



American Fisheries Society Oregon Chapter

OR Chapter AFS: PO Box 8062 Portland, OR 97207-8062 www.orafs.org

Date: February 2, 2021

RE: OREGON CHAPTER OF THE AMERICAN FISHERIES SOCIETY TESTIMONY CONCERNING HOUSE BILL 2298 RELATING TO ENVIRONMENTAL RESTORATION WEIRS

Chair Helm, Vice Chairs Owens and Reardon, and members of the House Committee on Water:

The Oregon Chapter of the American Fisheries Society (ORAFS) is comprised of over 500 fisheries and aquatics science professionals from federal, state, and tribal agencies, colleges and universities, diverse private employers, college students, and retirees. ORAFS was established in 1964 as a chapter of the American Fisheries Society. Our mission is to improve the conservation and sustainability of Oregon fishery resources and their aquatic ecosystems for long-term public benefit by advancing science, education and public discourse concerning fisheries and aquatic science and by promoting the development of fisheries professionals.

HB 2298 follows similar “artificial beaver dam” bills from the 2019 (HB 3132), 2016 (SB 1518), and the 2015 (HB 3217A) sessions. Although HB 2298 is an improvement over previous bills, ORAFS continues to oppose the proposed bill as implementation of the bill has the potential to harm Oregon’s desert basin streams and their associated unique fish communities. ORAFS has identified five primary concerns with HB 2298.

- 1) Oregon Department of State Lands (ODSL) currently has a regulatory framework in-place that regulates fill-removal activities in Oregon streams and wetlands. The existing fill-removal permitting program is sufficient to regulate rock grade control structures and check dams, an appropriate terminology for the proponent’s “environmental restoration weirs” technique. Environmental restoration weirs should be regulated as other stream restoration practices are, and weirs should be subject to the ODSL permit process. The U.S. Army Corps of Engineers (USACE) Section 404 permitting process provided a permitting backstop for previous versions of this bill. With changes to the Waters of the United States, USACE no longer regulates fill and removal activities in Oregon’s closed basins. Passage of HB 2298 would allow unregulated placement of fill in prescribed waters of the State.
- 2) The environmental restoration weirs, as proposed, do not incorporate fish passage considerations. Oregon Department of Fish and Wildlife (ODFW) has a fish passage program that assists landowners with projects to ensure fish passage for instream projects. The proponent’s structures should be required to meet the State’s fish passage statute (OAR 412 – Fish Passage). The fish passage permit application is not burdensome and requires less information and effort to complete relative to the ODSL permit applications. HB 2298 also put the onus on ODFW to determine that native migratory fish have returned to the qualifying stream. Appropriate fish passage that meets ODFW fish passage criteria may be technically more challenging to construct than the environmental restoration weir that created the fish passage concern.
- 3) Eastern Oregon streams have variable streamflow regimes that are influenced by the climate and seasonal weather, geology, and water use. HB 2298 would allow construction of environmental restoration weirs on streams with less than 1 cfs of streamflow during at least 2 months of the year. This minimum streamflow metric would likely qualify numerous streams for inclusion in the proponent’s program. Additionally, relative to previous bills, HB 2298 is no longer limited to the Silvies Valley Ranch, but now includes all closed basins east of the Cascade Range, and therefore, practices included in HB 2298 could have much broader impacts than under previous bills. Since environmental restoration weirs could be built without meeting fish passage criteria, the weirs have the potential to block access to a considerable amount of fish spawning and juvenile rearing habitat. Similarly, weirs may also exclude fish from accessing cold water refuges that are critical for maintaining

fish populations in Eastern Oregon streams that experience summertime warming due to a warming climate, low streamflow, and high solar exposure caused by degraded riparian vegetation communities.

- 4) HB 2298 puts the onus on ODFW to determine if a “healthy salmonid population” is present in affected streams, to pay for prescribed monitoring, and provide program reporting. The project proponents do not propose additional funding for the State to provide these services.
- 5) The project proponents also propose HB 2298 not require compliance with the Oregon Forest Practices Act and bill passage would allow for the removal of brush and trees from streambanks and riparian areas. Removal of native vegetation communities increases the potential for streambank erosion, stream warming, and riparian and aquatic habitat degradation.

ORAFS strongly supports restoring incised streams when efforts include the best available science. ORAFS suggests the bill proponents research and apply established techniques that restore incised streams and riparian communities while also ensuring fish passage and fish access to important seasonal habitats. Existing programs are already in-place to responsibly regulate the proponent’s proposed activities. Thank you for the opportunity to submit our opposition to HB 2298.

Respectfully,

A handwritten signature in blue ink that reads "Troy M. Brandt". The signature is written in a cursive, flowing style.

Troy Brandt – ORAFS, Legislative Committee Chair, 503-307-8367, tbrandt@riverdesigngroup.net