

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.

SENATE COMMITTEE ON  
WATER POLICY

June 6, 1991Hearing Room 137  
3:15 p.m. Tapes 85 - 87

MEMBERS PRESENT:Sen. Larry Hill, Chair  
Sen. Wayne Fawbush  
Sen. Bob Kintigh  
Sen. Eugene Timms  
Sen. Dick Springer, Vice-Chair

STAFF PRESENT: Lisa Zavala, Committee Administrator  
Bernadette Williams, Committee Assistant

MEASURES

CONSIDERED: HJR 61 HB 3465

WITNESSES: Rep. Bob Shiprack, House District 23  
Sen. Jane Cease, Senate District 10

Rep. Larry Sowa, House District 26

Bev Hayes, Water Resources Department  
Jill Zarnowitz, Water Resources Department  
Rebecca Kreag, Water Resources Department  
Clay Moorhead, City of Sandy  
Jerry Schmidt, Oregon Assn. of Water Utilities  
Dave Butt, Government Camp Resident's Assn.  
John Borge, Clackamas County Planning Division  
Judie Hammerstad, Clackamas County Commission  
Bill Hutchison, Oregon Rivers Council  
Louise Bilheimer, Oregon Rivers Council  
Charles Ciecko, Multnomah County Parks  
Michael Payne, Rep. Mike Nelson  
Jim Myron, Oregon Trout  
Tom Simmons, Water Watch  
Susan Schnieder, City of Portland, League of Oregon Cities  
Libby Henry, Eugene Water & Electric Board  
Larry Trossi, Oregon Farm Bureau  
Bob Hall, Portland General Electric

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TAPE 85, SIDE A

003 CHAIR HILL: Calls the meeting to order 3:35 p.m.

HJR 61

013 REP. SHIPRACK: The Water Resources Department is currently surveying the Sandy River basin. It is unclear who has water rights in the area. There is a proliferation of small water districts - about 37 in the Hoodland area alone. This section of the river is designated as a federal Wild and Scenic River; in-stream flows must be maintained for scenic values, fishing, recreation, etc. Other users of the river include the Cities of Sandy and Portland. The Federal Clean Water Act will soon go into effect, and this would be a good time to educate the community of its responsibilities.

We intend to form a water authority commission and combine these 37 districts to sort out the current water rights and distribute the water to all. We want the Water Resources Department (WRD) to finish their survey of the basin and force all water districts to work cooperatively. We

want to enhance the Hoodland planning for the future and provide long term planning for the area.

We are not trying to subvert in any way the wild and scenic designation. It is a major tourist site and we support it. We are not changing or supporting the Diack decision. We have asked for a delay of implementation of the streamflows until the end of August, for implementation. The resolution sets up the apparatus to assess community drinking water needs and availability. This situation is not unique; WRD is finding it throughout the state. This could be used as a model for other jurisdictions with this problem. It's disturbing to note that some people are misinterpreting the intent of the resolution - the intent is to form this task force dealing with the water rights and drinking water of the Hoodland area.

084 REP. SOWA: This area is not in my district, but I sit on the House Water Committee, and the committee crafted this bill after hearing of the problems in this area. The Clackamas County Commission will work toward getting a moratorium on building in this area until this process goes through.

098 HILL: My understanding is that many of the water uses are illegal - they are not permitted. So halting new water right applications may not have an effect. The demand seems driven by the new building taking place. Is most of the demand domestic, as opposed to agricultural?

103 SOWA: Almost 100 percent is domestic. It is a wooded river canyon without agriculture. The County Commission was concerned, so the WRD has been asked to postpone the implementation of those flows and they've agreed to do that until August. Everyone is working in a good faith effort to get this process going.

120 SEN. CEASE, DISTRICT 10: Has concerns and submits proposed amendments (EXHIBIT A). The amendments add Multnomah County and the boundary commission to the task force. Some entity needs to coordinate recreation and development in a plan. Will support with the -4 amendments.

