

**Water Resources Commission
Meeting
Bend, Oregon
June 3, 2010**

WRC Present

John Jackson
Mary Meloy
Ray Williams
Charlie Barlow
Jeanne LeJeune
John Roberts
Carol Whipple

Staff Present

Phil Ward
Tom Paul
Cindy Smith
Dwight French
Tracy Louden
Kyle Gorman
Brenda Bateman
Jeremy Giffin

Others

Susan Jordan
Eric Klan
Mike Bratton
Betty Roppe
John Short
Russ Rhoden
Alan Unger
Anita Winkler
Tod Heisler
Patrick Griffiths
Jerry Brammer
Jon Burgi
Eileen Stein
Elmer McDaniels
Steve Johnson
Bruce Brody-Heine
Kimberley Priestley
Suzanne Butterfield

Written material submitted at this meeting is part of the official record and on file at the Oregon Water Resources Department, 725 Summer St. NE, Salem, Oregon 97301-1271. Audiotapes of the meeting are on file at the same address.

Chair Jackson welcomed everyone to the meeting. Commissioners introduced themselves to the audience.

Commissioner Jackson welcomed Commissioner Whipple to her first official meeting.

A. Commission Dialogue with Elected and Local Officials

Two panels discussed water supply issues in the Deschutes Basin. Panel one consisted of elected officials who shared their views about the Deschutes Water Alliance and the creation of a water management framework. Panelists included: Deschutes County Commissioner Alan Unger; Prineville City Councilor Betty Roppe and Russ Rhoden, Ochoco Irrigation District.

Panel two consisted of local officials who discussed processes and projects of the Deschutes Water Alliance. Panelists included: Steve Johnson, Central Oregon Irrigation District; Suzanne Butterfield, Swalley Irrigation District; Patrick Griffiths, City of Bend; and Tod Heisler, Deschutes River Conservancy.

B. Integrated Water Resources Strategy Update and Discussion

Brenda Bateman, Water Resources Department (WRD) Senior Policy Coordinator, briefed the Commission on activities that had taken place related to the Integrated Water Resources Strategy (IWRS) since the February 2010 Commission Meeting.

The 2010 IWRS Open Houses

The Project Team has conducted nine of the 11 Open Houses. The purpose of these events was to share information about the purpose, development, and schedule of the Strategy; to solicit input from Oregon communities about what they see as the primary water resource challenges and solutions for their communities; and to showcase already-existing water resource solutions in Oregon communities today. For those unable to make one of the 11 Open Houses, a 12th Open House has been set up online containing all of the materials, handouts, and surveys available during these meetings.

Information collected during the Open Houses will be brought to the Policy Advisory Group for consideration and recommended action.

Each of the Commissioners gave a brief comment on the Open Houses they attended. Overall, they felt that the Open Houses were well received and that the people were happy that the Department came to their area and allowed the public's input.

Media Coverage

The media has provided strong coverage of the IWRS in the advertising of the Open Houses. Both the Capital Press and the Oregonian ran the opinion pieces (Op-Ed) written by the four chairs involved in this effort: Chair John Jackson, Water Resources Commission; Chair Bill Blosser, Environmental Quality Commission; Chair Marla Rae, Fish and Wildlife Commission; and Chair Bob Levy, Board of Agriculture.

The Policy Advisory Group

The IWRS Policy Advisory Group (PAG) met for the second time on April 14, 2010 at the Water Resources Department. The Group revisited previous meeting notes, as well as revisions to the PAG Charter, Meeting Protocols, and Vision. The bulk of this meeting was spent engaged with state agency officials, who presented their views on data and information needs related to water resources (water quantity, water quality, and ecosystem needs). Agency representatives provided brief summaries of this information and data needs to PAG members before the meeting. Because of the information presented, PAG members were not asked to come to consensus, but were asked to make a series of recommendations related to information / data and other topics during subsequent meetings.

The next PAG meeting is scheduled for July 13, 2010 in Salem.

Public Comments Received (February 1 – May 1, 2010)

Since the last Commission update, the Project Team has continued to receive public comments on the Integrated Water Resources Strategy activities.

The nature of the comments are moving from discussion of “process” and “background information” to more of a focus on potential opportunities and solutions for the state. Comments continue to be positive and supportive of the overall inter-agency effort.

