

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

April 23, 1991Hearing Room D 1:15 p.m.Tapes 51 - 54

MEMBERS PRESENT:Rep. Chuck Norris, Chair Rep. Bill Dwyer, Vice-Chair Rep. Bill Markham Rep. Walt Schroeder Rep. Larry Sowa

VISITING MEMBER:Rep. Dave McTeague

STAFF PRESENT: Beth Patrino, Committee Administrator Pat Zwick, Committee Assistant

WITNESSES:Bev Hayes, Water Resources Department Rep. Rod Johnson Bob Hall Don Cruz John Borden, Water Resources Department Glen Stonebrink, U. S. Department of Agriculture Jim Myron, Oregon Trout Larry Troisi, Oregon Farm Bureau Bill Dryden, Boise Cascade Corporation Rep. Tim Josi Les Helgeson, Friends of Nestucca Betty Goodeagle, Friends of Nestucca Beverly Johnson, Friends of Nestucca

MEASURES CONSIDERED:HJR 61 - Requires Water Resources Commission to establish Hoodland Area Water Supply Commission. - Work Session

HB 3136 - Exempts water right application for pond or reservoir of less than five acre feet or less than ten feet in height from requirement that maps showing location and description of water right be prepared by water right examiner. - Public Hearing

HB 3389 - Exempts from requirement to obtain water right permit or certificate, use of water for pond or reservoir located on seasonal water source and having capacity of less than five acre feet or being less than ten feet in height. - Public Hearing

HB 3390 - Permits use of water under water right permit or certificate at any location owned by holder of right or permit without applying for transfer of water right. - Public Hearing

HB 3323 - Exempts portion of Nestucca River from scenic waterways designation. - Public Hearing

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010 CHAIR NORRIS: Calls the meeting to order at 1:17 p.m.

Opens work session on HJR 61.

WORK SESSION HJR 61

030 BETH PATRINO, COMMITTEE ADMINISTRATOR: Reviews HJR 61-1 amendment (EXHIBIT A).

068 BEV HAYES, WATER RESOURCES DEPARTMENT: Offers proposed amendment which is written to address a concern of Water Resources Commission (EXHIBIT B).

090 MOTION: REP. DWYER: Moves to insert on line 27 after "the", "Water Resources Commission for submission to the"

VOTE: There being no objection, amendment is adopted.

130 MOTION: REP. DWYER: Moves that "task force" be substituted for the word "Commission" in (5) of the amended bill.

135 VOTE: There being no objection, amendment is adopted.

137 MOTION: REP. SCHROEDER: Moves the 61-1 amendments as prepared and amended, except on line 6, restore "is a matter".

VOTE: There being no objection, amendment is adopted.

142 MOTION: REP. DWYER: Moves HJR 61 as amended to the floor with a do pass recommendation.

146 VOTE: On a roll call vote, motion passes. Rep. Markham is excused.

155 CHAIR NORRIS: Rep. Shiprack will carry the resolution.

Closes work session on HJR 61.

Opens public hearing on HB 3136 and HB 3389.

PUBLIC HEARING HB 3136 AND HB 3389

153 PATRINO: Reviews provisions of HB 3136 which has no revenue impact. There is a fiscal impact and no subsequent referral.

167 CHAIR NORRIS: Will HB 3136 be needed if HB 3389 passes?

172 REP. ROD JOHNSON: No. Addresses needs at which HB 3136 and HB 3389 are aimed.

Speaks of hearings held in Roseburg.

HB 3136 would delete the requirement that a certified water examiner be required to prepare the maps.

Proposes three amendments for committee consideration:

>On page 3, line 2 change five acre feet to 9.2 acre feet to conform with Water Resources' current 9.2 acre feet as a break point for the difference in pond treatment.

>Add paragraph five that says permit fee cannot exceed \$50 per pond

>Add a line at the end of line 4, page to say that maps will conform to rules promulgated by Water Resources to achieve uniformity.

Oregon should encourage water impoundments wherever it can.

287 CHAIR NORRIS: Not everyone agrees that water running to the ocean is wasted.

290 REP. DWYER: How would you deal with the attorney general opinion that says that storage is subordinate to instream water rights.

297 REP. JOHNSON: The attorney general can be overruled with statutes.

315 REP. SCHROEDER: Wants language to designate the quality of documents submitted to the Water Resources Department?

330 REP. JOHNSON: Will confer with Water Resources Department for language if committee wishes.

360 REP. SOWA: Is it your understanding that statute refers only to enough water to fill your pond one time during the year?

365 REP. JOHNSON: These ponds are not used for irrigation, but for stock watering.

378 REP. DWYER: Issue is more complicated than you think.

Recalls case which Rep. Campbell had a bill drafted to address. Committee did not change the law for that party.

Why should we change the law for you?

REP. JOHNSON: Because we have a stock pond that has been used by the same farmer for fifty years and now a water rights person comes out and says give me a thousand dollar bill or you have to take this dam apart.