143 CLAY MOORHEAD, CITY OF SANDY: Sandy supports HJR 61. The bill provides for a coordinated effort of local governments, state agencies, and private interest groups to cooperate and find solutions for the water problems affecting the Hoodland corridor. There are currently about 7500 people who are supplied by water from the Sandy Basin and with an immediate adoption of a minimum stream flow, it is possible that an injunction could be placed on the existing water districts.

160 HILL: These are districts that don't have legal rights. They have delivered water without legal rights, correct?

163 MOORHEAD: That may be true, but it is the fault of many, including the Water Resources Department, because this is a fairly urban area.

173 HILL: Do you know how the water districts started using water with permits?

178 MOORHEAD: The land use planning process has been around about 15 years, and Clackamas County's plan has been acknowledged by the state and reviewed by WRD. It comes as a surprise that there are illegal permits, but the state agencies have been involved in the planning proposed for that area. A coordinated effort needs to occur. There are enough water right permits that are valid to alleviate and resolve the problem, but it could take years to complete. If new streamflows are implemented now, it would put some people out of water. These are not just resort homes, either.

199 HILL: If an individual obtains a legal water right, it would still be taking away the water from an illegal user.

213 MOORHEAD: The WRD has indicated that it will not approve additional water permits, until minimum stream flows are implemented.

214 HILL: That's not my point; the doctrine of prior appropriation is to prevent undocumented, illegal use of water. It disturbs me that so many homes are using water illegally. How can we prevent this from happening elsewhere in state?

215 FAWBUSH: I have been involved in the issue in this area. These districts would build small catch basin and pipe water to themselves and others. That's how it got started.

228 HILL: A developer could do this for profit, knowing it's illegal and the person buying the home would not know.

235 MOORHEAD: It would be a prudent decision to bring everybody to the table. HJR 61 would do that.

250 TIMMS: This problem was discovered by the Sandy River Basin study? You do not have basin committees like in eastern Oregon?

252 MOORHEAD: No; by having a separate commission, emphasis is placed in having a manageable product that is implemented.

267 BEV HAYES: The Department supports the approach presented in the bill; it would provide a possible solution to a difficult problem in the Hoodland area. We have identified flow requirements in the Sandy scenic waterway, the Commission has not yet adopted them, pending the outcome of HJR 61.

274 HILL: Would the flow requirements impact these illegal uses?

277 HAYES: Yes; our preliminary findings suggest that 3 or 4 months of the year there will not be water in addition to that required by the scenic waterway. They could not apply for a new permit.

287 HILL: To what extent would it impact the flow required by the scenic waterway for those months?

282 HAYES: WRD doesn't know at this point; we don't have a handle on the quantity of water needed for those illegal uses.

286 HILL: If they were treated as existing water rights they would have precedence over the scenic waterway. We could grandfather them in, but we don't know the impact yet.

290 HAYES: No we don't.

292 TIMMS: In other river basin studies have there been similar situations been uncovered?

294 HAYES: There are illegal uses all over.

297 TIMMS: The more people, the more illegal uses. What other basin studies are you looking at?

300 HAYES: The Sandy Basin is finished, but not the flow assessment for the scenic waterway. We are currently finishing the Willamette Basin plan, and we are going into the Deschutes area next.

307 TIMMS: You will run into this same situation elsewhere, and will need groups elsewhere.

318 HAYES: There is a policy issue, of how you deal with illegal water uses.

320 TIMM: Water basin groups are not required; they do exist in various counties.

330 HAYES: No; when we do our basin plan we do form advisory committees,

meet with local officials and people with the basin to discuss their major issues. There's no legal requirement that WRD do this.

339 TIMMS: Please comment on the proposed members of this task force.

345 HAYES: The way the language is written now, it does allow the Commission some flexibility in who may be appointed to the task force. We would not have any objection in including others.

349 HILL: Where are you in adopting the scenic flows required under the Scenic Waterway Act, and where are you in regards to the Sandy Basin plan?

352 HAYES: The Sandy Basin plan has been adopted.

355 HILL: Does it address conservation and illegal uses?

357 HAYES: It does not specially address these illegal uses.

360 BECKY KREAG: The Sandy Basin plan has a conservation element in it, although it's relatively weak. We are still in the process of putting together a stronger statewide program.