Public Policy Discussion

During a February 2010 briefing of the Environmental Quality Commission (EQC), members asked a question of Chair John Jackson and Project Manager Brenda Bateman, regarding their overall approach to the IWRS. Chair Jackson and Brenda Bateman brought this question to the Water Resources Commission for discussion at the June 3 meeting as well.

The Project Team continues to work on multiple projects and components related to the Integrated Water Resources Strategy. The next update to the Water Resources Commission will include concluding observations about the 2010 Open Houses, as well as guest presenters on the topics of “Australia’s Response to Drought” and “Lessons Learned from Water Marketing Efforts around the West.”

Anita Winkler, Oregon Water Resources Congress, expressed her views regarding the role of the PAG.

Patrick Griffiths, City of Bend, expressed concerns about communication.

Kimberley Priestley, WaterWatch of Oregon, agreed with the comments that were expressed by Anita Winkler and Patrick Griffiths. She said that she feels that overall the PAG is a valuable group. She also noted that statute is directing the process.

There being no further business, the meeting was adjourned.

Respectfully,

Cindy Smith
Commission Assistant

**Water Resources Commission
Meeting
Bend, Oregon
June 4, 2010**

WRC Present

John Jackson
Mary Meloy
Ray Williams
Charlie Barlow
Jeanne LeJeune
John Roberts
Carol Whipple

Staff Present

Phil Ward
Tom Paul
Cindy Smith
Dwight French
Jonathan LaMarche
Jesse Ratcliff (by phone)

Tracy Loudon
Kyle Gorman
Brenda Bateman
Jeremy Giffin

Others

Susan Jordan
Jerry Schmidt
Anita Winkler
Genevieve Hubert
Kimberley Priestley
Patrick Griffiths
Eileen Stein

Written material submitted at this meeting is part of the official record and on file at the Oregon Water Resources Department, 725 Summer St. NE, Salem, Oregon 97301-1271. Audiotapes of the meeting are on file at the same address.

Chair Jackson welcomed everyone to the meeting. Commissioners introduced themselves to the audience.

C. Approval of Minutes

The minutes of the February 18 and 19, 2010 meetings were offered to the Commission for consideration.

Commissioner Roberts moved to approve the February 18 and 19, 2010 minutes as submitted; seconded by Commissioner Barlow. Voting for the motion: Commissioners Barlow, Jackson, Williams, Roberts, Meloy, LeJeune and Whipple. Voting against the motion: None.

D. Commission Comments

Commissioner Roberts commented that he attended the Open Houses in Medford and Klamath Falls. He thought they were very well done by staff. Feels that there was good insight and comments from the attendees. He also commented that he was the hearings officer for three different coastal basin rulemaking hearings. Of the three hearings, a total of one person testified.

Commissioner Whipple commented that she attended the Open Houses in Gresham and Bandon. She thought they were very well done. She thanked staff and the Commission for the warm reception to her joining the Commission. She looks forward to continuing on with the tough issues ahead.

Commissioner Meloy thanked the local folks for the tour the previous day and felt they showed a good representation of what is going on in the basin. She extended her thanks to the panel members that presented to the Commission the previous day as well.

Commissioner Barlow commented that he attended the Open Houses in Ontario and Burns. He was encouraged by the crowd of people that attended and by the presentation. He noted that a former elected official at the Open House had expressed appreciation about having a local person from the Commission present and how it relaxed the crowd.

Commissioner LeJeune commented that she was a hearings officer for two different coastal basin rulemaking hearings. No one showed up to testify at either hearing. She noted that she will be attending the Salem and Eugene Open Houses. She also noted that she will be attending the Policy Advisory Group meeting in July. She commented that in the next 18 months to two years, there will be changes to the regulatory arena for waste water utilities and water utilities. She also thanked everyone that helped on the tour the previous day.

Commissioner Williams commented on the high quality presentations given by the local panel. He said it was very impressive. He commented that he went to Washington, DC, regarding the Columbia River Exchange. He noted that Director Ward also attended this meeting. Williams feels that it is a win/win situation and is worthy of the Commission's further consideration.

