

SENATE COMMITTEE ON WATER AND LAND USE

March 18, 1997 Hearing Room C

9:00 AM Tapes 42 - 43

**MEMBERS PRESENT:**

Sen. Veral Tarno, Chair

Sen. Bob Kintigh, Vice-Chair

Sen. Ginny Burdick

Sen. Ted Ferrioli

Sen. Bill Fisher

Sen. David Nelson

Sen. Thomas Wilde

**STAFF PRESENT:**

Mark Volmert, Administrator

Nancy Masee, Administrative Support

**MEASURE/ISSUES HEARD:**

SB 598 Public Hearing and Work Session

SB 395 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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 42, A</b>		
004	Chair Tarno	Calls meeting to order at 9:00 AM, opens public hearing on SB 598.
<b><u>SB 598 PUBLIC HEARING</u></b>		
011	Stephen Kafoury	American Fisheries Society (AFS), gives background on organization
		Says the Milltown project is inconsistent with the beliefs and scientific

033	Kafoury	principles of the AFS; proposed waiver will contribute to degradation of ecosystem and endanger the coho and cutthroat <b>(EXHIBIT A)</b>
050	Kafoury	Cites reasons project will destroy ecosystem <ul style="list-style-type: none"> <li>* Small tributaries needed to breed fish</li> <li>* Regulated flow affects streams negatively</li> <li>* Blocking passage of fishes to their better spawning areas</li> <li>* Inconsistent with the Oregon Coastal Salmon Initiative</li> </ul>
074	Kafoury	Summarizes this project is the antithesis of the Coastal Salmon Initiative
087	Sen. Kintigh	Says this is a very small part of the system, a small tributary; hears that there are very few fish there now
098	Kafoury	Replies there is no evidence in literature that it will benefit fish; natural habitats produce fish and unnatural streams tend to inhibit fish growth
107	Chair Tarno	Asks if the society has been involved in the last ten years that this project has been underway
110	Kafoury	Responds, no, the society was never asked to express an opinion
114	Sen. Ferrioli	Asks why the upper stream habitat is a better spawning area
132	Kafoury	Explains that establishing the practice of placing dams with no fishways could lead to expanding this practice to other watersheds and be detrimental
148	Sen. Ferrioli	Asks if they oppose both the dam and the fishway
177	Kafoury	Replies the concern is with disturbing the natural ecosystem
190	Kafoury	Comments that increased flow downstream is not that significant
197	Sen. Burdick	Asks if there has to be a dam, is it better to have a fishway or the other mitigations suggested
204	Sen. Wilde	Comments that there were only 50 fish returning, the cost of putting in a fish passage in a 200 foot dam seems excessive for such a low number of fish
219	Kafoury	Says the economics of cost and benefits are not in the purview of AFS; however, if you are willing to spend the money, AFS would support the fish way
237	Sen. Kintigh	Asks Mr. Kafoury to comment about previous money spent in Oregon on stream improvement
236	Kafoury	Explains the projects put in have been to restore what has been damaged by man; it's better than doing nothing
248	Pete Test	Oregon Farm Bureau, supports the efforts of SB 598 <b>(EXHIBIT B)</b>
282	Test	Supports the good watershed effort and this project that will do good for several issues
		Yoncalla City Council, retired Forest Service hydrologist; describes this

292	Kent Smith	watershed as a very small part of the Umpqua Basin, less than 1 percent or 30 square miles; the challenge from the city is to manage human use and natural resources; downstream mitigation is helpful to return to a healthy stream; Yoncalla can get the water they need, and to contribute to the flow in the Umpqua system
326	Sen. Kintigh	Asks about Yoncalla water supply now
	Smith	Responds that they are now ready to deal with additional water and development of the Yoncalla area; they have a water treatment system and developers have been waiting to build
341	Sen. Ferrioli	Asks if he was involved in the planning of the Milltown Project
	Smith	Responds for five years; process goes back 20 years
350	Sen. Ferrioli	Asks if Mr. Smith is familiar with the Endangered Species Act (ESA) consultations that took place on the project
358	Dean Schilling	Yoncalla, North Douglas County Economic Development Committee; testifies for the Milltown project; virtually no fish reach these headwaters at this time; increase water flows will increase fish counts; water for ranchers, municipalities, habitat and fish counts; without the dam, the fish will decline more
410	Chair Tarno	Closes public hearing on SB 598; Opens work session on SB 598
<b>TAPE 43, A</b>		
<b>SB 598 WORK SESSION</b>		
004	Chair Tarno	Asks for a motion to accept the -1 amendments to SB 598 <b>(EXHIBIT C)</b>
005	Sen. Kintigh	<b>MOTION: Moves to ADOPT SB 598-1 amendments dated 3/12/97.</b>
	Chair Tarno	<b>Hearing no objection, declares the motion CARRIED.</b>
008	Sen. Kintigh	<b>MOTION: Moves SB 598 to the floor with a DO PASS AS AMENDED recommendation.</b>
009	Chair Tarno	Asks for discussion
010	Sen. Burdick	Says she will vote for it but has environmental concern about the dam
011	Sen. Ferrioli	Comments that the proponents for the dam have met with environmental specialists on Endangered Species Act (ESA), and the "may affect" issue was spoken to, but that the overall concerns have been met
038	Sen. Wilde	Comments that he has a problem accepting the dam construction; however, for only 2-1/2 miles and 50 fish, he is willing to vote for this measure
		Comments that the small amount of habitat involved is only one of many