375 HILL: The Sandy has been in the state's scenic waterways since 1972. Have these uses occurred primarily since 1972?

362 HAYES: We don't know for sure. Many of these uses began as exempt uses. Domestic supply systems that use less than 15,000 gallons a day are exempt; what happens is that homes are added to this system over time, yet still think of themselves as exempt. There are a variety of problems out there.

372 HILL: Is there a limited groundwater problem in Sandy?

377 KREAG: Near the cities of Sandy and Boring there is a limited groundwater area that we're proposing to establish. In the Hoodland Corridor it is pretty much alluvial groundwater that is directly connected with the river.

383 HILL: Is the groundwater an alternative to the surface water diversion?

403 HAYES: Not in the Sandy; the alluvial aquifers connected to the Sandy so the Diack mandate would apply.

405 HILL: If this bill passes, the commission will not adopt the scenic waterway flow requirements?

412 HAYES: I don't know that. The commission will deliberate in August on the flow requirements and make a decision then.

418 HILL: The bill refers to conservation. I imagine that most of the proponents see a solution in diminishing the flow requirements of the scenic waterway and grandfathering in the diversions. There may be other solutions - conservation, evaluating senior water rights to see if they've been abandoned, looking for waste, unutilized storage.

430 HAYES: We have a list of seven possible options to be considered by a task force, and you've mentioned several of them. One can purchase or transfer existing water rights, there are storage facilities, supply authorities can be formed, for example.

431 HILL: Is there a flow assessment on the Sandy?

432 HAYES: That would consist of the scenic waterway assessment. Can we make that part of the comprehensive plan? Do we have a scenic waterway assessment? Does it include conservation measures?

TAPE 86, SIDE A

016 JERRY SCHMIDT: States that he represents the Oregon Assn. of Water Utilities, the Special Districts Assn., the Hoodland Chamber of Commerce, Government Camp PIF District, and

Oregon Water Consultants. We support HJR 16's approach to solving the water problem. Regarding basin committees, there was an advisory committee formed early on in the process of the Sandy River Basin plan, but none of the upper Hoodland area was involved, so this committee had no knowledge of the Sandy River basin plan until one week prior to the hearing. Part of the problem was communication and not being involved sooner. How do we prevent some of the illegal uses? Part of the answer is better coordination among state agencies. These entities have been on the records of the Health Division for years; it's been ongoing. The problem is there is little coordination between the Health Division and the WRD in exchanging information; this has improved recently. About 98 percent of this area is using groundwater. All the water being used in the upper basin is being returned to the basin; that's not true with the major out-of-basin user, the City of Portland. We are willing to cooperate in any way possible, to get water.

054 HILL: Refers to the article regarding the Sandy River (EXHIBIT B). One district has authority to serve 27 homes and is, instead, serving 236 homes. Who's responsible for this?

063 SCHMIDT: That is a private water company, one of three. The others are public utilities. The organizations I represent are the only ones allowed to stockpile water and we can plan.

071 HILL: When did the moratorium go into effect on new water rights? They didn't even apply for water rights.

075 SCHMIDT: My organizations didn't apply for additional water rights because the boundary commission has limited them.

078 HILL: Somebody must do something. Is there a requirement that you must demonstrate that you need a water right to build?

089 SCHMIDT: We would be willing to work on any issues.

091 SPRINGER: Has anyone asked the Water Resources Dept. to do what the county has failed to do so far? Or is the county not responsible in any way?

101 SCHMIDT: I don't know how to answer that question.

103 HILL: Has anyone downstream been affected by this illegal use? Have they filed suit?

102 SCHMIDT: Not to my knowledge.

105 DAVID BUTT: Spoke in favor of HJR 61. We petitioned WRD to reopen the basin plan, so some of these issues could be addressed, but were denied. This is our only hope - to come up with an entity to address these issues. As to the illegal uses, the issue is complex. Government Camp has an adjudicated water right that goes back to 1907, if the claim is upheld. Our question is, if we lose some of that water right can we ever recover it? There are other illegal users on forest service land which are dipping into the water, and it is also possible that there are federal reserve rights for some of that issue. A lot of the users in the basin are exempt. The figure of 7500 illegal users is a gross exaggeration. We are looking at coming up with a vehicle that will provide for growth according to comprehensive plan.

