

OREGON COASTAL Notes

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Bill to set 'minimum' instream flow draws sharp retorts

The sole proponent of a bill that would strictly define the reach of instream water rights under 1987 legislation ran into an overwhelming array of opposition at a Senate Water Policy Committee hearing Thursday.

Water for Life attorney David Moon told committee members that Senate Bill 440 would clarify the 1987 standard governing how much water state agencies could ask to be set aside for instream flows by defining such flows as "the minimum seasonal quantity of water flow necessary to support the public use requested by an agency." Asking for the minimum would be equivalent to requiring no waste in consumptive uses of water, Moon said, and would prevent such agencies as the Department of Fish and Wildlife from applying for "optimum" flows.

But Moon's proposal drew unanimous opposition from state agencies, environmentalists, fisheries groups and local governments, many of whom pointed out that existing instream rights often amount to little more than "paper rights" because they are junior to more established consumptive water rights.

"Sufficient instream flows are not now available to meet scenic waterway needs for fish, wildlife and recreation under the established [City of Portland v.] Diack flows," Pacific Rivers Council representative Louise Bilheimersaid. "There are currently only 542 instream water rights... what is causing stress on our rivers and streams is the over-appropriation of water to out-of-stream uses, not instream uses."

Representatives from Oregon Trout and WaterWatch also objected to the bill's requirement that state and federal agencies conduct baseline studies and use "up-to-date methodology" before granting instream flows, noting that no such requirement exists when the state approves private, consumptive uses of water.

"This bill would tie the state's hands by not allowing [it] to protect [public] uses of the resource if it lacks the funds to use the most 'up

to date' methodologies for determining flow needs," WaterWatch representative Doug Myers told the committee in written testimony. "This bill would place a greater burden on the state when requesting water for public instream uses than for private users of water."

Local government advocates from the League of Oregon Cities (LOC) and the Oregon Association of Clean Water Agencies (ACWA) joined the Department of Environmental Quality (DEQ) in objecting to a bill provision that would deny the use of instream flows for pollution abatement. Moon told committee members that Idaho already has declared in statute that pollution dilution is not a "beneficial use" of instream water. Water for Life, he added, favored reducing emissions at the source, not by "throwing more water on the problem" — a practice that could result in uncontrolled water use as state agencies and dischargers increase flows to match increases in pollution.

But DEQ representative Neil Mullane countered by noting that the department bases its requests for instream flows on what it needs to

dilute treated wastewater, not untreated wastewater, and that it does not intend to substitute dilution for source reductions and treatment. The bill as drafted would in fact require the department to apply for more instream water rights than it might ordinarily, Mullane said, because the department's current method of calculating necessary flows is more conservative than the method the bill proposes.

ACWA representative Cathryn Collis said the bill would force local governments into needless and expensive modifications of their wastewater treatment systems in order to meet a standard of cleanliness now difficult to achieve.

"Such an extreme condition would result in enormous expenditures without discernible environmental benefit in streams where all beneficial uses are currently supported," Collis said.

The bill would also deprive streams of return flows from agricultural, forestry and industrial operations, LOC representative Joni Low added, which would lower stream flows available for other beneficial uses.

Finger stuck in diking district tax levy to try to plug Measure 5 money leak

A proposal to allow diking districts hard-hit by Measure 5-mandated reductions in their fee base to reorganize as corporations enlisted vocal support from two House members of the Coastal Caucus at a House Water Subcommittee hearing Tuesday.

Rep. Tim Josi (D-Bay City) told committee members that House Bill 3146 is "probably the least sexy of the bills sponsored this session, but probably the most important."

The measure is necessary because of court decisions that have held diking district assessments against property owners subject to Measure 5 limitations, Rep. Josi said. These limitations now threaten the operation of

flood control projects and put the districts in danger of losing emergency flood assistance if they fail to meet federal standards, he added.

"The time clock is ticking for these people and they really are in trouble," Rep. Josi said.

Diking districts differ from other taxing districts in that they assess a flat, per-acre rate and do not impose ad valorem taxes to meet their federal contractual obligations, Rep. Tony Federici (D-St. Helens) said.

"There is no real room for downsizing here," Rep. Federici said. "You either keep the water out, or you don't."

Rep. Veral Tarno (R-Coquille) also supported the measure but did not testify.

Water committees pore over pond exceptions to permit process

Attention focuses on proposals to bypass water right application requirements for small diversions

Faced with no fewer than seven separate bills seeking in one form or another to free water users from the need to obtain a water right for small-scale diversions or storage projects, both the House and Senate water committees are pinning their hopes for consensus on a Water Resources Department-led work group scheduled to meet today.

House Water Subcommittee chair Rep. Chuck Norris (R-Hermiston), hoping to create "a pond-bill stew," concluded hearings Thursday on three of the bills — House Bills 2399, 2970 and 3273 — by referring them to the work group formed earlier this session to hash out differences among user groups, environmentalists, local governments and others over House Bills 2107 and 2153. Meanwhile, on the Senate side that same day Water Policy Committee chair Sen. Bill Dwyer (D-Springfield) appeared willing to defer consideration of Senate Bill 441 and await the passage of House legislation dealing with water storage exemptions.

