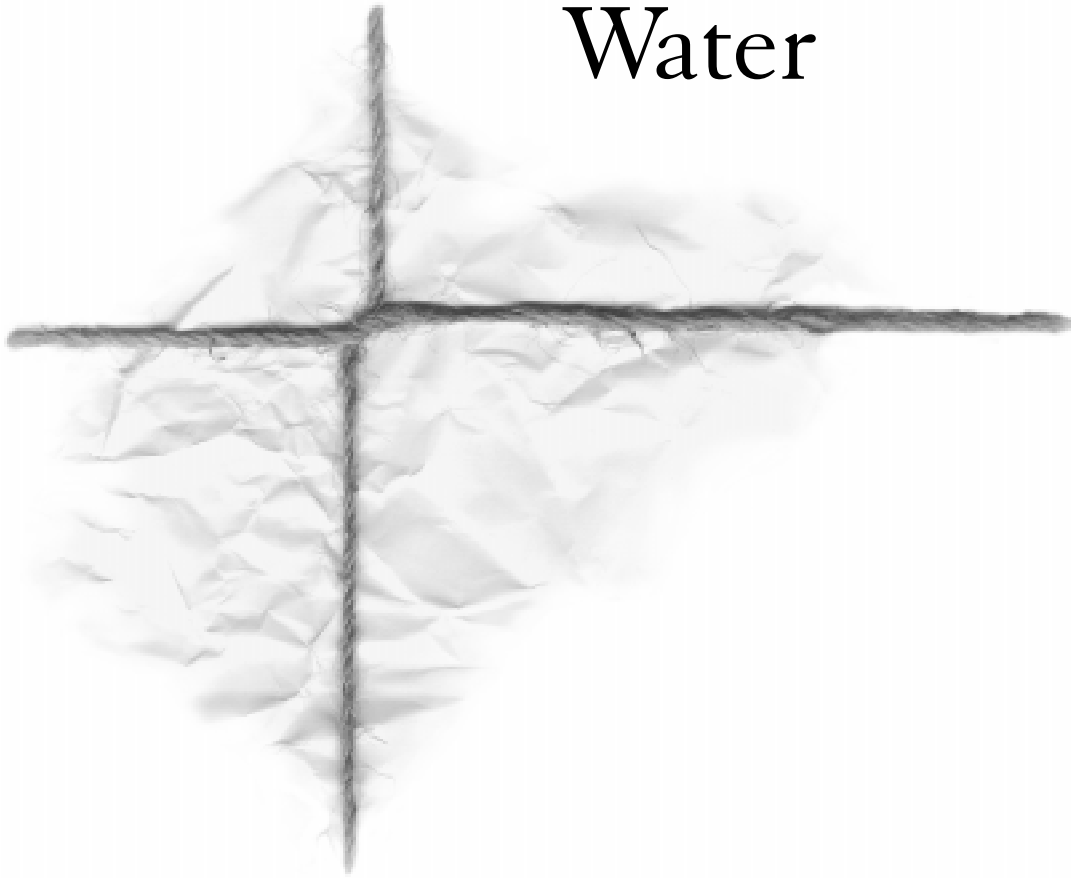


Water



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Summary
of Major
Legislation

Senate Bill 134

Relating to limited licenses for immediate use of water during an emergency.

SB 134 allows the Water Resources Director to issue limited licenses for immediate use of water during an emergency to protect public health, safety and welfare. Introduced at the request of the Water Resources Department, the measure repeals the sunset provision of limited licenses issued in conjunction with an enforcement order.

Under current law, the Water Resources Department's permitting process does not allow a timely response to emergency situations, such as the February 1996 flooding which limited the supply of water to some communities. SB 134 authorizes the issuance of a limited license for a period of sixty days. During the sixty day period, an application for a regular license would be submitted and reviewed.