140 HILL: How can you provide for future growth when there is no water?

142 BUTT: We need to make a case that the use in the basin is totally non-consumptive and the impacts downstream are nil. In a community that is based on recreation, water is primary to our economic well-being; we are getting a bum rap for wrecking the river. The consumptive rate of the water is low. If we quit using the water altogether, the most you'll get is 5 or 6 cubic feet of water, and the fish runs will still suffer.

174 HILL: The Bull Run water rights are senior.

180 BUTT: We recognize that Portland has the senior right, and we are somewhat concerned about the 300,000 customers outside the City of Portland. Long term, we are concerned that Portland's right to 100 percent of the Bull Run and Sandy Rivers didn't give them 100 percent right to the water in the Sandy Basin, and that's what's happening.

193 HILL: Do you have the total of unpermitted uses?

198 BUTT: Nobody has that number; the talk about how much damage is being done is rhetoric. This should have been addressed in the basin plan and since that process is closed, this is our next best hope. Another consideration, when the river was put into the state system in 1972, a lot of homes and the golf course were already in place; we haven't grown that much.

207 HILL: Were all water rights at that time certificated?

210 BUTT: We don't know. There's many cabins which are on individual wells that are exempt. There are 527 summer homes on federal land.

219 HILL: Are you advising all of your members to file for water rights?

220 BUTT: Members of our group are exempt or permitted. We have gone through a major planning effort in 1977, involving 30 agencies, with the interagency unit plan. We've gone through comprehensive plans and we just want to carry those plans through. The City of Portland leaks enough water a day to supply a city of 25,000. That water leaks into the Willamette basin, not the Sandy Basin. We filed an appeal on the Sandy Basin plan because it didn't adequately address comprehensive planning and it failed to address the fiscal impacts of the plan, and it failed to involve the public adequately.

238 HILL: What are you asking of WRD?

241 BUTT: We asked them to re-open the basin planning process and re-do the comprehensive plan compatibility, re-do the feasibility study, and that they set aside 10 cubic feet water for future development.

249 HILL: What is the quantity of water diverted? I still don't know the magnitude of the problem.

252 TIMMS: You haven't had your water right adjudicated? You have until 199 2.

270 BUTT: The issue is more than people taking water out of the stream that doesn't belong to them.

269 JUDIE HAMMERSTAD: Testifies in support of HJR 61 (EXHIBIT C). We don't want to take additional water out of the Sandy River. Through Rep. Mike Kopetski's office a "water summit" has been called that includes the cities of Sandy, Portland, Government Camp, Rack Water Resources Dept., environmental representatives, Oregon Rivers Council, and people from the Hoodland corridor, in order to establish what some of the activities might be that HJR 61 can complete. We are interested in providing a legal, constant source of water to those who live in the Hoodland Corridor and to planned growth. Our planning department has set that at approximately 5-6 CFS. We don't know how much water is being taken out now, but we think that the needs are less than 10 CFS. When you consider how much water Portland is using in that basin, what we would like to do is have water from Portland, through their existing water right. The City of Sandy has 20 cubic feet on the Salmon River that is unutilized; we may be able to supply that to the Hoodland Corridor. We need to find out who has legal water rights in that basin; HJR 61 gives us that opportunity. What are we supposed to do with the unadjudicated water rights; are they legal or illegal? Clackamas County is not in the water

business; we don't have jurisdiction. But we felt that as a government of last resort it was our responsibility to bring those involved parties together to try and solve the problem.

352 HILL: Why is the flow important?

355 HAMMERSTAD: At some times the flow is lower than it should be. Because Hoodland Corridor users have no other place to go, they could end up paying an inappropriately high price to hookup to a new water system. We would like to work with the Forest Service and gauge the river flow so there would be more reliable data. The public process that WRD when through was not very good. They didn't notify the people on the mountain. With better notification and flow data, a better plan could be developed.

