



Oregon

# COASTAL NOTES

May 19, 1989

## REPRIEVE ALLOWS FOR LAST MINUTE CONSENSUS SB 3 LEAVES SENATE WATER POLICY AND HEADS FOR WAYS AND MEANS

..by Onno Husing, Legislative Fellow

The word came down Monday afternoon that Senate President Kitzhaber (chairman of the Senate Water Policy and chief sponsor of SB 3) was sick with the flu. Therefore, those gearing up on Monday and Tuesday morning at Coastal Caucus for the promised "last hearing" and work session on the wetlands legislation knew that the last hearing would probably not be the last hearing. Without Kitzhaber, sponsor of SB3, it was difficult to imagine how the bill could leave the Committee.

As expected, on Tuesday morning at 8 AM when the Senate Water Policy convened, President Kitzhaber was home in bed. As a result, the Committee could only run through a few more proposed amendments and chat about them. Senator Phillips offered the amusing observation that there had been 27 amendments offered during the hearings to this so-called "consensus bill". DSL Director Martha Pagel responded that it was a good thing SB 3 was a consensus bill, "Think how many amendments there would have been if it wasn't". Phillips retorted, "I'm not being critical, I'll save that for later".

Those attending the hearing came away with the empty feeling of those who attend a rain-out of a big game. However, since most of the members of the Wetlands Working Group, including OCZMA director Jay Rasmussen, had come to the Tuesday morning hearing, DSL Director Martha Pagel requested that the group stick around the hearing room to attempt one last effort to achieve consensus. This tact seemed preferable to leaving it up to the Committee to pick and choose among the remaining proposed amendments (the remaining dispute centered upon elements of the wetland conservation

plans and some provisions in the agricultural exemption). Believe it or not, after an hour and a half of intense negotiations, near consensus was reached! The final hang up was resolved the following day. Therefore, Kitzhaber's absence turned out to be fortuitous after all.

One of the key new ingredients is a change to Section 11 7(b)(a) of the bill dealing with wetland conservation plans (WCPs). Based on the previous language, those formulating WCPs would have been in the position of determining which wetlands were of marginal value or of minimum value. Polarization over this issue occurred because environmentalists believed that such a determination would always be made in favor of development. Conversely, those interested in development and planning concerns generally saw this provision as a definitional nightmare in which fights over what constitutes a marginal wetland would never end. It was agreed that a more neutral and practical evaluation aimed at assessing the value of a wetland as it relates to the entire planning area — rather than an evaluation of whether a particular wetland is marginal or not — could resolve this impasse.

A part of this compromise package was the addition of a sub (8) to Section 11 called the "recapture provision". It was agreed that DSL should still retain the authority to intervene in the development process if DSL determines that local governments are not living up to their end of the bargain in following through on conditioning permits. That is why the term "re-capture"—not "capture". The other new agreement concerns the agricultural exemption section. The new language clarifies the

meaning of the provision dealing with stock pond maintenance. Construction of farm and stock ponds have been deleted from the exemption. Maintenance and drainage of farm and stock ponds, however, remain exempted under the new amendments.

The Senate Water Policy Committee reconvened Thursday morning at 8 AM with the same crowd in the audience and with a smiling and obviously healthy Kitzhaber at the helm. He greeted everyone and told us how pleased he was that consensus had been achieved.

After a quick rundown of the new amendments, the Senate Water Policy Committee voted 4-0 to move SB 3 to the President of the Senate's desk with the recommendation of a subsequent referral to the Ways and Means Committee. Ways and Means would have the opportunity to provide a supplemental appropriation to DSL to carry out the bill (assuming it passes the House). Due to the strategem of moving SB 3 to Ways and Means, the leadership could elect to avoid sending the bill over to a House committee and have the bill go directly to House floor.

For those who labored through these painstaking negotiations, these developments are occurring at a breathtaking pace.

### *In This Issue:*

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## Senate Bill 1038 (Oil Spill Cleanup Legislation) Leaves Senate Agriculture Committee... by Onno Husing

Early in the legislative session and well before the Exxon Valdez catastrophe, the Senate Agriculture and Natural Resources Committee introduced two companion bills relating to oil spills — Senate Bills 1038 and 1039.