HB 2184, enacted during the 1995 session, authorized the issuance of limited licenses in conjunction with enforcement orders. In certain situations, a limited license may be granted to allow the continued use of water while the user seeks to achieve compliance. The legislation authorized the issuance of the limited licenses until June 5, 1997. The department indicates the limited license authorization provides a flexible and useful tool in its enforcement program and recommends that it remain a part of state water law.

Effective Date: April 11, 1997

Senate Bill 207

Relating to the administration of removal-fill permits.

SB 207 directs the Division of State Lands to pursue methods to streamline the administration of removal-fill permits relating to waters of the state and their beds or banks. The measure requires the division to apply to the U.S. Army Corps of Engineers for state permitting authority, authorized by the federal Clean Water Act and the federal Rivers and Harbors Act. Under the measure, the Division of State Lands may investigate the possible assumption of additional dredge and fill regulatory authority authorized by federal law. The measure also requires the division to provide a progress report to the Seventieth Legislative Assembly.

Prior to 1993, the U.S. Corps of Engineers regulated fill permits but did not regulate removal permits. In response to a court decision, the Corps adopted removal

regulations (the Tulloch rule), which created a dual federal and state permit process. HB 2785 (1995), allowed the Division of State Lands to apply to the federal government for assumption of the federal Clean Water Act regulatory program, thereby providing a one-stop permit process; and placed a June 30, 1997, deadline on the decision. In early 1997, the U.S. District Court for the District of Columbia filed a judgment invalidating the Tulloch rule. The Division has worked with federal agencies and submitted a preliminary application. The application is still under review, and the federal government has not yet made a decision on the division's funding request.

Effective Date: May 2, 1997

Senate Bill 417

Relating to the extension of time to complete irrigation works.

In determining whether good cause exists for an extension of time to complete irrigation works, Senate Bill 417 directs the Water Resources Department to consider whether government requirements significantly delayed completion of construction, or perfection of the water right.

Currently, an applicant for a water use permit, except a municipal corporation, is required to start construction work within one year of the approval of the application. Construction must be pursued "with reasonable diligence" and be completed within a reasonable time, not to exceed five years from the date of approval. A permittee may seek and obtain an extension of time, upon the showing of good cause, to complete construction and apply the water to a beneficial use. Water Resources Department rules limit time extensions to one year. Municipal, quasi-municipal, group domestic, and district permits may be extended for up to five years.

Proponents assert that a permittee may be unable to exercise diligence toward construction if halted by government action such as Endangered Species Act requirements.

Effective Date: October 4, 1997

Senate Bill 712

Relating to Klamath Basin water adjudication rights.

Senate Bill 712 provides water rights adjudication claimants the opportunity to file exceptions to Indian water rights settlement agreements.

Current law authorizes the Director of the Water Resources Department to negotiate settlement of the reserved water rights of any federally recognized Indian tribe claiming rights in Oregon. Pursuant to this statute, an agreement shall not become effective unless and until incorporated in a final court decree. Under current law, any owner of a water right certificate or permit that may be affected by the agreement may submit an exception to the agreement to the court.

In basins that have not been adjudicated, vested rights have not been determined and water right certificates have not been issued. Vested right holders do not hold certificates or permits and therefore, are unable to submit exceptions to an Indian water agreement. SB 712 adds vested rights claimants in an adjudication to the class of water right holders allowed to file exceptions to an Indian water settlement agreement. The Water Resources Department asserts the bill encourages these vested rights holders to participate in the negotiation proceeding because they will have the right to challenge the final agreement.

Effective Date: October 4, 1997

Senate Bill 869

Relating to non-forfeiture of water right.

Senate Bill 869 provides that a water right is not forfeited if the owner does not use the maximum amount allowed by the right, as long as the owner has a facility capable of handling the entire allowed rate and duty and is otherwise ready, willing and able to make full use of the right.

SB 869 reflects a February 1994 Attorney General opinion that as long as a user has a facility capable of handling the full allowed rate and duty, and is otherwise ready, willing and able to make full use of the right, using less water to accomplish the beneficial use allowed by the right does not subject the right to forfeiture for non-use.

