

Oregon Water Resources Commission Meeting

May 3, 1996

Pendleton, Oregon

Members

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

Staff

Martha Pagel  
Geoff Huntington  
Steve Sanders  
Diane Reynolds  
Tom Kline  
Fred Lissner  
Dave Jarrett  
Tony Justus  
Mike Ladd  
Mike McCord  
Vern Church  
Tom Byler  
Norm Daft  
Quentin Kreuter

Others

Kimberley Priestley  
David Nelson  
Michaele Pelzer  
Jim Duff  
Dennis Hunt  
Todd Heidgerken  
Karen Pearson  
Roger Bachman  
Rep. Chuck Norris  
Lynn Dee Ramos  
Spring Haefer  
Rick Hepler  
Steve Brown  
Fred Ziari  
Bill Holmes  
Larry Coppock  
Mayor Bob Ramig  
Woody Hansell  
Steve Bloom  
Marc Liverman  
Luise Langheinrich  
Antone Minthorn  
Ann Beier  
Art Kegler  
Randy Mills  
Bob Hoeffel  
Rob Brown  
Pete Test

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.

Chair Bentz opened the meeting by thanking the organizers of Thursday's tour -- it was most interesting and educational.

#### **A. Commission Meeting Minutes**

Minutes of the January 1996 Commission meeting were offered for approval. Commissioner Frewing moved approval of the minutes; the motion was seconded by Ron Nelson. All voted in favor.

#### **B. Commission Comments**

John Frewing attended a meeting with Tom Paul sponsored by the Portland Water Bureau on their Regional Water Plan. At that meeting he reported that the Commission's interest is that the Bull Run is to be used exclusively for the city of Portland water supply as stated in the Sandy River Basin plan.

Ron Nelson thanked Pagel and staff for the tour of the Salem office. This was most helpful to him as a new member of the Commission. Reporting on the Tumalo Project in central Oregon, district staff are still seeking funding for piping and lining their distribution center. Ron, as a member of Oregon Water Trust, reported that this organization is working on approximately 25 instream leases ranging from the Rogue to the Umatilla River.

Tyler Hansell thanked all those involved in planning Thursday's tour of the area.

Anita Johnson reported that the Governor's Watershed Enhancement Board (GWEB) is meeting in Bend May 9 and 10; final approval of projects will be on the agenda. GWEB is planning a fall statewide conference.

Cliff Bentz asked for any comments on the Oregon Benchmarks program. He is serving on a committee charged with evaluating the program and will be reporting back to the Governor in late summer.

#### **C. Director's Report**

Pagel asked Steve Applegate to report on the water right backlog elimination progress and respond to questions by Commissioners. Applegate said staff expect to complete the processing of the remaining 3,311 applications by the deadline of October 31, 1996. In addition they have an additional goal of completing all applications received prior to February 15, 1996. Staff have sent out 331 proposed orders on instream water right applications in the coastal basins.

A total of 240 protests have been received since the backlog elimination project began. Nine contested case hearings have been scheduled.

Pagel reported that she and staff have been working on Klamath Basin issues and the adjudication process. In late March she spoke at the annual meeting of the Klamath Basin Water Users Association and attended a Klamath Compact Commission meeting in April.

Pagel announced she was confirmed by the Senate for another four-year term as Director of the agency. She asked Tom Paul to come forward and presented him with his twenty-five year pin in recognition of his years of state employment. Pagel introduced Weston Becker, who was recently hired as the public information staff person.

Pagel briefly reviewed the activities in Pendleton. Wednesday she attended an informal luncheon meeting planned by City Councilman Bob Ehmann and discussed water issues with local residents. That same afternoon the City of Pendleton Water Committee met with Pagel, Geoff Huntington, and Mike Ladd to discuss the city's water planning needs and their work with the Confederated Tribes of the Umatilla Reservation on a cooperative water management supply plan. Thursday morning Pagel, Huntington and Ladd met with Antone Minthorn and other members of the Tribal Water Committee to talk about plans to work on a cooperative water management plan in the Umatilla Basin. Also Thursday morning, many staff members and Commissioners took part in a tour of the area. After Thursday's work session, the City of Pendleton hosted a reception for Commissioners and staff at the Convention Center.

Pagel asked the Commissioners to consider locations for the remaining 1996 meetings. It was agreed that for the August and October meetings, either Newport or Bend would work, depending upon meeting room availability. The Commission will meet in Salem in December.

