

# OREGON COASTAL Notes

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## Water Dept. agenda will go back for more tinkering

Water committees in both chambers sent most of the Water Resources Department's legislative starting lineup back to the showers after water users objected to measures that would expand departmental authority to grant certain exemptions from the water right permitting process, to streamline applications for new uses and to require water use reports from private users.

The department agreed to form work groups that will draft compromise measures to present to the committees later this month.

### HB 2107

On the House side opposition to HB 2107, which would allow Water Resources to establish a registration process for users engaged in stream restoration projects in lieu of applying for a water right certificate, came primarily from the Oregon Water Resources Congress (OWRC), which sought assurances in the bill language that

any registrations granted under the bill provisions would be subordinate to inchoate and adjudicated water rights recognized by court decision. OWRC representative Ben Lombard also told the committee that the bill should require Water Resources to account for these new, registered uses in common with existing uses that divert water under a water right permit when it decides if a stream is over-appropriated.

Support for the bill came from the City of Portland, whose representative said the city would be interested in taking advantage of the proposed registration program for its water quality restoration projects along the Tualatin River, and from Rep. John Schoon (R-Rickreall), who asked the committee to not limit the uses eligible for the registration program. Schoon also suggested that local soil and water conservation districts should either issue the registration documents or have a say in the process.

Water Resources Director Martha Pagel told the committee that the bill as drafted does not reflect the department's current thinking on the subject and that it will go back to the working group that produced the draft with new language.

### HB 2153

The department also went back to the drawing board to re-fashion a measure that would have exempted altogether water uses for emergency fire-fighting, diversions for stock-watering ponds and troughs, and fish by-pass structures from any requirement to register the use or to apply for a water right permit.

OWRC's Lombard, noting that salmon and trout restoration projects alone qualify for exemption from existing requirements, objected to the expansion of exempt uses, but asked that the department consider coming up with a comprehensive list of

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## House to ask Congress to support regional timber summit

A proposal calling on Congress to support a summit meeting to address Northwest timber issues drew nearly unanimous support from timber workers, environmentalists and legislators in a House subcommittee hearing Wednesday.

The proposal, House Joint Memorial 2, also asks the Northwest congressional delegation to push for the summit "as a means of resolving the ongoing forest management crisis." President Clinton had suggested convening such a meeting on Oregon visits during last year's presidential campaign.

Summit conferees should obtain input from "all interested parties," but decisions on timber issues should be made only by Clinton Administration officials, the Northwest congressional delegation and the governors and elected officials of the af-

fectured states, the measure says. It also calls for conferees to produce legislation that would "maintain the economy of the region, maintain community stability, provide for a stable supply of timber for production, maintain a reasonable level of jobs and protect fragile forest ecosystems."

In testimony that addressed topics ranging from timber supply problems to efforts to amend the federal Endangered Species Act, labor groups, including the International Woodworkers of America, the AFL-CIO, the Association of Western Pulp and Paper Workers and the Association of Federal, State, County and Municipal Employees, called on legislators to press for an early summit.

"I can't emphasize how much we need this summit," Oregon AFL-CIO President Irv Fletcher said. "Every month of delay

means another mill shut down, probably permanently."

The measure also drew support from the Oregon branch of the Sierra Club, which cautioned committee members that forestry issues have an impact outside the region and that members of Congress might not appreciate having decision-making power taken out of their hands.

U.S. Rep. Peter DeFazio weighed in with a letter to the committee saying he has asked Clinton to hold the summit in his district, since job losses from reduced timber supply will hit Douglas, Lane, Linn, Curry and Coos counties hardest.

Rep. Tim Josi (D-Bay City) voted along with the full House Natural Resources Committee to send the measure to the floor Thursday, where it will be scheduled for third reading.

# Water bills meet heavy opposition

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such uses if it chooses to proceed. The law governing the impoundment and use of springs that arise on one owner's land, Lombard said, is an example of how piecemeal legislation on water uses has led to unneeded complexity and confusion.

WaterWatch representative Doug Myhre also objected to the bill, asking that it include some provision for public comment before the department granted an exemption. Under questioning from Rep. Bob Repine (R-Grants Pass), Myhre explained that WaterWatch wanted to ensure that water uses that could interfere with fish migration channels or divert flows from intermittent streams go through the normal water permitting procedure.

Water Resources Director Pagel testified that the department wanted the bill to accomplish two objectives in addition to exempting certain uses: to establish a registration process similar to that set forth in HB 2107 for existing stock and wildlife ponds operating without water rights; and to issue temporary licenses to users practicing forest and range management. Freely admitting that the bill as introduced did not represent a consensus of affected user groups, but rather resulted from an agreement among state agencies which saw it as a first step, Pagel told committee members that Water Resources plans to propose amendments to the bill. "We realize that more work needs to be done," she said.