"I think [HB] 2153 is a much better vehicle than this, in my opinion," Sen. Dwyer said. "This is an area we can do a lot with using what comes over from the House."

The measures all seek to exempt from or to substitute a streamlined registration or licensing procedure in lieu of the existing permit application process now required to divert water for small ponds and reservoirs, or for specific beneficial uses. But they differ in the amount of the diversion they would register or exempt, in the application requirements for registration or licensing, and in the types of uses they would allow and restrict. Most of them would also require some form of water use monitoring or reporting.

HB 2399

Perhaps the least controversial of the House pond bills heard last week, HB 2399 would exempt surface and groundwater diversions of less than one acre-foot when used to fill a rural fire protection district's fire prevention pond and would require annual water use reporting.

Clarks Rural Fire Protection District representative Kevin Hanway told the House Water Subcommittee that it should view giving an exemption to fire prevention ponds as a life-saving measure, noting that the alternative to maintaining a pond in the Clarks district is hauling water in pump trucks over steep terrain from municipal sources in Beavercreek, Molalla or Estacada.

Department of Forestry representative Scott Wilbrecht, the only other witness to testify on the bill, said the department took no position on any of the pond exemption bills, but agreed with provisions that would minimize or exempt from regulation water use directed toward fire suppression and forest management activities, provided the use had no effect on adjacent streams.

HB 2970 and 3273

The following measures, which differed primarily in their application to, respectively, existing diversions and to existing and future diversions, drew support from Rep. Bill Markham (R-Riddle), who testified that he thought the blanket exemption granted in HB 3273 was "a good idea if we want to look out for the farm community." Rep. Markham objected to the water use reporting requirements in HB 2970 and in other measures the committee has considered, noting that engineering surveys and the installation of monitoring equipment added up to increased expense for farmers.

"I don't see that having registration, permitting and [water use reporting] will get us much," Rep. Markham said.

Oregon Farm Bureau (OFB) representative Larry Trosi told the committee that OFB supported the concepts in the legislation and that the benefits of ponds exemptions would extend to other interests besides agriculture, including fire fighting and other small-scale uses. Water for Life representative David Moon echoed Trosi's comments and added that small stock-watering ponds frequently serve as wetland areas for waterfowl and other wildlife and keep watering animals away from riparian areas they might otherwise damage. Moon also noted that Water for Life had introduced a Senate bill to address some additional concerns, including giving exempt stock pond users a priority date beginning on the date of their first use of the pond, which would give them some rights under Oregon's prior appropriation system.

Opposition to the measures came from Oregon Trout representative Jim Myron, who noted in written testimony that continuing to tolerate ponds that have not gone through the permitting process and its accompanying public interest review could threaten fish habitat by dewatering "seasonal water sources" during critical spawning months and by raising the temperature in some downstream reaches.

Many existing ponds should also be required to provide fish passage devices, Myron added. Oregon Trout would prefer that the committee wait for the results of the work group on HB 2153 before considering further pond exemptions, he said.

Pacific Rivers Council State Conservation Coordinator Louise Bilheimer, however, said that she supported HB 2153 with "trepidation," because "no one knows how much water we are talking about. While each pond may be *de minimus* individually, collectively in any one watershed they may amount to a substantial amount of water." Bilheimer said she opposed both HB 2970 and 3273 because "both bills contain language that if enacted would lead to uncontrolled use of the waters of this state."

Rep. Norris, noting that LANDSAT satellite photographs exist for most of the state, asked Water Resources Department representative Bev Hayes if the department could pinpoint the location of most of the ponds that do not have water right permits. Hayes said that while the department has photographs showing most of the ponds in eastern Oregon, inclement weather and the presence of trees surrounding ponds on the west side of the Cascades makes locating ponds difficult.

SB 441

The utility of satellite photos proved to be a point of contention in the Senate hearing also, as Water for Life representative Moon, testifying in favor of a bill his organization asked to have introduced, squared off again opposite Bilheimer. Sen. Wes Cooley (R-Powell Butte) pressed Bilheimer to justify her statement that nobody knows how much water exists in small ponds when satellite data exists. But Bilheimer replied that even when satellite photos show the location of ponds, they cannot show their depth, so the volume of water they contain is still unknown.

Oregon Trout's Myron told the committee that SB 441 included too broad a mandate, exempting not just existing ponds but all future ponds from the need to apply for a water right and including in the definition of stock pond impoundments of up to 10 acre-feet, an amount Myron called "excessive."

Association of Oregon Realtors representative Jerry Schmidt, however, told the committee that he supported the bill's concept and would support any legislation that kept the state from micromanaging water resources.

Senate considers water issues, environmental crimes

Following is an abbreviated list of those bills introduced and moving in committee as of March 19.