399 HILL: Asks KREAG and HAYES to create a chart showing the current levels of water withdrawals compared to the recommended flow levels for recreational purposes, month by month. My impression is that the current use impacts adequate recreational flow levels, but I have seen any evidence of that.

429 HAMMERSTAD: Recreational flow levels for kayaking are between 1500 and 2000 CFS, and we are looking at between 5-6 CFS. WRD has the current river flow data.

415 SPRINGER: To what extent does the county, in their approval of the comprehensive plan, consider services which require water?

430 JOHN BORGE: The area up there does have a long history of planning. It was at the end of the Oregon Trail, and so many little towns had sprung up. The subdivision of those properties occurred in the early 1900s and some of the water districts began soon after. In the 1970s there was a concern that the carrying capacity would be jeopardized by continued growth. There was a multi-agency plan developed in 1977 that tried to discern what the handling capacity of that area could be. It was estimated that the aquifer ground rechargability of the Westside Corridor could support 100,000 persons; this was from the state Wildlife Commission, Dept. of Water Resources. The Clackamas County comprehensive plan provided for a growth of 19-20,000.

TAPE 85, SIDE B

019 BORGE: The county has never been in the business of surveying water - we have relied on the water districts to provide information. Many of these districts may not have had the information it needed. Timberline Lodge's new lodge's water rights were handled by the Forest Service, and it is even suspect. The situation is complex, and HJR 61 provides a forum to straighten it out. It's only been in the last two years that we've been aware there is a problem.

035 HAMMERSTAD: Our population is currently about 8,000.

036 HILL: Are you going to put a moratorium on new building unless a legal source of water can service the constructed building?

039 BORGE: Currently, in our permit issuance process, we are requiring a letter from the water company which serves that development which says they have the right to serve them. Our problem is how to discern whether the water supplier has the legal right to service the development.

052 HILL: Why don't you have WRD certify that the water district has the legal right to supply the water? I don't see how you can do anything but that, unless you want the problem to grow.

060 HAMMERSTAD: We would like to establish procedures for this. We are trying to find ways to do it correctly. If it can be timely, we don't mind doing this. Does WRD have that

information and can they provide it to us in a reasonable time?

072 HAYES: We do have water rights computerized and can generate a list of legal water rights in the area. That won't reflect actual useages there.

077 HILL: Then you don't let any associations hookup any more homes until they can show a legal water right. The water right might be to an association for twenty homes; then you have to figure out how many homes are being supplied.

085 HAMMERSTAD: It sounds like only WRD knows if there is a legal water right, not if that right is for only 27 homes, but more are being served. Can we get information from WRD that the water supplier has a right to serve the number of homes they are serving?

090 HAYES: We would be able to tell the quantity of water they could divert, and estimate the number of homes that water right would serve.

094 HILL: Are these rights being metered?

098 HAYES: Not sure; some may and some may not be metered.

098 SPRINGER: Will we have to come back next session and have to deal with the Clackamas River, for example?

100 HAMMERSTAD: The Clackamas River flows were approved last Friday. However, I think this is going to be a problem all over Oregon.

108 TIMMS: This is a real problem. We have got to get on this growth in these areas. We have water rights not adjudicated in major areas.

131 BILL HUTCHISON: I am here representing the Oregon Rivers Council, and as the attorney who brought the Diack case to the Supreme Court. The message from the Supreme Court was that we need to deal with water in an integrated fashion. That process is underway, however HJR 61 runs contrary to that approach. This is a Hoodland area attempt to fix their problem, somewhat in a vacuum. The Council has submitted amendments which might improve it (EXHIBITS D and E). When we spoke with the WRD they stated that they had many basins to work on, and they feel that this one is finished. In order for the process to go forward those flows need to be put in place. One of the thrusts of this proposal was that flows wouldn't be established, and might not be established for two years. Those flows need to be established, with uses based on those flows. Recently 72 condominiums have been approved for Welches, built by the Saudis. This needs to be done systematically, otherwise the appeals will come in prior to the plan being developed. The Sandy River is heavily used; to undermine that would not be advantageous. If we don't start now with integrated water management we are in deep trouble. When we tried the Diack case, the WRD stated that we didn't have to worry about scenic waterways because it's just a thimbleful of water and the Supreme Court stated that upstream activities' impacts must be considered on downstream scenic waterway values. Diack is not the problem, scarcity is, and now we have an opportunity to solve the problem.