Steve Sanders, Legal Counsel, reported that the Department and Commission have been sued on the Boeing extension in Marion County Circuit Court as to whether granting the extension of time to complete the water right was valid.

#### **D. Informational Report on Lower Umatilla Basin Ground Water Management Area**

Rick Kepler, Department of Environmental Quality (DEQ), offered a historical overview of the Ground Water Management Area (GWMA) process and its implementation in the basin; Jerry Grondin and Karl Wozniak, Ground Water Section of the Water Resources Department, explained the ground water flow and contamination process in the basin with the help of a slide presentation.

Kepler explained that in 1984-87 DEQ conducted a pesticide evaluation around the state. From that study staff discovered that nitrate was the most prevalent ground water contamination statewide. In 1990, the Lower Umatilla Basin was declared a Ground Water Management Area (GWMA) because of this contamination. Nitrate levels above 10 mg/L nitrate-nitrogen may represent a serious health concern for infants and pregnant or nursing women.

Grondin explained the sources of nitrate, nitrate concentrations resulting from human activity, and nitrate travel time.

A ground water management Action Plan is being developed by a local citizen committee and state agencies to correct the contamination. This activity is directed by the 1989 Groundwater Protection Act. Correcting the problem will require years.

In the future, the Water Resources Commission may need to provide guidance or direction to staff, set agency policies, and/or adopt rules related to Action Plan development and implementation. The goal is to improve and protect the long-term quality of ground water in the management area.

Henry Lorenzen, Chair of the Lower Umatilla Basin Groundwater Management Citizens Committee and Chair of the Environmental Quality Commission, spoke on the nitrate contamination issue and possible solutions. Lorenzen said the citizens committee began meeting five years ago and possible solutions evolve around the concept of voluntary efforts. A majority of entities that contribute to the nitrate problem are regulated by the departments of Agriculture or Environmental Quality through normal permitting processes. Irrigated agriculture and rural residential development are not regulated. SB 1010 gave the Department of Agriculture the responsibility for assisting agriculture in developing management plans. Lorenzen said he is convinced the farmers and ranchers in the Umatilla Basin area are willing to join in efforts to develop and follow plans in order to solve the contamination problem. (tape 4, mark 588)

#### **E. Informational Report on Field Regulation and Enforcement Activities**

Dave Jarrett, District 16 Watermaster, Tony Justus, District 5 Watermaster, and Brian Mayer, Well Inspector for the North Central Region, spoke on enforcement and well inspection activities, and responded to Commissioners' questions.

Justus described District 5 as covering approximately 4,550 square miles. The Umatilla River, the Walla Walla River, and Willow Creek flow through this District. The Columbia River is the northern boundary. The District has three critical ground water areas and one ground water withdrawal area. The District has measurement devices in all the basalt wells having water rights greater than 56 gallons per minute; and there are measuring devices on the Umatilla River below Pendleton on all irrigation greater than two acres. The challenges for the District are correcting problems and meeting new water demands for economic development with limited sources of water. Justus said that working closely with the public and local governments has helped foster a good understanding and support for regulation to correct or avoid problems.

Brian Mayer is a well inspector for eight counties which include areas of critical groundwater, a nitrate study area, the Umatilla Army Depot, and waste disposal areas. The region receives around 500 start cards each year and Mayer inspects 50-70 percent of them. Mayer reviews all the well logs generated for his area for clerical or construction problems and manages several data bases. He explained to the Commissioners the procedures followed in field inspection of wells. The Groundwater Resource Inventory Database (GRID) program has been most helpful in identifying location of wells.

Nelson asked Jarrett how field staff are educating the public. Jarrett said that watermasters and well inspectors regularly speak with local groups about the department's current programs and any changes in the law regarding water rights. Mayer speaks several times a year about well maintenance and protecting water supply to groups formed through the Oregon Extension Service Home Assist program.

Following Agenda Item E, Pagel introduced Antone Minthorn, Chair of the General Council of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and Pendleton Mayor Bob Ramig. Minthorn and Ramig briefed the Commission on work being done together by the Tribes and the City of Pendleton.

Minthorn introduced Rick George, Manager of the Rights Protection and Environmental Program, and Kate Ely, CTUIR hydrologist. Minthorn spoke on the Tribes' history and described the water projects in which the Tribes are involved.

In 1982 the Tribes began to work on the Umatilla Basin Project to establish the fish runs into the Umatilla River based on the Tribes' treaty rights. This project has become a nationwide model. The Project was a big first step in resolution of water issues in the Umatilla Basin.

