

Oregon Water Resources Commission Work Session
August 22, 1996
Newport, Oregon

Members

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

Others

Kimberley Priestley
Jerry Schmidt
Roger Bachman
Lorna Stickel
Doug Myers
Jan Boettcher
Karen Pearson

Staff

Martha Pagel
Geoff Huntington
Steve Sanders
Diane Reynolds
Steve Applegate
Tom Byler
Tom Kline
Tom Paul
Fred Lissner
Doug Parrow
Mike McCord
Dave Jarrett
Steve Elmore
Doug Woodcock
Weston Becker
Sandra Cairns
Jerry Grondin
Kimberly Grigsby

Agenda reports and other material submitted at this work session 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 session are on file at the same address.

1. Preparation of 1997-1999 Budget and 1997 Legislative Proposals

Martha Pagel, Director, and Tom Byler, Legislation and Rules Coordinator, led this discussion.

Staff offered to the Commission a concept for transfers that would amend the statute to provide greater flexibility for the water user and the Department, would correct an error in 1995

legislation and clarify certain areas of the law. Another change would create a voluntary process to encourage transfer applicants to transfer or lease a percentage of their water right to instream purposes in exchange for reduced transfer fees. Frewing suggested considering raising transfer fees so that a fee reduction would be an incentive and the program might pay for itself. Pagel agreed that having the transfer program be supported by fees is a goal of the Department but the amount of increase to recommend has not yet been decided upon.

Jewett suggested using the proposed statutory language in alternative 3 of Byler's August 14 memo regarding transfer fee reduction. Hansell suggested waiving the entire transfer fee when 25 percent of the water right is transferred or leased for instream purposes.

Pagel asked the Commission if staff should continue working toward using the transfer as a mechanism to deal with instream flows or if they should offer other alternatives. Hansell said he supports fee increases to help cover the program but getting increases through the Legislature will be difficult; he said he does not support a "water tax" on transfers. Frewing supported pursuing a fee increase on transfers with some type of reduction for instream purposes. Frewing would eventually like to see a "tax" on transfers. Leonard supported proceeding with this concept -- alternative 3 is a good choice but perhaps consider a 50 percent reduction of fee when up to 25 percent of the water right is transferred for instream purposes, and waive the entire fee for more than 50 percent.

Steve Applegate, Acting Water Rights Administrator, handed out a worksheet showing that a 278 percent increase in all of the water right fees would be necessary to fully fund the programs for the next biennium. The current average fee paid by an applicant for a water right permit is \$420. The 278 percent increase would bring that up to \$1,168 -- higher than it needs to be in relation to other fees. Current transfer applicants pay an average of \$100. The Department's cost in processing a transfer over the last few years has averaged over \$700 so in this case the 278 percent fee increase would not be enough. Even with fee increases, General Fund dollars would be necessary to help cover the entire cost of processing applications.

Nelson asked if staff are also looking at ways to trim the costs of processing applications. Applegate responded that decentralizing much of the water right activity is in our long-term plan. Pagel said that she is not sure that moving some of the processing to the field cuts the cost as much as it improves the effectiveness of the decision-making and improves customer service.

Leonard suggested that starting with a ten percent fee increase might be acceptable to the public. Frewing suggested considering the operating costs of field monitoring in any fee increase policy; he would be pleased with 80-90 percent. Hansell and Johnson both support some type of fee increase.

Applegate said the last time fees were increased was in 1983. Staff realized at that time that the increase was not nearly enough to cover the cost of processing. Leonard suggested creating a chart showing comparisons of the 1983 fees and costs with the costs of today.

Pagel asked if the Commission would approve dropping consideration of the concept of time-limited permits at this time. This is a very controversial issue and it has been difficult for staff to come up with a sensible time period that is rationally tied to a kind of water use. In the last legislative session the concept of limited licenses was expanded to include uses for short-term or fixed duration. Permit conditions for a period of time are also being used. Hansell and Jewett agreed that there are so many other issues the staff are working with that this could be set aside. Johnson and Frewing would like to see time-limited permits considered in the future.

Frewing asked about considering a reduction in the amount of daily use associated with exempt water uses. The statute now calls for 15,000 gallons per day. Pagel responded that at the Ashland meeting staff recommended not to include this as a legislative concept. Sanders commented that the exempt use limit is not an automatic right to use that amount of water -- it must be beneficial use without waste. Leonard was remembering that from the last meeting, staff were going to consider separating the exempt uses into single domestic and group domestic categories with a smaller gallon amount for single domestic. There was not a consensus from the Commission on pursuing this. Staff will investigate the issue further and report back at the next Commission meeting.