Effective Date: October 4, 1997

Senate Bill 924

Relating to the Oregon Coastal Salmon Plan.

SB 924, with the accompanying revenue (HB 3700) and appropriations (HB 5042) bills, provides the tools to implement the Oregon Coastal Salmon Plan. The plan is based on the concept that a public-private partnership built on voluntary efforts and existing law will be more effective in the restoration of salmon and habitat

than a federal, regulatory-based program. The goal of the plan is to restore coastal salmon and restore habitat which will help in the recovery of other species including the Bull Trout and the Steelhead Trout.

SB 924 establishes a seven-member, bi-partisan, Joint Legislative Committee on Salmon and Stream Enhancement, a seven-member Independent Multidisciplinary Science Team, and a fifteen-member Healthy Streams Partnership to provide oversight of the implementation of the Oregon Plan. The measure increases the membership of the Coastal Salmon Restoration and Production Task Force from 11 to 15, redefines its duties, and extends its term from 1999 to 2001.

SB 924 requires native or anadromous fish habitat restoration projects approved by the Governor's Watershed Enhancement Board to comply with federal Clean Water Act standards. Under the measure, state agencies are required to provide persons whose property rights may be affected by the plan with written information regarding dispute resolution services. SB 924 establishes conditions on the levy of tax imposed by HB 3700 and provides conditions for repeal.

In October 1995, an effort to restore coastal salmon to a sustainable level was initiated. The effort included participation by state and federal agencies, local watershed councils, conservation organizations, industry representatives, county and city officials, the National Marine Fisheries Service (NMFS) and interested citizens. A draft Oregon Coastal Salmon Restoration Initiative Plan was completed in August 1996. Following public and scientific peer review and community briefings, a draft was submitted to the legislature in February 1997. A final draft plan was submitted to NMFS in late March. Based on that plan, NMFS decided not to list the Oregon Coastal Coho Salmon on the endangered species list.

Effective Date: March 25, 1997

Senate Bill 1114

Relating to Department of Environmental Quality agreements for services provided to applicants, permittees, and regulated entities.

Senate Bill 1114 allows the Department of Environmental Quality to enter into agreements with applicants, permittees and regulated entities for the receipt of the actual cost of services, in place of fees. The measure allows the department to contract with third parties to provide services, and allows the Environmental Quality Commission to establish fees for state certification

under federal water pollution control law for removal and fill activities. The measure exempts from fees activities that have a surface mining operating permit, commercial sand and gravel removal operations, and activities involving removal of less than 500 cubic yards of material or involving a fill of less than two acres.

Proponents assert SB 1114 provides both the Department of Environmental Quality and the regulated community greater flexibility by allowing the department to respond to the service needs of industry and local government. SB 1114 allows the Department of Environmental Quality to enter into agreements to expedite or enhance the permitting process. SB 1114 specifically indicates the agreements for services are voluntary on the part of applicants and shall not alter the department's other processing priorities or schedules.

SB 1114 clarifies the Environmental Quality Commission's authority to establish fees for state certification under federal water pollution control law relating to activities on federal lands, with an exemption for specified activities.

Effective Date: October 4, 1997

Senate Bill 1154

Relating to the allocation of conserved water measures.

Senate Bill 1154 allows water right certificate holders to apply for allocation of conserved water for a conservation measure implemented within the previous five years. Under the measure, the applicant is required to describe the conservation measures, including the amount of water conserved, the proposed allocation and the intended use of the water. SB 1154 allows participants of the conserved water program to choose the priority date of the conserved water. The retroactive application provisions of the measure sunset December 31, 1999.

Currently, the Water Resources Commission has a voluntary conserved water program intended to provide an incentive for water right holders to implement conservation projects. Through the program, a water right holder may utilize a portion of the conserved water on additional lands, lease or sell the water, or dedicate the water to in-stream use. At least 25 percent of the conserved water is transferred to the state for in-stream use or, if not needed for in-stream use, to the state for appropriation.

