

# OREGON COASTAL Notes

A PUBLICATION OF THE OREGON COASTAL ZONE MANAGEMENT ASSOCIATION, INC.

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## Water measures flow from House committee spigot

Water concerns topped the House Natural Resources Committee agenda last week as lawmakers heard testimony on proposals to coordinate state agency management over watersheds, to clarify the allocation of water recovered from improved diversion and transmission techniques and to give state agencies authority to protect drinking water sources.

### HB 2215

House Bill 2215 directs the Strategic Water Management Group (SWMG) to assess the condition of the state's watersheds and identify "high priority" areas that need special management to improve water quality or to protect existing water quality from deteriorating. The bill also authorizes local, state and federal agencies to forge cooperative agreements to manage watershed areas and to form local watershed councils to implement watershed management. The measure drew praise at a Jan. 26 hearing from water users and environmen-

talists for its concept, but House Water subcommittee members questioned whether local watershed management councils formed under the measure would exercise any actual management authority.

Water Resources Department Director Martha Pagel noted that the bill does not vest any regulatory authority in the local councils, but that the councils might use the cooperative process the bill establishes to head off any "heavy handed" regulation by state agencies. Anne Squier, the Governor's SWMG representative, added that the agencies that have watershed management authority — including the Water Resources Department, the Department of Environmental Quality, the Department of Agriculture and the Department of Fish and Wildlife — participated with local government agencies in the year-long process that culminated with the draft bill. This, Squier said, has made state agencies sensitive to local concerns.

League of Oregon Cities representative Joni Low said local governments generally support the bill, but would like to add a more explicit definition of "local government" so that special districts would have authority to form watershed councils.

Representatives from the Pacific Rivers Council and the Oregon Water Resources Congress (OWRC) registered minor objections to the bill's language. The Rivers Council favored returning to an earlier draft of the bill that focused more on setting up an inter-agency coordination scheme to manage the state's water resources than on the local management councils. The Water Congress wanted a more explicit designation of a funding source to pay for the studies required in sections 10 and 13 of the bill and stronger assurances that local agencies could withdraw from management agreements if they appear unworkable.

House Water Subcommittee Chair Rep. Chuck Norris scheduled additional hearings and a possible work session on the bill for Feb. 9.

### HB 2155

Water users gave a Water Resources Department proposal to change the definition of "conservation" and to shift the department's policies dealing with reclaimed water a far chillier reception at the same hearing.

The bill seeks to make explicit state policy that prohibits the wasteful use of water rights by removing from the definition of "conservation" any improvements in water diversion and transmission techniques a water user undertakes to eliminate wasteful uses. The bill also grants the water user who improves his or her diversion and transmission techniques to conserve 75 percent of the water he or she conserves, while reserving 25 percent to the state for instream uses. But the 75 percent grant applies only to stored water — water conserved in free-

## MEETING NOTICES

### Oregon Coastal Zone Management Association

The Oregon Coastal Zone Management Association will meet Friday, Feb. 12 at the Quality Inn on Market Street in Salem. In addition to conducting regular business, the Association will hear from: Martha Pagel, Director of the Water Resources Department, on water-related legislation during this session of the Legislature; Dr. Dan Botkin of the Center for the Study of the Environment on the progress of the study of the causes of declines of salmon in western Oregon; and our first legislative report from Sean Brennan, the 1993 Legislative Fellow. The Association's Executive Board will meet on the evening of Thursday, Feb. 11 also at the Quality Inn.

### Coastal Ports Maintenance Dredging Committee

In preparation for congressional activity regarding future funding for maintenance dredging of coastal harbors and waters, the Coastal Ports Maintenance Dredging Committee will meet on Thursday afternoon, Feb. 11 at the Quality Inn on Market Street in Salem. Among other meeting actions, reports will be made on the 1992 port reporting system, on a study of coastal dredge material disposal sites, and on the economic costs of fishery regulations. Election of Committee officers will also occur.

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# Work group to tackle wellhead protection measure

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flowing streams would not receive explicit protection under the bill.

This lack of protection and the resulting uncertainty in the amount of water a user could expect to retain after installing expensive conservation measures formed the principle objection representatives from Water for Life and the Oregon Water Resources Congress held against the bill.

OWRC representatives said water users, like municipal users, should be able to determine the actual amount of their water right necessary for their beneficial use and to consider diversions beyond that amount "conservation" for purposes of Oregon law. OWRC also objected to limiting the 75 percent allocation of conserved water to stored water.

Water for Life proposed that the allocation of reclaimed water between the state and the water user be set at a strict 25 percent and 75 percent, respectively, rather than at the variable rate that now exists so that water users will have incentive to conserve. Water for Life representative David Moon said the organization will consider whether to try to amend the existing bill or whether to introduce its own measure.

Oregon WaterWatch, by contrast, opposed the allocation formula set forth in the bill, contending that reclaimed water should be split 50-50 between water users and instream uses.

The bill now awaits further hearings and a possible work session Feb. 9.

