

Oregon Water Resources Commission Work Session
April 3, 1997
Salem

Members

Nancy Leonard
Mike Jewett
John Frewing
Tyler Hansell
Ron Nelson

Others

Rick Kruger
Kimberley Priestley
Todd Heidgerken
Phillip E. Graf
Jim Myron
Jan Boettcher Lee
Reed Benson
Doug Myers
Jerry Schmidt
Bill Hoffstetter
Ves Garner

Staff

Martha Pagel
Geoff Huntington
Steve Sanders
Diane Addicott
Tom Byler
Charlotte Haynes
Bob Rice
Doug Parrow

In addition to those listed above, other staff were present for particular segments of the work session. Written material submitted at this work session is part of the meeting record and 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. Oregon Coastal Salmon Restoration Initiative: The Oregon Plan

Charlotte Haynes and Bob Rice, Resource Management Division, presented this informational item and responded to questions and comments by Commissioners. They presented an update on the Department's role in the "Oregon Plan," submitted to the National Marine Fisheries Service on March 12, 1997; and discussed Department commitments and workplans key to the Plan.

The Oregon Healthy Streams Partnership intersects with the Coastal Salmon Initiative in a number of ways and was developed in conjunction with the Initiative. It addresses water quality planning and the 870 streams that do not meet water quality standards. Both the Oregon Plan and Healthy Streams Partnership focus on local solutions, innovative partnerships, and watershed management.

In February 1997 an interim draft of the Oregon Plan was circulated to the legislature for their review and comment, resulting in passage of Senate Bill 924 which covers both the Oregon Plan and the Healthy Streams Partnership. House Bill 3700 imposes a tax on harvesting of forest

products and uses proceeds of the tax to implement the Oregon Plan. The tax is repealed if the National Marine Fisheries Service lists any Oregon coastal salmon species as threatened or endangered in the area designated as the northern Ecologically Sensitive Unit (ESU).-- In the event of a listing, House Bill 5042 will cover the entire \$30 million needed to implement the Plan.

Public Comment

Reed Benson, WaterWatch, expressed appreciation for the efforts involved in developing the plan but also mentioned some concerns. Instream flows are crucial to coastal coho; the plan falls short on restoring instream flows under existing law. Benson suggested regulating for duty and regulating ground water in connection with surface water. The plan does not commit to recommending serious water management problem areas. Local efficiency standards mentioned in the plan are vague. In general, the plan talks about the right issues, but falls short of what the state could do under existing law. Benson said he was impressed with the assessment and goal-setting work being done on restoring and protecting habitat by watershed councils on the south coast; however, they need an action plan. It will be very difficult for watershed councils to tackle the controversial issue of instream flow restoration. (tape 2, mark 224)

Frewing asked Pagel how the Commission will be kept informed on the progress of the implementation of the Salmon Plan Initiative. Pagel will continue regular mailings of updates to the Commissioners and schedule briefings at future meetings.

2. Legislation and Budget Status Report

Tom Byler, Legislative Assistant, gave a brief update on the status of water-related bills; Martha Pagel discussed the current budget status and specific bills of interest to the Department.

The Governor's recommended budget for the Water Resources Department maintained our base budget for programs and approximately \$800,000 to continue the Willamette Basin Ground Water Study, and funding for several option packages. Option package 113 for \$1,878,800 includes funding for 11 field staff and for new ground water studies in the Klamath, Rogue, and South Coast basins. When the Department budget was before the Ways and Means subcommittee the legislative leadership had not yet worked out funding for the Salmon Plan -- \$30 million was needed and one of the strategies was to take that money out of agency base budgets and redirect it to fund that Plan. For that reason the subcommittee reduced the Department's base budget by \$1 million of general fund money and did not fund Option Package 113.

The Governor and legislative leadership have since then agreed to fund the Salmon Plan with up to \$30 million general fund, and there is an intent to fund the agency packages that help support

the salmon plan such as our Option Package 113. Pagel said she is hopeful that the \$1 million general fund cut will be restored. The \$1 million cut came primarily from Willamette Basin ground water studies.

HB 2135 has been seen as drastically increasing fees. Without the increases, the Department stands to lose five current positions in the Water Rights Division. A need for an additional four positions is also projected -- so there would be a total of nine positions covered by the fee increases in HB 2135.

Pagel will work with the Legislature to try to regain the \$1 million that was cut from the Department's base budget by the Ways and Means subcommittee and redirect some of that money to offset the fee increase while reducing other services and supplies accordingly and doing less work on the Willamette Ground Water Study.

Pagel said the Oregon Farm Bureau has submitted SB 1157 which would streamline the issuance of secondary water rights for the use of contracted stored water in a facility operated by a state, local, or federal government agency. The Department has been working with the Farm Bureau on a concept of issuing a limited license for the term of the contract rather than issuing a traditional water right. The limited license would include a public interest review and a provision that would not allow injury to any other water right; it would not have a priority date. Byler said that SB 1157 would allow for a one-year limited license for this type of use; it could then be renewed.