## HB 2344

Water subcommittee head Rep. Chuck Norris (R-Hermiston) briefly gave up his committee chairmanship for the witness seat to press for a measure that would allow de minimus human and livestock uses above or within state scenic waterways.

The bill, reprinted verbatim from last session's HB 2677, which made it to the Senate before dying in committee, seeks in part to reverse the decision of the Oregon Supreme Court in *Diack v. City of Portland*, 306 Or. 287, 759 P.2d 1070. Norris said the decision effectively prohibited the Water Resources Department from accepting applications for uses in scenic waterways. Allowing some uses, particularly diversions for stock watering troughs or ponds, could actually enhance the scenic character of

the stream, Norris said, by preventing cattle from destroying riparian areas as they go down stream banks to drink.

Department of Fish and Wildlife (ODFW) representative Jill Zarnowitz said the department would support diversions that keep cattle away from stream banks, but would prefer bill language that would encourage water users to find long-term alternatives to using water from scenic waterways. The department also objected to the bill's definition of "de minimus" use as an amount not exceeding one cubic foot per second, noting that this might exceed the entire flow of some streams during some parts of the year. Rather, Zarnowitz said, "de minimus" use should amount to one percent of the available stream flow measured at the time when stream flow is lowest.

Pacific Rivers Council State Conservation Coordinator Louise Bilheimer said the entire matter may be moot, since Water Resources has completed the stream flow quantifications for fish, wildlife and recreation required by *Diack* and has begun issuing water right permits within and above scenic waterways.

Norris said he would confirm Bilheimer's testimony with Water Resources and decide whether to continue with the bill later this month.

## Senate measures

Water Resources efforts on the Senate side fared little better in the face of opposition from user groups and close questioning from Water Policy Committee chair Sen. Bill Dwyer (D-Springfield).

## SB 89

The department led off with a measure to eliminate contested-case proceedings in favor of departmental rule-making where the department sought to withdraw water from appropriation to protect stream basins, but water users lined up to oppose the measure, claiming that access to evidentiary proceedings enables water users to have a say in what would otherwise be political decisions.

"I really feel strongly that this bill is going in the exact wrong direction [from] where we want to go," Oregon Association of Realtors representative Jerry Schmidt told the committee. Schmidt added that water users need better notice and improved ac-

cess to Water Resources proceedings in order to protect their rights.

But Water Resources Director Pagel responded that giving all affected water users notice of its actions could lead to "a situation where the department could be dealing with hundreds of individual parties in a single evidentiary hearing." Pagel added that an attorney general's opinion had previously found that the department's actions under ORS 536.410, which governs stream withdrawals, should be accomplished by rule-making.

Pagel garnered qualified support from WaterWatch representatives, who told the committee that the department needs a simple procedure to follow in order to make needed withdrawals.

## SB 90

A proposal to allow the Water Resources Commission to exempt some existing uses of groundwater that do not exceed 5,000 gallons per day and to require water rights for new uses when the Commission deems it necessary to protect groundwater resources also drew fire from Oregon Association of Realtors representative Schmidt.

Schmidt objected principally to the bill's proposal to give expanded rule-making authority to the Water Resources Commission, which he said would take authority away from the legislature to decide which groundwater uses should be exempt and "let the Commission ... determine who may or may not have the use of their property."

But Pagel said the measure is aimed at clarifying whether groundwater uses for such projects as draining mines and agricultural land, constructing buildings and sewers and running small amounts of water in pipes to keep them from freezing need to have water right permits.

The measure also would allow the Commission to limit new uses when they threaten groundwater resources, Pagel said. Giving the Commission rule-making authority, rather than waiting for the legislature to prohibit these uses in statute, would allow the Commission to respond to changing conditions in the aquifers, Pagel said.

Questioning from Sen. Bill Dwyer focused primarily on how the Water Resources Department proposed to gauge the

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## Senate measures address range of issues

Following is an abbreviated list of those bills introduced and moving in committee as of February 5.

SB 27 would allow the Department of Environmental Quality to require the owner or operator of a municipal solid waste facility to conduct a cleanup when the facility is contaminating ground water with a hazardous substance. The bill also changes the financial assurance requirements needed to operate a disposal site to conform with federal law. Public hearing scheduled for Feb. 8 in the Senate

Agriculture and Natural Resources Committee.

SB 87 proposes to increase the fee charged to owners of underground storage tanks to pay for the costs of state agency inspections and regulation. Public hearing and possible work session scheduled for Feb. 12 in the Senate Agriculture and Natural Resources Committee.

SB 129 would require any water user who proposes to construct a dam or impoundment structure to apply for and obtain a water right certificate from the Water Resources Commission before beginning construction. The measure also allows the Commission to request information it needs to complete the user's application. Public hearing scheduled for Feb. 11 in the Senate Water Policy Committee.

