

Oregon Water Resources Commission Meeting  
October 2, 1997  
Silver Falls Conference Center

Members

Nancy Leonard  
Mike Jewett  
John Frewing  
Tyler Hansell  
Jim Nakano  
Ron Nelson  
Dan Thorndike

Staff

Martha Pagel  
Geoff Huntington  
Tom Byler  
Diane Addicott  
Tom Paul  
Weston Becker  
Al Cook  
Steve Sanders  
Dwight French  
Fred Lissner  
Patrick Lee  
Bill Fujii  
Charlotte Haynes  
John Wynn  
Mike Mattick  
Larry Menteer

Others

Bob Hunter  
Tom McMurray  
Dan Shephard  
Doug Myers  
Bob Hoeffel  
Todd Heidgerken  
Joe Rohleder  
Pat Zwick  
Cindy Long  
Marjorie Speckler  
Don Greenwood  
Jeff Curtis  
Karl Berg  
Kris Baluet  
Jan Lee  
Marc Liverman  
Gail Achterman  
Dennis Becklin  
Eric Glover

Written material submitted at this meeting is part of the official record and on file at the Oregon Water Resources Department, 158 12<sup>th</sup> Street NE, Salem, Oregon 97310. Audiotapes of the public meeting are on file at the same address.

**A. Commission Meeting Minutes**

The minutes of the August 1, 1997, Commission meeting were presented for approval. Frewing moved to approve the minutes; seconded by Thorndike. All voted approval.

## **B. Commission Comments**

Ron Nelson thanked people for attending the workshop held the two previous days.

Dan Thorndike also thanked staff and guests who attended the workshop.

Nancy Leonard thanked staff for their planning and hard work in putting together the workshop. Leonard announced that Ken Williamson, Director of the Water Resource Research Institute at Oregon State University, agreed to have his students do a year-long study of the southern part of Lincoln County at no cost to the local governments. The result of the study will be plans for a coordinated regional supply system.

Tyler Hansell enjoyed the workshop and appreciated the discussions with people representing various interest groups and government agencies.

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

Pagel thanked everyone for the good participation in the workshop — many ideas were brought up for staff and Commission to work on in the next year.

Pagel presented the proposed 1998 Commission meeting schedule. All Commissioners agreed that this would work for them. They also reviewed the upcoming meeting forecast.

October 13 is the date set for a formal negotiating session on the Warm Springs tribal treaty rights— to be followed by a formal signing ceremony with Governor Kitzhaber and Secretary of the Interior Bruce Babbitt.

A September 17 informational meeting for an Alternative Dispute Resolution (ADR) process was held in Klamath Falls for the Klamath Basin adjudication. Approximately 130 local residents attended this meeting — most have filed pre-1090 claims. The ADR process, facilitated by the Department, offers an opportunity for informal discussions, promoting wider understanding about the adjudication and claims. Through this process a number of technical disputes should be resolved, limiting the number of formal protests.

There have been several meetings of a work group on peak flows. The main issue before that group is how to evaluate new requests for storage projects and still provide necessary protection for peak flows as they impact the stream ecology. Meetings have also been held on the administrative rulemaking for extensions of permit time limits. The Hydroelectric Task Force has met to consider closing down projects no longer licensed, and discuss an annual long-term fee basis to be paid by hydroelectric projects.

#### **D. Resource Management Division Reorganization**

Charlotte Haynes, Resource Management Division; and Barry Norris, Field and Technical Services Division, reported on this recent reorganization and responded to Commissioners' comments. The overall mission of the Division parallels the philosophy of the Oregon Plan, moving the state as a whole toward a more geographically targeted watershed-based approach to managing natural resources. With the help of slides Haynes showed how Salem staff will work closely with field staff across the state to provide flexible, locally-g geared water management solutions while maintaining a consistent statewide approach. In the mean time, staff have been cross-training in an effort to broaden their areas of expertise. The aim is for staff to become skilled at using all the Division's tools, applying these tools on a targeted geographic basis to provide better service to the public and local governments. Norris added that the region managers are very pleased with this — not only for the benefit of bringing statewide policy and consistency to the regions, but for the opportunity to better communicate and connect with the Salem office.

#### **E. Grants Pass Irrigation District (GPID) Progress Report on Savage Rapids Dam**

Al Cook, Manager of the Southwest Region office, presented this report to the Commission. At the April 1997 meeting Commissioners requested this interim progress report from GPID addressing the due diligence requirement.