Commissioner Jackson commented that he attended the Open Houses in Tillamook and Gresham. He also commented that he attended an IWRS workshop in Hillsboro. From attending this workshop, he realized that we need to be aware of the watershed councils as part of the Commissions interactions. He commented that he had attended meetings of the Directors and Board/Commission Chairs from the Dept. of Agriculture, Dept. of Forestry, Dept. of Environmental Quality, Dept. of Water Resources, Dept. of Parks and Recreation, and Oregon Watershed Enhancement Board, discussing natural resources management.

E. Director's Report

Director Ward reviewed his written report with the Commission and responded to their comments and questions.

Commissioner Meloy requested that staff give a briefing on peak and ecological flows at the next meeting.

Director Ward gave an update on the Umatilla Project. It is moving forward on the Phase I implementation for the Umatilla Aquifer Recovery Project. It encompasses a \$2.5 million grant from the State of Oregon.

Doug Woodcock, Groundwater Manager, gave a brief update on the Eola Hills project just west of Salem. Eola Hills is a groundwater limited area that restricts new permits from being issued for specific aquifers in the groundwater limited area. Back in 2007, the Commission was petitioned to stop all new exempt wells from being put in. The Commission directed the Department to adopt a special area well construction standard; continue monitoring in the groundwater limited area; and to pursue the neighborhood groundwater monitoring network program. Currently, the Department is continuing to work in the Eola Hills area as the Commission has directed.

Director Ward gave a brief update on the Klamath Falls Drought situation. He noted that the staff has met with the Governor every two weeks regarding the drought to ensure that the state agency's are coordinated in their response to the situation. The Department has been reviewing and issuing emergency drought permits for groundwater use. The National Guard, and various state agencies, including WRD and Department of Human Resources are all involved in being prepared to meet community needs should a crisis occur.

Doug Woodcock, Groundwater Manager, commented that he had just attended the Board of Agriculture meeting in Klamath Falls. He sat on a panel and discussed the groundwater conditions in the area along with what has happened since 2001.

F. Budget Update and Policy Option Packages (POP's)

Brenda Bateman, Senior Policy Coordinator, and Tracy Loudon, Administrative Services Division Administrator, gave an update on the Department's 2009-11 budget along with information regarding the Department's 2011-13 Budget Option Packages.

During May 2010, the Department conducted an electronic survey of key stakeholder groups, to get input on the development of the Department's 2011-13 budget. Out of the 35 surveys sent out, 24 responses were returned. Survey participants were asked to prioritize activities and describe their "willingness to pay" for each. The result came back that it was difficult to prioritize programs and that the "willingness to pay" differed by group.

The Environmental / Conservation Groups supported all types of fees, favoring "water right maintenance fees." The water users without ratepayers support favored "no fees at all." Water users with ratepayers support tendered to favor "fee for service."

The most support was for building upon already-existing fees (i.e., increase cost recovery past 50% for transactions). There was some support for establishing new fees, particularly for "on-line information", with little-to-no support for charging fees for the following: "walk-in" questions at the front counter; water-use reporting; instream-related work; and climate change modeling.

Before each Legislative Session, the Governor's office asks agencies to arrange their budget requests in priority order. Staff has conducted one round of prioritization so far. The budget packages are: 101 - Continue Integrated Water Resources Strategy; 102 - Reinstate Water Use Reporting; 103 - Reinstate Water Measurement; 104 - Reinstate Oregon Plan Activities; 105 - Reinstate Info Tech Application Developer; 106 - Fund Water Investment Grant Fund; 107 - Make Permanent an Existing Asst. Watermaster in South Central Region; 108 - Make Permanent an Existing Hydrotech in Eastern Region; 109 - Continue Water Development Loan Program Funding; and 110 - Continue Water Conservation, Reuse, and Storage Feasibility Grants.

The Governor's office has asked all state agencies to plan their next biennial budgets as though they could expect reductions in their General Fund budgets of up to 25 percent. Department staff have looked at a variety of scenarios in an attempt to meet this 25 percent target (\$5.9 million) including the reduction of Regions from five to three, the merger of the Field and Technical Service Divisions, a continued "thinning" of programs, and deletion of some programs entirely.

