

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.

HOUSE COMMITTEE ON WATER POLICY

January 24, 1991 Hearing Room D 1:30 p.m. Tapes 8 - 9

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 2367 - Allows water right holder to temporarily change point of diversion, place of use, or purpose of use of water for period of one year or less. - Pub Hearing HB 2189 - Modifies representation requirements of Water Resources Commission's Groundwater Advisory Committee. - Pub Hearing

WITNESSES: Dave Nelson, Oregon Water Resources Congress Jill Zarnowitz, ODF&W Jeff Curtis, ODF&W Bev Hayes, Water Resources Dept. Steve Applegate, Water Resources Dept. Jeannette Holman, Legislative Counsel Tom Simmons, Water Watch Larry Trosi, Oregon Farm Bureau Ron Yokum, D.R. Johnson Lumber Co. & Douglas County Water Advisory Board

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TAPE 8, SIDE A

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

012 BETH PATRINO, COMMITTEE ADMINISTRATOR: Reviews agenda for the day.

Summarizes HB 2367 which allows a water right holder to temporarily change the use, place of use, or point of diversion of a water right as long as such change does not injure any existing water right or unreasonably affect fish, wildlife, or other instream uses. It limits these to the quantity of water consumptively used by the water right holder and the change cannot exceed the period of one year.

027 CHAIR NORRIS: Opens public hearing on HB 2367.

PUBLIC HEARING HB 2367

040 REP. DWYER: HB 2367 was pre-session filed at the request of several parties who wanted to be able to change their point of diversion. The bill was filed as a courtesy.

045 DAVE NELSON, OREGON WATER RESOURCES CONGRESS: Jan Boettcher will be submitting written testimony.

In the past several years, bills have been passed that allowed irrigation districts to make some movement of water in quarter-quarter sections.

The proposed legislation allows certain transfers of the site of application.

Our specific interest and only concern in HB 2367 is that users in districts not be affected by the transfer of water by a user from a point of diversion or point of application where a subsequent user may be dependent upon the tail water or return flows of the upstream user.

Paraphrases final two paragraphs of written testimony (EXHIBIT A).

085 REP. SOWA: Is "unreasonably affect" defined in the law?

090 NELSON: I don't believe so. The only additional protection we might seek would be for an irrigation district to have the right to review and comment or veto that transfer before it can occur.

100 REP. SOWA: Is there a provision in the law for ODF&W to get involved and make a determination each time there is an application for change, and determine if that change would unreasonably affect fish and wildlife or other instream uses?

105 NELSON: ODF&W could best answer that.

As a temporary transfer, I am not sure there would be.

115 REP. DWYER: This bill, as current law, only allows a diversion to move 500 feet.

Could that 500 foot movement adversely affect?

120 NELSON: I think there would be a small number of instances, but the potential is there.

122 REP. DWYER: Does everyone within an irrigation district, that has a water right, belong to the irrigation district?

125 NELSON: I believe they would. A water right holder might not be dependent on the district's delivery.

134 REP. DWYER: Why do you feel we should give the district the right to comment on those transfers?

135 NELSON: We would not be concerned about the individual who owns an individual right, but only if that right makes up a part of the district.

135 REP. SOWA: There is no 500 feet limitation in the new language.

150 CHAIR NORRIS: The old language remains.

155 PATRINO: The 500 foot limitation remains, but that is within the regular transfer process. This bill would allow temporary transfers and there is no 500 foot limitation.

175 REP. DWYER: Did cities want the bill introduced as part of their package to allow them to get the water?

180 NELSON: Believes that is correct.

182 REP. DWYER: Cities wanted to be able to buy water that was not being used at one point and put it to some other use which may not be irrigation.

185 REP. SCHROEDER: Line 14 of HB 2367 says "may be applied to beneficial use on land". Not sure that can be interpreted to mean to cities.

195 NELSON: Believes definition of "beneficial use" is broad enough to include almost anything.

205 CHAIR NORRIS: Reads and comments on page 2, lines 16 and 17 of HB 2367.

If we could tie that to the general purposes of this statute, we could apply the 500 foot maximum.

