

# OREGON COASTAL Notes

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## Wellhead protection bill drowns in sea of controversy

A failure to reach consensus in the face of trenchant opposition from farming and landholding interests and eroding support from local government proponents doomed a state wellhead protection bill in a House Water Subcommittee hearing Thursday.

Committee members, with only Rep. Carl Hosticka (D-Eugene) dissenting, voted to table House Bill 2149 after a working group led by Oregon Environmental Council (OEC) Policy Director Jean Cameron and Oregon Farm Bureau representative Larry Trosi failed to reach agreement on revisions to the bill after more than three weeks of work.

"I'd hoped to pull a rabbit out of the hat," Cameron told the committee. "But there were no rabbits in the hat."

Cameron presented the committee with a reworked version of the proposal that substituted a voluntary education program for HB 2149's mandated program, but that proposal nonetheless drew unequivocal opposition from Oregonians for Food and Shelter (OFS) Executive Director Terry Witt, who argued that existing law provides adequate authority to undertake educational programs.

"What benefit is there to passing a weakened bill?" Witt asked. "Do we merely pass a bill to pass a bill?"

Witt added that even with adequate authority in statute, state agencies have insufficient funds to begin educational programs. But, he said, even if the state had enough money OFS would see little reason to open a "Pandora's box" of wellhead protection measures without working out program and funding details. Witt cited the 1985 Community Right to Know Act as an example of "run-amok financing" that may cost OFS members as much as \$13,000 for each of their waste generation facilities.

"Oregon passed a Community Right to Know Act because it was the right thing to do and because, as proposed, it did not represent an unreasonable financial burden," Witt said.

"That disaster came four years later."

Witt's comments preceded a contingent of opposition that included Rep. Patti Milne (R-Woodburn), who said HB 2149 was less about wellhead protection than the imposition of additional unneeded government regulation; Marion County farm operators Dan Dougherty Jr. and Dan Dougherty III; Lackiamute Water Co-op representative Vess Gamer; and a representative from the South Adventist Church Schools, who said the bill would represent a severe financial burden on small, rural private schools on well systems.

But hydro-geologist Jonathan Snell appeared undeterred by the lopsided testimony, reminding committee members that the price of groundwater remediation after contamination far exceeds the price of prevention. Furthermore, he added, hydro-geologists have

begun to realize that the technology to clean up contaminated aquifers simply doesn't exist in many cases and that "the best we can do is contain the contamination."

"I call on this subcommittee to begin to steer our groundwater protection program, in the words of Gen. Omar Bradley, 'by the light of the stars as opposed to the light of passing ships'," Snell said, adding that the committee should pass a bill that provides some sort of wellhead protection so as to avoid a "public backlash" once the true costs of groundwater remediation emerge.

Rep. Tim Josi (D-Bay City) said he favored the concept behind the bill, but that he could not support it when he had as many concerns about its implementation as he did.

"I think what we've seen is the death of a bill," he said. "And that's too bad."

## Water conservation struggle persists in House committee

An expected stream of water legislation from the House Water Subcommittee slowed to a trickle last week after persistent opposition from WaterWatch representatives delayed action on a conservation measure and on proposals to expand the authority of irrigation districts.

But committee members voted to send House Bill 2344, a measure allowing *de minimis* withdrawals of water from scenic rivers, to the full House Natural Resources Committee after accepting Water Resource Department amendments that placed restrictions on the amount of an allowable diversion and on the types of uses permitted. If approved by the full committee, the measure would be the first bill passed out of the House Water Subcommittee this session.

The conservation bill, House Bill 2155, will go under the legislative knife in its second work session this Thursday after three previ-

ous public hearings and one previous work session. The measure, which proposes an allocation formula for water savings resulting from improved diversion techniques, stalled Tuesday after WaterWatch representatives Anne Perrault and Tom Simmons objected to a Water for Life amendment that would have replaced, acre-foot for acre-foot, existing instream water rights with the 25 percent allocation of conserved water assigned to the state under the bill's allocation formula.

Water for Life attorney David Moon had argued that simply allocating the state's share of conserved water to instream uses would create a process for establishing instream water rights that bypasses the normal water right permitting process and its opportunity for public notice and comment. Moon also objected to adding more instream water rights on top of existing rights, arguing that instream

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# Water battle erupts again in House committee hearings

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water rights, like any other water rights, are wasteful if there are too many of them.

But Simmons said the state's water resources are already over-appropriated and that all instream rights are drawn from existing water rights.

"If we had to cut back on existing instream water rights because of waste, that would be the most delightful thing imaginable," Simmons said. "But [that situation] doesn't exist ... there is no more water."

Committee chair Rep. Chuck Norris (R-Hermiston) also questioned Moon's portrayal of instream water rights, noting that in most instances they are little more than paper rights, with no actual water dedicated to flows. Rep. Carl Hosticka (D-Eugene), in turn, questioned whether the amount of water dedicated to instream flows was sufficient to meet actual instream needs and suggested that pressures from other constituent groups could cause the Water Resources Commission to set flow levels below those recommended.

