

HOUSE COMMITTEE ON WATER POLICY

January 17, 1991 Hearing Room D 1:30 p.m. Tapes 4 - 5
MEMBERS PRESENT: REP. CHUCK NORRIS, CHAIR REP. BILL DWYER, VICE-CHAIR
REP. BILL MARKHAM REP. WALT SCHROEDER REP. LARRY SO' VA STAFF
PRESENT: BETH PATRINO, COMMITTEE ADMINISTRATOR PAT ZWICK, COMMITTEE
ASSISTANT MEASURES CONSIDERED: HB 2188 - MODIFIES REQUIREMENTS
RELATING TO RECORDS OF WATER RESOURCES DEPARTMENT - PPW HB 2190 -
MODIFIES WATER RIGHT PERMIT CANCELLATION PROCEDURE - PPW HB 2191-
ESTABLISHES PROCESS FOR STATE AGENCY TO REQUEST PERMIT FROM WATER
RESOURCES COMMISSION FOR RESERVATION OF WATER FOR FOR FUTURE ECONOMIC
DEVELOPMENT - PPW WITNESSES: BILL YOUNG, WATER RESOURCES DEPT. BECKY
KREAG, WATER RESOURCES DEPT. DAVE NELSON, OREGON WATER RESOURCES
CONGRESS TOM SIMMONS, WATER WATCH JOHN BORDEN, WATER RESOURCES DEPT.

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.

TAPE 4, SIDE A

010 CHAIR NORRIS: Calls the meeting to order at 1:30 p.m. 007 BETH
PATRINO, COMMITTEE ADMINISTRATOR: Tells members what materials they will
receive for each bill before the committee.

014 REP. SOWA: Asks Chair to recognize Martha Pagel, Governor's Special
Assistant for Natural Resources.

025 PATRINO: Will give members copies of six policies adopted by Water
Resources Commission provided by Water Resources Department at the end
of the meeting.

030 CHAIR NORRIS: Notes bills before the committee today. Howe
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Hopes to be able to remain with 1:30 p.m. committee starting time.

Opens public hearing on HB 2188.

PUBLIC HEARING HB 2188

045 BILL YOUNG, DIRECTOR, WATER RESOURCES DEPT.: Reviews provisions of
HB 2188 paraphrasing (EXHIBIT A).

071 REP. MARKHAM: Asks for explanation of (2) on page 6 of the printed
bill.

080 YOUNG: We found ourselves with a difficulty in regulating between
exempt users of ground water because we had nothing in the department
that was listed as a record of the department. We went through a process
to make sure that well logs, if they are available, are records of the
department to satisfy that requirement and to let our watermaster
resolve those disputes. That is the language that is incorporated here.

Nothing new is intended.

090 JOHN BORDEN, WRD: A couple of our legislative proposals happened to
cite this particular paragraph, and everywhere it appears, we are using
the same language as it is shown here.

104 CHAIR NORRIS: It makes reference to ORS 537.545. Does that citation pertain to the use of well logs? _ , 105BORDEN: ORS 537.545 says we can use the well log to distribute water, as a method to set the priority date for the purposes of water distribution. 114 YOUNG: We think we are only clarifying the nature of the record and the manner in which the records have to be kept. 108 REP. SCHROEDER: Does your watermaster in the field have a duplicate copy of all your records? 110 YOUNG: Not in all cases. Regional offices or watermaster offices will have records necessary for water distribution. 115 REP. SCHROEDER: Can watermasters access your records if you go to electronic record keeping? 120 YOUNG: We are in the process of developing that capability. 121 REP. DWYER: Will there be a way for the public to access the information, and how will WRD protect the public access to the information? 128 BORDEN: I do not see the abolition of paper records. I believe the record will be available in at least two locations in the department for any client who asks. . House Committee on Water January 17, 1991Page 3

149 REP. SCHROEDER: Does Sec. 1 (1) imply that the record will be in the department office and the local office without their having to come to Salem?

155 YOUNG: They will have the same opportunity to access the information if this bill passes as they do now.

160 REP. SOWA: Speaks of his experience looking for SAIF records.

166 YOUNG: Our goal is to make the records more accessible.

Some records would only be available at a headquarters office, and it would be possible for someone to request a record that is only in a regional office or archives.

Regional records will normally be available at regional offices.