Public Comment

Roger Bachman, Oregon Trout, spoke in support of reducing the amount of allowable use for exempt wells. Even though this water is to be used without waste, there are not enough watermasters to monitor the larger users. Oregon Trout has no specific number of gallons in mind but a reasonable amount would be much less than 15,000. (tape 2, mark 36)

Nelson suggested that the Ground Water Advisory Committee (GWAC) be asked to consider this topic. Pagel agreed that GWAC would be contacted and staff will report back to the Commission.

Jewett asked if the underlined Section 2.a of Attachment 2 of the staff report reflects proper delegation. Sanders responded that the delegation is appropriate. Standard permit conditions have included the Director's authority to require measuring and reporting for quite some time. Pagel said the intent in Section 2.a was to venture into reporting in partnership with local watershed councils. If there might be a better way to word this, staff will consider it. Johnson asked if the watershed councils would want the authority to recommend to the Director annual water use reports from any user within the watershed.

2. Informational Report on Reservations of Water

Doug Parrow, Resource Management Division, updated the Commission on rulemaking issues and pending reservations. A Reservations Work Group composed of representatives from interest groups and other state agencies has been assembled to review the reservation program and assist in development of legislative recommendations. Staff's goal is to develop draft legislative recommendations by November 1, and prepare a report to the Legislature before the end of the year. There are two fundamental concepts being discussed by the Work Group -- one is the concept of a determination of water availability, the other is protecting potential storage sites through basin planning and rulemaking.

There would be an application process with a fee for which any person could apply for a determination of water availability for a multi-purpose project. The Department would then make the determination of available water -- in the future when the applicant would come forward with a reservoir permit application, the water would still be available. The priority date would be the date of the determination for water availability. Public interest concerns would be considered when the applicant applies for a permit.

The Work Group has had several discussions on how reservations of water might be developed through the basin plan rulemaking process. The members have yet to agree on a preferred concept or process for reserving water. There is agreement in the group that the focus of future reservations should be on water that is available to be stored for multipurpose uses. Work Group meetings will continue with the hope of developing consensus-based recommendations.

Parrow updated the Commissioners on the rulemaking hearings to amend the Hood, John Day and Umatilla basin programs. The rulemaking process parallels the model used for the Burnt River subbasin. The water availability analysis takes into account existing and pending instream water rights, and the draft rules reflect consideration of instream values.

Rulemaking hearings on the pending reservation requests for future storage in the Hood, John Day, Umatilla, Grande Ronde, Powder, Owyhee and Malheur Basins are scheduled this year. Consideration of rulemaking in the Deschutes and Willamette Basins will occur during the first half of 1997. Rulemaking for the reservation of live flows in the main stem Columbia, Snake and John Day Rivers will await the completion of the salmon recovery plans.

Public Comment

Roger Bachman, Oregon Trout, commented on disagreement among the Work Group members regarding a priority date being granted at the time water availability is determined. Another issue is whether there should be a public interest review at the time of determining water

availability. Finally, there are concerns about what happens if two entities want to develop the same site. The Work Group has discussed providing a 60-day window in the draft legislation in which someone else could make a competing request for a water availability determination and a process in which the Department could help the entities work together. Hopefully these issues can be resolved. (tape 2, mark 395)

Doug Myers, WaterWatch, asked that the public interest review take place at the time of the determination of water availability. (tape 2, mark 506)

Parrow said the problem with doing a public interest review at the time of water availability determination is that the information needed to evaluate whether a prospective reservoir is in the public interest is not available at this early stage. An applicant must clearly understand that the Department is only evaluating whether or not water is available for the project; and that the public interest questions would be addressed at the time an application for a reservoir permit is filed.

Pagel said that an idea being considered is that all the available water in a basin not be reserved, but a portion of it kept for current use, a portion for reservation, and a portion for future decision making.

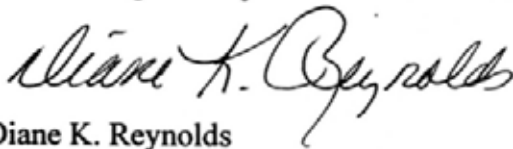
Jewett asked about the Willamette Basin and coordinating the pending reservation requests with Metro's land use plan. Pagel said this will be considered when staff begin the rulemaking process this fall.

Lorna Stickel, Portland Water Bureau, commented that she is aware of the issue about the reservation request. The Regional Water Supply Plan will be entering the adoption process in October so there will likely be a resolution of that issue before the Commission considers the Willamette Basin rulemaking. (tape 3, mark 55)

3. Ground Water Projects and Studies Briefing

Fred Lissner, Jerry Grondin, and Doug Woodcock of the Field and Technical Services Division gave a very interesting presentation on three ground water projects using a display of charts and maps.

The meeting was adjourned for this informal presentation.



Diane K. Reynolds
Commission Assistant