

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

TAPE 25 WAS DAMAGED AND NOT USED.

March 5, 1991Hearing Room D 1:30 p.m.Tapes 26 - 27

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

WITNESSES:Bev Hayes, Water Resources Department Reed Marbut, Water Resources Department Jan Boettcher, Oregon Water Resources Congress

MEASURES CONSIDERED: SB 202 - Clarifies that spring or seepage waters are surface waters. - Public Hearing

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TAPE 26, SIDE A

010 CHAIR NORRIS: Calls the meeting to order at 1:33 p.m.

Asks Committee Administrator to comment on SB 202.

012 BETH PATRINO, COMMITTEE ADMINISTRATOR: Senate Bill 202 allows:

One registration statement to be submitted for multiple springs or seepage sources provided that the sources have the same nature of use and date of initial beneficial use and are located on the contiguous property of the registrant. A single application fee to be submitted with those types of applications.

The bill clarifies that seepage and spring waters are surface waters and accords the right to the use of seepage and spring waters to the person on whose lands seepage or spring waters arise and allows the person to apply for a certificate of registration if the waters were put to beneficial use before January 1, 1991 and the waters naturally remained on one property at the time the use began.

The bill directs watermasters relying on well logs or other

documentation to regulate the use or distribution of groundwater, to do so in accordance with ORS 537.545 (3)

The bill repeals Sec. 3, Chapter 939, Oregon Laws 1989 which added certain sections of SB 261 (1989) to groundwater statutes.

The Senate amended the original bill to allow land owners to file for multiple springs on a single registration statement with one registration fee and removed references to groundwater statutes.

The bill passed the Senate Committee on a 3-0 vote and I think it was unanimous on the floor.

035 Rep. Dwyer is excused at 1:36 p.m.

PUBLIC HEARING SB 202

045 BEV HAYES, WATER RESOURCES DEPARTMENT: Comments on what SB 202 does and

the problem being addressed, paraphrasing written testimony (EXHIBIT A).

The only really substantive item in the bill is the language the Senate added to allow people with multiple springs to file a single registration and pay a single fee.

Water Resources Congress brought the multiple users amendment.

Continues review of (EXHIBIT A).

073 REP. MARKHAM: What happens if use began after 1/1/91?

075 HAYES: They would file for a water right if they want one.

The bill was intended to address the situation where the original owner did not get a water right and perhaps then was out of the use of the water, and give that person an opportunity to file a registration and claim to that water.

099 REP. MARKHAM: Will the person have to get a water right to protect that?

100 HAYES: He can file a registration statement. Today, if the water does not go off your property, you do not need to get a water right, but you can if you wish.

Continues review of (EXHIBIT A).

140 REP. MARKHAM: Will Water Resource's fee income be reduced by allowing one registration to replace multiple registrations?

147 HAYES: No, because I believe we have been accepting single registrations for multiple springs and only charging a single fee.

143 REED MARBUT, WATER RESOURCES DEPARTMENT: Gives section by section review of SB 202.

150 REP. SOWA: Are there adequate definitions of springs and seepages in the law?

153 MARBUT: Springs are defined in common law through many court cases in Oregon. They are the vestiges of the riparian right that remains in Oregon which was originally a mixed right state.

For the purposes of SB 202, springs are defined in the definitions under Sec. 3, beginning on line 32 where it is clearly stated that they it must rise, remain, and not flow off the property in a natural channel. The other definitions we would depend on are the definitions of groundwater where a distinguishing definition element between groundwater and surface water is needed.

175 REP. SOWA: What would happen if a person was digging a well, found water, and before the well was capped, it was determined that water would run out either as an artesian well or natural flow. Would that be a spring?

183 HAYES: If you hit artesian pressure when drilling a well, that would not change the fact that the water is groundwater. Where a spring starts to recede and a person digs down to get the water, our groundwater people have taken the position that a case by case examination is needed to determine if you are in surface water or groundwater .

200 MARBUT: Gives in-depth section by section review of SB 202.

250 CHAIR NORRIS: Is it universally understood that the phrase "on one property" is talking about one piece of property under one ownership?

254 MARBUT: That is our intent. We are stating that the water does not flow across a property line.

Understands committee's concern and can add language to refine the issue if the committee wishes.