049	Sen. Fisher	available to the fish in the area; he supports this issue
055	Chair Tarno	Asks for further discussion; hearing none, asks for a vote
057	<b>Chair Tarno</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
		<b>SENATOR KINTIGH will lead discussion on the floor.</b>
064	Chair Tarno	Closes work session on SB 598; opens public hearing on SB 395
<b><u>SB 395</u></b> <b><u>PUBLIC</u></b> <b><u>HEARING</u></b>		
075	Mark Volmert	Committee Administrator, gives background on measure SB 395 <b>(EXHIBIT D)</b>
083	Van Moore	Model airplane flyer, testifies for SB 395; speaks to the amendments; no loss of farmland by farmers for leasing land out; most flying facilities are not leased; most are in place by a farmer's benevolence; conditional use process explained as inadequate due to issues that are not applicable such as noise; gives example of testing for noise from the planes and the associated costs; conditional use permit requirement would put a small group through an expensive process; indicates some clubs use several sites within the period of a year
166	Sterling Anderson	Planner, Marion County; the primary reasons that the applications were denied is based on zoning ordinance requirement of ownership of a park under ORS 215.283 <b>(EXHIBIT E)</b>
178	Sen. Kintigh	Asks if the owner can make the application
181	Anderson	Responds that owner who is not the operator did sign; the ordinance was interpreted that the operator has to own the land
190	Sen. Ferrioli	Asks if a lease agreement would satisfy the application requirements
201	Anderson	Responds, no, says neighbors complained about harassment of livestock, trespassing, noise, traffic, hours of operation, removal of land from farm use; Marion County suggests amending to remove the word "owned" from ORS 215.283(2)(d) and 215.213; or listed as a separate use in ORS 215.283(2) and ORS 215.213; this would allow a case by case analysis
228	Sen. Ferrioli	Asks about application approval by the hearings officer
241	Anderson	Responds it was originally approved by the hearings officer; the board of commissioners remanded back to the hearings officer with county's interpretation of "owner" was misapplied by the hearings officer; it was then dismissed as a use in the zone; it was the board's decision that the definition of "owner" did not allow for a lessee to be considered the owner of the property
255	Sen. Ferrioli	Asks if the Board of County Commissioners wish to review case by case
262	Anderson	Responds that is right because items differ case by case; neighbors and the conditions specific to a particular site should be the determinant
278	Sen. Burdick	Asks about removing the word "owned "

285	Anderson	Explains that removing the word "owned" would remove the conflict the board of commissioners found undefined in state law; by allowing it as a conditional use, the board could review it, allow for citizen input, based on location and the type of operation being proposed
314	Sen. Ferrioli	Comments that the wording is what led to this
326	Anderson	Recommends wording as "conditional use" or a separate use
333	Sen. Burdick	Asks the if the county could change the ordinance itself
337	Anderson	Says they could do it
349	Sen. Fisher	Asks about unleased land
356	Anderson	Responds the owner still has to authorize the application
394	Sen. Fisher	Asks if the complaints were validated
398	Anderson	Responds they were checked out
<b>TAPE 42, B</b>		
004	Anderson	Responds that when they receive a number of complaints from the area, they consider it valid conflicts; the enforcement officer checked it out and considered the complaints valid
010	Sen. Fisher	Asks the length of time and cost going through a conditional permit application
013	Anderson	About 30 to 45 days for a staff decision; 60 to 90 days from a hearings officer
019	Sen. Fisher	Asks to describe the process
020	Anderson	If there is no appeal, depending on conditions; when an appeal is made it takes about 14 days and a decision in 30 to 60 days; then there is another 10 day wait to appeal; another 20 days to the board; if appeal denied, about a week or two
042	Anderson	Continues on appeal process and time frames
050	Sen. Fisher	So you are talking about months and expense
052	Anderson	Replies they can be expensive
065	Sen. Fisher	Comments on the appeals process and how it can stop activities
120	Sen. Wilde	Asks about placing "owned or operated" in sub-section 2
129	Sen. Ferrioli	Comments that "and "and "or" are interchangeable in Oregon statutes
139	Blair Batson	1000 Friends staff attorney, says this issue should have been taken care of at the county level; concern is when the activity becomes permanent; Marion County's suggestion is the easiest because you do not have to add a whole entire use with the implications of amending the statute; just clarify the person operating the facility as well as the person owning the facility can apply for the permit; again, this should have been done at the county level; the -4 amendments are adequately drafted to assure that piece of land where the facility is located will not be permanently

		converted to non-farm use; the issue of valid conflicts with surrounding farmers has not been addressed, these should be moved to subsection 2 of the statute it could be addressed
183	Don Schellenberg	Oregon Farm Bureau; indicates the amendment does not address the basic conflict; it addresses buildings and amenities; Farm Bureau's concern is that if it is made a permanent use, there should be an opportunity for farmers to review the issue and impact
201	Sen. Fisher	Asks for clarification of opportunities for people to object to any use regardless of permit or not
200	Don Schellenberg	Continues on the conflict issue and permanent use; wants conditional use; will oppose as is;
219	Sen. Fisher	Comments on activities that occur on a farm road and asks why these activities are not required a conditional use permit
217	Schellenberg	Responds he does not know; Farm Bureau's concern does not address potential traffic conflict; if permitted use was acceptable, the language regarding the number of people or requirement of parking off the road, this may be acceptable

245 Chair Tarno Comments SB 395 will be back for a work session as will SB 464; closes public hearing on SB 395

22 Chair Tarno Adjourns meeting at 10:19 AM

Submitted By, Reviewed By,

Nancy Masee, Mark Volmert,

Administrative Support Administrator

### **EXHIBIT SUMMARY**

**A - SB 598, written testimony, Stephen Kafoury, 2 pp**

**B - SB 598, written testimony, Pete Test, 1 p**

**C - SB 598-1 amendments, Staff, 1 p**

**D - SB 395-4 amendments, Staff, 1 p**

**E - SB 395, written testimony, Sterling Anderson, 4 pp**

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