SB 189 would allow any citizen to sue to enforce Oregon law governing the disposal, collection, storage or recycling of solid waste, unless the state has already begun a proceeding against the violator. The bill would also prohibit counties from imposing a surcharge on waste imported for disposal or recycling in the county. Public hearing and possible work session scheduled for Feb. 8 in the Senate Agriculture and Natural Resources Committee.

SB 315 would prohibit any person from aerating soils contaminated with oil on property located within an urban growth boundary. The measure would also allow the Environmental Quality Commission to adopt rules to limit the storage of oil-con-

taminated soils within urban growth boundaries. Public hearing and possible work session scheduled for Feb. 12 in the Senate Agriculture and Natural Resources Committee.

HB 2192 would remove water utilities from regulation by the Public Utilities Commission. Public hearing held Jan. 21 in the House Subcommittee on Water. No further action scheduled as yet.

HB 2284 would amend a legislative finding in ORS 285.800 to declare that ports are an integral element of the state's transportation infrastructure and would change state policy so as to include ports in planning and implementing state economic development and transportation programs. Public hearing and possible work session scheduled for Feb. 8 in the House Subcommittee on Transportation.

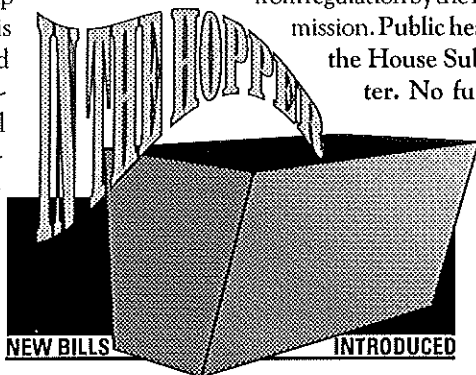
HB 2340 would expand the powers of irrigation districts to provide water for uses other than irrigation. Public hearing scheduled for Feb. 9 in the House Subcommittee on Water.

HB 2341 would permit the use of reclaimed water from industrial sources. Public hearing scheduled for Feb. 16 in the House Subcommittee on Water.

HB 2342 would allow the agents of irrigation districts to enter the property of water users for district purposes and allow irrigation districts to require users to install water measuring devices. Public hearing scheduled for Feb. 9 in the House Subcommittee on Water.

HB 2343 would allow irrigation districts to seek reimbursement for lien costs and increase the interest rate on the delinquent payment of liens. Public hearing scheduled for Feb. 9 in the House Subcommittee on Water.

HB 2346 would declare that a shortage of water resources is a matter of statewide concern and would declare that priority should be given to environmentally acceptable and financially feasible storage facilities. Assigned to House Subcommittee on Water. No hearing scheduled yet.



## User groups assail proposed changes in water statutes

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cumulative effect of multiple, small groundwater withdrawals, particularly in critical groundwater areas.

"Do you know how you eat an elephant?" Dwyer asked. "One bite at a time." He explained that each individual withdrawal by itself might not amount to much, but together they could have a severe impact on groundwater resources.

Oregon Cranberry Farmers representative Ron Yocum echoed Dwyer's point, testifying that development in the Bandon area has resulted in hundreds of small wells drilled for residential use that have taken water away from cranberry farmers who have water right permits.

### SB 91

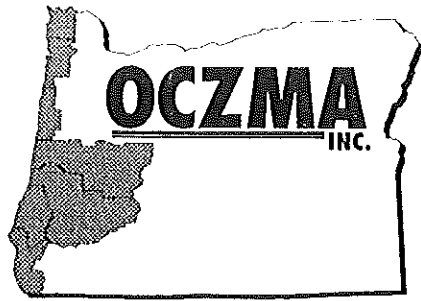
A final Water Resources proposal to require water use reports from individuals in water-short areas foundered in the face of pointed opposition from user groups, who objected to provisions allowing water-masters to cut off non-complying users and permitting the department to use their failure to file reports within five years as evidence in a proceeding to cancel their water right.

OWRC representative Ben Lombard called the bill's penalty provision a "sledgehammer clause" that could run afoul of constitutional restrictions on government takings.

"This type of sanction is not only overkill, it's unnecessary," Lombard said. He added that the department can assess civil penalties against users who fail to comply or can require water-masters to shut off their diversions. Cancelling a water right would be far too harsh a penalty for users who, perhaps out of mere negligence, fail to file the required report.

League of Oregon Cities representative Joni Low noted that municipalities already report their water use, but that they too could inadvertently fail to file a report and might, under this proposal, cut municipal users off from their water supplies.

Water Resources Director Pagel said the department will meet with a working group to forge a compromise on bill language.



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