265 CHAIR NORRIS: Concerned that the phrase is not descriptive enough and asks Mr. Reed to explore the issue.

270 REP. SCHROEDER: We could change it to say "one ownership" or "the same ownership".

Doesn't know of any water in Western Oregon that stays on one property in the rainy season.

283 HAYES: If the water does, and has traditionally run off the property, they always needed to get a water right or permit to use that water. There are cases where springs arise on one property and never run off.

Suggests that if we change it to "ownership" we make it clear that it is one parcel of land because you can own many parcels of land that are not contiguous.

300 CHAIR NORRIS: The issue might cause a problem in the future.

305 MARBUT: An additional clause to (b) may be helpful. Will prepare language.

Continues review of SB 202.

340 CHAIR NORRIS: What would the priority date be for someone who filed

on 12/31/90?

347 MARBUT: The date initial use began.

355 REP. SOWA: Why is the bill before us and how many people have filed?

365 MARBUT: This bill was only to clean up the language of the old law which seemed to be confusing, and to add the right for a person to file multiple registrations.

A person need not file the registration before 1991. The use must have been initiated before the end of 1990.

We envision spring registrations will be filed for many years by people who have been using springs and wish to document an earlier use than a current application permit and certificate and establish a priority date. The purpose of SB 202 is to refine the language in law and clarify that it applies only to surface water.

395 REP. SCHROEDER: Can a person applying for a multiple spring or seepage permit use an aerial photo and mark where springs and seeps are?

400 MARBUT: Yes. Any appropriate document is acceptable.

TAPE 27, SIDE A

002 REP. SCHROEDER: Some people are not applying because of a misunderstanding that they will incur substantial surveying costs.

Concerned that water draining from a seep or spring in the winter might be claimed to be a permanent water course and a right claimed on it.

010 HAYES: When we talk about spring water going off a property, we mean a definite channel off the property.

015 REP. SCHROEDER: What happens if there is a definite channel from a spring that is gushing because of winter rain, but the channel dries up in the summer time?

018 HAYES: The person would need a water right and has always needed a water right to use that water.

022 CHAIR NORRIS: If a spring is on a person's property but the water has not been used prior to 1/1/91, how would it be affected?

033 MARBUT: You have not put it to beneficial use and have no right. You would have to go through the regular permitting process.

You can't file a registration because you have not used the water.

This is a vestige of riparian right that comes to an end January 1, 1991.

050 REP. SCHROEDER: If the person files on January 1, 1991, and is the only one filing on that spring, will he have the primary water right?

051 MARBUT: Yes.

056 REP. MARKHAM: If a person has a spring and has not filed on it by

January 1, 1991, can anyone else file against it as long as he owns the land?

060 HAYES: No one can file a claim except the owner if the spring is only on his property.

If you divide the property, you will be required to file a water right if you are using the water.

075 CHAIR NORRIS: It is for the protection of the spring head owner to file a registration.

080 JAN BOETTCHER, OREGON WATER RESOURCES CONGRESS: We are in support of the bill as amended. All of the items we requested to be incorporated into SB 202, and the changes identified by Kip Lombard, have been incorporated in the Senate committee and we support the bill as currently written.

085 REP. SOWA: I still have problems with the concept of this bill.

The language seems to say that people who dug a reservoir for their spring will be prohibited from using the water or be required to go to Water Resources Department to file for a water right application. Is that your intent in supporting this bill?

105 BOETTCHER: Has heard discussion about where the difference in depth lies between a groundwater right and a surface water but can not recall the difference.

Sounds as if the groundwater application of the springs could be dealt with as surface water. Our concern was that when the statute was placed partially in the groundwater statutes it was very confusing and if one had to build a legal case, it probably would not be a viable thing to do because of the confusion in the statutes.

We support the bill because of situations seen in the Eastern part of the state where there has been major subdivision and a spring that was at one time on a 160 acre ranch is now on subdivided property owned by a number of users. Water battles have occurred because of that.

Will talk to our legal people about concerns they might have in that area.

127 CHAIR NORRIS: Closes public hearing on SB 202.

The committee will not go into work session today since questions have been raised by Rep. Sowa which Jan Boettcher has agreed to explore further.

Bill will be rescheduled at the appropriate time.

135 PATRINO: Reviews Thursday's agenda.

155 CHAIR NORRIS: Adjourns meeting at 2:14 p.m.

Submitted by:      Reviewed by:

Pat Zwick, Beth Patrino, Assistant Administrator

EXHIBIT LOG:

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