

Oregon Water Resources Commission Meeting  
May 30, 1997  
Salem

Members

Nancy Leonard, Chair  
Mike Jewett, Vice Chair  
John Frewing  
Jim Nakano  
Ron Nelson

Staff

Martha Pagel  
Geoff Huntington  
Steve Sanders  
Diane Addicott  
Barry Norris  
Fred Lissner  
Tom Byler  
Adam Sussman  
Weisha Mize  
Marc Norton  
Dwight French

Others

Nancy Couch  
David Moon  
Henry Reeves  
Jan Lee  
Roger Bachman  
Jaime Sanders  
Jim McHale  
Anita McHale  
Mary Phillips  
Ves Garner  
Martha Hall  
Kate McCarthy  
Bill Cook  
Dave Riley  
Richard Allan  
Steve Warila  
Howard Arnett  
Karen Russell  
Stephanie Burchfield  
Karl Anuta  
Dan Thorndike

In addition to those listed above, other staff were present for particular segments of the meeting. Written material submitted at this meeting is part of the meeting record and on file at the Oregon Water Resources Department, 158 12<sup>th</sup> Street NE, Salem, Oregon 97310. Audiotapes of the meeting are on file at the same address.

Chair Leonard opened the meeting and introduced Jim Nakano, newly-appointed Commissioner from Ontario.

**A. Commission Meeting Minutes**

The minutes of the April 1997 meeting were presented for approval. Frewing moved to approve the minutes; seconded by Jewett. All voted approval.

## **B. Commission Comments**

Frewing and Nelson attended the Water Law Conference at Lewis and Clark College earlier this month. They enjoyed the good discussions and information shared.

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

Pagel summarized Thursday's work session. She reviewed future meeting location options with the Commissioners and they agreed to meet in Ontario for the July 31-August 1 meeting and either Klamath Falls or Hood River in November.

Geoff Huntington distributed a forecast of agenda items for upcoming meetings.

Tom Byler, Legislative Coordinator, said the legislative session appears to be drawing to a close — substantive committees are shutting down and not hearing bills. Compared to the 1995 legislative session there has been much less activity in water-related legislation. The Department's bill tracking log regularly sent to the Commissioners tracks approximately 90 bills — approximately 60 of these bills are directly related to water policy. Fifteen of the 60 bills did not have a hearing in committee. Byler explained that the Department filed 12 bills, including our budget bill, and so far only two of these bills have made it through the system and been signed by the Governor. Senate Bills 123 and 131 never had a hearing. HB 2094 (relating to well construction) and SB 712 (relating to adjudications) are currently in committee. The hydroelectric bill was passed out of the subcommittee and will move on to the full committee. The fees proposed in the Department's fee bill have been questioned by the chair of the subcommittee. Pagel said the Governor's Office will work with legislative leadership to see that this bill proceeds.

Byler said there have been substantial amendments to a few bills. SB 133, the Department's housekeeping bill, has had several amendments. One amendment allows a supplemental water right holder to prove up the permit without making beneficial use of the water. Another involves extending the sunset date for irrigation districts providing them more time to develop conservation plans and exempting them from forfeiture of water rights during that time. A third amendment would allow public corporations to avoid written authorization or easement requirements in obtaining a permit.

Pagel commented on the budget bill and responded to comments and questions by Commissioners. There will likely be a reduction in the base level from that in the Governor's recommended budget but this should not result in loss of staff. The reduction will cause staff to cut back on aggressive efforts to perform new ground water studies in the Willamette Basin. However, the Department will continue with the major cost-sharing agreement with the U.S. Geological Survey on the Willamette Basin modeling project. Staff are hopeful that Option

Package 113 which would give the Department 11 new positions in the Field and Technical Services Division will be approved. This option package would help the Department fulfill commitments in the Salmon Restoration Plan. HB 2119 (relating to the hydroelectric relicensing program) made it through Ways and Means and is expected to move forward through the House and Senate. HB 2135 (fees) initially included significant fee increases to fund nine positions — the expected outcome for that is that five of these positions will be funded by the Department's base budget, and four positions will be funded by fee increases.