Mike Jewett suggested Commissioners disclose any contacts that have been made regarding this issue. All the Commissioners have received several mailings from Dennis Becklin. Jewett had talked with Tom McMurray, Leon Goulet, David Moon, and Bob Hunter. Frewing had received mail from Becklin and talked with him, and spoke with Bob Hunter of WaterWatch.

Frewing asked staff to respond to the specific data mentioned in Becklin's letters. Pagel said that through discussions at this meeting, staff would know which documents might be most significant to the Commission and would then work on specific responses.

Dan Shephard, GPID Manager, and David Moon, Attorney, spoke on behalf of the irrigation district. Dan Shephard reviewed the accomplishments listed in the report. GPID hired an attorney to handle the Endangered Species Act issues relating to the dam. A committee has been formed to hire a fish biologist and an engineer to address the fish passage issue. The Board also plans to hire a person to help with public relations. Roy Hemmingway, of the Governor's Office, has been invited to attend the October Board meeting. Joe Rohleder, Northwest Sport Fishing Industries, and Bob Hunter, WaterWatch, have offered to help gather support for the dam removal alternative. A newsletter will be mailed to GPID patrons to keep them informed.

Jewett asked Shephard if GPID could make the deadlines in Alternative 2 of the staff report. Shephard said he believed it would be possible.

David Moon expressed appreciation for the GPID Board members. He said the report they submitted shows they are committed to resolving fish passage issues by removal of the dam. They have made contacts with state and federal elected officials to make this a reality — obviously obtaining financing will be a difficult task. There have been several contacts with the staff of the Bureau of Reclamation to discuss the process of obtaining federal funding. The District has also been working with local and statewide groups that support the decision to remove the dam. Getting accurate information out to local residents has been a challenge to the District — there are many rumors. There have been petitions circulated asking to save the dam — the issue is just not that simple. Information stated in these petitions is very often inaccurate. Moon said that GPID would prefer Alternative 1 of the staff report; he reviewed all the actions taken by GPID which show due diligence. Alternative 3 and 4 are not appropriate because GPID had to wait for the recommendation of the task force. A lawsuit has been filed against the GPID Board by Mr. Becklin and one of the Board members; there has not been a preliminary injunction issued or a hearing scheduled.

Shephard answered questions asked by Commissioners. He explained the Bureau's interest in the dam, the schedule for the annual irrigation season, and how the dam is partially removed during the winter months. Shephard discussed projects completed by GPID as mentioned in the report, and upcoming planned projects for the District. He said GPID's largest patron is the Grants Pass Golf Course having approximately 100 acres. There are two dairies and a few vineyards in the District, but most of the patrons have small ranches of 5-10 acres, or live within the city limits. (tape 1, mark 553)

Dennis Becklin, Savages Rapids Dam Foundation, commented in support of retaining Savage Rapids Dam. He encouraged the Commission to support Alternative 1 of the staff report which called for no immediate action. Using slides he showed the river flows and existing dam structure, and discussed the reason the Commission is now considering removal of Savage Rapids Dam. He also circulated photographs of the dam and the sediment piles. Becklin expressed concern about the sediment flow after dam removal. He does not want to see any adverse effects to the river and fish. Becklin reviewed the concerns of the Savage Rapids Dam Task Force and their recommendation to retain the dam. He said the community needs time to work on the funding necessary to resolve the fish passage issue. (tape 2, mark 92)

Martha Pagel clarified the role of the Savage Rapids Dam Task Force; this task force existed through the end of 1996. The task force was created as a result of legislation enacted in 1995 and was to report to the legislature and the Governor. Neither the legislature nor the Governor acted upon the task force report that was submitted to the legislature. Pagel said she received some

materials that indicated some revisions to the task force recommendation; she asked Becklin to clarify that in actuality the task force is no longer in existence.

Becklin said he is the former chairman of that task force, and though the task force is no longer in existence, he continues to be an advocate for their recommendation. He said that all of the materials sent out fairly represent the record of the task force and are suitable for use in examining the issues examined by the task force.

Pagel reviewed what led up to this situation. A discovery was made some years back that GPID was diverting more than allowed by its certificated water right. GPID needed the additional water to continue operating its system, but had no right to do it. A key issue is understanding, implementing and maintaining the integrity of the water rights system, and allowable diversions under the terms and conditions of the water right. GPID requested a new water right for the additional amount needed, but in reviewing the request, staff found that the GPID water system is very inefficient. There have been many discussions about the GPID system becoming more efficient over time and about concern over the Scenic Waterway flows (Diack flows). New water rights can not be issued in violation of the Scenic Waterway law.