Of the two companion bills, SB 1039 emerged from the Committee first and seeks to establish oil spill cleanup plans for the entire Oregon coast. As hearings on SB 1039 and discussions concerning bringing the stricken Exxon Valdez to Portland revealed, the Department of Environmental Quality only has oil spill recovery plans for the Columbia River, Yaquina Bay, and Coos Bay. This fact is remarkable considering the volume of tanker traffic off Oregon's coast. Until SB 1039 goes into effect, therefore, there are no oil spill recovery plans for the rest of the Oregon Coast. Apparently, Oregon has been terribly lucky.

As Gail Achterman (Governor's Assistant for Natural Resources) told OCZMA members at our meeting last Friday in Salem, when there was a minor spill in Yaquina Bay, the spill was successfully contained largely due to the Yaquina Bay plan. Despite the fact that the plan had not been practiced, according to Achterman, local officials were still able to pull the plan off the shelf, contact the right people, and quickly get things moving. Events like the Exxon Valdez and the Yaquina Bay oil spills underscore the need to have a plan that centralizes authority and maps out a course of action.

The other bill — SB 1038 — has had a much more rocky road through Committee. SB 1038's policy is quite simple: to require those transporting hazardous cargoes in state waters to provide up-front assurances that those carriers will be able to provide for cleanup costs and other costs related to compensating the state for lost

natural resources in the event of a spill. Federal law on this subject is woefully inadequate. As such, SB 1038 proposes to increase financial security requirements to \$1 million.

In fairness to the bill's critics, earlier versions of the bill were flawed. Clearly, more up-front consultations may have avoided the need to keep re-scheduling hearings (but legislative committee staffs have a lot of business to attend to). Criticisms focused largely on unclear statutory definitions such as what constitutes "hazardous waste". As critics of the bill argued, any commodity over a certain volume constitutes a hazard (the bill was later narrowed to include only oil in bulk and not bunker oil used to operate the vessel). Another major problem with the original bill were ambiguities concerning how such a bill would have been implemented; in other words, the original SB 1038 was unclear on which state agency and individuals would have enforcement responsibilities.

However, resistance by some lobbyists to SB 1038 took on a very unflattering tone as the senators and committee staff struggled with the bill. A fleet of shipping operators, pilot representatives, and port officials expressed their anxiety over the bill. Playing on the inherent complexities of admiralty law and their industry, they portrayed the bill as unworkable. It seemed their primary motives were to maintain competitive advantages with other ports to avoid taking responsibility in these matters.

As I sat through these hearings and heard their public commentary, I believe I came to understand the mentality that led to the Exxon Valdez disaster. I was particularly galled by an indiscreet comment made one row behind me in the audience by a lobbyist who turned to his colleagues

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## HB 3336 PASSES SENATE FLOOR 48-12

by Onno Husing, Legislative Fellow

Readers of Coastal Notes who are following the fisheries enhancement legislation may be pleased to hear that HB 3336-B (formerly SB 41) finally passed the Oregon House on May 18, 1989. The bill was carried on the House floor by Representative Paul Hanneman and supported by Representative Larry Sowa, a key player in this bill process. The final vote was 48 in favor and 12 opposed.

The bill underwent a crucial change when it was before the Ways and Means Committee. HB 3336-B was transformed from a six year program to a two year program. There are pros and cons to this development. The good news is that ODFW will have to really get things moving before the next legislature because future appropriations to the bill will be contingent on their progress. The bad news is that HB 3336-B will have to be reargued during the next legislative session.

The major problem with a two year program is that two years does not really provide the amount of time necessary to evaluate the program. Even under the best of circumstances, the fish will still be out at sea when the Legislature reconvenes. By then the only thing legislators may be able to remember is the flack they received from increase user fees. In addition, since the Legislature is loathe to raise taxes, there is a trend toward utilizing user fees. One can expect some citizen or user backlash from these fees.

No matter how many assurances folks are given that fee increases will be used strictly for fishery enhancement purposes, there are a number of people that believe the fees will go toward buying ODFW a building in Portland and other empire-building acts. This widespread suspicion underscores the fact that ODFW has their work cut out for them if they are ever going to improve public opinion of the agency's work.

