

House Committee on Water January 22, 1991 - Page

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HOUSE COMMITTEE ON WATER POLICY

January 22, 1991Hearing Room D 1:30 p.m.Tapes 6 - 7

MEMBERS PRESENT:REP. CHUCK NORRIS, CHAIR REP. BILL DWYER, VICE-CHAIR
REP. BILL MARKHAM REP. WALT SCHROEDER REP. LARRY SOWA

STAFF PRESENT: BETH PATRINO, COMMITTEE ADMINISTRATOR PAT ZWICK,
COMMITTEE ASSISTANT

MEASURE CONSIDERED:HB 2335 - ALLOWS WATER RIGHT HOLDER TO SELL, LEASE OR OTHERWISE TRANSFER WATER. - PPW HB 2336 - ALLOWS CREDIT AGAINST INCOME TAXES FOR VALUE OF WATER RIGHT TRANSFERRED TO STATE TO BE USED FOR SATISFYING MINIMUM IN-STREAM FLOW REQUIREMENTS. - PPW

WITNESSES:BEV HAYES, WATER RESOURCES DEPT. JAN BOETTCHER, OREGON WATER RESOURCES CONGRESS DAVE NELSON, OREGON WATER RESOURCES CONGRESS LARRY TROSI, OREGON FARM BUREAU JACK STRAUSS, DEPT. OF REVENUE JILL ZARNOWITZ, OREGON DEPARTMENT OF FISH & WILDLIFE MARJO NELSON, DARROW ROCKS COMMUNITY ASSN.

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TAPE 6, SIDE A

010 CHAIR NORRIS: Calls the meeting to order at 1:30 p.m.

Asks Rep. Dwyer to comment on HB 2335 and HB 2336.

PUBLIC HEARING HB 2335

015 REP. DWYER: A number of irrigation districts and public utilities were interested in the concept of being able to allow the sale, lease, and transfer of water rights as proposed in HB 233 5.

In the Southwest, cities with water are precluded from growth by lack of water and dedicate money to buying water rights in order to promote a continued growth.

Irrigation districts testified that there are times when they could sell or transfer their surplus water and would like that opportunity.

045 CHAIR NORRIS: Water rights can not be purchased without also purchasing the land to which the water right is appurtenant.

055 BEV HAYES, WATER RESOURCES DEPT.: People do buy, sell, and transfer water rights under current law, provided they meet the requirements of the law. HB 2335 appears to ease the transfer of water within irrigation districts by allowing them to declare water surplus and move it outside of the district.

Water Resources favors making the law more flexible and there may be some worthwhile things to consider.

It is uncertain whether HB 2335 would allow the spreading of water which can cause injury to third parties and impact other users.

The bill would not reduce the consumption of water.

Water Resources has discussed banking a portion of the water to see whether there is injury to users because of the ability to transfer water more freely.

070 CHAIR NORRIS: Does this relate to the conservation bill passed in the 198 9 Session?

080 HAYES: I don't believe so.

085 REP. MARKHAM: Asks for explanation of "banking".

095 HAYES: Allows spreading of some water and banks a reserve until it is determined whether there are downstream impacts.

109 CHAIR NORRIS: Do provisions of the bill involve the Water Resources Commission in sales or transfers?

120 JAN BOETTCHER, OREGON WATER RESOURCES CONGRESS: Submits and paraphrases written testimony (EXHIBIT A).

155 REP. MARKHAM: Would you rather the bill were not here?

160 BOETTCHER: Yes.

165 DAVE NELSON, OREGON WATER RESOURCES CONGRESS: The concept of the bill is good in principle. Making it work without affecting the other users will need work.

We will be happy to work on that.

180 REP. MARKHAM: Would you like the bill amended or killed?

185 NELSON: At this point in the session we would like to try to fine tune the bill.

190 BOETTCHER: It might be a tool for water users outside of districts.

191 LARRY TROSI, OREGON FARM BUREAU: Voices same concerns as Oregon Water Resources Congress.

We would be very interested in working on the bill.

200 REP. SOWA: In 1985-86 many people interested in water worked on this concept. They came to the conclusion that under most circumstances water is the property of the state of Oregon and the people are allowed to use it.

