

Oregon Water Resources Commission Work Session  
March 7, 1996  
Coos Bay, Oregon

Members

Cliff Bentz  
Mike Jewett  
John Frewing  
Tyler Hansell  
Anita Johnson  
Nancy Leonard  
Ron Nelson

Staff

Martha Pagel  
Geoff Huntington  
Steve Sanders  
Diane Reynolds  
Barry Norris  
Steve Applegate  
Tom Kline  
Doug Parrow  
Bob Rice  
Rob Carter  
John Drolet

Others

Jan Boettcher  
Lynn Schumway  
Keith Shellenberger  
Kip Lombard  
Jerry Schmidt  
Kimberley Priestley  
Pete Test  
Ron Yockim  
Todd Heidgerken  
Phil Matson  
Steve Hinton  
Rob Schab

Agenda reports and other material submitted at this meeting are part of the meeting record and are on file at the Oregon Water Resources Department, 158 12th St. NE, Salem, Oregon 97310. Audiotapes of the meeting are on file at the same address.

**1. Review of the Request for Adoption of Burnt River Reservations and Other Powder Basin Program Amendments**

Doug Parrow, Resource Management Division, presented the concepts and issues of this request for discussion in preparation for Commission action at Friday's meeting. A key issue of this rulemaking is whether it is in the public interest to allocate much of the remaining unappropriated water in the subbasin for storage purposes. A related issue is whether the correct standards are being used to consider the public interest when allocating or reserving water as proposed in the basin program amendments.

In keeping with the policies enumerated in ORS 536.220 and 536.310, staff believe that reserving unappropriated water as proposed serves to protect and promote the public welfare. In adopting reservations the Commission would be setting aside quantities of water to be stored in some future project so potential sponsors of those projects will have the assurances that the water will be available when they apply for a permit to store the water. Whether the reservoir is in the public interest or not would be considered at the time of application for a water right under ORS 537.170

With the help of maps and graphs Parrow showed the Commission the current available water in the basin. Under present conditions, there is no water available in the Burnt River basin during the summer months. Staff believe it is reasonable to set aside the quantities of water requested for prospective storage projects that would meet a range of potential needs.

The reservations will not over-allocate the Burnt River system. Staff have used the 50 percent exceedance standard to determine the water available, which is allowable for storage projects. The reservations would be subject to review every five years, and would be automatically repealed in twenty years unless the Commission enters back into rulemaking.

Pagel explained there are three sub-reservations under this rule. The first two must be for construction of multipurpose reservoirs; the third component of the reservation does not include that multipurpose language, so that 2,000 feet could be for a single purpose project.

Phil Ward, Assistant Director for the Department of Agriculture, said that specific allocations to other uses are identified in the original application submitted by his agency and all others later submitted.

Steve Sanders, Legal Counsel, explained the relationship between the current Division 79 rules and these rules. The current Division 79 rules look toward a contested case process to establish a reservation. This is an attempt to do this by rulemaking instead by applying the statutory framework from the 1995 Legislature. The Department of Agriculture and all the other pending applicants had the choice to proceed under the Division 79 rules or proceed under rulemaking.

Sanders said there are three different stages to this process -- set the reservation, apply for a storage right which will implement the reservation, and apply for a secondary right to use the water stored under the reservation.

Jewett and Johnson suggested focusing on the definition of multipurpose, possibly adding some instream component. Staff discussed how such language might be structured. Sanders offered to develop some language for consideration at Friday's meeting.

Pagel said the Department is asking the developer of the reservoir to make water available to be put in stream, rather than requiring a certain release for instream purposes. These reservations would be established in addition to instream water rights that are currently pending. The issue is now whether these future storage projects should be used to make up for the low flows resulting from decisions made in the past.

Parrow said there were concerns raised about consistency of the proposed rules with the Department's existing and proposed rules that cover fish recovery efforts in the Columbia Basin. He explained that applications for permits to store reserved water will be subject to the Division 33 rules.

Frewing said the definition of the storage period in the addendum was much improved, but asked why the ending date would not be April 15. Parrow said that would be based on an evaluation of the particular project at the time the permit is being considered by the Department -- there may be advantages in allowing the storage of water during that period when considering the flow pattern. The South Fork Burnt River reservation storage season would be October 1 through June 30; the North Fork reservation would be January 1 through May 31.

Phil Ward reminded the Commission that his agency is committed to working with Water Resources and other agencies in modeling a reservation process that works for all stakeholders.

## **2. Information Report: 1997 Legislative Proposals**

Pagel explained this discussion was to begin the process of preparing for the 1997 legislative session, developing a budget and legislative concepts. Pagel recommended the same process as was used for the 1995 session -- following a revised version of the Strategic Plan as a guide to keep the focus on stewardship and supply.

The Governor is putting a strong emphasis on inter-agency coordination -- setting joint priorities, cooperative budgets and legislative concepts. There will be keen competition for budget dollars. The General Fund will be at a low level; the Lottery Fund may not be the source of alternative funding that has been in the past. Natural resource agencies have higher public expectations with fewer dollars. A concept that is being explored is to try to identify some alternative funding source, perhaps a fee that would create a dedicated fund for natural resources, as opposed to an increase in existing fees.

One legislative concept being considered would tidy up and clarify bills that came out of the 1995 session. Staff will be meeting with stakeholders to receive their input on proposed concepts and discuss any legislative concepts likely to be put forward by their groups.

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Frewing suggested working on the definition of "waste" and encouraging efficiency in the Strategic Plan. Pagel agreed. Standards for efficiency or definition of waste must be built around practices, customs, and economic realities in a local area. The impediment has been the shortage of field staff. Staff plan to submit for Commission approval a budget package for additional funding for field staff.

Frewing said that additional gages would also be helpful. Pagel agreed.

Bentz asked about the department's dependency upon Lottery Funds. Pagel said a few programs, such as the backlog program, information development programs including the ground water studies, are almost entirely Lottery dependent.

Commissioner Nelson suggested taking a look at the Conservation statutes to make them more usable.

Hansell said he has talked with staff of the La Grande office of the Department of Fish and Wildlife (ODFW) about legislation authorizing ODFW to maintain the corner areas of fields not harvested by farmers that could be used for public hunting, wildlife feed in winter, etc. Hansell is hopeful this might be something that could be supported in a joint effort by several agencies.

There being no further discussion, the work session was adjourned.



Diane K. Reynolds  
Commission Assistant