Tribes are proposing federal water legislation to end the uncertainty over water rights. The legislation would include Phase III of the Umatilla Basin Project, watershed restoration, a joint municipal water supply project, water spreading, upstream storage, and settlement of the Basin water allocation and water management.

Mayor Ramig spoke on the City of Pendleton's water supply which comes from two sources. One is a spring system in and above the CTUIR area that flows into Pendleton. This has a water right of about 11.7 cubic feet per second. The other source is an underground aquifer which is falling at a rate of three to four feet each year. Population increases are causing great demands on water in the Basin.

Ramig said the city was invited by the CTUIR to a two-day workshop to discuss a feasibility study on how to address the water needs of the Tribes and the city. He distributed copies of the agreement signed by those who attended. (tape 2, mark 264)

#### **F. Public Comment**

Woody Hansell spoke on his concerns about the ground water quality in the Irrigon area north of the Army Depot. In times of high usage a community well he once shared would begin to emit a smell and a bluish clay or very fine sand would plug the sprinklers. Ten years ago he drilled his own well; the driller's well log indicated that poor quality water and the bluish clay were above the basalt level. The driller sealed this new well and Hansell has had no problem. In area wells if there is contamination below the basalt level, the state bears a tremendous responsibility for not having properly regulated the well drillers. (tape 5, mark 238)

#### **G. Discussion of Proposed Amendments to Transfer Rules**

Tom Byler, Director's Office, and Steve Applegate, Administrator of Water Rights and Adjudications Division, gave an update on proposed changes to Divisions 15 and 21 and responded to Commissioners' questions and comments.

A number of bills were passed by the 1995 Legislative Session which affect the transfer process. These proposed rules update the existing Division 15 rules and bring both Divisions 15 and 21 into conformity with this legislation.

Two public hearings were held on these rules; after reviewing public comments, it was decided that further work needs to be done. The public comment period will reopen May 8 on the rewritten rules. A Rules Advisory Committee (RAC) meeting was held April 29 to review the latest draft; the RAC will meet again on May 16. A revised final draft of these rules will be offered to the Commission for consideration at the June Commission meeting.

#### Public Comment

Kimberley Priestley, WaterWatch, spoke on the issues of extension of time and water quality. There is no authority in the statute for extensions of time even though WRD has historically allowed them. Extensions of time would allow some abuse of the transfer process. Water quality should be part of the no injury determination; there is case law supporting this. Even though water quality issues will be discussed in the Water Quality/Quantity Task Force, language should be included in these rules. (tape 5, mark 147)

William Holmes, representing Oregon Water Resources Congress, shared important points that he understands will be addressed in the next draft of the rules. The phrase "record location" doesn't address the situation that might arise if a district is awaiting a final proof survey and wants to rotate the water from land currently being irrigated even though that land is not attached to the permit. The mapping provisions in the rules are onerous. OWRC is concerned that the current rules do not allow for an increase in acreage that is involved in the transfer in the event of

an amendment. (tape 5, mark 198)

#### **H. Discussion of Division 33 Rules Regarding Sensitive, Threatened and Endangered Fish Species**

Tom Kline, Acting Administrator of the Resource Management Division, and Mike McCord, Resource Management Division, led this discussion. Since the March Commission meeting there have been two meetings of the Rules Advisory Committee. The committee reached conceptual agreement on an interagency process to review new applications. A revised draft of the rules is available for public comment until May 17. Members of the Rules Advisory Committee were invited to this meeting to share their perspective on the rules and the major issues.

Mike McCord highlighted changes in the draft rules. In the hearing draft it was suggested that changes be made to the Upper and Lower Columbia Rules -- these changes are not proposed at this time after all. A process similar to the triage process for the coastal applications has been brought into the Statewide Rules. Limited license language has been added to the Statewide Rules.

Kline added that the rules set forth some standards with respect to impact on habitat, provide for a recommendation from an interagency review team, and set forth some public interest factors. WRD staff might consider if they choose not to accept the recommendations of the interagency team.

Frewing asked if staff will be able to meet the SB 674 time lines with this additional review of applications. Kline responded that staff believe this will work. Staff propose that in the end of the initial review the applicants will be advised that their application might be subject to concerns with Threatened and Endangered species. At the end of the thirty-day period when the proposed final order is issued, these findings would be included.