If we begin selling it, we might need volumes of amendments to control problems that would arise.

Thinks extensive work sessions on the bill would be needed.

230 CHAIR NORRIS: Are we talking about selling the water or selling the right to use?

235 HAYES: You would be selling the water right. You can currently sell or lease your water right for instream purposes.

240 CHAIR NORRIS: That should be considered in any fine-tuning.

Closes public hearing on HB 2335 and urges those involved to come back with proposed amendments.

Asks Beth Patrino to get the history of the bill.

Opens public hearing on HB 2336.

PUBLIC HEARING HB 2336

296 JACK STRAUSS, DEPT. OF REVENUE: In reviewing the bill we noticed a lack of verification of allowable credits.

305 REP. DWYER: The bill came from my concept which I discussed with Oregon Water Resources Congress in terms of a free market approach to streamflow restoration.

It gives people an opportunity to give water to the state that would be dedicated to instream uses that would have priority dates and give a tax credit commensurate with how old the water right was and the amount of its use.

It would benefit people who are no longer farming, and give them a tax credit to give the water back to the state for instream uses rather than consumptive uses.

I asked Legislative Counsel to draft the concept. The information you are giving will help us ascertain how to make it work.

345 STRAUSS: The year that the credit would be allowable is not clear and would be a problem for the Department of Revenue.

Sec. 2 (5) mentions that the credits can be carried forward and used in a tax year beyond the year specified in Sec. 7. Sec. 7 does not specify the years.

We will change our returns so that the credit will be picked up as a capture item and tracked.

TAPE 7, SIDE A

008 REP. SOWA: Do you see a valuation of water in the bill so that a person who decides to donate water and take a tax credit for it could not claim an excessive value?

011 STRAUSS: That could be handled in the certification.

015 REP. DWYER: Refers to Sec. 10, page 3 dealing with the certification issue of concern. The tax credit only applies to overappropriated streams. There will be no tax credit when the stream is no longer overappropriated.

040 REP. MARKHAM: Is any weight given to the factors?

045 REP. DWYER: I think a criteria will be developed that will weight each factor.

050 REP. MARKHAM: Do you envision that the value of the water is more in some streams than others?

055 REP. DWYER: Could depend on whether threatened species are involved.

062 HAYES: We think the idea of the bill is a good one.

We see the following difficulties:

Substantial cost to Water Resources Department to do the water value determination, determine if the right has been abandoned, and rulemaking. Costs are estimated at \$500 per application.

Difficulty to estimate the value of the right and possibility of a large impact to state revenues, depending on whether or not you would envision the person able to claim a tax credit for the market value of the right.

Refers to Sec. 10. and gives examples of incidents which could occur.

100 REP. DWYER: Asks Ms. Hayes to benefit the committee with suggestions to minimize the work of Water Resources Dept. in order to make the bill work.

120 HAYES: If the bill passes, we will do our best. We will have to consider many factors. We like the incentive for restoring streams.

130 CHAIR NORRIS: Does not anticipate a large number of people giving up their water rights.

Could we come up with an arbitrary figure for an acre foot of water?

150 HAYES: Yes. A lower market value would be of benefit to the state.

158 REP. DWYER: This bill will not conflict with my other bill to provide money. They would work in tandem.

I think that people should be compensated when property is taken. I think the bill would be beneficial to instream use and help mitigate effects on threatened species.

170 REP. SCHROEDER: If HB 2335 and HB 2336 pass, is there a mechanism to prevent someone from purchasing a senior water right and relinquishing his junior right?

185 HAYES: I don't believe so.

200 REP. DWYER: No bill is foolproof.

215 CHAIR NORRIS: HB 2335 provides only for the sale, lease, or transfer by irrigation districts.

They could transfer to an individual depending what they come up with in their conference work.

229 HAYES: Determining whether a right has been abandoned might take field work and research that we do not normally do.

240 REP. DWYER: Does not think anyone would apply for a tax credit for a water right that has been abandoned.

248 HAYES: A person does not always know that the water right he holds has been abandoned.

250 CHAIR NORRIS: The watermaster should know if the right has been abandoned.

252 HAYES: That is sometimes difficult to determine.

265 CHAIR NORRIS: Suggests Ms. Hayes confer with Water Resources Department staff about the consideration of a standard value per acre foot concept.