HB 2346

Hearings on a bill that would declare as a high priority for the state the development of

environmentally acceptable and financially feasible water storage capacity quenched some of the heat of the conservation debate, drawing only mild objections from Water Watch's Doug Myers and enthusiastic support from water user groups.

Committee chair Rep. Norris described the measure as an attempt to keep storage from becoming "a four-letter word" in Oregon. "I just wanted this bill to say 'yea, storage!'," he said.

Water Resources Director Martha Pagel told the committee that existing Water Resources Commission policy directs the department to consider storage in common with other methods for meeting instream and out-of-stream water needs and to pursue funding when the state determines that water storage will meet a future need. The policy also asks the state to encourage watershed storage through natural processes and using non-structural means such as wetland enhancement and riparian area recovery, Pagel said.

The bill drew praise from Oregon Water Resources Congress (OWRC) Executive Director Jan Boettcher, who noted that the consequences of the last eight years of drought

would have been much more severe without storage capacity. The bill will send a strong message to Oregonians that the state must begin to shape its future water supply to avoid controversy over "how we continue to cut the pie into smaller pieces," Boettcher said.

Oregon Landscape Contractors Association representative Michael Snyder also approved of the measure. Snyder said his industry was "singled out by political leaders to take the brunt of [the 1992] water shortage" and as a result lost millions of dollars because of restrictions on landscape irrigation. Increased storage, Snyder said, should be a "top priority" for the state.

Myers said Water Watch would not oppose the bill, but he asked the committee to consider how many dam sites remain for storage projects in the state and how much federal and state funding exists for dam projects. The bill seems to favor engineered and structural storage solutions, Myers said, but the committee should try to emphasize natural storage processes in existing ecosystems.

HB 2340, 2342, 2343

Fireworks erupted again at a hearing Thursday after OWRC representative Kip Lombard described a plan to give irrigation districts expanded authority to provide water for non-agricultural uses, to change voting requirements for district elections and to permit district representatives to enter water users' property to make necessary repairs to the water conveyance system.

Lombard said the plan, now distilled from House Bills 2340, 2342 and 2343 into just HB 2340, allows the districts, especially in rural areas, to legally supply water to a number of users not served by municipal water corporations, including rural parks, schools, resorts, dairies and nurseries, and to a number of uses, including construction, mining, food-processing and fire-fighting. Tualatin Valley Irrigation District Manager Dan Wilson supported Lombard, telling the committee that his district had provided water, illegally, to the City of Banks to fight a fire that had exhausted the city's municipal water supply.

But the proposal raised the ire of Water Watch representative Tom Simmons, who told the committee, "we're giving away the store with this bill." Simmons said the bill permits water districts to benefit from their own waste and inefficiency by allowing them to sell water they admit is surplus and by

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## House rules committee hears earful when witnesses unload on agencies

In a prelude to what promises to become a stormy series of hearings before the House Legislative Rules Subcommittee, business owners and private citizens last Monday angrily denounced state agencies ranging from the Children's Services Division to the Department of Environmental Quality for what many saw as arrogant and capricious rulemaking procedures in the service of agency "empire building."

Witnesses testifying in favor of House Joint Resolution 22 and House Bill 2262, both of which seek to subject agency rulemaking to legislative oversight, found a sympathetic audience in committee members, who listened attentively as they related instances where, they said, agencies had refused to listen to them or had acted arbitrarily to deny them their rights.

Aloha business owner Loren Parks raised perhaps the most vociferous voice of protest, calling agency heads "failures," who succeed only when they "brown-nose" their way into state government.

"Of the people who head agencies, how

many would you trust with your own personal money?" Parks asked rhetorically. "Not one! Then why do you trust them with Oregon's money?"

Bob Carpenter, a citizen member of the Secretary of State's Oregon Administrative Rule Advisory Committee, noted that while Oregon agencies had made more than 1,500 filings for rule changes in 18 months, postage for the Oregon Bulletin, in which agencies announce rulemaking proceedings, amounted to only \$120 per month.

But attorney general special counsel Elizabeth Hushing called the House measures impractical, noting that the volume and number of rules that the legislature would have to review under the provisions of the bill would make legislative sessions unworkable. The bills make no distinction among rules which are controversial and those which are routine, Hushing said, and ignore existing mechanisms for legislative oversight of agency rulemaking, including setting guidelines in statute.

Hearings on the measures continue today.

# Budget woes threaten Fish and Wildlife's hatcheries

Saving the Trask River and Willamette fish hatcheries from budgetary extinction this biennium would require a cash infusion of \$643,000 over and above the amount the Department of Fish and Wildlife (ODFW) expects to collect from a proposed two-dollar increase in fish license fees, department director Randy Fisher told Coastal Caucus members Wednesday.

Declining returns from ad valorem taxes imposed on commercial fish landings have put the department in a half-million-dollar fiscal hole, Fisher said, that has forced it to propose cutbacks in portions of its fisheries programs. Fisher estimated the loss of fish production from the two hatcheries at about one million spring and fall chinook, two million coho and 450,000 legal trout. Anticipated cutbacks at the Fall River hatchery could reduce legal trout production by another 248,000 individuals, he added.