### WAYS AND MEANS COMMITTEE BUDGETS 2 MILLION FOR DREDGING AT TONGUE POINT

After years of teasing Clatsop County with schemes to fully utilize the state's facility at Tongue Point, it appears that something may finally be in the works. North Coast residents' frustration over the string of lost opportunities over Tongue Point was best expressed recently in the press when Representative Hanlon was asked about yet another development proposal and he stated, "Show me, Show me"! Well, the Ways and Means Committee appears to have met Hanlon's challenge by appropriating \$2 million to match the Army Corps of Engineers \$8 million pledge to provide monies to dredge the Tongue Point facility.

The long talked about car unloading facility is the project slated for Tongue Point. As Martha Pagel of the DSL explained to the members of the subcommittee, there will be a two stage lease for the property. Even if the car facility does not materialize, it appears timely for the state to get the dredging done now while the Corps is in the mood to provide the \$8 million. I'm sure there are plenty of people in Clatsop County that are still saying, "Show me, Show me"! We'll all believe it after the dredge pulls up and starts its work.

### State-Federal Placer Task Force Meets

The second meeting of the newly formed State-Federal Placer Task Force will be held at the Inn at Otter Crest, Otter Rock, Oregon, on May 24-25, 1989. OCZMA is providing the hors d'oeuvres for the May 24th no-host ice-breaker.

The Task Force was formed to evaluate the possible economic and strategic importance of the black sand placer resources which contain chromium, titanium, and gold and examine environmental aspects of development. The Task Force first met in October 1988. Black sand placer resources are nearshore deposits of heavy minerals that have been concentrated by wave and current action.

The meeting is open to the public and all are welcome.

There is a strong State-Federal partnership on the Task Force. Oregon Task Force members are Don Hull, Portland, state geologist, and Task Force co-chairperson; Jeff Kroft, Salem, marine minerals manager for the Division of State Lands; Don Oswalt, Salem, coastal plan analyst for the Department of Land Conservation and Development; Jay Rasmussen, Newport, Executive Director of the Oregon Coastal Zone Management Association; and Richard Starr, Newport, fisheries biologist for the Department of Fish and Wildlife.

See "Placer", next column

### OIL AND GAS DEVELOPMENT MORATORIUM LEGISLATION TO BE ANNOUNCED NEXT WEEK

After the Exxon Valdez incident and the Washington state Legislature passed their own oil and gas moratorium legislation, a number of members of the Oregon Legislature have begun a scramble to initiate an Oregon version. The content of the bill is yet to be determined but the overall purpose is to prohibit oil and gas development in state waters.

In a sense, the bill may be either premature or unnecessary, because under SB 630 passed last session, any such development could not proceed before a comprehensive ocean plan is completed. While far from completing this very complicated plan, the Oregon Ocean Resources Management Task Force has adopted a draft policy statement that "Oregon will not permit oil and gas exploration and development within the state Territorial Sea."

However, a legislative moratorium does provide a new wrinkle to the process. A press conference on the bill is scheduled for May 22nd at 9:30 a.m. in the Capitol.

### Legislative Quote of the Week

Just before Tuesday's hearing on Senate Bill 3, the Land Use Caucus hastily convened outside the hearing room in the hallway. At the end of their discussion, one of the members of the Caucus said "You just want to have the last word". The reply, "I don't want to have the last word, I just want him to stop talking."

### "Placer", continued from this page

Federal members of the group are Lisle Reed, Los Angeles, regional director of Minerals Management Service and Task Force co-chairperson; Ed Clifton, Menlo Park, geologist with U.S. Geological Survey; Tom Hillman, Spokane, geologist with U.S. Bureau of Mines; Brad Laubach, Herndon, Virginia, geologist with Mineral Management Service; and Russ Peterson, Portland, field supervisor with the Fish and Wildlife Service.

### "SB 1038", from Page Two

and said, "We'll just have to kill this bill over in the House"! Considering the events in recent months and that a nearly identical legislation recently passed the Washington State Legislature unanimously, I believe the remark was not only mean spirited but politically naive.

In the end SB 1038 left the Committee for the Senate floor with the following elements: the bill closely matches the state of Washington's bill; the maritime pilots of these vessels will bear the responsibility for checking to see that a standard form certifying insurance coverage is on board the ship; DEQ will be responsible for conducting follow-up investigations once a maritime pilot notifies DEQ of the lack of such certification; and DEQ will undertake rulemaking to clarify these investigatory procedures.