190 CHAIR NORRIS: Will this bill facilitate getting information from records for real estate transactions?

200 YOUNG: It would not inhibit it.

220 CHAIR NORRIS: Closes hearing on HB 2188 and opens public hearing on HB 219 0.

PUBLIC HEARING HB 2190

225 YOUNG: Reviews provisions of HB 2190 paraphrasing written testimony (EXHIBIT B).

285 CHAIR NORRIS: What notification mechanism are you speaking of in the bill?

290 YOUNG: In all cases where we are proposing cancellation, we will notify the holder of the permit by certified mail.

310 CHAIR NORRIS: The initial notice does not presume a contested case.

315 YOUNG: I think it does. We have to give the opportunity for a contested case which the person may waive.

325 REP. DWYER: We gave DMV the right to use regular mail in the 1989 session. The difference in this case is that you are apt to read a registered letter more than regular mail. In the case of water rights I think we should notify in a way that the person I know it is important mail. 345 YOUNG: We intend to notify the water right holder by certified mail. We are talking about whether we have to do that to every junior downstream user. That is our intention. If the bill does not say that, it should be changed to reflect our intention. Would be glad to meet with Legislative Counsel to see if amendments are needed. House Committee on Water January 17, 1991 - Page 4

375 CHAIR NORRIS: We will hold this open to give you an opportunity to look at the questions raised and possibly come back with an amendment to the bill.

Closes public hearing on HB 2190.

TAPE 5, SIDE A

Reopens public hearing on HB 2190. 017 DAVE NELSON, OREGON WATER RESOURCES CONGRESS: Thinks it is important to retain notification to subsequent water right holders whose permit values may be changed by the cancellation of a more senior permit.

States concerns with HB 2190. Would like to discuss the items with WRD and work on proposed amendment.

050 CHAIR NORRIS: Asks Nelson and WRD to meet to resolve questions.

Closes public hearing on HB 2190 and opens public hearing on HB 2191.

PUBLIC HEARING HB 2191

065 YOUNG: Reviews provisions of HB 2191 and proposes amendments paraphrasing written testimony (EXHIBIT C). 080 REP. DWYER: Why do we want "an applicant" instead of a "state agency"? Who would the applicant be? 085 YOUNG: We have a request from the Dept. of Agriculture for reservation of water for economic development purposes. We are reviewing that request as part of our basin program update in the Willamette Basin. The Dept. of Agriculture believes that waters are going to be needed for irrigation here, but the Department would not put the water to use. They are applying using their statutory responsibilities and wisdom, to say we think this much water should be reserved for that purpose. At a later date, an applicant might want to use some water for that purpose, use it out of that reservation, and have the opportunity to have that reservation's priority date. 110 REP. DWYER: Can we reserve water that would have to be "senior, against the instream water right? 115 YOUNG: No. If there was reservation of water from a particular source, and water was not available at particular times of year in that source because it was protected by a previous minimum streamflow or instream water right, that reservation of water would not provide an opportunity to do violence to that, just as it would not provide an opportunity to do violence to any other previously existing right. 128 REP. DWYER: Are you saying that you could not reserve water for economic development that would impact the streamflows?

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130 YOUNG: If you reserve or make an application for water, and took water from the stream, it would impact the streamflow, but it could not do so and do violence to an instream water right or minimum streamflow that existed, and could not take water from an already existing water right.

140 CHAIR NORRIS: If an instream water right has been issued, and no more appropriations are available from that stream, would a permit for reservation be accepted? 150 YOUNG: No, unless the party applying said we want to reserve water out of that stream and we believe within the next ten years we will have some storage built at the upper end of the stream, and we think we can demonstrate that there is water available beyond any currently identified needs in the high flow months that would let you build that storage and fill it.

That might then be a source of water for that reservation. Reviews information received from the Attorney General's Office. With HB 2191, we are proposing a mechanism that allows the reservation to be filed, considered, and granted and allow a secondary permit to make use of that reservation as proposals are made and are consistent with the purposes of the reservation. 185 REP. DWYER: Asks for definition of economic development. 190 YOUNG: Doesn't know how it would be defined.

196 REP. DWYER: Need definition before allowing withdrawal of water for a purpose which is not defined by law. 200 REP. SCHROEDER: Is "the priority date of the reservation shall be the date the application is filed with the commission" consistent for all water right filers?