Becklin said he understands it is the 52 cfs that is at question. GPID is an irrigation district with 160 miles of canals that have been seeping water into the region for 52 years. The term efficiency ultimately means the canals get lined or the system turns to a piped system. Becklin said the removal of the waters that have greened the region will be considered an act of confrontation to the community — a very serious matter.

Jewett said if the dam is removed and pump stations are installed, there will still be water in the ditches.

Becklin continued to say that the inefficiency of the system will always be fought for by the community because the distributed water seeping from the canals is needed for wetlands, for the water table, and the community.

Thorndike said this is a totally different issue from the dam. Becklin said they are linked.

Pagel said the dam retention option recommended by the task force does not address the efficiency issue. The current water right permit held by GPID requires implementation of improved efficiency.

Bob Hunter, WaterWatch, submitted written comments of his remarks to the Commission. He said he had been a member of the Savage Rapids Dam Task Force and the oversight committee. Hunter said he has been very consistent on the need to remove Savage Rapids Dam. The task force had asked the Bureau of Reclamation to work up numbers on the 4B alternative so the

members could make comparisons when looking at different alternatives. The Bureau did work up those numbers which came up showing that the 4B alternative was more expensive. Hunter said Becklin has been implying that the task force alternative is the cheapest — not according to the information provided by the Bureau. Hunter said a professional engineer from British Columbia spoke with the members of the task force on the issue of sedimentation and the likelihood of damages to fisheries. The Bureau of Reclamation is the only entity that has looked into the sediment issue relating to Savage Rapids Dam; he distributed copies of the Bureau's report. Hunter said WaterWatch supports the Department's recommendation to approve Alternative 2 of the staff report. He also requested that GPID be asked to obtain federal legislation authorizing dam removal in the 1998 federal fiscal year, and that if the GPID Board of Directors reverses its decision to remove the dam, their permit should be immediately canceled and the District's water use should immediately be restricted to its certified right of 96.94 cfs. WaterWatch obtained signatures of representatives of thirty groups on a letter to the Oregon delegation requesting funds for dam removal and replacement with pumps. Dam removal would provide the most fishery benefits and would be the cheapest alternative. (tape 2, mark 778)

Jeff Curtis, Trout Unlimited, spoke in support of Alternative 2 of the staff report with the changes recommended by Bob Hunter. His organization has offered to work with GPID in any way they can. Regarding the Endangered Species Act, a number of the coho salmon spawn above Savage Rapids Dam — eventually the young fish will have a problem passing the dam, especially the north side turbine. The District will be faced with a take situation at this point. The best alternative is dam removal — the 4B alternative would not solve the take problems. Curtis commended the GPID Board for their courage in making the decision to remove the dam. He also thanked Bob Hunter for all the years he has worked on this issue. (tape 3, mark 189)

Don Greenwood, retired engineer, said that according to the senior fish biologist of the Oregon Department of Fish and Wildlife, if the fish ladders are repaired to NMFS standards, the mortality rate for downstream smolts would be zero. The upstream mortality would be between zero and three percent. Greenwood read a portion of a petition being circulated in Josephine and Jackson Counties in support of dam retention. In a letter, Eric Glover, Bureau of Reclamation, stated there could be an impact on the river because of sedimentation behind the dam. Greenwood said the economic issue of removing or retaining the dam also needs to be taken into consideration. He urged the Commission to look at all the facts and try to discount any misleading statements. (tape 3, mark 260)

Joseph Rohleder, lobbyist for several fish groups including Northwest Sport Fishing Industries Association, Association of Northwest Steelheaders, Oregon Outdoors Association, and Curry Guides, said he is interested in funding projects that benefit fish. In 1994 he worked with Senator Hatfield's staff in obtaining federal funds through the Bureau of Reclamation for dam removal if there was local consensus. The opportunity was lost with Senate Bills 1005 and 1006, the change in the GPID Board, and lack of local consensus. Rep. Bob Smith's staff is now

willing to work to obtain federal funding for removal of the dam if there is a plan and local consensus exists. It would be helpful if the Water Resources Commission would move toward approving Alternative 2 of the staff report which would solve some of the take problems. Savage Rapids Dam in its current condition does not meet fish screening or fish passage requirements. (tape 3, mark 364)

Jan Lee, Oregon Water Resources Congress, respects the responsible decision the GPID Board of Directors has made based on the best available information. Her organization stands ready to support the congressional financing and will work hard to get the best plan in place to fix the problems. There seems to be a significant difference in the cost of the two options — with the ESA listing, there may be an even bigger difference. (tape 3, mark 457)