216 NELSON: We are not the advocates for this bill. We want to be sure we do not run into problems.

230 REP. SOWA: Refers to and comments on page 1, line 22 of the bill.

255 REP. MARKHAM: Asks for definition of "unreasonably affect" from ODF&W.

263 JILL ZARNOWITZ, ODF&W: ODF&W has concerns with the wording "unreasonably affect" because we do not know what it means, either. We would like to see wording that says "does not result in any additional harm" or wording that would require no change from the existing status.

We want to be sure that fish and wildlife is not affected by that temporary transfer.

290 CHAIR NORRIS: Do you think that transfers should be done in coordination with ODF&W within a reasonable time?

295 ZARNOWITZ: Yes.

300 REP. DWYER: Bill requires Water Resources Commission to review the proposed change and make the determination, and they do not have the knowledge to do that.

ODF&W or Parks should be the agency to determine whether the temporary use would injure fish, wildlife, or other instream uses.

315 JEFF CURTIS, ODF&W: We would be happy to work with staff and others to try and work out a satisfactory solution.

320 REP. SOWA: Refers to HB 2990 (1985 Session) regarding hydroelectric systems. Would ODF&W have to make a ruling that no fish would be

involved in that process?

330 ZARNOWITZ: I believe if a new hydroelectric facility were involved, that would trigger that statute. An existing facility would probably not be affected by HB 2990.

350 CURTIS: Changing language in HB 2367 to deal with "additional harm to fish and wildlife" would resolve the situation.

355 REP. MARKHAM: A person applying would need an expeditious answer.

365 CHAIR NORRIS: Agrees.

370 REP. SCHROEDER: Gives a scenario and asks if it would be considered unreasonably affecting the fish?

383 ZARNOWITZ: I would expect that moving an intake downstream would generally benefit fish because water would remain in the stream for a longer distance. Moving water upstream could be less beneficial.

If you are talking about a deeper part of the river which is a holding area for fish, fish would probably not be affected.

TAPE 9, SIDE A

010 BEV HAYES, WATER RESOURCES DEPT: Introduces Steve Applegate, water rights section manager.

Water Resources Department likes the bill and feels it provides a simplified method for processing transfers for both the applicant and the Department. In the last year and a half we dealt with four such transfers. The Department and the applicant would both be saved time and money with HB 2367.

We see benefits during water shortages when temporarily changing water use would be beneficial. There is no fiscal impact to the Department.

There is no provision in the bill for fees. Assumes current fees would apply.

The provision in existing law allowing individuals to follow the naturally changing stream channel is the provision you are talking about. That means they do not have to apply for a transfer with WRD as long as the point of diversion does not exceed 500 feet.

WRD feels that as long as the bill meets the injury test that is currently required under transfer law, as well as any other qualifications you might put in the bill, it would allow a transfer anywhere.

040 REP. DWYER: Why would WRD want to be the one to make the determination whether fish and wildlife would be affected by these points of diversion changes?

042 HAYES: We already consult with ODF&W on applications of all kinds.

We are the agency under the law required to do public interest determinations on applications.

We would have no problem if you want to insert the language suggested by

Jill Zarnowitz.

055 STEVE APPLGATE, WATER RESOURCES DEPT.: We are only talking about a temporary change in use to an existing water right. Effects on fish would normally be minimal.

060 REP. DWYER: Do screening requirements go with the point of diversion change?

065 APPLGATE: Yes, if the original diversion was required to be screened.

070 REP. MARKHAM: What is magical about the 500 foot figure?

075 APPLGATE: It was an arbitrary figure to determine when an individual was required to follow the formal transfer application.

085 REP. DWYER: Under this proposal, could you move your pipe anywhere along your portion of the stream on a temporary basis without formal application?

090 APPLGATE: No. Any time there is a change in point of diversion of any distance, if the change is other than for the purpose of following a natural change of stream course, and without regard to property boundaries, a formal transfer application subject to the injury provision is required.