205 YOUNG: Yes.

Can provide the committee with the definition of "economic development" which WRD developed during rule making. 235 REP. SOWA and YOUNG: Comment on water reservation issue.

290 CHAIR NORRIS: Asks for history of statute that set up authority for agency reservations.

300 YOUNG: It was part of the original instream water right bill adopted in 1987. This provision was developed during the compromise period on the bill. 320 REP. DWYER: Could the applicant be a private or environmental entity? 345 YOUNG: We are not proposing any change in who may reserve water. It might be an individual applicant user who put that water to use consistent with the purposes of the reservation. House Committee on Water January 17, 1991- Page 6

A number of applicants could use the water consistent with the purposes of the reservation.

Continues review of (EXHIBIT C). TAPE 4, SIDE B

010 CHAIR NORRIS: Refers to (EXHIBIT C). Asks if "as trustee. needs to be added to the suggested page 1, line 25 proposed amendment. 015 YOUNG: Agrees with Rep. Norris' suggestion.

We have attempted to parallel a process currently used when someone applies to store water, then use it. 023 REP. SCHROEDER: Cranberry growers are concerned about having to have three permits.

029 YOUNG: Cranberry permits are the most complicated we issue. It has

always been WRD policy to require a permit to store water and a secondary permit to use the water. 040 REP. MARKHAM: Questions need for the secondary permit.

045 YOUNG: There has always been an expectation that it is necessary to identify the land on which the water is to be used.

065 DAVE NELSON, OREGON WATER RESOURCES CONGRESS: We support HB 2191 as drafted and with amendments proposed by Director Young. The concept is to put a structure to the implementation of the water reservation scheme developed in 1987 and implemented in SB 140. Gives issue background. We strongly support the economic reservation of water. We think it is important to give the Department the mechanism for effecting that, and we think that HB 2191 comes close to doing that. 120 REP. SCHROEDER: Do you have a definition of "economic development.?"

125 NELSON: Would have to consult his records. Thinks the intent of the discussions was to broadly include what was commonly referred to as economic development, and would include, in our minds, future irrigation development, industrial utilization, and other municipal uses linked to economic growth. 130 REP. DWYER: Could economic development include recreation and fisheries? 135 NELSON: I believe it could. House Committee on Water January 17, 1991 - Page 7

150 REP. SCHROEDER: I would feel more comfortable if the bill were refined further.

155 NELSON: We will be happy to work with WRD to refine the bill and bring back proposed amendments we think will help clarify it.

160 CHAIR NORRIS: Would Mr. Young agree to fundamental research with Water Resources Congress and other interested parties?

162 YOUNG: Yes.

165 TOM SIMMONS, WATER WATCH: Gives his recollection which is different from Mr. Nelson's.

195 CHAIR NORRIS: Are you suggesting that there is no hope for future storage projects?

199 SIMMONS: I purposely omitted mention of storage projects. Instream water rights are subordinate to storage projects. I don't understand the bill. It is unrealistic because nothing exists to allow you to do it.

If we are going to get into this, we should see what we are trying to do and the reality of it.

255 NELSON: We are working with Water Watch trying to develop a storage policy bill for this committee to consider.

275 CHAIR NORRIS: Do Mr. Nelson and Mr. Simmons see any possibility of coordinating something that you might want to bring back to the committee?

293 NELSON: Would be happy to work on it. We think HB 2191 is to help implement a policy decision made in 1987. We are not interested in re-hashing whether that was a good policy, because we think it was.

297 SIMMONS: Would be happy to work on it. 298 CHAIR NORRIS: Would WRD mediate and work on the issue? 302 YOUNG: Yes. 305 CHAIR NORRIS: Opens work session on HB 2188.

WORK SESSION HB 2188

310 MOTION: REP. DWYER: Moves HB 2188 to the floor with a do pass recommendation.

VOTE: On a roll call vote, motion passes unanimously. All members are present.

330 CHAIR NORRIS: Rep. Schroeder will carry the bill.

Adjourn at 2:52 p.m.

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Submitted by: Reviewed by: Pat Zwick, Beth Patrino
Assistant Administrator

EXHIBIT LOG:

A - Testimony on HB 2188 - Bill Young, WRD - 1 pages B - Testimony on HB 2190 - Bill Young, WRD - 1 pages C - Testimony on HB 2191 - Bill Young, WRD - 1 pages