228 LOUISE BILHEIMER: The amendments attempt to create a broad based approach to deal with a broad base of issues in the Sandy basin. What happens in the Hoodland Corridor affects every downstream user. Many players need to be involved.

252 CHARLES CIECKO: Submits and sumamrizes written testimony (EXHIBIT F and G). He supported the amendments offered by Sen. Cease and the Oregon River's Council.

260 HILL: This will be scheduled for a work session on Tuesday if the parties agree.

278 MICHAEL PAYNE: Testifies on behalf of Rep. Nelson. Explains that HB 346 5 simply keeps the public informed as to the application or water rights. The bill requires public notification of the application be printed twice in the county newspaper of the county affected. The concept came from constituents who were concerned that they were not informed on water issues until after the rights were granted. This is especially important for small communities. The bill was amended in the House to apply to both in-stream and out-of-stream rights and this amendment seems to address some of the equity issues that were raised. There is no known opposition to the bill.

299 JILL ZARNOWITZ: We feel the bill is equitable in that it addresses both in-stream and out-of-stream water rights and public notice of those. There will be an estimated fiscal impact on the Dept of Fish & Wildlife of \$40,000. As long as it is equitable for both in-stream and out-of-stream, that is our main concern.

315 TIMMS: On what did you base the fiscal impact?

322 JILL: The Water Resources Department would be required to notify the public through the newspaper, and that cost would be passed through to the applicant, that's us, in the case of in-stream water rights.

326 JIM MYRON: States that he supports the bill.

337 HILL: Submits fiscal impact. (EXHIBIT H)

342 TOM SIMMONS: This bill is not necessary; it adds administrative costs to no purpose. Water rights applicants are publicized now, and this would only drive up the cost for ODFW. Section 2 requires a disclosure from the agency for the reason of the application; the legislature has already defined this. This is an attempt to "bash" the process of in-stream water rights.

366 BEV HAYES: The WRD does not have a position on the bill. The WRD intends to pass the costs onto the applicant and other agencies, so it doesn't impact WRD directly.

359 HILL: Is there a fiscal analysis? If there is a \$40,000 impact on Fish & Wildlife, it is probably a similar amount for DEQ and a lesser amount for Parks.

390 TIMMS: Concerning consumptive out-of-stream use, what are the requirements now?

405 HAYES: Currently, the only notice of application for a permit is in a notice to people on a mailing list. In the case of transfers, WRD does require that the information be published in the paper, and money is collected from transfer applicants for that purpose. The notice that goes out to the mailing list every week includes all in-stream water right applications recieved. There is a fee - \$26.00 a year.

417 HILL: What is the total cost of the service? Maybe there would be another way to do that.

429 TIMMS: If there is more public information, people are going to be more informed on water issues. People will watch their neighbors. What is wrong with notification? I don't understand how it is subverting in-stream water rights. You will have people starting to understand the process even better.

TAPE 86, SIDE B

019 SIMMONS: In Section 2(2), a disclosure of agencies' reason for making the application sets up a process which is expensive and unnecessary. There is already another notification process. It sets up a process to challenge all the in-stream water rights.

033 TIMMS: Why have the in-stream water rights? What is the problem with notifying people?

038 SIMMONS: There is nothing wrong with public being informed, but there is an adequate process in place already.

053 HILL: I estimate the fiscal impact at \$90,000. The committee is under a call of the Senate; we will recess. (at 5:05 p.m.)  
WORKSESSION ON SB 1163

061 MOTION: Sen. Hill moves to reconsider the vote with which the committee sent SB 1163 to the Floor.

VOTE: Hearing no objection, the Chair so moved.

