

SENATE COMMITTEE ON WATER AND LAND USE

March 10, 2003
3:00 p.m.

Hearing Room D
Tapes 25-26

MEMBERS PRESENT: **Sen. Ted Ferrioli, Chair**
 Sen. Charlie Ringo, Vice-Chair
 Sen. Jason Atkinson
 Sen. Rick Metsger

STAFF PRESENT: **Judith Callens, Committee Administrator**
 Megan Jensen, Committee Assistant

MEASURE/ISSUES HEARD: **SB 590 Public Hearing**
 SB 642 Public Hearing

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 25A		
004	Chair Ferrioli	Calls the meeting to order at 3:25 p.m. and opens a public hearing on SB 590.
<u>SB 590 – PUBLIC HEARING</u>		
008	Judith Callens	Committee Administrator. Gives overview of SB 590, which requires the Water Resources Commission (WRC) to initiate proceedings for cancellation of a water right within 45 days of determination by the commission or by submission to the commission of evidence of water right forfeiture.
020	Richard Koesan	Water for Life, Inc. Provides testimony in support of SB 590. States that the bill addresses delays in processing affidavits alleging nonuse of water rights.
040	Brad Harper	Water for Life, Inc. Gives testimony in support of SB 590 (EXHIBIT A) . Explains that SB 590 proposes to improve the statute governing the process for investigating allegations of forfeiture due to nonuse. Believes that a timeline is necessary because it currently takes a long period of time for the Water Resources Commission to initiate cancellation proceedings.
078	Sen. Ringo	Asks for clarification on the 45 day limit.
082	Koesan	Explains that the limit is 45 days after the initiation of a forfeiture proceedings.
087	Sen. Ringo	Asks what event precedes the start of the 45 day limit.
090	Koesan	Replies that the 45 day limit begins after the presumption of non-use for a period of five years has been established.
093	Harper	Elaborates.
097	Sen. Ringo	Inquires if WRC is supported by general fund money.
099	Koesan	Affirms WRC is supported by general funds, fee revenues and federal money.
105	Sen. Ringo	Expresses concern about WRC's ability to fund the process.
108	Koesan	Explains that there are options for different types of processes.
124	Sen. Atkinson	Wonders if SB 590 could potentially increase the Oregon Water Resources Department's (WRD) workload and if there was a

		potential for the rule to be abused.
149	Kosesan	Elaborates on the presumption of water rights forfeiture.
172	Harper	Reiterates that the goal of SB 590 is to encourage faster processing of affidavits alleging nonuse of water rights.
183	Sen. Atkinson	Expresses concern that SB 590 might target people who are currently not involved.
190	Harper	Responds that is not the intent.
192	Chair Ferrioli	Clarifies the triggering event which starts the 45 day time limit.
198	Kosesan	Affirms.
204	Paul Cleary	WRD. Provides testimony against SB 590 (EXHIBIT B). Elaborates on the process of determining nonuse and forfeiture of water rights. Believes the process will place a burden on water users.
277	Sen. Ringo	Asks who instigates the forfeiture proceedings.
280	Cleary	Explains that it can come from another water user or from a water right holder who seeks a transfer of water rights.
288	Sen. Ringo	Inquires if WRD would initiate the process.
291	Cleary	Responds that there is a process for WRC based on its own determination of water rights forfeitures.
294	Sen. Ringo	Clarifies that WRD could actually initiate the process.
296	Cleary	Affirms and elaborates.
305	Sen. Atkinson	Asks if WRD would support a time period other than 45 days.
311	Cleary	Replies that there would still be a fiscal impact not anticipated in the Governor's budget.
325	Chair Ferrioli	Comments on the balance between a water right holder who is not using the right and the water right permit applicant who is not able to get a permit.
340	Cleary	Discusses issuing water rights permits.
359	Chair Ferrioli	Comments on the 45 day limit.
373	Cleary	Clarifies the affidavit process.
393	Adam Sussman	Discusses water rights nonuse allegations in the Malheur Wildlife Refuge.
TAPE 26, A		
003	Chair Ferrioli	Asks about the average time to process a permit.
004	Sussman	Explains timelines for issuing permits.
011	Chair Ferrioli	Clarifies that WRD would experience a significant budget impact.
022	Cleary	Affirms and elaborates.
028	Chair Ferrioli	Asks about the statute regarding forfeiture.
032	Cleary	Discusses the statute regarding forfeiture.
038	Chair Ferrioli	Inquires if there is a formal process for making a determination on the forfeiture.
039	Cleary	Affirms and remarks that WRD administrative rules address the issue.
041	Chair Ferrioli	Asks if the process includes any time limits.
042	Cleary	Replies that WRD's administrative rules contain no time limits.
043	Sen. Ringo	Believes the evidence required to begin the 45 day process should be better defined.
047	Chair Ferrioli	Comments that there is some uncertainty in SB 590.
051	Cleary	Talks about the proceedings for a cancellation of water rights.
059	Jean Wilkinson	Oregon Farm Bureau. Gives testimony in support of SB 590. Believes that SB 590 will establish a process to act on forfeiture claims.
077	Chair Ferrioli	Closes public hearing on SB 590 and opens public hearing on SB

