Irrigators compromise with cities on notification bill

Senate Bill 865 unanimously approved by Oregon Senate

By MATEUSZ PERKOWSKI
Capital Press

SALEM — Local governments would have to notify Oregon irrigation districts of proposed subdivisions under a bill that's been approved by the state Senate.

The notification requirement, which is intended to prevent developments from disrupting irrigation canals and other facilities, was initially opposed by the League of Oregon Cities.

Sean Ellis/Capital Press
A sugar beet field in Eastern Oregon is irrigated in June. Irrigation districts in Oregon have reached a compromise with cities on a bill that requires local governments to provide notification of subdivision plans.

However, the organization has arrived at a compromise with supporters of Senate Bill 865, which was approved with a "do pass" recommendation by the Senate Environment and Natural Resources Committee. The Senate unanimously approved it on April 19.

City governments initially objected to SB 865 because they feared it would slow down the approval of new plats, or maps of subdivision parcels.

An amendment to the bill has soothed that concern by clarifying that local governments will seek input from irrigation districts much earlier in the plat approval process, said April Snell, executive director of the Oregon Water Resources Congress, which supports SB 865.

Lack of communication between local governments and irrigation districts has led to breached canals and flooding, endangering public safety and water quality, according to the Water Resources Congress, which represents irrigation districts.

The revised bill provides irrigation districts with 15 days to respond to tentative plans for proposed plats, down from 30 days in the original language, she said.

Local governments aren't required to act on the input from irrigation districts under the bill, Snell said.

Irrigation districts must also submit their boundary maps to local governments to qualify for notifications, said Erin Doyle, intergovernmental associate with the League of Oregon Cities.

"It's difficult for us to keep track if there are no maps or listed facilities," she said.

A companion bill centered on relations between local governments and irrigation districts — Senate Bill 866 — would have required permission for stormwater to be discharged into canals.

City governments said the bill was impractical and would have forced them to manage all the rainfall within their boundaries, but supporters argued the bill would protect irrigation districts from pollutants.

A legislative deadline for scheduling work sessions on SB 866 has passed, so the bill has died in committee.

Oregon Ag Department begins its attack on Japanese beetle infestation

By ERIC MORTENSON
Capital Press

The imposing homes and manicured lawns of Bronson Creek Estates west of Portland may appear to be an unlikely front line for Oregon agriculture's war on invasive Japanese beetles. But the subdivision is among the first areas to be treated with insecticide as the Oregon Department of Agriculture begins what may be a five-year project to wipe out the crop- and flower-eating beetles.

A contractor's crew is spreading a granular form of the insecticide Acelepryn on lawns within a 1,000-acre treatment area. This past week, hampered at times by heavy rain, the crew was treating 70 to 100 properties a day.

"This is preferred habitat for Japanese beetles — irrigated turf grass," said ODA program manager Clint Burfitt. The insecticide targets Japanese beetle grubs; as flying adults that emerge in summer, the beetles could cause heavy damage to high-value berries, hazelnuts, winegrapes, nursery plants and cannabis, in addition to homeowners' roses and Japanese maples.

"Leafy, fruit or flower, they don't seem to distinguish," Burfitt said. "The adults are a voracious feeder."

ODA has estimated the potential cost of a full-blown infestation at $43 million a year, measured by lost plant value, possible export restrictions and increased production costs such as spraying.

But stopping the infestation is complicated because it requires treatment on about 2,500 private properties. To win people over and ease fears, ODA engaged in a public information campaign that included 46 stakeholder meetings, five direct mailings and more than 500 hours of door-to-door canvassing, Burfitt said. The treatment will have to be done once a year for up to five years.

Burfitt said most people don't have a problem with the program, but a few are opposed to pesticides in general or don't want the government on their property. As of April 21, about 20 homeowners said they would not allow treatment crews on their property, and 150 to 200 didn't respond to multiple notices.

Those who refuse may be caught up in legal action by the ag department and the state Department of Justice. State officials believe they have legal authority to treat the properties even if owners disapprove, if necessary.

Burfitt said the insecticide crew is working with homeowners who ask them to be especially careful around garden boxes or particular plants.

Neighborhood resident Ellen Colwell allowed the exterminators on her property, with assurances they wouldn't spread the granules near her blueberries.

Photos by Eric Mortenson/Capital Press
Contractor employee Eduardo Palomino spreads a granular form of the insecticide Acelepryn on a lawn in a Washington County suburb west of Portland. The Oregon Department of Agriculture this spring began what could be a five-year project to kill an infestation of invasive Japanese beetles.

Ellen Colwell

"It's too bad," she said, "I don't like to expose our yard to unnecessary chemicals. I try to keep our foodstuffs organic."

But Colwell believes she and other property owners have a community responsibility to keep the beetles from spreading onto farmland.

The ag department decided to take action against Japanese beetles after a record 373 were caught in traps last year – 369 of them in the 1,000-acre treatment area. Burfitt said the department will set a couple thousand beetle traps this summer. The treatment area next year may be modified based on the trapping results.

Clint Burfitt heads the Oregon Department of Agriculture's Japanese beetle eradication effort in Washington County. Contractors hired by the department are spreading insecticide on private property.

State drops several defenses in $1.4B timber lawsuit

By MATEUSZ PERKOWSKI
Capital Press

ALBANY, Ore. — The State of Oregon has conceded that a class action lawsuit seeking $1.4 billion for insufficient timber harvests isn't blocked by the statute of limitations.

The state government has also dropped its argument that county governments and local taxing districts don't have legal standing to sue Oregon for alleged breach of contract.

Last year, Linn County filed a lawsuit accusing Oregon of violating contracts with 15 counties by reducing logging on about 650,000 acres of forestland the counties had donated to the state.

The lawsuit was certified as a class action by Linn County Circuit Judge Daniel Murphy, which means the 15 counties and roughly 150 taxing districts, such as schools and fire departments, joined as plaintiffs in the case.

Since then, Clatsop County's government and Clatsop County Community College have opted out of the lawsuit while other taxing districts within Clatsop County have not.

Attorneys for the plaintiffs had asked the judge to eliminate 12 "affirmative defenses" intended to shield the State of Oregon from the class action lawsuit.

During oral arguments on April 20, Oregon's attorneys agreed to drop several of the defenses, including the expiration of statute of limitations, the plaintiffs' lack of legal standing and the court's lack of jurisdiction over the case.

However, Oregon's attorneys also argued for the validity of remaining defenses, such as the claim that the federal Endangered Species Act and Clean Water Act preclude the level of logging sought by the plaintiffs.

Counties turned over the forestlands in the early 20th century in return for a share of timber revenues, but plaintiffs claim Oregon has curtailed logging due to environmental and recreational considerations.

Even if the state's contract with the counties did require timber revenues to be maximized, that's no longer possible because federal laws effectively impose limits on logging, said Scott Kaplan, attorney for the state.

"That purpose, if there was such a purpose, can't be satisfied," he said.

This defense isn't valid because the lawsuit only seeks to recover damages for lost revenues from lawfully harvested timber, argued John DiLorenzo, attorney for the plaintiffs.

Oregon's reduction in timber harvest goes beyond what's required by federal law, he said. "Honoring federal requirements is built into the calculation of damages."

Oregon's "greatest permanent value" rule for managing state forests, enacted in 1998, is blamed by plaintiffs for causing the harvest reductions.

Attorneys for the state government say the "greatest permanent value" rule conforms with Oregon law and the Oregon Department of Forestry is complying with the rule, which is a valid defense to the breach of contract claim.

DiLorenzo said the plaintiffs agree that ODF is following the rule, but they simply want to recover damages resulting from that compliance.