The Water Resources Department reports that the con-

served water program has had limited use. SB 1154 creates new incentives for the conservation of water by allowing prior (within five years of the request) conservation measures, which were not a part of the Commission's conserved water program, to qualify for the transfer program.

Effective Date: October 4, 1997

Senate Bill 1157

Relating to limited license for the use of stored water.

Senate Bill 1157 allows a one-year limited license for the use of stored water in accordance with a local, state or federal contract and specifies the limited use application requirements and provisions.

Local, state and the federal government enter into short term contracts for the use of stored water. The contract holder must pursue a water right permit to use the stored water. Although the contracts are for short term uses, under the current law the application and review are the same as requests for long term water rights and include a full risk-of-injury review. SB 1157 provides reasonable access to stored water by providing a more timely and less expensive review under limited license provisions. The measure requires requests to be reviewed in comparison with other requests for stored water, rather than in comparison with all other water uses. The measure requires public notification under terms of the current limited license statute.

Effective Date: June 20, 1997

Senate Resolution 3

Senate Resolution 3 urges Congress to ensure that federal agencies operate the Klamath Project facilities in accordance with Oregon's system for allocation of water rights.

Water rights associated with the Klamath Project are based upon the federal Reclamation Act of 1902 and a 1905 Oregon statute. The Attorney General's office asserts, under the terms of the laws, the water rights must be used only for irrigation.

In 1995, the Ninth Circuit Court of Appeals affirmed Oregon's authority to adjudicate federal and tribal water rights claims. The state adjudication (under ORS Chapter 539) will resolve three general categories of claims in the Klamath Basin: (1) the claims of private users holding individual water rights; (2) the claims of irrigation districts holding water rights; and (3) the claims of federal agencies and tribes. The adjudication

will establish the relative priority dates as well as the nature and scope (rate, duty, use, place of use and point of diversion) of all claims and thus regulate water use between the rights.

A dispute has emerged about who will actually own these rights, with the federal government raising issues about federal authority to manage the Klamath Project pending completion of the adjudication, federal rights to water, including tribal water rights, upon completion of the adjudication, and the development of an operations plan by the Bureau of Reclamation.

Adopted: April 3, 1997

House Bill 2095

Relating to reuse of water.

HB 2095 exempts land application of ground water that has first been appropriated and used under a water right permit or certificate for industrial purposes, or for confined animal feeding purposes, from additional permit or certificate requirements. The exemption applies if the reused water is for irrigation purposes, the period of irrigation is a time when the reused water has never been discharged to the waters of the state, and the water is applied pursuant to a discharge permit issued by the Department of Environmental Quality (DEQ). The measure requires DEQ to provide the Water Resources Department a copy of the permit issued authorizing the land use application of ground water for reuse. A farmer's underlying water right is protected from forfeiture for nonuse while reclaimed water is being used. The measure exempts reuse of industrial discharge water and use of municipal water rights or reclaimed water in existence on or before the effective date of the measure.

Effective Date: October 4, 1997

House Bill 2119

Relating to reauthorization of hydroelectric projects.

HB 2119 establishes a process, standards, and fees for the reauthorization of existing hydroelectric projects and licensing of new hydroelectric projects. The measure requires the Water Resources Department to submit a report describing the department's use of reauthorization funds to each session of the Legislative Assembly.

HB 2119 also requires the convening of a hydroelectric task force and specifies task force membership and duties. The measure extends for one year the water

right for any project that expires before December 31, 1997, to allow the project owner to initiate the reauthorization process under the measure.

Effective Date: June 30, 1997

House Bill 2135

Relating to fees for processing water rights.

HB 2135 increases fees for processing water right and transfer applications and establishes fees for the aquifer storage and recovery program and temporary transfers.

Water permit and transfer fees were last increased in 1983, and the current fee structure does not accurately reflect processing costs. Permit fee provisions were not included in the aquifer storage and recovery program or in temporary transfer legislation enacted in 1995.

Effective Date: July 23, 1997

House Bill 2178

Relating to water pollution control facility permits.

