

OREGON COASTAL Notes

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DSL offers compromise on shellfish program transfer

Reacting to increasing opposition from growers and coastal legislators to a measure that would transfer leasing authority over oyster cultivation to the Division of State Lands (DSL), Director Gary Gustafson proposed Friday that DSL study the mariculture industry over the 1993-1995 interim with an eye toward drafting comprehensive legislation to govern all mariculture authorizations on state tidal and submerged lands.

Gustafson presented the Senate Agriculture and Natural Resources committee during a hearing on Senate Bill 6 with a brief letter of agreement co-signed by the chair of the Oregon Shellfish Industry Steering Committee that called for DSL to cooperate with growers and other interests in a work group that would consider the consolidation of existing Oregon law related to mariculture. The letter also charged the work group with responsibility for promoting management efficiency, protecting the environment and maintaining a healthy mariculture industry. Gustafson pledged that DSL would work with the Department of Agriculture, which now has jurisdiction over oyster cultivation, and with any other state department with interests in the area.

But Gustafson's offer did not appease bill opponents, including Sen. Joan Dukes (D-Svensen), who told the committee that SB 6 "is a particularly unnecessary and bad move." Dukes said the shellfish issue goes beyond the question of who has jurisdiction over submerged lands leasing and that she would prefer to see all state agency programs related to shellfish cultivation, including the water quality testing program now housed in the Health Division, transferred to Agriculture.

"DSL has no experience in this area," Dukes said. "When the mission is to protect the public interest and support a small industry, all functions should be under one umbrella."

Scattering responsibility for mariculture regulation among state agencies is particularly

harmful when one agency proposes a fee increase for growers, Dukes said. Where an agency with overall responsibility for the program could properly weigh the benefits in increased services against the potential damage to the industry before raising fees, Dukes explained, uncoordinated agency management might simply do harm.

Sen. Gordon Smith (R-Pendleton), however, echoed concerns expressed by Sen. Joyce Cohen (D-Lake Oswego) in a Jan. 29 hearing on the measure, asking if bill opponents feared that DSL might raise lease fees for submerged

lands in response to the perception that growers have enjoyed below-market lease rates on those lands for several years. Sen. Dick Springer (D-Portland) said he thought that Gustafson's proposal represented a good compromise and that the committee needed to address the larger questions related to the use of the state's submerged lands.

Committee chair Sen. Ron Cease (D-Portland) closed the hearing by asking Gustafson to consult with Agriculture and the growers and return to the committee with new bill language in two to three weeks.

Eugene residents upset by contaminated pile get general support from costumed senator

Sen. Bill Dwyer (D-Springfield) led a charge — almost literally — to restrict the dumping of oil-contaminated soils within residential neighborhoods at a Friday hearing before the Senate Agriculture and Natural Resources Committee.

Dwyer, dressed in Civil War period costume in honor of the Oregon Trail celebration, quipped to TV cameras before the hearing that if committee members "wouldn't take me seriously as a senator, they might listen to a general."

But Dwyer's whimsical mood evaporated as he told committee members that he introduced Senate Bill 315 in response to complaints from residents of a Eugene neighborhood who "were shocked as several hundred cubic yards of oil-contaminated soils were trucked in from another part of the city and dumped in a vacant lot" near their homes. The smell from the pile "soiled the air," Dwyer said.

Dwyer said the bill, which would prohibit the storage or aeration of contaminated soils on property within an urban growth management boundary, also responds to complaints from residents in Brownsville and other Or-

egon cities who have had contaminated soils dumped in adjacent property. "This is happening all over the state," Dwyer said. "With an estimated 1,200 underground storage problems coming up over the next two years, the problem will only get worse."

Bill supporters, including Brownsville residents Diana Young and Richard Blakeley, also expressed frustration with the Department of Environmental Quality (DEQ), which oversees the removal and treatment of soils contaminated with hazardous wastes. "DEQ was interested in seeing dirt removed and treated, but not interested in inspecting the place where it was dumped," Young said.

Reaction to the proposal from gasoline distributors and hazardous waste treatment firms, however, was mixed.

Pacific Remediation Corp. representative Pat Turnage favored the measure, saying that aerating contaminated soils simply transfers the problem from the soil to the air. Turnage said his firm, which treats hazardous waste with a thermal process, offers a more complete solution to the problem that is as cost-effective as properly designed aeration treatment.

—continued on page 3

Prospects for accord on water remain dim

The struggle to shape this session's package of water legislation showed few signs of reaching resolution last week as agencies, user groups, environmentalists and local governments squared off in two-, three- and sometimes four-sided battles during committee hearings.

The lack of consensus surprised neither water committee leader — House water subcommittee chair Rep. Chuck Norris (R-Hermiston) remarked that water issues never seem to be resolved to everybody's satisfaction, while Senate Water Policy chair Sen. Bill Dwyer (D-Springfield) relied on the Mark Twain adage "whiskey is for drinking and water is for fighting" to describe the pace of negotiations on his side of the rotunda.