#### Comments by Rules Advisory Committee Members

Pete Test, Oregon Farm Bureau, spoke in support of the rules as they are now written. The rules give extra protection to the sensitive fish species and call for a group recommendation by people with the best available information. After a recommendation is made, if a basin plan addresses sensitive species that plan should be followed. He recommended that the Upper and Lower Columbia River process be revised to the same format. (tape 5, mark 422)

Kimberley Priestley, WaterWatch, commended the department for not amending the upper and lower division rules. She asked that the section that allows for exceptions to the rules maintain review by the Commission and not be delegated to the department. WaterWatch supports the

interagency review team process as long as there are standards to which the group refer. WaterWatch believes that these standards should apply to all pending applications. It should be clearly reflected in the rules that essential habitat refers to all habitat needs of fish including water quality and water quantity. It should also be clear that tributaries are included. In Section 33-340(1) there should be added the standard that the project should be in the public interest. (tape 5, mark 476)

Bill Holmes, representing Oregon Water Resources Congress, distributed a written copy of his testimony. Holmes said the rules are a step in the right direction in proposing an interagency consultation process but there are some basic questions remaining on how the interagency team will be put together and how it will function. The detriment standard for the Upper and Lower Columbia Basin is too vague. An interagency review team should be used to review applications in the Columbia Basin also. Instead of relying on a vague "detriment" or "no net loss of essential habitat" standard, the department and Oregon Department of Fish and Wildlife should work cooperatively under ORS 496.172(3) to develop clear guidelines for protecting resource sites that may be affected by water right applications. If impacts to essential habitat are to be the standard, ODFW should use verifiable scientific data in designating habitat. The rules should recognize that some impact on species is permissible and then provide quantifiable and measurable guidelines for defining what the allowable level of impact is in a given situation. Whatever recommendation the interagency team makes, the department must be free to weigh the public interest as required by ORS 537.170(8) without restriction. OWRC urges the return to the original language in the April 15 draft, "if a proposed use may result in a discharge to any surface or groundwater source, thereby impacting the habitat of threatened and endangered fish species, any necessary water quality permits shall be obtained by applicant prior to any diversion of water."

(tape 5, mark 528)

Todd Heidgerken, Water for Life, expressed cautious optimism regarding this process. There is uncertainty contained in the rules that he would like to see clarified such as to what areas in the state these rules would apply. The RAC has not reviewed maps showing where these sensitive, threatened and endangered species are located. More information is needed on how the interagency team is chosen, how the applicant is involved, etc. Someone familiar with the local agricultural aspects of the area should be on the team. There is not an assumed link between water use and the impact on a sensitive, threatened or endangered species. The final public interest determination needs to be made by the department with input by the interagency team. (tape 6, mark 1)

Marc Liverman, Oregon Department of Fish and Wildlife, believes the process recommended is the best so far for balancing the needs of at risk species with human needs. These rules will reduce the need for last-minute costly intervention at a time when species are truly critical and the hope of recovery is slight. He participated in the coastal water rights review process and



recalls how that team was able to address and resolve most issues. (tape 6, mark 55)

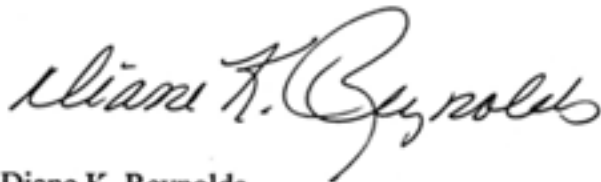
Roger Bachman, Oregon Trout, will submit written comments. Oregon Trout hoped for much tighter review standards which have disappeared in these draft rules. (tape 6, mark 72)

Frewing asked Kline about the difference between "no loss" of essential habitat and "no net loss" of essential habitat. Kline replied that mitigation or alternatives would likely be available under "no net loss" that would not be available under "no loss."

#### **I. Informational Report on Department Participation in Governor's Coastal Salmon Restoration Initiative**

Geoff Huntington, Deputy Director, and Marc Liverman, Department of Fish and Wildlife, presented this report to the Commissioners and responded to their comments and questions. Huntington explained the process of WRD's review of applications pending in the coastal basins that are the subject of a potential listing of the Coho salmon. He distributed a summary table on this process and the results, and explained the meaning of the numbers. A group of representatives from the departments of Environmental Quality, Water Resources, Agriculture, and Fish and Wildlife reviewed all 1,200 applications. Area watermasters and district biologists were brought in for consultation; and the Department of Forestry and Division of State Lands also contributed information to this team.

There being no further business, the meeting was adjourned.



Diane K. Reynolds  
Commission Assistant