HB 2178 allows the Department of Environmental Quality (DEQ) director to issue a Water Pollution Control Facility permit for a duration of more than the five-year period currently allowed by law. The measure allows the Environmental Quality Commission, by rule, to exempt de minimis discharges from permit requirements and establish performance-based criteria for exempt operations and discharges. The measure also requires an operator or person discharging exempt waste, to comply with performance-based criteria, and monitor performance and report results to the DEQ.

Effective Date: October 4, 1997

House Bill 2409

Relating to recreational placer mining within scenic waterways.

HB 2409 allows recreational prospecting without a permit for the fill, removal, or other alteration of less than one cubic yard of material at one site, and not more than five cubic yards, cumulatively, on any single waterway in one year. The measure prohibits recreational prospecting at any site where fish eggs are present.

HB 2409 requires the State Parks and Recreation Department to conduct a review of the scenic waterways program and requires Division of State Lands, in con-

junction with the State Parks and Recreation study, to conduct a study of recreational prospecting and recreational placer mining within scenic waterways.

The measure extends the expiration date for recreational placer mining permits from December 31, 1997, to December 31, 1999, if the study is complete and reported to the 70th Legislative Assembly. If the review has not been completed and reported, the expiration date is extended to December 31, 2001.

Effective Date: July 3, 1997

House Bill 2607

Relating to fishway alternative mitigation.

HB 2607 suspends the State Fish and Wildlife Commission enforcement capabilities concerning fishway requirements for existing hydroelectric projects until June 30, 1999.

The measure directs the State Fish and Wildlife Director to convene a fish passage task force, specifies task force membership and duties, and allows the State Fish and Wildlife Commission to enter into a memorandum of understanding to waive the requirement to build a fishway as part of artificial obstruction if alternative mitigation proposed by owner or operator would provide net benefit and if the memorandum of understanding is submitted to the commission on or before January 1, 1999.

The measure requires an opportunity for public review and comment on the proposed alternative mitigation, and specifies that mitigation shall not include a hatchery or the introduction of non-native fish within the project area.

Effective Date: August 1, 1997

House Bill 2768

Relating to riparian protection.

HB 2768 allows exemption from permit or certificate requirements the use of surface water for livestock watering under the following conditions: the water must be diverted to a trough or tank through an enclosed water delivery system; the delivery system must be equipped with an automatic shutoff or flow control mechanism or include a means for returning water to the surface water source through an enclosed delivery system; and the operation must be located on land from which the livestock would otherwise have legal access to both

the use and source of the surface water.

Effective Date: October 4, 1997

House Bill 3184

Relating to permits issued by Division of State Lands.

HB 3184 allows the Division of State Lands (DSL) to issue an emergency authorization for the removal of material from the beds or banks, or the filling of any waters of the state, for the purpose of making repairs or preventing irreparable harm, injury, or damage to persons or property. The measure requires the emergency authorization to contain conditions of operation that DSL determines are necessary to minimize impacts to water resources or adjoining properties. If removal or filling is authorized orally, written confirmation must be given by the division within five days.

Effective Date: October 4, 1997

House Bill 3522

Relating to wetlands.

HB 3522 permits the sale of mitigation credit by an individual, an agency, a federally recognized Indian tribe, a watershed council, or a political subdivision that owns land upon which a certified watershed enhancement project that qualifies as a wetlands mitigation bank is located.. The measure allows "off-site" mitigation, if it is found to be environmentally preferable, and requires the Division of State Lands Director to confer with the Governor's Watershed Enhancement Board to develop criteria to certify watershed enhancement projects as mitigation banks. Under exceptional circumstances, the measure permits the use of mitigation credits outside the basin where permit actions occur.

Effective Date: October 4, 1997

House Bill 3523

Relating to requests for reservations of unappropriated water for future economic development.

HB 3523 allows a local government, watershed council, or individual cooperating jointly with a local government, watershed council, or state agency, to request the Water Resources Commission reserve unappropriated water for multi-purpose storage. The measure requires commission rules to provide an opportunity for public interest review and requires an individual requesting use of reserved water to comply with proce-

dures set forth in statute. HB 3523 further requires the Water Resources Department to submit a report describing implementation of the measure to the 70th Legislative Assembly.