With only two measures before the Senate committee, attention again focused on the House subcommittee, where bills dealing with the allocation of conserved water and the formation of local watershed management councils again drew capacity crowds for their

second public hearings, and where a slate of measures governing irrigation districts provoked a contentious exchange between Oregon Water Resources Congress and WaterWatch representatives.

HB 2155

A Water Resources Department proposal to allocate water conserved from efficiency improvements in diversion and delivery structures reappeared for its second hearing bearing scars from work-group surgery so extensive as to require a new set of typefaces to describe the changes. Resource Management Division Administrator Becky Kreg led the committee through a host of deletions and additions that boldfaced, underscored, italicized and bracketed not only existing law, but the proposed changes incorporated in HB 2155 itself.

Despite the changes, substantial disagreement remained over the allocation formula, with water users pressing for statutory recognition of a 75 percent allocation of conserved

water to the water right permit holder and 25 percent to the state and with WaterWatch representatives insisting on a 50-50 split between users and the state.

WaterWatch representative Anne Perrault argued that the 50-50 split would make up for historic inefficiencies in the diversion and delivery of water that resulted in water right holders getting more water than they actually needed to apply to a beneficial use. Perrault also pointed out that water conservation measures already benefit users by reducing their pumping costs and, in many instances, improving crop yields.

But Water for Life attorney David Moon contended that the 75-25 allocation would give water users needed incentive to invest in conservation measures. Moon also objected to the bill's requirement that the state's 25 percent share of saved water be allocated to instream uses, arguing that adding conserved

—continued on page 3

Coastal Caucus focus stays with shellfish issue

Legislation affecting shellfish cultivation remained the hot topic at the Coastal Caucus meeting Tuesday, as legislators heard updates on the progress of Senate Bill 6 and on proposals to raise recreational and commercial shellfish fees to pay for Health Division water quality testing (see related story, page 1).

Paul Hanneman, who represents the Oregon Shellfish Industry Steering Committee, summarized the Jan. 29 hearing on SB 6 and said the industry remains "unalterably opposed" to the measure, which would transfer jurisdiction over submerged lands leasing for oyster cultivation from the Department of Agriculture to the Division of State Lands. Caucus chair Rep. Tim Josi (D-Bay City) said he was confident that even should the bill pass the Senate it would probably die in the House.

Discussion also focused on House Bill 2331, which seeks to raise the fees charged to both recreational and commercial shellfish harvesters to finance the Health Division's water quality testing program. Hanneman noted that the proposed fees would raise about \$1.1 million for the biennium, which is nearly double the cost to the Health Division of administering the program. Rep. Jim Whitty (D-Coos Bay) said he had some doubts about the wisdom of the fee increase and Rep. Josi said he will probably introduce an amend-

ment to take care of Caucus members' concerns once the bill comes up for hearing.

Rep. Whitty also asked Caucus members to consider supporting him in a resolution that would ask the Legislative Assembly and the Governor to consider the impacts of a reduction in state services to struggling coastal communities, particularly impacts on community employment, when scaling back the state budget. Rep. Josi agreed, suggesting that budget reductions should be made on a basis proportional to the relief each community received from property taxation under Ballot Measure 5 mandates. Whitty provided committee members with a copy of his drafting request to the Legislative Counsel's office.

Also awaiting action in the Legislative Counsel's office is the proposal by the Oregon Trawl Commission to establish an Oregon fisheries enhancement board to encourage alternatives to the declining salmon fishery. Trawl Commission Administrator Joe Easley said he expects a draft from the LC before bill cutoff this week.

The Caucus also heard from Sen. Bob Kintigh (R-Springfield), who asked for support from coastal legislators for a Senate joint memorial calling on Congress to build in population control measures for California sea lions when it considers the Marine Mam-

mal Protection Act for reauthorization later this year.

"I'm not a fisherman, but I eat fish," Kintigh said. "I keep reading about marine mammals chewing up all the fish and I wanted to do something about it."

Rep. Whitty said he favored the measure, citing the upstream migration of sea lions in some coastal rivers and their uncontrolled feeding on coastal salmon runs. Whitty said natural sea lion predators, such as killer whales, do not exist in sufficient numbers to control the sea lion population. Rep. Chuck Norris (R-Hermiston) noted that a similar measure, HJM 25, passed the House last session but died in the Senate. He provided Sen. Kintigh with a copy of the measure for reference in drafting his resolution.

Ocean Policy Advisory Council member Bob Bailey gave the committee an overview of the Council's progress on developing a management plan for the state's three-mile territorial sea. Once completed the plan will govern state agency policy on access to, use and development of the near-shore area. Bailey said the Council has met a couple of times and has held workshops with affected user groups in Gold Beach, Brookings and other coastal communities, but has substantial work remaining.