The Department is in the process of preparing the 2011-2013 Budget which is to be submitted to the Oregon Department of Administrative Services by August 2, 2010. Staff will continue to finalize budget details throughout the summer.

Susan Jordan, Legislative Fiscal Office, gave a general overview of the 2011-2013 Biennium. She said that there was a \$2.45 billion gap between the projected expenditures and the resources available.

G. Water Resources Department's 2011 Proposed Legislative Concepts

Brenda Bateman, Senior Policy Coordinator, gave an update on the Department's 2011-13 proposed Legislative Concepts.

The Department prepared legislative concepts that are few in number and technical nature, as it has in the past. The concepts are meant to streamline Departmental operations, provide greater consistency in statutory language, and ensure the fees and resources necessary to maintain services.

The Department submitted 10 initial legislative concepts to the Oregon Department of Administrative Services on April 9, 2010. They were:

- Concept 69000-01 "Electronic Transactions at the Water Resources Department"
- Concept 69000-02 "Broadens the Category of Eligibility for In-Conduit Hydro"
- Concept 69000-03 "CWRE Training"
- Concept 69000-04 "Alternate Reservoir Process"
- Concept 69000-05 "WRD Issuance of Emergency Limited Licenses"
- Concept 69000-06 "Broadens the Category of Permits Involved in an Exchange"
- Concept 69000-07 "Replace Requirement of Newspaper Notice with Electronic Notice"
- Concept 69000-08 "Water Resources Department's Ability to Enter into MOUs"
- Concept 69000-09 "Fees"
- Concept 69000-10 Klamath Basin Restoration Agreement Fund

The Department of Administrative Services will send updates that notify each Department if legislative concepts have gone to the next stage of the process for editing / drafting. The Department will have one opportunity to make final changes to the text or pull concepts entirely before the start of the 2011 Legislative Session. Staff will return during the August 2010 Commission meeting to provide more detail and seek Commission input.

Kimberley Priestley, WaterWatch of Oregon, expressed her concerns regarding some of the legislative concepts.

H. Deschutes Basin Groundwater Mitigation Program Annual Implementation and Evaluation Report

The Department is required to annually report on and evaluate implementation of the Deschutes Groundwater Mitigation Rules. The Department is also required to annually report on the implementation and management of mitigation credits generated and allocated through existing Mitigation Banks. Kyle Gorman, South Central Region Manager, presented the annual implementation and evaluation report to the Commission. The mitigation program in the Deschutes

Groundwater Study Area continues to address new and changing water needs, while protecting scenic water way flows.

On September 13, 2002, the Commission adopted the Deschutes Groundwater Mitigation Rules and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules. These rules implement Senate Bill 1033 (1995 Oregon Laws), HB 2184 (2001 Oregon Laws), and most recently HB 3494 (2005 Oregon Laws). The rules provide for mitigation of impacts to scenic waterway flows and senior water rights, while allowing additional appropriations of groundwater in the Deschutes Groundwater Study Area.

The Deschutes Groundwater Mitigation Rules allow groundwater users to provide mitigation through an individual mitigation project or through an approved mitigation bank. The Deschutes Basin Mitigation Bank and Mitigation Credit Rules provide for the establishment of a mitigation credit system and mitigation banks to help facilitate transactions among holders of mitigation credits and persons interested in acquiring mitigation credits. One mitigation credit equals one acre-foot of mitigation water.

The Department continues to implement the Deschutes Groundwater Mitigation Rules and Deschutes Basin Mitigation Bank and Mitigation Credit Rules. Groundwater permit applications and mitigation projects are moving through the required processes. The program is producing positive benefits as more mitigation water has been approved and protected instream than required for the 80 groundwater permits issued. Model results through mid-2009 suggest that the percent of time that instream flow requirements are met has decreased at certain locations. However, further evaluation and analysis are needed before any conclusions may be reached or recommendations may be made to the Commission.

Patrick Griffiths, City of Bend, commented on the importance of this program.

Kimberley Priestley, WaterWatch of Oregon, expressed the need for a table that references, by month, the streamflow for the mitigation and the effects on the stream to be included in the annual report.