270 HAYES: Yes.

272 REP. SOWA: We should get suggested language from the Dept. of Revenue to satisfy their problems.

285 STRAUSS: The 120 day certification is a concern.

If someone submitted a certificate after 120 days to the end of the year it will not be granted, but all other conditions were met.

Will work with Water Resources Department to work with the issues we have exposed today.

320 HAYES: What is a "recycling water right" mentioned on page 1, Sec. 4?

330 REP. DWYER: One that went back to the stream. That is Counsel's language.

338 CHAIR NORRIS: Some people recycle the water they use.

340 REP. DWYER: Asks Beth to check with Legislative Counsel for their definition of "recycling water right".

345 HAYES: Was it intended that this credit only be allowed in instances where an instream water right or minimum streamflow exists?

350 REP. DWYER: Only in an over appropriated stream as determined by Water Resources Department.

365 REP. MARKHAM: Asks how tax credits would be handled for people with insufficient income to pay taxes.

Perhaps we should write that it is a refundable tax credit if the credit can not be used in three years.

Why does the water right have to have been used in the previous year?

390 REP. DWYER: It doesn't have to be, but it would have to be used within the preceding five in order to be a valid water right.

TAPE 6, SIDE B

STRAUSS: If it is a refundable credit, the bill would need to so state.

005 REP. DWYER: Has no problem with that.

A refundable credit can be applicable to three years.

010 REP. DWYER: Could you have both; the credit carried against taxes due for three years, but refundable if not used in the three years?

020 REP. MARKHAM: Asks for explanation of page 2, lines 2 through 4.

025 STRAUSS: It means it is not a refundable credit as written.

030 CHAIR NORRIS: Should it be "or" instead of "of" on line 3?

035 STRAUSS: Yes.

045 JILL ZARNOWITZ, OREGON DEPARTMENT OF FISH & WILDLIFE: Refers to page 4, Sec. 12, lines 16 and 17 of the bill.

For consistency with the Instream Water Right Act, it should be changed to something like " the flow necessary for fish and aquatic life, wildlife, fish and wildlife habitat and pollution abatement" if those are the public use values to which this would be applied.

The same language would also be needed in (2) where minimum flow is mentioned.

050 CHAIR NORRIS: If you do that, and there is not an instream water right on that particular stream or stretch, it seems that each one of these would have to go to ODF&W for a determination of sufficient water to meet all the benefits.

060 ZARNOWITZ: We would have to review whether or not this transfer would benefit fish and wildlife or pollution abatement if that was the case.

Otherwise, I don't see that you could reach the certification step that

the Dept. of Revenue wants.

070 CHAIR NORRIS: Are the minimum streamflows established in advance of the Instream Water Rights Act still in effect?

080 ZARNOWITZ: Most of them have or will be converted to instream water rights.

The law is still on the books, but they are called minimum perennial streamflows.

A minimum streamflow refers to a biological minimum flow needed to meet needs for existence.

The needed flow should be determined on a stream by stream basis.

086 CHAIR NORRIS: Are those levels pretty well determined for all streams?

090 ZARNOWITZ: We have more than 600 streams for which we have no information. We have information on 1,400 streams and on 800 of those streams we have some type of instream water right.

093 CHAIR NORRIS: If a stream for which no such flows were established were involved in this process, do you think you should be involved in the process?

095 ZARNOWITZ: Yes, if the benefit to fish or wildlife is to be determined.

It is important to the certification process for ODF&W to say what will benefit fish and wildlife.

115 CHAIR NORRIS: ODF&W is one of three departments that can and should recommend these minimum flows or instream water rights.

120 ZARNOWITZ: We could stay out of it if language is inserted that recommends that it is just not a minimum flow for fish, but that it is being applied to the beneficial use of fish and wildlife, pollution abatement, etc.

130 REP. DWYER: Suggests language: "no credit against taxes for the value of a water right as certified under section 7 of this Act shall be allowed after sufficient water is available in a stream to maintain a minimum flow, or required to satisfy public use value".