SB 1163

078 HILL: We are working off the -6 amendments (EXHIBIT J). It was changed on page 2, line 13, the word "domestic" was changed to "municipal." On lines 20-21 we have changed the definition of "over appropriated." On page 6, lines 8-9; an exemption is provided to municipalities to the requirement of converting waste to an in-stream water right; then their waste, which is reduced, is not converted to an in-stream water right. On page 14, the new language allows the Commission to disapprove a water right application if the stream is over appropriated. On page 18, there is an exception to any municipality operating a hydroelectric project pursuant to a water right and saves water through efficiencies, does not lose the water because of those efficiencies. On page 35, section 35, a new section is added; it has a \$310,000 a biennium impact and most of it is due to the development of a state plan.

083 SUSAN SCHNIEDER: We support the bill with these amendments.

187 LIBBY HENRY: We support the amended bill.

190 SIMMONS: We actively support the bill.

193 JAN BOETCHER: We will not stand in the way of the bill nor shall we actively support it, because all the agricultural parties have not been heard from at this point.

201 FAWBUSH: What are the major issues for you?

203 BOETCHER: Our major concern is that Legislative Counsel has not had an opportunity to put the bill in proper form and there are references to many definitions that will affect many parts of the statutes. For example, chapters 536-541 there will be considerably changed and we have not seen that piece together to see how it will affect the other sections. There are a number of areas, i.e. transfers, which could be put together much better. It needs to be overhauled by LC. Some of the major irrigators have problems with the transfer section.

218 HILL: Congress hasn't brought forward any suggestions for changing that language. Has it crystallized into language suggestions?

224 BOETHER: My understanding was that the Oregon Farm Bureau had amendments to submit, but haven't had an opportunity to present them.

232 HILL: We had a public hearing and heard everyone who signed up.

236 LARRY TROSSI: We submitted some recommendations to Senate President's office when word went out other amendments would be considered. We made general suggestions in our testimony.

249 ZAVALA: As I recall, when you testified on the bill, the committee did incorporate some of your language into the bill - in terms of the water quality concerns?

260 HILL: If you have additional amendments you should have come to us with them. Please prepare some specific amendments for consideration by the House.

267 SPRINGER: I would appreciate getting a summary of the objections of the Farm Bureau.

271 TROSSI: We had made some rough amendments on the -2 amendments. We have not put them into the -5 or -6 amendments.

284 FAWBUSH: You have some specific concerns that are still relevant? Can you give me a list of what they are?

288 TROSSI: One of the concerns is transfer; some of the definitions are a problem. We made substantial changes in section 4 of the -2 amendments.

317 HILL: The -5 amendments have been out for 10-12 days; did you ask for a copy of them?

321 TROSSI: Yes, we have a copy of them, and received a copy of the -6 today. In section 8 there were concerns with the private right of action.

310 HILL: We don't have written testimony from you.

316 TROSSI: We didn't submit written testimony, but we do have a copy of our concerns and can submit it.

320 FAWBUSH: What other issues?

325 JAN: A number of our issues are of a technical nature. Kip Lombard is working on those, and if the bill goes to the House we would take that opportunity to attempt to incorporate those changes. The way the bill is put together, without review by Legislative Council, is more than a technical problem; that is Kip's major concern.

342 HILL: I don't want to disagree that there are areas that couldn't be made more perfect technically, but counsel has been over it three times, so it has received their scrutiny.

352 JAN: The problem that we have is that we don't have a database to match up every statute and the change that would affect it.

359 FAWBUSH: This is a last minute effort; in doing this we are running some risk. I would also commend those who have remained actively engaged in this process. I would like to ask PGE some questions; I understand they are not happy with the bill

379 BOB HALL, PGE: We are not totally sure what the bill does with the interrelating statutes. The term "beneficial use" is used in several of the definitions. The definition of conservation is drawn largely from case law. This definition is extremely broad. It is a very complex piece of legislation.

