

SENATE COMMITTEE ON WATER AND LAND USE

April 2, 2003
3:00 PM

Hearing Room D
Tapes 40-41

MEMBERS PRESENT: **Sen. Ted Ferrioli, Chair**
 Sen. Jason Atkinson
 Sen. Rick Metsger

MEMBER EXCUSED: **Sen. Charlie Ringo, Vice-Chair**

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

MEASURE/ISSUES HEARD: **SM 1 Public Hearing and Work Session**
 SB 499 Public Hearing
 SB 642 Public Hearing
 SB 645 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>
<u>TAPE 40, A</u>		
005	Chair Ferrioli	Calls meeting to order as a subcommittee at 3:18 p.m. and opens public hearing on SM 1.
<u>SM 1 – PUBLIC HEARING</u>		
008	Michael Grainey	Office of Energy. Provides testimony in support of SM 1. States that SM 1 sends an important message to Congress about the cleanup of Hanford.
116	Chair Ferrioli	Discusses the objective of SM 1. Closes public hearing and opens work session on SM 1.
<u>SM 1 – WORK SESSION</u>		
029	Sen. Metsger	MOTION: Moves SM 1 be sent to the floor with a BE ADOPTED recommendation.
034		VOTE: 3-0 AYE: In a roll call vote, all members present vote Aye.
036	Chair Ferrioli	EXCUSED: 1 - Sen. Ringo The motion CARRIES. SEN. METSGER will lead discussion on the floor. Closes work session on SM 1 and opens public hearing on SB 499.
<u>SB 499 – PUBLIC HEARING</u>		
039	Judith Callens	Committee Administrator. Provides overview of SB 499 and -1 amendments (EXHIBIT A).

065	Brad Harper	Water for Life. Provides testimony in support of SB 499 and discusses the background of SB 499.
099	Glen Stonebrink	Oregon Cattlemen Association. States support of SB 499.
104	Ed Goodman	Oregon Water Trust. Provides testimony in support of SB 499. Explains the background of the -1 amendments.
132	Sen. Atkinson	Asks if any of the task force members represents hydro operators.
136	Goodman	Responds that there is no representation of hydro operators.
137	Sen. Atkinson	Asks if that is intentional.
138	Goodman	Responds that the work group must be small to function efficiently.
149	Harper	Explains that a small work group will be more effective.
165	Roger Martin	Confederated Tribes of the Umatilla Indian Reservation (CTUIR). Expresses concern regarding SB 499 and objects to the fact that CTUIR is not represented on the task force.
200	Jean Wilkinson	Oregon Farm Bureau. Provides testimony in support of SB 499 and states that water right transfers need a task force to resolve issues.
222	Anita Winkler	Oregon Water Resources Congress. States support of SB 499 and conveys the support of Gail Achterman from the Deschutes Resources Conservancy.
238	Aubrey Russell	Oregon Trout. Provides testimony on SB 499 (EXHIBIT B). States support for a collaborative forum in which to discuss improvement of the Water Resource Department's current means of assessing injury and enlargement and expresses concern that western water law might be unwittingly revised by the task force.
297	Willie Tiffany	League of Oregon Cities. States support for SB 499 and -1 amendments.
313	Chair Ferrioli	Comments that CTUIR should have a representative on the task force. Closes public hearing on SB 499 and opens public hearing on SB 642.

SB 642 – PUBLIC HEARING

345	Adam Sussman	Water Resources Department (WRD). Provides testimony against SB 642 (EXHIBIT E). Believes a proposal to change any water right priority date is inconsistent with the foundation of Oregon's water code, contrary to long-established Legislative policy that protects the priority date of existing water rights.
415	Chair Ferrioli	Inquires who holds statutory water rights.
420	Sussman	Replies that the State of Oregon holds statutory water rights.
425	Chair Ferrioli	Asks about circumstances under which an instream water right could be converted to another use.

TAPE 41, A

003	Sussman	Explains that there are no statutes that preclude the transfer of an instream water right to some other use.
009	Chair Ferrioli	Confirms that nothing precludes the transfer of water rights and that WRD has no experience transferring instream water rights to another use.
010	Sussman	Affirms that WRD would need to explore the issue.
008	Chair Ferrioli	Inquires if the instream water right becomes part of the public trust.
015	Sussman	Explains that instream water rights are held by WRD in trust for the people of Oregon.

020	Ferrioli	Asks if the rights are covered by the Public Trust Doctrine.
021	Sussman	Affirms.
022	Chair Ferrioli	Comments on instream water rights as irrevocable transfers.
026	Sussman	Discusses irrevocable transfers.
031	Chair Ferrioli	Clarifies that the transfer of a water right would not preclude a water right holder from making a different beneficial use of that water right, but a transfer to instream water rights would not be subject to modification.
048	Glen Stonebrink	Oregon Cattlemen Association. Provides testimony on SB 642 and states that water rights belong to the land.
080	Aubrey Russell	Oregon Trout. Provides testimony against SB 642 (EXHIBIT F). Believes SB 642 would significantly undermine the Instream Water Rights Act by providing no benefit to out-of-stream users while impairing the ability of individuals to provide for the recovery of threatened fish stocks.
120	Janet Neuman	Oregon Water Trust. Provides testimony against SB 642 (EXHIBIT G). Asserts that SB 642 would deprive Oregon of an effective, voluntary, market-based tool for addressing the problems of low streamflows and would diminish the economic value of senior water rights.
160	Ed Goodman	Oregon Water Trust. Discusses instream water rights.
201	Chair Ferrioli	Comments on instream water rights having the same priority as any other beneficial uses. Closes public hearing on SB 642 and reopens public hearing on SB 499.