100 REP. SOWA: Cautions the committee that in addition to the point of diversion, two other criteria are involved; the use, and the place of use.

Since the statute requiring public use determination was enacted, have you issued any water rights without first making public use determinations?

110 HAYES: We have had rules in place for three or four years that outline how WRD will apply a public interest test to new applications.

It has always been the position of WRD that public interest determinations were made through basin program adoptions.

We believe something more than that is needed, and that is why the current rules were adopted by the Commission.

125 REP. SOWA: A lot of water rights have been approved since the law was put into effect that have had no public interest determination. Those rights would be eligible for transfer or change of use with this bill.

130 CHAIR NORRIS: Is it correct to assume we would be talking "consumptively used" within the limits of the permit or certificate?

135 APPLGATE: Yes. The portion of the right subject to transfer in the normal standard transfer process is limited to the amount of water in the water right or the amount of water they can demonstrate they have consumptively used, whichever is less, up to the limits of the right.

150 JEANNETTE HOLMAN, LEGISLATIVE COUNSEL: In my opinion the language "beneficial use on land" on line 14 would limit the use under the transfer to a land application.

Water use generally goes with the land it is appurtenant to and this just makes an exception to that and says it can be used on other land.

160 CHAIR NORRIS: Is there any beneficial use not involving land application where the word "appurtenant" would apply?

170 HOLMAN: Will have to check and return with an answer.

185 REP. SCHROEDER: Gives example of aqua facility on farm land and asks if that is beneficial use on the land.

190 HOLMAN: No.

195 REP. SCHROEDER: Is water use for climate control in cranberry operations considered in this definition?

196 HOLMAN: Unable to answer.

Asks committee whether they want to limit or not limit water use to the land.

200 REP. SOWA: Understands cities asked for the bill and were thinking of temporary diversions of water to a city. Some committee members have a lot of problems with the bill. The bill also lets Water Resources make some decisions we are not comfortable with them making.

230 TOM SIMMONS, WATER WATCH: We feel the bill has some good features, especially from the view of an irrigation district.

If the districts were given more flexibility in moving water around temporarily, more benefit could be derived from the state's water, provided proper safeguards are in place.

Does not understand "water consumptively used" page 1, line 8.

Suggests "beneficially used, without waste".

Not suggesting specific amendments at this time.

Makes general comments.

296 LARRY TROSI, OREGON FARM BUREAU: The bureau would support this legislation and feels it would help certain aspects of agriculture.

The 60 day time period in Sec. 3. would be detrimental to some agricultural practices.

Would like the Director to be able to make a decision based on a recommendation from a local watermaster with approval by the Commission at a later date within the 60 day limit.

325 CHAIR NORRIS: Concerns duly noted.

330 REP. SOWA: The only reference to time limit in the bill is that if the determination can not be made within 60 days, they have to do certain things. It does not say that they can't make the decision after one day.

345 RON YOKUM, REPRESENTING D.R. JOHNSON LUMBER COMPANY & DOUGLAS COUNTY

WATER ADVISORY BOARD: We have endorsed this concept.

Gives examples of specific uses in Douglas County that could benefit by the type of transfer that would be allowed with passage of HB 2367.

Concept is good, and would be glad to work with committee.

385 REP. DWYER: Would the uses as defined in the bill be applicable to the examples you gave?

395 YOKUM: Our industrial permits are specific to the land covered in the permit.

TAPE 8, SIDE B

004 CHAIR NORRIS: We have consensus that the concept is good. Asks Beth to work with interested parties to develop good legislation.

015 REP. SOWA: Is not part of the consensus at this point.

020 CHAIR NORRIS: Closes public hearing on HB 2367 and opens public hearing on HB 2189.

PUBLIC HEARING HB 2189

030 BEV. HAYES, WATER RESOURCES DEPT.: Reads written testimony in support of HB 218 9 (EXHIBIT B) and submits proposed amendments requested by the Groundwater Advisory Committee (EXHIBIT C).