Gasoline retailers cite cost factors in opposing bill

—continued from page 1

But other treatment firm representatives sided with petroleum marketers in opposing the measure. Environmental consultant Scott Mills, who represented the treatment consulting firm GeoEngineers, said the costs associated with removing, transporting and treating contaminated soils are already prohibitive for most gasoline distributors and retailers — restricting the use of such cost-effective methods of treatment as aeration and bio-remediation will simply encourage these landowners to dispose of contaminated soil in landfills, where it will remain indefinitely, Mills said.

Representatives from the Oregon Petroleum Marketers' Association and the Western States Petroleum Association also cited the cost of treatment methods other than aeration in opposing the measure. Western States Petroleum Association representative John Burns said restrictions proposed in SB 315 could slow industry compliance with state and federal hazardous waste laws and discourage the industry's efforts to find ways to recycle hazardous materials. Burns said he was encouraged by remarks Dwyer made that would allow on-site aeration on industrial sites within urban growth management boundaries.

"None of us wants to dump contaminated soil in residential neighborhoods," Burns said.

Committee chair Sen. Ron Cease (D-Portland) asked DEQ staff members to discuss the proposal with Dwyer and industry representatives and to come back to the committee with an amended bill.

Summit request passes House, goes to Senate

A House joint memorial calling on Congress to hold a summit to discuss Pacific Northwest timber and forestry issues passed third reading in the House Wednesday with no opposition.

HJM 2, which drew almost no opposition in House committee hearings, now awaits committee referral in the Senate.

Fire in water battle raises steam

—continued from page 2

water to instream flows would increase instream flow rates above levels already deemed necessary to support existing instream uses.

Instead, Moon said, the conserved water should replace a like amount of water already set aside for instream uses—that way, the overall amount of water dedicated to instream uses would not change, but the water made available through conservation would have the same priority date as the original use.

Committee chair Norris closed the hearing by asking Water Resources Director Martha Pagel to provide the committee with a hand-engrossed version of the bill incorporating the work-group's changes.

HB 2215

Invoking fears of another land-use planning structure modeled on the Land Conservation and Development Commission (LCDC), opponents to a proposal to establish local watershed management councils blasted the measure as adding another layer to an already overbearing state bureaucracy.

"While it takes an apple pie and motherhood approach and emphasizes the concept of partnerships, the fact is [the bill] is letting the camel's nose into the tent," Oregonians in Action President Frank Nims said. He added that the bill is the first step in a process where state government "almost certainly would end up dominating local government and the interests of private property owners."

Nims objected to a bill provision allowing the Strategic Water Management Group (SWMG) to ensure compliance with guidelines governing representation on the local councils and to provisions he said placed additional burdens on state and local government without any corresponding sources of funding.

But Nims' position drew a rare rebuke from committee chair Norris, who said that water users who have called on him to simply vote no on HB 2215 are probably not familiar with its provisions.

"I think there is benefit there [in the bill]," Norris said. "The interests say this bill doesn't do much, but when I asked what's out there now, there's nothing."

Norris found cautious support for his position on the bill from county officials and representatives of the Association of Oregon Counties (AOC), who supported the bill's concept, but wanted to tinker a bit with the proposed implementation.

AOC said it would prefer that statewide coordination among local councils rest with the Water Resources Department, rather than with SWMG; that the state should allow a watershed to organize itself, define its boundaries, set its own remediation and supply goals and fund its own programs rather than wait for the state to designate high-priority watersheds; that state and federal officials appointed to local councils serve as advisors only; and that Water Resources supervision of local council action remain advisory only.

County commissioners from Polk and Yamhill counties echoed AOC's position, but stressed that local governments must have real decision-making power.

The measure also gained support in concept from Pope and Talbot, Inc., but the paper company expressed concern with the amount of de facto power delegated to local councils and to a lack of positions given to industrial water users.

HB 2340, HB 2342

WaterWatch representatives Doug Heiken and Tom Simmons carried the battle right to Oregon Water Resources Congress representatives in a contentious fight over measures providing for changes to irrigation district voting rights, allowing districts to provide water to non-agricultural users and allowing districts to require users to install water use measuring devices.

WaterWatch objected most strenuously to provisions in HB 2140 that would allow water transfers to non-irrigation uses. Heiken called the proposal an attempt to "strengthen the districts' control over water and weaken the authority of the Water Resources Department ... at the same time the districts are erecting subtle shields to protect them from legal challenges."

Simmons decried new election rules that he said give control over water resources only to users. "There is a feeding frenzy going on in this state over water," he said, adding that the committee needs to decide if this control is good public policy.



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.

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Address correction requested

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A guide provided courtesy of the Oregon Coastal Zone Management Association

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367

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1993 COASTAL LEGISLATORS

H493

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