**D. Request for an Exception to the Willamette Basin Program under ORS 536.295(1)(e).**

Adam Sussman, Water Rights and Adjudications, presented this report to the Commission. Applicant C.M. Hubbard and staff jointly requested an exception to the Willamette Basin Program as part of an Alternative Dispute Resolution process to resolve protests on applications G-12631 and S-71790.

Sussman explained that in order for the Commission to make this exception, they must find the request meets one of the criteria under ORS 536.295(1). In this case, the criteria is extreme hardship. And the use must be consistent with the general policies of the basin program.

A public interest determination would be made as a part of the standard water rights process which would continue if an exception is granted.

Application G-12631 includes a request for the use of two wells (#2 and #4) for irrigation of 78.9 acres and supplemental irrigation of 41.1 acres. Application S-71790 includes a request to use an unnamed lake for irrigation of 222.3 acres and supplemental irrigation of 139.0 acres. The wells are hydraulically connected to an unnamed lake and Miller Creek and staff consider these bodies tributaries of the Long Tom River. The Long Tom River and tributaries are not classified for irrigation so staff denied the use of wells #2 and #4 and the unnamed lake.

Sussman explained that staff believe, in this case, application of restrictive classifications may be an inappropriate application of the Commission's policy objectives and leads to an unintended result that could be considered an extreme hardship on the applicant. The proposed sources are cut off from the Long Tom River and do not contribute flow. Staff made a technical evaluation of the proposed uses from wells #2 and #4 and the unnamed lake and found that there is no potential for substantial interference with surface waters of the Long Tom River. Marc Norton, hydrogeologist, explained the technique used in this evaluation.

An alternative source of water is available but would cost the applicant approximately \$6,000 per year plus additional pumping costs.

Public Comment

David Moon, attorney for the applicant, spoke on the extreme economic hardship purchasing water would have on the applicant. (tape 1, mark 880)

Jewett moved for approval of the request for a basin program exception; seconded by Nelson. All voted approval.

**E. Consideration of Exceptions to Proposed Order: Fairview Community Church and Chris and Robyn Greenlund**

Weisha Mize, Administrative Law Judge, reviewed for the Commissioners the background of this request for exceptions to a proposed order. At the Commission's April 4, 1997, meeting the applicants requested that the Commission reopen the hearing record to allow additional evidence. The Commission sent this matter back to Mize to decide whether to reopen the record and if the record is opened, to issue a new order if the evidence warrants. Mize determined that the parties had not demonstrated good cause for failing to submit the offered evidence at the hearing but that it was clear that they did not fully understand the basis for the Department's water availability determination or the application of the Commission's rules to these applications.

The record was reopened on a limited basis. The applicants' additional evidence and argument on water availability, the South Coast Basin Plan, instream rights generally and whether the uses were of high public value were admitted.

On review of the additional evidence and argument, and the Department's response, Mize determined that no change in the earlier issued proposed order was warranted. Mize explained that the issues set forth in the April 4, 1997, staff report to the Commission remain the same.

Applicants' Comments (tape 2, mark 107)

Chris and Robin Greenlund and Pastor Craig Curtis explained their situation and responded to questions by the Commissioners. Chris Greenlund said that alternatives were not thoroughly discussed or explored by the Water Resources Department. However, alternatives are not available. There is no way to make any kind of determination whether alternatives are acceptable or not in this process. Robin Greenlund said that Sussman had suggested the possibility of drilling a well next to the creek; the issue of constructing a pond was not discussed.

Chair Leonard asked the applicants how the granting of this water use would be in the general public's interest. Pastor Curtis, from the Fairview Community Church, responded that the church is the only public entity in the community and is used as a community center. Various community activities take part using the church grounds. Alternatives for acquiring water for the

church and its grounds would be cost prohibitive for a small rural congregation. The property adjacent to the church is privately owned and the grass and brush are not kept trimmed -- in the summer there is a potential for fire hazard. Having water to irrigate the church grounds reduces the chance that fire would spread to the church and parsonage.