470 HILL: We had Bill Young describe the nature of the hydroelectric license. A beneficial use license is granted for a production of theoretical horsepower. The amount of water is calculated on the theoretical horsepower. In that way, it is different than water for a field of potatoes of irrigated crops. The theoretical horsepower drives your water right, and that's your beneficial use, and you can use any part of that up to the maximum. In that sense, the beneficial use is different from other beneficial uses, which are based on the production of an amount of land and if you can do it with less water, you forfeit that water. You don't forfeit water if you become more efficient. In the existing abandonment of water statute, it states that the beneficial use shall be the basis measuring the limit of all rights to the water of the state.

TAPE 87, SIDE A

025 HILL: Beneficial use is defined in the constitution. There's a definition of beneficial use which clearly includes hydro. I can't figure out how this does any harm to water rights where the production of hydro is a beneficial use. And your attorney has been unable to find any reason to claim impairment, detriment, harm, diminishment, or otherwise damage.

036 HALL: We continue to claim that there may be an impact. This is our

counsel's advice.

040 HILL: You have been a constructive player, but I can't understand the concern.

045 FAWBUSH: Maybe your counsel should come down and look at the bill to satisfy themselves.

055 HALL: Part of our problems are the lengthy and recent revisions. To feel comfortable with the bill we need time.

060 FAWBUSH: If you are given more time, will your counsel be able to look the bill over.

065 HALL: I can't make any promises, but I can ask.

067 HILL: Refers to ORS chapter 536.300; "The Water Resources Commission shall proceed as rapidly as possible to study: assisting water resources of the state, means and methods of conserving and augmenting such water resources, existing and contemplated needs and uses of the water for domestic, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses and for pollution abatement, all of which are declared to be beneficial uses." Nothing in this bill impacts that.

074 FAWBUSH: The difficulty is that you and PGE's counsel have not sat down with the finished version and reviewed it. I have some sympathy for PGE.

085 HILL: WaterWatch's attorney did talk with PGE's attorney a couple of times in an attempt to understand the concerns.

098 FAWBUSH: Your attorney had conversations with PGE. Was there any specific concerns addressed?

104 SIMMONS: We could not determine the problem from the conversations. The concern over beneficial use was not determined; this language has not changed for three or four months. It has been difficult for us to determine what the problems have been at the corporate level.

116 HILL: The bulk of the bill hasn't changed from the -2 amendments. Recesses the meeting at 6:05 p.m.

120 HILL: Reconvenes the hearing at 6:10 p.m.

131 MOTION: Sen. Springer moves to adopt the SB 1163-6 amendments (EXHIBIT I).

VOTE: Hearing no objections, Chair Hill so moved.

MOTION: Sen. Springer moves SB 1163, as amended to the floor with a "do pass" recommendation.

135 FAWBUSH: I will support it going to the floor, but probably not on the floor. It's time the entire body discussed the issue. With the amount of work that has gone into it, it deserves to go to the floor.

157 HILL: The discussions have been good.

VOTE: In a roll call vote, the motion passes, 3-0. Senators Fawbush, Springer, and Hill voting "aye." Senators Timms and Kintigh were away on Senate business.

180 HILL: Hearing no further business, Sen. Hill adjourns the committee at 6:15 p.m.

Submitted by:

Reviewed by:

J.E. McComb  
Assistant

Lisa Zavala  
Committee Administrator

EXHIBIT SUMMARY:

Exhibit A - proposed amendments, HJR 61, Sen. Cease, 3 pgs.

Exhibit B - news article, HJR 61, staff, 1 pg.  
Exhibit C - testimony, HJR 61, Judie Hammerstad, 7 pgs.  
Exhibit D - proposed amendments, HJR 61, Bill Hutchison, 1 pg.  
Exhibit E - proposed amendments, HJR 61, Bill Hutchison, 2 pgs.  
Exhibit F - testimony, HJR 61, Charles Ciecko, 3 pgs.  
Exhibit G - testimony, HJR 61, Charles Ciecko, 2 pgs.  
Exhibit H - fiscal impact, HB 3465, staff, 2 pgs.  
Exhibit I - proposed amendments, SB 1163, staff, 35 pgs.