006 REP. DWYER: You mean they built a stock pond without a permit.

009 REP. JOHNSON: The practical application of the law until the last couple of years has not required permits for these kinds of uses.

Refers to Line 8 of HB 3389 which requires that the source be a seasonal water source. The distinction is that we are damming up a little water and holding it back. If we did not do that, it would run out to the ocean in the Spring.

018 REP. DWYER: Define a seasonal water source.

020 REP. JOHNSON: A creek that only runs in the winter. This bill is not designed to allow people to make these kinds of dams on streams that run all through the summer.

025 REP. DWYER: Would like a list of the ponds in existence without permits. Would like to see what reach of water they are really on to see if they only flow in the winter season.

032 REP. SOWA: Most of the ponds I know about are on springs and seeps

and the water never got to the stream.

038 REP. JOHNSON: May need to add language to make sure that it applies to streams that never get into a defined water channel. Those are not public water so the permitting process does not come up.

046 ROBERT HALL: Describes types, purposes, and locations of ponds he builds.

Describes what type of pond he understands is covered by the bill.

Current cost would be prohibitive. Was unaware of any requirement for permits for these types of impoundments.

Reads written testimony asking for support in saving runoff water with passage of HB 3136 and/or HB 3389 (EXHIBIT C).

210 DON CRUZ: Supports Mr. Hall's testimony.

If fees in place are imposed it will be difficult for existing ranchers to survive and would also stop any future development.

245 REP. DWYER: Agrees that conservation of water as described by Mr. Cruz is desirable.

Thinks something can be worked out to address your concerns. Would like to encourage use of the types of storage facilities you describe.

340 JOHN BORDEN, WATER RESOURCES DEPARTMENT: Reads written testimony on HB 3136 and HB 3389 stating what the bills will do, the problem, department concerns, history, department/commission position, recommended alternative, and other potential alternatives (EXHIBIT D).

TAPE 51, SIDE B

BORDEN: Continues paraphrasing (EXHIBIT D).

137 REP. SOWA: Forestry Department is concerned about ponds on forestry land. Mentioned that ponds might be used for dust abatement on roads and fire fighting. Could those uses be considered in this bill or would another permit be required for these uses?

152 STEVE APPLIGATE, WATER RESOURCES DEPARTMENT: We are suggesting that this alternative would apply to any beneficial use of the stored water.

155 REP. SCHROEDER: Would 9.2 acres be more appropriate as proposed by earlier witnesses?

160 BORDEN: Prefers five feet but would be willing to talk about the larger amount.

165 REP. SCHROEDER: Would HB 3136 accommodate ponds on a sloping hillside where float valves control the flow of water to various areas?

170 APPLIGATE: Believes so. The change we are suggesting to ORS 537.400, which is not currently dealt with in the bill, would make it clear to Water Resources Department that that use could be authorized under a single permit.

177 REP. JOHNSON: Appreciates Water Resources willingness to address

the concerns.

If you have a stream that goes absolutely dry between August 1st and October 1st each year, and a person builds a pond somewhere on that stream and holds back 9.2 acre feet of water so that down below the pond, for that same time, the stream is still dry, what has changed as far as the water use of the main stream down below?

195 BORDEN: Hard to generalize a response because there are many variations.

Courts have ruled, and the doctrine of prior appropriation has often been interpreted that anything that is tributary, even seasonally, is susceptible to the doctrine of prior appropriation and the permitting and regulating that goes with it.

To the extent that one might have reduced some water that was once tributary, that potentially or actually works an injury on someone.

206 REP. JOHNSON: Using my hypothetical, in either case there is no water going into the stream above ground.

230 CHAIR NORRIS: Calls for five minute recess at 2:33 p.m.

Reconvenes at 2:40 p.m.

240 GLEN STONEBRINK, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE: Paraphrases written testimony concerning stock ponds (EXHIBIT E). Attached to Mr. Stonebrink's testimony are letters to Sam Wade dated March 5, 1991, Bill Young, dated February 7, 1991, and a Resource Enhancement Project budget for Trout Creek.

340 REP. MARKHAM: Do you have an opinion of small ponds as they relate to forestry?

354 STONEBRINK: Can only talk about private lands in forestry. Our regulations do not address fire fighting aspects of small ponds.

395 JIM MYRON, OREGON TROUT: Reads written testimony in opposition to HB 338 9 (EXHIBIT F).

TAPE 52, SIDE B

010 LARRY TROSI, OREGON FARM BUREAU: Testifies in support of HB 3136.

040 BILL DRYDEN, BOISE CASCADE CORPORATION: Reads written testimony stating

concerns with HB 3389 (EXHIBIT G).

Willing to participate in a work group on the bill.

107 REP. DWYER: Agrees there is a problem, but it is a Water Resources Department problem and not a forest practices problem.