But the cutbacks that would be necessary if the fee increase proposal does not pass dwarf these proposals, Fisher said. Estimated losses from program reductions without the fee include the shutdown of two additional hatcheries—Fall Creek and Butte Falls—cutbacks in production at six other hatcheries, the elimination of the fish district office at Prineville and the elimination of planning and research positions for three department projects, Fisher said. He added that the drop in fish production could amount to more than 5.3 million coho, 2.8 million spring and fall chinook, 1.3 million legal trout, 1 million fingerling trout and 5,000 winter steelhead.

Part of the answer to these problems may lie in a proposed increase in shellfish harvest fees, Fisher said. An increase proposed in House Bill 2331 would collect about \$1 million, he said, which would pay for the Health Division's water-quality testing program for shellfish and still leave a little less than half that amount for ODFW to use as an add-back to its fisheries budget.

But that proposed solution faces its own challenges. Rep. Tim Josi (D-Bay City) gave committee members a copy of his request to the Legislative Counsel's office to draft an amendment to HB 2331 that would dedicate the funds remaining from the fee increase to the Salmon Restoration and Enhancement Board, while a companion measure asking for fee increases in the Senate has fixed no specific amount for collection. Shellfish industry

growers have also voiced some muted concern about dedicating funds collected from shellfish harvesting to programs involving finned fish.

Fisher said he intends to frame the issue of program and hatchery cutbacks as a policy choice for the joint Ways and Means Committee to make in hearings on the department's budget for the upcoming biennium.

Fisher also told Caucus members that the department's decision to close down the Columbia River gillnet fishery two weeks ago resulted from a combination of bad circumstances. National Marine Fisheries Service (NMFS) staff members failed to draft a formal biological evaluation required under the Endangered Species Act that would indicate that a 10.6 percent catch rate Oregon and Washington fisheries managers had proposed in an oral conference with NMFS before the start of the season would have no significant impact on the listed species, Fisher said. Because ODFW knew that continuing the season would inevitably have some — albeit unknown — impact on the endangered run, it had no choice but to shut the fishery down, he said.

Shutting the fishery down early might cost harvesters up to \$540,000 and the state about \$14,000, Fisher said.

A similar failure to have a formal biological evaluation completed before last season opened didn't raise any eyebrows, Fisher said, but this year hydro power facility operators involved in litigation with the department raised some questions. He added that the only way to prevent a similar shut-down next season is for NMFS to put in the overtime necessary to get the biological evaluation out.

In other business, the Caucus heard an explanation of a proposal to establish limited-entry regulations for Oregon's Dungeness crab fishery from Pacific States Marine Fisheries Commission member Paul Heikkila and Oregon State University marine extension agent Bob Jacobson. Heikkila told Caucus members that restricting entry to the fishery to those harvesters who held ODFW registrations between 1986 and 1991 and who landed at least 500 lbs. of crab for two seasons during this period would promote community stability and prevent degradation of the resource.

Heikkila noted that most industry members favored even more stringent restrictions, but that some members had reservations about

whether the proposal would protect those harvesters who had made substantial investments in crabbing equipment or who had begun construction of boats they intended to use in crabbing operations. Jacobson noted that only two of the nine Oregon members of the Tri-State Crab Committee responsible for drafting the proposal agreed to include provisions for protecting investments.

Sen. Bill Bradbury (D-Bandon) said the Senate Agriculture and Natural Resource Committee has agreed to introduce the measure and that it has been sent to the Legislative Counsel's office for drafting.

## **Irrigation district bill sparks heated retort from WaterWatch**

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enabling them to avoid public scrutiny of their actions.

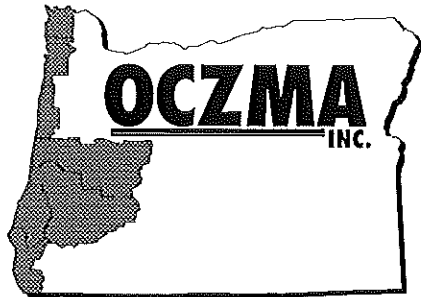
"Today you've heard, in my opinion, a bunch of fast talk," Simmons said. "There was not one word said to justify these changes."

Simmons noted that state water law would permit each of the users Lombard mentioned to apply for their own water right rather than obtaining their supply from the districts. WaterWatch representative Doug Heiken suggested that water allocated to irrigation districts but no longer needed should return to the control of the Water Resources Department for re-appropriation or reallocation according to the public interest.

Water Resources representative Bev Hayes took a generally neutral stance between the two adversaries, favoring the ability of irrigation districts to provide water to non-agricultural users, but expressing concern about whether the district could make such transfers without departmental approval.

Oregon Farm Bureau representative Larry Trosi said he supported the bill and that he had worked out most of his differences with OWRC. The only remaining concern he had was to ensure that water users had some ability to evaluate the cost of water metering devices required in the bill.

Rep. Norris concluded the hearing by scheduling the bill for work session on Mar. 9 and adding that he would like to move the bill out of committee at that time.



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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