Robin Greenlund said their reasons for believing this water use would be in the public interest are the same as those of Pastor Curtis. They are concerned about fire suppression. An oversight in the definition of domestic use expanded and household use is that there would be no fire protection by watering a lawn and garden to create a buffer space surrounding the property to prevent wild fire. Exhibit number 10 is a letter from the Coos Forest Protective Association indicating it is in the public's interest for property owners to maintain a green space around their house.

Mrs. Greenlund said that the South Coast Basin Plan states that even when there are low flows in the Coquille and its tributaries, water for domestic use expanded could still be appropriated. Very few people know that to water their garden they need a domestic use expanded water right.

Sussman returned to the table to discuss the water allocation policy with the Commissioners. The Department's response in the staff report addresses all issues brought up by the applicants. The basin program does speak to the minimum perennial stream flows; the problem in this case is not the minimum perennial stream flows, but rather more recent instream water rights. These instream water rights do not have any subordination clause which would allow domestic expanded use. When the applicants entered the water rights process, their application was junior to several instream water right applications. These instream water rights are now certificates; they were uncontested and are legally established water rights. Sussman said the major policy issue before the Commission is whether or not an exception should be granted to the water allocation policy. To do this, the Commission must find that public interest in the use is high and that the use could be conditioned to protect instream values. Staff believe that the applicants do not present the circumstances warranting an exception, and that granting an exception in this case would undercut the effectiveness of the Commission's water allocation policy.

Sussman said that if the Commission were to grant an exception that would not give the applicants immunity from regulation. Their use would very likely be curtailed to human consumption every summer because they are junior to instream water rights that are usually not going to be met.

Nakano asked about the alternative of drilling a well. Sussman said that drilling a shallow well close to the stream would be an option to consider.

Mr. Greenlund said there has never been any measurements made on the stream -- all the Department's data is from computer modeling. The Coquille Watershed Association is doing

extensive restoration work on the stream. If the water right is granted, it would hopefully result in monitoring the stream flow which would be in the public's benefit. It would be beneficial to know how much water is in the stream. (tape 2, mark 575)

Frewing moved to deny the exceptions and direct issuance of a final order as indicated in the proposed order issued by Mize; seconded by Jewett. All voted approval.

#### **F. Recommendation on the Requested Expansion of the Eola Hills Ground Water Limited Area (GWLA) to Include the Amity Hills Area**

Steve Sanders excused himself from this discussion because of a personal conflict of interest. Walter Perry replaced Sanders for this item.

Frewing declared that he is a member of Thousand Friends of Oregon and Friends of Yamhill County but is not familiar with this issue.

Marc Norton, staff hydrologist, presented this report to the Commission. The Friends of Yamhill County submitted this request because of rural residents' concerns that additional development cannot be supported by the local ground water resources. Norton explained that available ground water data are varied and too inconsistent to support expansion at this time; however, a problem may exist and additional data are needed to make that determination.

A rulemaking change to expand the Eola Hills GWLA would not protect the ground water resource from further rural residential development in the Amity Hills area because exempt uses would still be allowed. Norton said that if ground water levels decline significantly in the Amity Hills area before administrative action is taken by the Commission, the Department has statutory authority to regulate exempt uses based on priority dates, and the authority to condition any future water uses.

#### **Public Comment**

Larry DeBates, resident of the Amity Hills area, submitted written testimony and urged the Commission to approve this expansion request. The county has consistently taken the position of relying on the state to protect ground water resources. New residential development along with quarry expansions, wineries and other developments are being approved by the county without any concern for the ground water resources. (tape 3, mark 1)

Henry Reeves, resident of the Amity Hills area and member of Friends of Yamhill County, submitted written testimony and displayed maps showing the area of concern. Reeves showed the location of seven residential subdivisions in the northern Eola Hills and discussed their development. He said that the motto of Friends of Yamhill County is to help shape the use of