**HB 2149**

After two lengthy hearings with capacity crowds, House Water Subcommittee Chair Rep. Chuck Norris (R-Hermiston) formed

a work-group led by industry and environmental representatives to forge a compromise measure for drinking water source protection and scheduled additional hearings and work sessions for Feb. 4.

At issue is the adoption of state standards for groundwater protection at the wellhead — federal law (42 U.S.C. § 300h-7, the Safe Drinking Water Act Amendments of 1986) authorizes state agencies to establish programs and receive federal funds to pay for up to 90 percent of the costs incurred in protecting drinking water sources, provided the United States Environmental Protection Agency approves the state plan. Both proponents and opponents of HB 2149, which authorizes the Environmental Quality and Water Resources commissions and the Health Division to adopt rules to establish such a program, agree on the need for a wellhead protection program, but disagree on the proposed scope of the program and on the authority to be granted to the implementing agencies.

Bill proponents, including the Oregon State Public Interest Group (OSPIRG), and the Oregon Environmental Council (OEC) stressed the need for preventative measures to avoid potential contamination from polluting sources and to avoid much higher remediation costs once groundwater sources become contaminated. "Even if a responsible party is found to pay cleanup costs," OEC Policy Director Jean Cameron said, "the bills are still greater by several magnitudes than the costs of preventative activities."

Opponents of the measure as drafted, including the League of Oregon Cities (LOC), focused on the potential problems

that could arise from a division of responsibility for the program among three state agencies and between local government and public water suppliers. LOC representative Joni Low said the organization supports the concept of wellhead protection, but is particularly concerned about the potential fiscal impact on local governments which must already comply with several state and federal mandates for water quality without, in many cases, sufficient taxing or fee assessment authority to pay the costs of compliance. Low noted that this is of particular concern since the Oregon Tax Court ruled that the City of Roseburg's storm water fee is a tax that must abide by the limits set by Ballot Measure 5.

Other opponents of the measure included farmers locked in a dispute with the City of Newberg over the city's plan to purchase portions of their land to serve as wellhead protection sites. Their concerns with the bill focused on whether it would enable the city to more easily condemn their land in order to site wells for city consumption and on whether the city could restrict certain farm uses on land zoned for Exclusive Farm Use (EFU). Assistant Attorney General Michael Huston testified that the bill does nothing to either expand or restrict a city's powers of condemnation, but that the city could, depending on the provisions of the wellhead protection plan it adopts, restrict farm uses in order to protect drinking water supplies. Although state law limits the type of regulation local governments may impose on lands within an EFU zone, Huston said that the law permits exceptions where the local government regulates land uses to protect public health, safety and welfare.

## Oyster growers see problems with program transfer to DSL

Worried about potential disruptions to the supportive relationship they have cultivated with the state Department of Agriculture, coastal oyster growers testified Jan. 29 before the Senate Agriculture and Natural Resources Committee against Senate Bill 6, which proposes to transfer regulatory authority over shellfish production from Agriculture to the Division of State Lands (DSL).

The growers, who two weeks ago formed the Oregon Shellfish Producers, their first trade association, said their already fragile industry could suffer irreparable damage if the

expertise and familiarity with industry concerns that now characterizes the agriculture department were lost in the move to an agency with little experience with shellfish production. "We see ourselves as farmers, growing a crop," grower Lee Hansen said.

But committee members, led by Sen. Jim Bunn (R-McMinnville) and Sen. Joyce Cohen (D-Lake Oswego), questioned the growers' opposition to the measure, asking them to identify what specific expertise they might lose in the transfer to DSL and whether they feared that DSL might raise lease fees for

the state submerged lands they use for oyster production because of the agency's mandate to maximize revenue from state land leases.

Both the Department of Agriculture and DSL support the measure on the ground of administrative efficiency, contending that oyster cultivation is the only remaining program involving state submerged lands that DSL does not administer. The agencies also noted that any remaining revenue in the revolving fund used to administer the program will go into the state's K-12 school fund.

A work session will be scheduled later.

## Assembly moves on water issues early in session

Following is an abbreviated list of those bills introduced and moving in committee as of January 29.

SB 89 would require the Water Resources Commission to withdraw unappropriated waters from further appropriation under certain circumstances using a rule-making procedure rather than by simply issuing an order as ORS 536.410 now permits. **Public hearing scheduled for Feb. 2 in Senate Water Policy Committee.**

SB 90 would allow the Water Resources Commission to use a rule-making procedure to exempt any new groundwater uses from state law that requires a water right permit or certificate to withdraw groundwater, provided the new use does not exceed 5,000 gallons per day. The measure also permits the commission, however, to require a water right permit or certificate for any new use if the commission believes it necessary to protect groundwater resources. **Public hearing scheduled for Feb. 2 in Senate Water Policy Committee.**

SB 91 allows the Water Resources Commission to require water users who must install measuring devices to make periodic reports to the commission. The measure also allows the commission to designate water use reporting areas where it believes it needs water use data to resolve water use disputes or improve water management. The bill establishes a rebuttable presumption that a water user has forfeited his or her water right if he or she fails to make timely reports, and allows a watermaster to prohibit water diversions by users who fail to comply with water monitoring or reporting requirements. **Public hearing scheduled for Feb. 2 in Senate Water Policy Committee.**