I. Request for Adoption of Deschutes Basin Water Management Rules, OAR Chapter 690, Division 522, to operate in conjunction with the Deschutes Groundwater Mitigation Rules, OAR Chapter 690, Division 505, and Deschutes Basin Mitigation Bank and Mitigation Credit Rules, OAR Chapter 690, Division 521

Kyle Gorman, South Central Region Manager, requested the adoption of Deschutes Basin Water Management Rules, OAR Chapter 690, Division 522, to operate in conjunction with the Deschutes Groundwater Mitigation Rules, OAR Chapter 690, Division 505, and Deschutes Basin Mitigation Bank and Mitigation Credit Rules, OAR Chapter 690, Division 521. The proposed rules are intended to provide additional flexibility and clarity to the Deschutes Groundwater Mitigation Program. These rules would change how the Department counts new groundwater permit applications under the allocation cap and would allow unused mitigation credits to be reassigned. The proposed rules also clarify how municipal and quasi-municipal permit holders provide mitigation under incremental development plans and also allow them additional flexibility to use “offsets” to move mitigation credits between permits.

The Department convened a Rules Advisory Committee (RAC) to assist the Department in reviewing the proposed Division 522 rules.

The proposed rules were presented to the Groundwater Advisory Committee on January 29, 2010. The Committee did not express any objections to the proposed rules.

The Department held a public rulemaking hearing in Bend on February 3, 2010. No testimony was provided at the public rulemaking hearing. The public comment period closed on February 19, 2010. One written comment in favor of the proposed rules was received.

The final proposed rules (Deschutes Basin Water Management, OAR Chapter 690, Division 522) would clarify the accounting and mitigation requirements for the Department and new permit holders and are consistent with the State's goal of reducing the fiscal impact of regulations.

Commissioner Meloy moved to approve the adoption of the final proposed rules as submitted; seconded by Commissioner LeJeune. Voting for the motion: Commissioners Barlow, Jackson, Williams, Roberts, Meloy, LeJeune and Whipple. Voting against the motion: None.

J. Authorize the Director to Take Action under ORS 537.780(1)(i)

Tom Paul, Deputy Director, briefed the Commission on the request to give authorization to the Director to take action under ORS 537.780(1)(i).

ORS 537.780(1)(i) gives the Commission authority to seek a warrant to seize any well-drilling machine used in violation of ORS 537.747 and 537.753 when it appears to the satisfaction of the Commission that the determination of action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525 (Groundwater Act of 1955).

Oregon adopted the Groundwater Act in 1955. The Act requires that "no person or public agency shall use or attempt to use any groundwater, construct or attempt to construct any well or other means of developing and securing groundwater or operate or permit the operation of any well owned or controlled by such person or public agency except upon compliance with ORS 537.505 to 537.795 and 537.992 and any applicable order or rule adopted by the Water Resources Commission under ORS 537.505 to 537.795 and 537.992." The Commission, consistent with the Groundwater Act, adopted by rule well construction standards, which describe the minimum standards for constructing wells and for obtaining a well constructor license. Formal enforcement actions are taken when staff are unsuccessful in gaining voluntary compliance.

The Department was informed that an un-licensed individual was constructing a well. The individual's well constructor license was suspended several years ago for failing to provide required start cards and well logs, and for constructing wells without proper well casing and annular seal. Noncompliance with Oregon's minimum well construction standards often results in wells that do not protect the groundwater resource from contamination, waste, and loss of artesian pressure. This individual was assessed civil penalties in excess of \$8,000, which have not been paid. License suspension and civil penalties have not deterred the individual from continuing to drill wells.

This is an unusual and extreme action. The Department has followed its normal process for attempting to gain compliance.

After Commission discussion, it was agreed that the language needs to reflect the ability to seize multiple machines if applicable.

Commissioner Meloy moved to instruct the Director to seek a warrant to seize a well drilling machine or machines in regard to this specific enforcement matter, for violation of ORS 537.747 and 537.753; seconded by Commissioner Roberts. Voting for the motion: Commissioners Barlow, Jackson, Williams, Roberts, Meloy, LeJeune and Whipple. Voting against the motion: None.

K. Public Comment

No Public Comment was received.

L. Other Issues

Director Ward commented that the Department would work on arranging a tour for the August meeting.

Commissioner LeJeune said that she would like to have a Willamette storage update at the August meeting.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Cindy Smith
Commission Assistant