Effective Date: October 4, 1997

House Bill 3634

Relating to maps required for water right application for small reservoir.

HB 3634 clarifies that the map accompanying an application for a water right permit or certificate for a qualifying reservoir with a storage capacity of less than 9.2 acre-feet need not be prepared by a Certified Water Right Examiner (CWRE), but must comply with standards set by the Water Resources Commission.

The measure requires a permittee for a qualifying reservoir to submit a claim of beneficial use within one year of completion of construction. The measure provides that the claim of beneficial use shall require a written affidavit signed by the permittee and specifies the content of the affidavit. An individual applying for a permit to use stored water from a qualifying reservoir is required to submit a survey prepared by a CWRE.

Effective Date: October 4, 1997

House Bill 3720

Relating to water quality standards.

HB 3720 allows the Department of Environmental Quality (DEQ), consistent with the federal Water Pollution Control Act, to determine whether selected segments of the waters of the state are capable of attaining their designated uses. In conducting its use attainability analysis, the department is required to include appropriate documentation and defensible data for determining whether subcategories or seasonal uses should be designated. The measure requires the DEQ director to appoint an advisory group to nominate those waters for which use attainability analysis is most warranted.

The measure also allows DEQ to perform follow-up assessments of the waters of the state included in the 303(d) list for exceeding numeric temperature water quality criteria and act promptly to update the 303(d) list when appropriate, based on the follow-up assessments. The measure requires the department to give priority to those waters of the state listed primarily on the basis of temperature data from 1991 to 1994 and for which follow-up data are now available. The mea-

sure specifies that such follow-up data may have been collected by a watershed council, university, soil and water conservation district, or any individual or group using data collection protocols approved by the department. The measure further requires the department to report regularly to the Joint Legislative Committee on Salmon and Stream Enhancement on the development of the use attainability analysis.

The measure appropriates \$129,718 from the General Fund for the purposes of carrying out the requirements of the measure.

Effective Date: August 5, 1997

Major Legislation

Not Enacted

Senate Bill 598

Relating to fishway passage requirements for the Milltown Hill dam project.

SB 598 would have granted a waiver of fishway requirements to the Milltown Hill project located on the Elk Creek tributary of the Umpqua River in Douglas County. The bill would have authorized the Department of Fish and Wildlife to approve alternative mitigation activities.

Senate Bill 962

Relating to the development of a statewide water supply plan.

Senate Bill 962 would have directed the Water Resources Commission to develop a statewide water supply plan, separate from existing basin plans and other commission planning functions, to assess surface and ground water availability and future storage capacity, identify areas where additional information is needed about potential sources of supply, compile existing information relating to potential storage sites and environmental factors to help focus on storage options and identify critical water availability areas.

Senate Bill 1140

Relating to navigability.

SB 1140 would have established Class I and Class II waters for purposes of public use. The measure would have prescribed the allowable uses for each class and

quit claimed any right the state may have had in the bed or banks of certain waters.

House Bill 2094

Relating to well construction.

HB 2094 would have required a person who contracts for the construction or alteration of water wells to have a surety bond or an irrevocable letter of credit in the sum of \$10,000, issued by a commercial bank. The measure would have also set the permit application fee at \$75 for property owners constructing or altering a well on their own property and required the applicant to file a bond or irrevocable letter of credit.

House Bill 2703

Relating to dredging.

HB 2703 would have authorized a pilot study of dredging and removal activities in portions of the Willamette River. The measure would have directed the Mid-Willamette Valley Council of Governments to monitor all dredging activities to assess costs, benefits, and impacts of the activity.

House Bill 3322

Relating to stream management.

HB 3322 would have required the Division of State Lands to contract with the Water Resources Research Institute at Oregon State University to conduct an analysis of the effects of dredging and other activities on a certain section of the Willamette River.