SB 92 would establish a preference for human consumptive uses, stock water uses and uses that protect public health and safety in the event of an emergency water shortage. The bill also allows the Water Resources Commission to establish water rationing plans and to use expedited au-

thority to deal with severe water shortages. The bill also allows water distribution systems that deliver potable water to negotiate for options to secure alternate water sources during shortages. **Referred to Senate Water Policy Committee. No public hearing scheduled yet.**

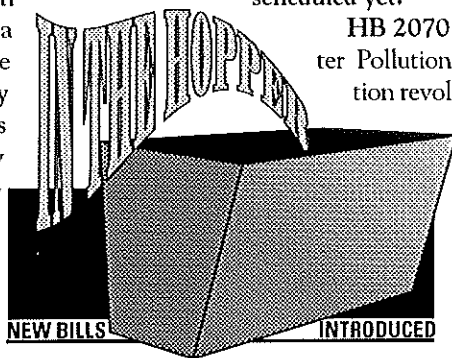
HB 2070 would establish a Water Pollution Control Administration revolving fund to assist public agencies in repaying bonds issued for the construction of water pollution control facilities. **Referred to House Subcommittee on Environment and Energy. No public hearing**

**scheduled yet.**

HB 2107 would permit any person or public agency to register their use of water with the Water Resources Department rather than apply for a water right permit if the use is for wetland or stream restoration. The bill subordinates the registered use to existing water rights and to future permitted uses and requires that any development registered under the program be off-channel and not have a capacity of more than five acre-feet, and that it not be used for commercial purposes. **Public hearings scheduled for Feb. 2 in House Subcommittee on Water.**

HB 2153 would permit the use of water for controlled burning in forest management, and brush and pest control to be registered rather than requiring an application for a water permit if the use diverts less than 10 percent of stream flow. The bill would also exempt uses for emergency fire fighting, diversions to water tanks or troughs under existing water right permits and use providing for fish screens or fish bypass structures from any requirement to register the use or obtain a water right permit. **Public hearing scheduled for Feb. 2 in House Subcommittee on Water.**

HB 2242 would eliminate a patrol program that retrieves logs straying from downriver log transportation in the Columbia River and its tributaries. **Public hearing held Jan. 27. Work session scheduled for Feb. 3 in House Subcommittee on Agriculture.**



## Coastal Caucus chooses Josi as new chair

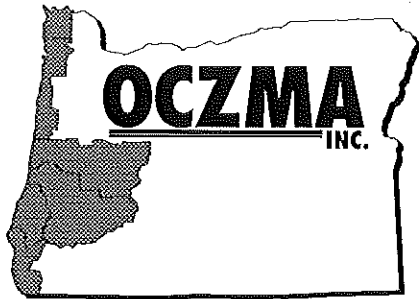
Rep. Tim Josi (D-Bay City) will lead this session's coastal caucus contingent as chair after his unanimous election Jan. 26. Josi said he expects the caucus to act on a host of coastal issues, including water quality testing and administrative oversight for shellfish producers, along with the expansion of Oregon fisheries.

Discussion at the first caucus meeting focused on the proposal in Senate Bill 6 (see related story page 2) to move jurisdiction over the leasing of state submerged lands for shellfish cultivation from the Department of Agriculture to the Division of State Lands. The caucus concluded that the existing arrangement served the interests of the small producers that make up the shellfish industry and that such a move might unnecessarily disrupt the state support the industry has traditionally enjoyed.

Rep. Veral Tarno (R-Coquille) added that the shellfish industry already faces a number of threats to its existence, including the potential reduction or elimination of state funding for water quality testing around shellfish beds. Rep. Tarno said he believes the state should bear the responsibility for the testing program, in part because the public as a whole benefits from water quality data and also because the costs associated with water quality testing would be much higher than an industry with fewer than 30 producers can afford.

In other business, the caucus heard a proposal from Oregon Trawl Commission Administrator Joe Easley to establish a state fisheries development board to encourage the creation of alternative fisheries off the Oregon coast that might offset a steep decline in the salmon fishery. OCZMA Executive Director Jay Rasmussen noted that harvesters often find themselves caught in a sort of Catch-22, where the Department of Fish and Wildlife requires sufficient biological data on the species proposed for harvest and harvesters have no way to develop such information without, in effect, conducting "experimental" fishing. The caucus agreed to support the introduction of such a measure.

Finally, the caucus set Tuesdays at noon as its regular meeting time, and Senate Caucus Room S-226 as its regular meeting place, beginning Feb. 9.



The Oregon Coastal Zone Management Association, Inc. (OCZMA) is a voluntary association of coastal counties, cities, ports and soil & water conservation districts established to provide a forum for the resolution of issues of particular concern to the local governments of the coast and the people they represent.

### Association Officers

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**Doris Wadsworth** • Vice Chair, Douglas County Commissioner  
**Nancy Leonard** • Secretary-Treasurer, Lincoln County Commissioner

### Association Staff

**Jay Rasmussen** • Executive Director  
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Lincoln County  
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Address correction requested