent which was that only potable water suppliers would benefit from this section. - In the process of adding back other entities over different versions, this must have been overlooked.

409 BOETTCHER: Water districts are public corporations and local governments or political subdivisions, so they are covered under all the bases.

CHAIR DWYER: We have to reach consensus.

PAGEL: The department supports the -5 approach and looks to the previously negotiated language to further explain that provision.

SEN. COOLEY: Why is there a reluctance to add individual irrigators as long as they meet the requirements?

PAGEL: Our reluctance has to do with the whole concept of providing these options and agreements. - Opening this up to all users creates a statewide process that allows

movement of water in a way other than that presently used.

TAPE 51, SIDE A

PAGEL: To broaden this new opportunity would have been a huge step administratively.

SEN. COOLEY: When you issue these, you go through a review process, even though it is not the long public review process. - Factors are involved where some irrigators, because of their specific crop, should be considered in this same allocation process.

037 PAGEL: Under current law, there is an expedited transfer process that would allow private users to temporarily transfer the water right for

the duration of the drought. - This is found under the .750 section. - Options and agreements are limited. 057 PERRAULT: The department is recommending 92-5 be adopted and what the Congress, the department and WaterWatch agreed upon in 92-4 be used as

rules. - I don't think some of the agreed upon provisions can be put in rule

and be clarified by rule.

CHAIR DWYER: Explains why they are adopting the -5 amendments.

MOTION: SEN. COOLEY: Moves to ADOPT the SB 92-5 amendments dated 5-24-93. VOTE: CHAIR DWYER: Hearing on objection the amendments are ADOPTED.

Senators Kintigh and Smith are EXCUSED.

MOTION: SEN. COOLEY: Moves that SB 92 AS AMENDED, be sent to the Floor with a DO PASS recommendation. VOTE: In a roll call vote, all members present vote AYE. Senators

Kintigh and Smith are EXCUSED.

CHAIR DWYER: The motion CARRIES. Senator Cooley will lead discussion on the Floor. 100 - Closes the work session on SB 92. - Adjourns the meeting at 3:50 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Lisa Zavala Clerk
Administrator

EXHIBIT LOG:

A Proposed Amendments 92-5 - Staff - 1 page