075 REP. DWYER: Why are the amendments presented now?

079 HAYES: While the committee had a chance to review the drafts, they had not solidified their position until after the bill was pre-session filed.

085 FRED LISSNER, GROUNDWATER SECTION, WRD: The issue before us is that the

Groundwater Advisory Committee (GWAC) originally concentrated on water well construction, driller licensing, and well construction and licensing enforcement issues.

The drilling community wanted a stronger voice and succeeded in having the legislature create this committee to guarantee their voice in the process.

Gives history of GWAC work.

HB 2189 is GWAC's attempt to include specific groups not currently represented.

124 CHAIR NORRIS: The language in the bill does not limit membership to those named.

125 LISSNER: We read the bill that those listed must be included.

125 HAYES: That is one of the reasons WRD is not excited about the proposed amendments.

135 CHAIR NORRIS: Current language does not exclude the groups proposed

in the amendments.

140 LISSNER: Well constructors have separate examination and licensing.

150 REP. DWYER: Are those people excluded from participating under the original language of the bill?

154 LISSNER: No.

160 REP. MARKHAM: Will WRD go to the wall to get the advisory committee enlarged?

170 HAYES: No. I do think that WRD feels uncomfortable that the group as currently composed does not represent all the range of interests that should be represented when some of the environmental or agricultural issues are discussed.

The bill allows, but does not require travel reimbursement.

190 REP. SOWA: How many times since the committee has been in operation has it recommended against the drilling of new wells or the protection of groundwater in areas where there is a groundwater shortage?

198 LISSNER: Unable to answer. They would not typically deal with issues related to a particular well or groundwater development.

212 REP. SOWA: Reads present language.

220 LISSNER: The closest the committee has come on that is in developing well construction standards for water wells and monitoring wells, and advising the Department as we approach a particular area to place restrictions on water use.

220 REP. SOWA: Have you ever conducted a license exam or been involved in the preparation of examination questions?

225 LISSNER: Yes. The committee has assisted the Department in developing questions for exams.

227 REP. SOWA: I want to determine if the committee needs to be continued, or whether they have been fairly inactive for the past few years.

235 REP. SCHROEDER: Where are committee meetings held?

240 HAYES: In Salem as a rule.

242 LISSNER: We have held only one meeting out of Salem in the past four or five years.

245 REP. SCHROEDER: Has anyone refused to serve on the committee because of lack of expense money.

250 LISSNER: Can remember only one.

It would be our desire to get representation outside of the Willamette Valley.

260 REP. SCHROEDER: Would members get a per diem if they lived less than 50 miles away?

266 LISSNER: Don't think we would pay overnight or meal expenses if they were that close.

270 REP. SCHROEDER: Might be cheaper to have them put in a bill for actual expenses rather than paying per diem.

280 HAYES: We do not intend expect to pay per diem.

320 CHAIR NORRIS: Asks Beth to check with Legislative Fiscal Office on the per diem question.

335 TOM SIMMONS, WATER WATCH: If we are going to do this, suggests that since streamflow restoration is a topical thing, we also form an advisory committee on streamflow restoration to perform the same functions that the groundwater advisory committee does.

I do not see why the state should pay people to do citizen activities at this time, with current financial restrictions.

360 REP. DWYER: Would the failure of the committee to include GWAC travel expenses be fatal to the existence of the committee?

380 LISSNER: Unable to answer.

390 CHAIR NORRIS: What is an "environmental group"?

410 REP. DWYER: Suggests substituting "nonconsumptive user".

430 REP. SOWA: Suggests deleting names of all groups and substituting "represents a range of interest in groundwater management.

437 CHAIR NORRIS: Closes public hearing on HB 2189 and adjourns meeting at 2:58 p.m.

Submitted by: Reviewed by:

Pat Zwick, Beth Patrino, Assistant Administrator

EXHIBIT LOG:

A - Testimony on HB 2367 - Dave Nelson - 2 pages
B - Testimony on HB 2189 - Bev Hayes - 1 pages C - Proposed
Amendments to HB 2189 - Bev Hayes - 1 pages