140 ZARNOWITZ: I think that would satisfy our concern.

Our main concern is over the words "minimum flow".

145 CHAIR NORRIS: I think you could turn Sec. 12 (1) around to say this could only apply in a stream for which a minimum flow and/or instream water right has been established.

145 REP. DWYER: It allows the Commission a lot of latitude in making a determination on those sections of streams impacted by this. If, after they make a determination that there is no public benefit by certifying these rights back to the stream, there will be nothing.

175 REP. SCHROEDER: Which would be the most objective and subjective

methods of measuring streamflow?

190 ZARNOWITZ: ODF&W has adopted in rule form three accepted methods to determine instream flow. Those methods can determine minimum flows as well as average or higher flows. Biologists then determine the desired level of fish population. Using the information, you pick the appropriate fish population goal.

200 REP. SCHROEDER: I am concerned that public use and pollution abatement can stretch the desired flow. A minimum stream flow of so many cfs would give you an objective measurement.

205 ZARNOWITZ: We use objective measurements for biological measurements. Other types of measurements, such as recreational, tend to be more subjective because recreation is subjective. For fish biology, and the desired fish population, it is scientifically based.

215 CHAIR NORRIS: We will re-work the bill and keep it simple.

220 NELSON: Submits written testimony commenting on HB 2336 and stating Oregon Water Resources Congress concerns (EXHIBIT B).

Concerns: Members of an irrigation turning in their water right as a portion of the District's water right for a tax credit, and hampering the ability of the district to operate as a district and repay its federal loan.

Would like the district to have the ability to participate in the process so that the district is not impaired by individual members of the district.

The philosophical policy in the bill is good.

Valuation of the water right will be determined by the market place.

Potential for confusion for abandoned rights that the Department has on the books as existing rights because if any member has a right that may be contested as abandoned it would cause the Department to have to go through a large number of contested case hearings for determination.

No value in retaining a two year limitation of acquiring a tax credit transfer of a water right to an instream water right. The water right would not be abandoned to an individual for five years, so why not make that parallel with an abandoned right.

Supports concept of a refundable credit because of economics.

Recommends that committee consider deleting Sec. 12. Does not think there will be enough volume in the activity to cause a concern.

290 BOETTCHER: Districts have ongoing assessments on these water rights, so it would be pertinent that if someone were to receive this right, there perhaps would not be a flat fee because one would have to buy out the federal contract in the district which could be a considerable sum of money.

Fee structure for application process, if it were to be anywhere near \$500, might discourage applications.

300 CHAIR NORRIS: Does the district as a corporate body hold the water right, rather than the individual record?

305 NELSON: Some districts hold the rights, and some individuals hold them.

There are enough cases where the individual holds the right to cause us concern about them terminating that right.

The district manages the entire distribution system within the boundaries as defined in the district organization. The district is an agent for its membership.

325 CHAIR NORRIS: Thinks the bill is worth working on.

335 LARRY TROSI, OREGON FARM BUREAU: States concerns with Sec. 10.

Oregon Farm Bureau would be interested in seeing factors or methods that Department would use to determine the value of the water right.

350 CHAIR NORRIS: The Commission should establish this in the public hearing process.

Volunteers Trosi to help on work group.

386 TROSI: Accepts.

390 MARJO NELSON, DARROW ROCKS COMMUNITY ASSN.: Concerned about the abandoned water rights from the small farmers standpoint.

Education is needed to let them know they do have abandoned rights.

380 CHAIR NORRIS: Will any of them be candidates for turning abandoned water rights back to the state.

390 NELSON: Yes.

408 REP. DWYER: Appropriators resist reporting because of detection of abandoned rights.

430 CHAIR NORRIS: Misunderstanding of water law by users is vast.

435 NELSON: Will work with Water Resources Department to put something in the application language that will describe an abandoned right.

440 CHAIR NORRIS: Adjourns meeting at 2:57 p.m.

Submitted by: Reviewed by:

Pat Zwick, Beth Patrino, Assistant Administrator

EXHIBIT LOG:

A - Testimony on HB 2335 - Jan Boettcher - 1 page
B - Testimony on HB 2336 - Dave Nelson - 1 page