Marc Liverman, National Marine Fisheries Service (NMFS), spoke on NMFS' position regarding Savage Rapids Dam as it relates to the GPID diligence in addressing conservation and fish passage. On September 5, 1997, NMFS sent a letter to GPID agreeing with the District's decision to remove the dam, and also set forth the requirements for an incidental take permit as part of a habitat conservation plan. The permit is necessary for continued operation of the dam and for its removal to provide authorization for fish mortality that will inevitably occur. Those requirements include a method and time frame for removal, adequate funding assurance, and measures to reduce and mitigate incidental take. NMFS has not been contacted by GPID since that letter went out; NMFS is concerned about a possible lack of focus on ESA requirements related to take and the resulting delays in addressing fish needs. The permit must be in effect prior to the beginning of the next irrigation season. NMFS will soon have enforcement officers in place to observe adult fish passage mortality at Savage Rapids Dam, and will also be observing mortality associated with juvenile passage next spring. Enforcement options will be considered if mortality occurs and substantial progress toward implementation of a take permit has not occurred. NMFS has asked GPID for an estimate of the time frame for the dam removal, and a time frame for obtaining funding assurances in measures to minimize and mitigate take so that NMFS can proceed with a habitat conservation plan. (tape 3, mark 489)

Kris Baluet signed up to speak but had to leave early.

Martha Pagel read written comments submitted by the Oregon Fish and Wildlife Commission in support of dam removal.

Eric Glover, Area Manager for the Lower Columbia Area, Bureau of Reclamation (BOR), commented on the sedimentation analysis in the Bureau planning report and final environmental statement. During the Savage Rapids Dam Task Force deliberations, a professional engineer did offer some testimony on case studies indicating adverse effects at other dams that had been removed when sedimentation that had been trapped behind the dam was allowed to move downstream. However, this individual did not perform any studies— he raised concerns and

made some recommendations. In a recent letter to GPID, the Bureau discussed the nature of the federal planning process and the fact that it is iterative in nature. If Congress were to authorize removal of Savage Rapids Dam and provide funding, there would be more detailed studies performed; those studies would allow for a greater level of detail than was done during the planning process for the feasibility study. The studies would also allow the opportunity to address issues that may have arisen between the publication of the planning report and environmental statement, and the arrival of funding which is often a significant period of time. Glover said BOR would revisit the sediment issue in that planning process and would do some more analysis of the materials behind the dam. BOR staff would look at the mechanisms for moving the sediment down stream and revise the management plan. If, in that process, it was determined that the sediment must be moved mechanically, then cost estimates would be revised. If that revision in cost estimates meant that there was a significant change in the cost of the project, and it would be necessary to revisit the decision based on the economics, BOR would seek authority to make a change in that decision. These studies are done in a public process and the public will have access to the scoping of those studies and be able to see the results. The public will have input in the decision making. (tape 3, mark 545)

Hansell said he irrigates land and knows the value of water; he also knows what will happen to Grants Pass Irrigation District patrons if the permitted water use is cut back to that allowed in the first certificate. With commitment comes the responsibility to uphold that commitment — often in society today, people do not take that responsibility seriously. The GPID Board of Directors made a commitment to the Water Resources Commission— now they must be responsible to uphold that commitment. The Board chose to remove the dam before most of the current Water Resources Commissioners were serving. Commissioners should not be used in political games—the community must quit bickering and become unified to the commitment previously made and their responsibility. Hansell spoke in support of Alternative 2.

Jewett spoke to the patrons of GPID facing a vote very soon. In his opinion, the current Board has worked very hard in good faith to implement a solid business decision. The only chance for GPID to survive and keep water in the ditches is to hold to the deal.

Thorndike said he believes the critical factor is the survival of GPID— and that is where his sympathies lie. How can GPID be allowed to supply water to its users in a manner that is in accordance with state and federal law? With the particular circumstances of this situation, Thorndike said he believes moving forward with removal of the dam is the only way GPID will be allowed to retain the additional water. He believes that any concerns regarding fish impacts as a result of dam removal will be safeguarded by NMFS, ODFW or another entity. Thorndike spoke in favor of Alternative 2.

Nakano said he has been farming in the Ontario area for over forty years and has served on the local irrigation board. He would not like to be in GPID's position now; he would also not want



to be a patron threatened by an allotment cut back. Nakano spoke in support of Alternative 2 and encouraged community consensus.