Pagel said there have been several bills filed dealing with the transfer process. One issue is the actual time for review; the Department would support a time line so long as we have funding for adequate staffing. Another bill would require a full public interest review instead of an injury test; yet another would require that a certain amount of the transferred water be dedicated to instream flow. Should the Department be proposing some level of review or a fish impact analysis where listed species exist?

Jewett suggested a "fish neutral" analysis rather than an entire public interest review so as not to encumber the transfer process. Pagel said that by "fish neutral" the new use under the transfer would not be more adverse to fish than the current use.

Hansell suggested that no changes to the transfer process be made -- there may be several issues that changes to the transfer policy would impact that have not yet considered.

The Commission did not reach agreement and since these bills have not yet been scheduled for a hearing the issue will be discussed at an upcoming conference call. In the meantime, Pagel will be talking to interested parties about the issues.

Public Comment

Kimberley Priestley and Reed Benson, WaterWatch, commented on the public interest issue. Most western states have a public interest standard on transfers. Priestley said the public interest proposal considered by the Department is limited to fish concerns at the point of diversion — it's not the point of diversion that is the problem, it's the amount of water. On all types of transfers the amount of water can be changed significantly. WaterWatch would like the public interest standard applied to every type of transfer. As streams become over-appropriated transfers will be used more and more. (tape 3, mark 72)

Sussman said that when considering water availability, staff look at expected demands of water rights. Consumptive use factors are applied differently for various types of uses. For irrigation, staff do not look at the quantity on a certificate, they look at the number of acres that could be irrigated within a water availability basin. The consumptive use is then distributed for that number of acres. The Department is conservative when estimating water availability for irrigation.

Jewett and Nelson said that perhaps WaterWatch's concerns should be discussed if the full amount of the water right could be transferred and exceed historic use. Pagel agreed, but noted that the currently required injury analysis would likely limit a transfer of more than the historic amount of use.

3. Water Allocation Policy Discussion

Doug Parrow, Resource Management Division, and Adam Sussman, Water Rights and Adjudications Division, led this discussion with the Commission. Parrow reviewed the development of the statewide water policies, the history of water availability determinations, the reasons the water allocation policy was developed, and the policy and principles of water allocation.

Parrow explained it was decided in the 1980's that the water policies and principles should be adopted as administrative rules. In 1990 the Water Resources Commission adopted policies for ground water management, hydroelectric power development, instream flow protection, interstate cooperation, protection of water resources on public riparian lands, conservation and efficient water use. In 1992 the water allocation policy and water storage policy were adopted.

The definitions and introduction to the policy document were also adopted as administrative rules in 1990 with the first six water policies. One of the definitions is that of "over-appropriated." Surface water is considered over-appropriated when it is not available to meet the expected demands from all water rights at least 80 percent of the time. Ground water is over-

appropriated when uses exceed the average annual recharge to the aquifer or result in the depletion of over-appropriated surface water.

In 1987 the Division 11 rules were adopted to guide the water right permitting process. These rules required referral of an application to the Commission if water was not likely to be available in the amount and at the times needed. Staff generally used average streamflows in evaluating water availability and relied on watermasters' observations. In 1989 the Legislature provided funding for the Department's first water availability database. In 1992 the Division 11 rules were amended to include a standard that water must be available from the source to support the proposed water use.

The water allocation policy says that the waters of the state shall be allocated within the capacity of the resource; allocated among the broad range of uses to provide environmental, economic and social benefits; and protected from over-appropriation. Additional surface water uses may be allowed even though the stream is over-appropriated where public interest in the uses are high and uses are conditioned to protect instream values. Restrictions on exempt ground water may be considered when a ground water source is over-appropriated.

Parrow said that in working on reservations, staff are using a 50 percent exceedance standard in deciding if water is available. Under the water allocation policy, storage is exempt from the 80 percent exceedance standard. However, protection may be afforded to water rights and instream uses through storage seasons and other conditions. In deciding on what an allowable storage season would be for a particular reservoir, consideration is taken to avoid periods when flows are low and seldom exceed existing needs.

Sussman spoke on exception provisions in the water allocation policy. The policy states that when a stream is over-appropriated some additional uses may be allowed where public interest in those uses is high and uses are conditioned to protect instream values. The term "over-appropriated" means the quantity of surface water available is not sufficient to meet the expected demands from all water rights at least 80 percent of the time. "Public interest" means a beneficial use which is consistent with state law and includes providing the greatest good for the people of the state based on current values, protecting water rights and conserving water resources for present and future generations. This definition is rather vague when deciding upon the public interest.

Department staff have granted exceptions on over-appropriated streams for human consumption and livestock; the Commission has never been asked to implement this exception. There are no other rules to provide the Commission and staff guidance as to what constitutes high public

interest. In implementing an exception, two issues to consider are 1) determining whether public interest in the use is high; and 2) determining whether the use can be conditioned to protect instream values.

Sussman led a discussion with the Commissioners using four scenarios for possible exceptions.

There being no further business, the work session was adjourned and the Commission went into Executive Session.

Respectfully submitted,

A handwritten signature in cursive script that reads "Diane K. Addicott".

Diane K. Addicott
Commission Assistant