SB 642 – PUBLIC HEARING

088	Callens	Gives overview of SB 642, which provides that a water right converted to an in-stream water right receives new a priority date if the water right converted was purchased or received as gift.
100	Cleary	Provides testimony against SB 642 (EXHIBIT C). Expresses concerns about the proposal that a water right converted to an in-stream water right be given a new priority date: <ul style="list-style-type: none"> • A proposal to change any water right priority date is inconsistent with foundation of Oregon’s water code • It is contrary to long-established Legislative policies that protect the priority date of existing rights • It could have unintended detrimental consequences to existing water users within Oregon’s water rights system
122	Chair Ferrioli	Clarifies that the concept of in-stream water rights did not exist in the early 1900s.
125	Cleary	Affirms and continues discussion of in-stream water rights.
180	Sen. Metsger	Inquires if the concern is that if the Legislature were to change the historical right of precedence in water rights, there would be no reason for future legislatures to determine that historic priority was of value.
187	Cleary	Affirms.
193	Chair Ferrioli	Asks about converting water rights uses.
197	Cleary	Explains the transfer process.
210	Chair Ferrioli	Talks about determining injury to a junior water user for the conversion to in-stream use and asks about the difficulty of converting an in-stream use to another use.
225	Cleary	Explains the transfer process from instream use to other uses.
234	Chair Ferrioli	Asks about the transfer of other water uses to in-stream water uses.
243	Cleary	Talks about the increase of in-stream lease transfers.
253	Chair Ferrioli	Confirms that in-stream leases are the current trend.
264	Cleary	Affirms.
269	Chair Ferrioli	States that SB 642 would affect a minority of the total transfers of water rights.
270	Cleary	Agrees.
274	Chair Ferrioli	Inquires if SB 642 would affect water leases.
276	Cleary	Responds that SB 642 only applies to in-stream transfers.
277	Chair Ferrioli	Expresses concern about the trend of purchasing headwater ranches with historical water rights.
300	Cleary	Responds that any transfer would go through an analysis to ensure that junior water rights holders are not injured by the transfer.
316	Chair Ferrioli	Asks how many water rights applicants have plead an injury on an in-stream transfer.
329	Cleary	Responds that he is unsure.
350	Chair Ferrioli	Points out that no one has plead an injury from in-stream water rights transfers because they have no standing.
354	Cleary	Responds that anyone can file a claim of injury, with or without a water right.
359	Chair Ferrioli	Talks about in-stream uses versus agronomic uses of water.
379	Cleary	Elaborates.
386	Chair Ferrioli	Expresses concern about water rights policies.