127 CHAIR NORRIS: Closes public hearing on HB 3136 and HB 3389.

Assigns bills to work group coordinated by committee administrator.

Will try to have a work session by May 9.

156 REP. DWYER: Asks unanimous consent to allow Rep. Markham to vote on HJR 61.

Rep. Markham votes Aye.

195 CHAIR NORRIS: Opens public hearing on HB 3323.

Closes public hearing on HB 3323.

Opens public hearing on HB 3390.

PUBLIC HEARING HB 3390

200 BEV HAYES, WATER RESOURCES DEPARTMENT: Explains what Water Resources Department thinks HB 3390 does.

240 REP. DWYER: Could you facilitate guarantees that the water does flow into the same stream basin?

260 HAYES: In past sessions we have supported the idea of a single land owner who may have several pieces of contiguous property being able to move that water if, before the irrigation season, they report to Water Resources where it will be used and meter the use.

Would be willing to work with committee on HB 3390.

278 DON CRUZ: Testifies in support of HB 3390.

340 CHAIR NORRIS: Is your farming operation on contiguous property?

345 CRUZ: Not entirely.

350 HALL: Speaks in support of HB 3390.

370 REP. DWYER: Would you expect to be able to take water from the North Umpqua, take it across the ground, then return it to a reach that drains into the South Umpqua?

375 CRUZ: Have pumped water out of the South Umpqua that might return water to the North Umpqua because of the way water rights are constructed. We farm between the two rivers.

Can reach most of our land from either river. Oregon's water right laws were not designed with the farmer in mind.

TAPE 53, SIDE A

CHAIR NORRIS: Closes public hearing on HB 3390.

Opens public hearing on HB 3323.

PUBLIC HEARING HB 3323

025 REP. TIM JOSI: Reads written testimony in support of HB 3323 (EXHIBIT H)

Urges committee support of HB 3323.

089 LES HELGESON, FRIENDS OF NESTUCCA: Reads written testimony in support of HB 332 3 (EXHIBIT I).

200 BETTY GOODEAGLE: Speaks in support of HB 3323, reading written testimony (EXHIBIT J).

280 REP. SOWA: Where is Parks and Recreation Department in their planning process?

285 GOODEAGLE: They have submitted two inaccurate drafts and have approached us with a new planner who says he will be open to working with the people. We are very cautious. 293 BEVERLY JOHNSON: Speaks in support of HB 3323 reading testimony from (EXHIBIT K).

340 REP. JOSI: Reads letter from Quentin Borbu into the record (EXHIBIT L).

360 REP. SOWA: Did you oppose the scenic river bill when it was up for a vote of the people?

368 JOHNSON: Extensively.

385 REP. JOSI: Agrees. This initiative passed in the urban areas and lost in the rural areas. Believes that if the scenic designation for this portion of the Nestucca River were brought to the legislature, and the requirements for scenic rivers had been known, the Nestucca River would not have qualified.

TAPE 54, SIDE A

REP. SCHROEDER: Are there three designations on the state scenic waterways as there are on the federal; i.e., wild, scenic, and recreational?

010 JOHNSON: And river community.

Recreational designation is where the property is managed for public use.

020 REP. SCHROEDER: Are there a lot of accesses to this section of the Nestucca?

025 HELGESON: They try to go through our private land to get to the river.

There are significant stretches of public land and we want to leave those intact.

030 REP. JOSI: When we were fighting this initiative process, we were also fighting a Hatfield bill which had a number of rivers that would have fit into a national scenic rivers program.

We convinced Hatfield and his staff that the Nestucca River did not meet the criteria and he removed it from his bill.

This is not an anti-environmental bill. We are not against scenic river designations. We are not taking the vast majority of that river out of this designation. We think that the basic program works and is good for the state. This bill only takes care of a mistake.

050 CHAIR NORRIS: Closes public hearing on HB 3323.

Adjourns meeting at 3:52 p.m.

Submitted by:      Reviewed by:

Pat Zwick,              Beth Patrino, Assistant Administrator

EXHIBIT LOG:

A            -            HJR 61-1 Amendment - Staff - 1 page B            -            HJR 61  
Proposed Amendment - Bev Hayes - 1 page C            -            HB 3136 and HB 3389  
Testimony - Robert Hall - 1 page D-HB 3136 and HB 3389 Testimony - John  
Borden - 3 pages E-HB 3136 and HB 3389 Testimony and Exhibits - Glen  
Stonebrink - 6 pages F-HB 3389 Testimony - Jim Myron - 1 page G-HB 3389  
Testimony - Bill Dryden - 2 pages H-HB 3323 Testimony - Rep. Tim Josi -  
2 pages I-HB 3323 Testimony - Les Helgeson - 20 pages J-HB 3323  
Testimony - Betty Goodeagle - 5 pages K-HB 3323 Testimony - Beverly  
Johnson - 3 pages L-HB 3323 Letter - Rep. Josi - 1 page