Leonard said it is often very difficult to give up a position and join a group effort going forward with a plan. In this case, Leonard said she too would encourage this to happen in the community.

Steve Sanders spoke on the technical basis for the Commission's action if Alternative 2 is approved. The existing permit includes language that a refusal to comply with any of the provisions of the permit, including the exercise of due diligence, justifies an amendment to the permit. The motion would be to modify or end the permit and consequently the Commission would find there is some lack of diligence or some failure to comply with the permit to justify the modification of the permit. In addition to the finding spelled out in the staff report, that failure to comply with those four conditions by the time line set out would constitute a lack of due diligence. The Commission would now be finding one of the predicate conditions required by paragraph nine of the permit justifying the permit modification.

Jewett moved that the Commission adopt Alternative 2 of the report as recommend by staff and the permit be amended accordingly; seconded by Hansell. All voted approval.

#### **F. Water Availability and Calculating Consumptive Use**

This item was rescheduled to the following meeting.

#### **G. Public Comment**

Gail Achterman and Jan Lee, Oregon Water Resources Congress (OWRC), spoke about the Rules Advisory Committee (RAC) working on revisions to administrative rules for permit extensions. Achterman and Lee were not at the Ontario WRC meeting when staff asked for Commission authority to form this RAC. The staff report offered two alternatives— one to direct staff to initiate rulemaking to amend the permit time limit extension period; and the other to direct staff not to initiate rulemaking. Achterman and Lee understood it would be a rulemaking advisory committee addressing the very narrow issue of how long the permit time limit extension period should be. When staff sent out a letter to the RAC members, the process was described as the Commission having authorized "broad review of the permit extension process," and that "all aspects of the process are open for discussion." At the first RAC meeting there was a great deal of discussion related to an Attorney General informal opinion that the Department had received in June, and released to the public prior to the August Commission meeting in Ontario. Achterman said that many water attorneys across the state have serious disagreements with that opinion. The committee was told they could not raise questions about the AG opinion, and the RAC process was constrained by it and could not deviate from it. Oregon Water Resources Congress is extremely concerned about this process. The Commission needs to understand what

is going on with the permit extension process and what the implications are of the AG's advice. Achterman distributed copies of a list of permits held by members of the OWRC — 97 permits held by 50 members. At least one of those permits has not been put to final proof for 72 years because the Department has never done the final proof survey. If the scope of the RAC process is a broad review of the permit extension process, Achterman said the Commissioners and the Department ought to call the RAC a legislative task force instead. If the changes and past practices of the Department and the past interpretation of the statute embodied in the AG opinion are going to drive the process, then the thousands of people who hold these unperfected permits in the state and who have relied upon them for decades, will have no choice but to either litigate with WRD or go to the legislature and rewrite the statute to clarify the rules of the game. OWRC wants to be very clear that they have no problem with tightening up a system that has not been run the way the statute envisions it should be run, but to suddenly change the rules on people who have been waiting patiently for their final proof survey is fundamentally inequitable. The people who hold the existing permits and have been extending them based on past practices of the Department need to have an adequate transition period allowed to make a change. They urged the Commission to get clarification from staff as to the scope of the RAC. Jan Lee said that in several old files, records don't exist or are incomplete. There has to be a definitive process of how you treat what exists versus what is new, and the rulemaking needs to be narrowed to those implications that will fit in that process or look at it from a legislative perspective. (tape 4, mark 40)

Ron Nelson announced the fact that the irrigation district that employs him is listed in the OWRC hand out. Sanders thanked Nelson for this disclosure and said there would be no conflict of interest in this discussion.

Pagel clarified the action taken at the Ontario Commission meeting referred to by Achterman. After the Commission had heard public testimony at that meeting, they directed staff to broaden the scope of the rulemaking. There was discussion on the standard of good cause and discussion of being quite mindful of the impact this would have on people relying on the past practices of the Department. These are issues that can be addressed in the rulemaking process and hopefully concerns will be resolved. There is also the opportunity to receive further input on the legal advice from the Attorney General's office but as a matter of law the Department is bound by the advice received. Pagel said the rulemaking process can be a forum for bringing forward these types of concerns and seeing that those affected by the rulemaking will be dealt with fairly.

## **H. Oregon Plan Update**

Due to lack of time, no formal presentation was made on the Oregon Plan update. The Commissioners did receive a written update.

There being no further business, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Diane K. Addicott".

Diane K. Addicott  
Commission Assistant