SB 499 – PUBLIC HEARING

225	Chair Ferrioli	Discusses modifications to SB 499 to reduce legislative participation in the task force and asks for -2 amendments. Closes public hearing on SB 499.
255	Sen. Atkinson	Opens public hearing on SB 645.

SB 645 – PUBLIC HEARING

258	Callens	Provides overview of SB 645 and -1 amendments (EXHIBIT J).
359	Rod Johnson	Douglas County. Provides testimony in support of SB 645 (EXHIBIT K). Believes that SB 645 will encourage compact development, help save farmlands and assist rural cities to create jobs, a tax base and general economic improvement.

TAPE 40, B

005	Johnson	Continues testimony in support of SB 645. States that the primary focus of SB 645 is marginal wetlands that dry up in the summer, are sloped, or have non-wetlands plants.
027	Chair Atkinson	Asks about the tests for determining marginal wetlands.
035	Johnson	Responds that only one test has to be met for wetlands to be determined marginal.
040	Paul Adamus	Benton County. Provides testimony against SB 645 (EXHIBIT L) Expresses concerns: <ul style="list-style-type: none"> • Eliminates protection of many freshwater wetlands because of the definition of isolated and marginal wetlands • Requires that the wetland contain visible surface water for a certain number of days • Singles out wetlands on steeper slopes as disposable
120	Chair Ferrioli/Adamus	Discussion of issues surrounding wetlands and the urban growth boundary.
210	Adamus	Talks about hydrophytes.

225	Robert Frenkel	Benton County. Provides testimony against SB 645 (EXHIBIT M). Discusses isolated wetlands, marginal wetlands and the application of wetland jurisdiction to counties and small cities.
294	Chair Ferrioli	Asks for clarification on citations.
296	Frenkel	Restates that approximately 57% of wetlands within urban areas are small wetlands. Discusses benefits relating to social issues
320	Chair Ferrioli	Talks about criteria for excluding wetland areas when designating urban growth boundaries.
352	Frenkel	Discusses mitigation to allow development and gain wetlands.
397	Jeffrey Kee	Multnomah County. Provides testimony against SB 645 (EXHIBIT N). Discusses the functions and values of wetlands for society.
410	Liz Frenkel	League of Women Voters of Oregon. Provides testimony against SB 645 (EXHIBIT O).
TAPE 41, B		
003	Frenkel	Continues testimony against SB 645. Asserts that all waters, whether large or small, function as an interconnected system serving for the maintenance of wildlife species, biological diversity, pollution control, water storage, and flood control and isolated or marginal wetlands should not be excluded from state wetland jurisdiction.
040	Tim Acker	Applied Technology. Provides testimony against SB 645 (EXHIBIT P). Expresses concerns: <ul style="list-style-type: none"> • Based on assumptions concerning federal regulation of isolated wetlands that may not be valid • Unnecessarily complicates the development process where wetland issues exist within urban growth boundaries • Ignores other means could be used to achieve the same ends
140	Acker	Discusses recommendations for managing wetlands.
185	John Lilly	Division of State Lands (DSL). Provides testimony against SB 645 (EXHIBIT Q). Supports testimony given by Tim Acker and talks about standards for creating public policy.
200	Chair Ferrioli	Asks if his written testimony addresses the SB 645-1 amendments.
201	Lilly	Replies that it does not address SB 645-1 amendments.
204	Chair Ferrioli	Requests he review the -1 amendments. Summarizes issues surrounding SB 645.
230	Lilly	States that DSL opposes SB 645.
234	Chair Ferrioli	Asks for DSL's approach to solving the following problems: <ul style="list-style-type: none"> • Potential cause of action • Cost shifting • Increase of urban growth boundaries or mitigation
240	Lilly	Replies that those are global issues.
244	Chair Ferrioli	Asks if DSL has a strategy to deal with issues that cause difficulty to landowners with wetlands.
250	Lilly	Affirms and talks about wetland regulations.
259	Chair Ferrioli	Asks which house bill DSL is working on.
261	Lilly	Replies that HB 2431 has been heard and that a work group has been organized.
280	Chair Ferrioli	Summarizes SB 645 and closes public hearing on SB 645. Adjourns meeting at 5:05 p.m.

EXHIBIT SUMMARY

- A – SB 499, SB 499-1 amendments dated 3/27/03, staff, 1 p.**
- B – SB 499, written testimony, Aubrey Russell, 1 p.**
- C – SB 499, written testimony, Adam Sussman, 4 pp.**
- D – SB 499, written testimony, Kimberly Priestley, 1 p.**
- E – SB 642, written testimony, Adam Sussman, 2 pp.**
- F – SB 642, written testimony, Aubrey Russell, 1 p.**
- G – SB 642, written testimony, Janet Neuman, 3 pp.**
- H – SB 642, written testimony, Michael Carrier, 1 p.**
- I – SB 642, written testimony, Theodore Eady, 1 p.**
- J – SB 645, SB 645-1 amendments dated 3/20/03, staff, 18 pp.**
- K – SB 645, written testimony, Rod Johnson, 2 pp.**
- L – SB 645, written testimony, Paul Adamus, 4 pp.**
- M – SB 645, written testimony, Robert Frenkel, 2 pp.**
- N – SB 645, written testimony, Jeffrey Kee, 3 pp.**
- O – SB 645, written testimony, Liz Frenkel, 3 pp.**
- P – SB 645, written testimony, Tim Acker, 6 pp.**
- Q – SB 645, written testimony, John Lilly, 13 pp.**
- R – SB 645, written testimony, Dan Huff, 2 p.**
- S – SB 645, written testimony, James Bennett, 1 p.**
- T – SB 645, written testimony, Richard Meyers, 1 p.**
- U – SB 645, written testimony, Scott Duckett, 1 p.**