SB 48-A Engrossed would allow the Water Resources Department to impose civil penalties on those violating dam, dike or other hydraulic structure safety standards or pump test requirements and on those violating water use reporting requirements. Passed the Senate 27-3 (J. Bunn, Hannon and Johnson nay); introduced in the House and referred to the House Natural Resources Committee. No further action scheduled as yet.

SB 88 would establish as crimes punishable by up to six months in prison, a \$1,000 fine, or both, the unlawful treatment, storage or disposal of hazardous waste, unlawful air and water pollution, endangering the environment or submitting false information to the Department of Environmental Quality. Public hearing held on Mar. 8 and Mar.

19 in the Senate Agriculture and Natural Resources Committee. No further action scheduled as yet.

SB 90 would permit the Water Resources Department to designate by rule additional uses of groundwater exempt from the water right permitting process, so long as the use does not amount to more than 5,000 gallons per day, and would permit the department to require new groundwater users to obtain a water right permit where necessary to protect the state's groundwater resources. Public hearing held Feb. 2. Public hearing and possible work session scheduled for Mar. 23 in the Senate Water Policy Committee.

SB 91 would permit the Water Resources Commission to establish a water use reporting area and to require water measuring devices. The measure also establishes a rebuttable presumption that a water user has abandoned his or her water right if he or she fails to report water use when required. Public hearing held Feb. 2. Public hearing and possible work session scheduled for Mar. 25 in the Senate Water Policy Committee.

SB 92 would establish a preference during an emergency water shortage for human consumption, stock watering and public health and safety needs. The bill would also allow the Water Resources Commission to require water use curtailment and permits it to use expe-

ditioned processes to deal with a water shortage. Finally, the measure allows public and private water distribution systems to contract for alternative water supplies during a drought. Public hearing held Feb. 9 in the Senate Water Policy Committee; public hearing and work session held Mar. 11; work session

port and Portland. Passed the Senate 29-0; introduced in the House and referred to the House General Government Committee. No further action scheduled as yet.

SB 491 would expand the conditions under which ocean charter vessels registered in the state of Washington may conduct ocean charters off the coast of Oregon north of Cape Falcon to include those vessels leaving from any Washington port, provided that Washington extends similar reciprocal favors to Oregon vessels. Public hearing scheduled for Mar. 22 in the Senate Transportation Committee.

SB 535 would permit the Water Resources Commission to revoke the water right permit or certificate of any person who interferes with, tampers with, damages, destroys or removes fish screening or bypass devices. Public hearing and possible work session scheduled for Mar. 23 in the Senate Water Policy Committee.

SB 608 would prohibit hunting seasons for deer of either sex in the Saddle Mountain, Scappoose, Wilson, Trask, Stott Mountain, Alsea, Siuslaw, McKenzie or Santiam hunting units, except for damage control hunts. Public hearing and possible work session scheduled for Mar. 26 in the Senate Agriculture and Natural Resources Committee.

SB 912 would establish the crimes of unlawful disposal, treatment or storage of hazardous waste, unlawful air and water pollution, environmental endangerment and supplying false information to the Department of Environmental Quality. The bill also establishes a maximum one-year jail term or \$10,000 fine, or both, for offenses related to hazardous wastes, air pollution and supplying false information to DEQ; a maximum one-year jail term or \$25,000 fine, or both, for water pollution offenses; and a maximum 15-year jail term or \$1 million fine for environmental endangerment. Finally, the bill establishes a maximum of \$200,000 in fines for subsequent convictions, except for environmental endangerment, which can draw a maximum 30-year jail term and a \$2 million fine. Public hearing held Mar. 19 in the Senate Agriculture and Natural Resources Committee. The bill is also referred to the Senate Judiciary Committee. No further action scheduled as yet.



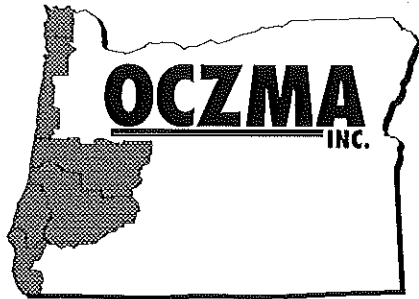
held Mar. 18. No further action scheduled as yet.

SB 129 A-Engrossed would require those proposing construction of an impoundment, diversion structure or dam to first obtain a water right permit. Passed the Senate 28-1 (J. Bunn, nay); introduced in the House and assigned to the House Water Subcommittee. Public hearing held Mar. 16. No further action scheduled as yet.

SB 315 would prohibit the aeration of oil contaminated soils within the boundaries of an urban growth management area. Public hearing held Feb. 12; work session held Mar. 17 in the Senate Agriculture and Natural Resources Committee. No further action scheduled as yet.

SB 470 would change the duration of a preliminary hydroelectric facility permit from two years to three years and eliminate the ability of the licensee to renew the permit for an additional year. Passed the Senate 28-0; introduced in the House and referred to the House Natural Resources Committee. No further action scheduled as yet.

SB 490 would add the Port of St. Helens to a list of deepwater ports for which the development of deepwater port facilities is declared to be a state economic goal of high priority. The list also includes Astoria, Coos Bay, New-



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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