396	Sen. Ringo	Talks about instream water rights policies.
TAPE 25, B		
006	Chair Ferrioli	Comments that instream water rights are new and believes it is a matter for public policy.
030	Janet Neuman	Oregon Water Trust (OWT). Provides testimony against SB 642 (EXHIBIT D). Expresses concerns regarding SB 642: <ul style="list-style-type: none"> • SB 642 would change the prior appropriate system by requiring that an existing, valid water right lose its priority date because it was transferred to one particular type of use • SB 642 would deprive Oregon of an effective, voluntary, market-based tool for addressing the problems of low stream flows • SB 642 would diminish the economic value of senior water rights
216	Chair Ferrioli	Asks if OWT has an obligation to protect or promote irrigated agriculture.
225	Neuman	Explains that OWT's mission is to buy water rights for conversion to in-stream flows only from willing sellers.
235	Chair Ferrioli	Asks if she agrees with Cleary's testimony that only about 7000 acre feet of water have been converted to in-stream water rights.
238	Neuman	Suggests that includes agency in-stream water rights.
240	Chair Ferrioli	Asks for a list of water right transfers and inquires who sets the market value for instream water rights.
252	Neuman	Replies that federal agencies and non-governmental agencies convert water rights to in-stream water rights.
256	Chair Ferrioli	Asks for clarification.
258	Neuman	States that the conversion is a two part transaction.
260	Chair Ferrioli	Talks about voluntary sellers who are facing bankruptcy and foreclosure.
270	Neuman	Believes there are many reasons to sell water rights.
278	Chair Ferrioli	States that selling water rights might be a more desirable outcome over foreclosure and bankruptcy.
288	Chair Ferrioli	Asks how the transactions are funded.
290	Neuman	Discusses funding sources.
295	Chair Ferrioli	Asks if some funding is private money.
298	Neuman	Explains the sources of private money.
300	Chair Ferrioli	Asks if OWT benefits from mitigation banking.
302	Neuman	Responds that OWT receives some mitigation funds.
308	Chair Ferrioli	Asks if OWT buys water rights to sell to a third party.
311	Neuman	Explains that OWT is essentially a broker.
313	Chair Ferrioli	Asks if OWT buys water rights and gifts or sells the rights to the state.
314	Neuman	Responds that no money is exchanged between OWT and the state.
316	Chair Ferrioli	Clarifies that the process is not similar to purchasing private land for conversion to public land.
325	Aubrey Russell	Oregon Trout. Provides testimony against SB 642 (EXHIBIT E). Believes that the bill will provide no benefit to out-of-stream users while impairing the ability of individuals to work alone or collaboratively with the state and federal managers to provide for the recovery of threatened fish stocks
424	Roger Martin	Confederated Tribes of the Umatilla. Provides testimony against

SB 642 (**EXHIBIT F**). Expresses concerns:

- SB 642 would eliminate the ability of the Oregon in-stream water right program to protect stream flows
- Eliminating the priority date of the original permit would decrease the value of the original water right
- SB 642 will impact the tribal fishery on the Umatilla River and other rivers.

TAPE 26, B

014	Chair Ferrioli	Talks about priority dates in water laws.
030	Kimberly Priestley	Waterwatch. States that Waterwatch opposes SB 642 (EXHIBIT G).
053	Dave Babits	Thompson's Mills. States opposition to SB 642 (EXHIBIT H).
066	Jean Wilkinson	Oregon Farm Bureau. Provides testimony against SB 642 and discusses finding a balance for all water users.
100	Chair Ferrioli	Expresses concern about certified water rights and agronomic uses.
135	Sen. Atkinson	Asks about Oregon Farm Bureau's position on Thompson's Mills.
138	Wilkinson	Responds that the Oregon Farm Bureau supports Thompson's Mills.
142	Sen. Atkinson	States that this has been a long-standing issue.
149	Babits	Reiterates that SB 642 should not be passed in its present form and discusses senior water rights.
158	Katie Fast	Oregon Cattlemen Association. Provides testimony in support of SB 642. Expresses concerns about removing water from the land in perpetuity, which could have a negative effect on agriculture.
188	Chair Ferrioli	Comments that the issue merits further discussion. Closes public hearing on SB 642 and adjourns meeting at 5:00 p.m.
The following prepared testimony is submitted for the record without public testimony for SB 642:		
	Gail Achterman	Submits written testimony (EXHIBIT I).
188	Chair Ferrioli	Adjourns meeting at 5:00 p.m.

EXHIBIT SUMMARY

- A – SB 590, written testimony, Brad Harper, 2 pp.**
- B – SB 590, written testimony, Paul Cleary, 2 pp.**
- C – SB 642, written testimony, Paul Cleary, 3 pp.**
- D –SB 642, written testimony, Janet Neuman, 3 pp.**
- E –SB 642, written testimony, Aubrey Russell, 2 pp.**
- F –SB 642, written testimony, Roger Martin, 3 pp.**
- G –SB 642, written testimony, Kimberley Priestley, 2 pp.**
- H –SB 642, written testimony, Dave Babits, 2 pp.**
- I –SB 642, written testimony, Gail Achterman, 2 pp.**