

Oregon Water Resources Commission Meeting
November 21, 1997
Hood River

Members

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

Staff

Martha Pagel
Geoff Huntington
Meg Reeves
Tom Byler
Weston Becker
Diane Addicott
Dick Bailey
Charlotte Haynes
Barry Norris
Fred Lissner
Donn Miller
Mike Mattick

Others

Renee Moulun
Kimberley Priestley
Jan Lee
Ron McKinnis
Roger Bachman
Anne Saxby
Holly Colloii
Todd Heidgerken
Bob Hoeffel
John Buckley
Bill Stanley
Steve Applegate
Barry Beyeler

Written material submitted at this meeting is part of the official 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.

A. Commission Meeting Minutes

The minutes of the October 2, 1997, Commission meeting were presented for approval. Frewing moved to approve the minutes; seconded by Jewett. All voted approval.

B. Commission Comments

Nakano attended the Oregon Water Law Conference held in Portland November 6 and 7. It was very interesting and worthwhile.

Jewett updated the Commissioners on the Grants Pass Irrigation District recent elections. The chairman Tom McMurray was recalled and the other two Board members who had voted for removal of Savage Rapids Dam were not re-elected. The two new Board members will begin their term in January. There are now four Board members and one vacant position.

Hansell said the County Line Water Improvement District's 20-year-old pipeline has deteriorated and is being repaired with concrete lining. He thanked those responsible for planning and presenting the previous day's tour.

Leonard also expressed appreciation for Thursday's tour.

C. Director's Report

Pagel and Commissioner Ron Nelson attended the signing ceremony of the Confederated Tribes of the Warm Springs Reservation Water Rights Settlement.

Efforts are continuing for a negotiating process in the Klamath Basin to deal with the Tribes' claim and other federal and private claims. There have been three public meetings held to work toward developing an alternative dispute resolution process.

Pagel was in Salem Thursday to present the Department's Legislative Emergency Board request for \$659,346 to pay for the costs of the Klamath adjudication during the remainder of this biennium. The federal claimants are not required to pay fees to the state so that leaves the Department with a long list of claims to process without an adequate fee base to cover the cost. Half the money was appropriated, \$321,000; the Department has the option of returning to the Emergency Board to request the additional funds to cover legal fees. Hopefully a federal law change to correct this situation will be enacted.

Pagel was confirmed Thursday as a member of the State's Dispute Resolution Commission. This Commission helps provide policy guidance on use of state money used for mediation and dispute resolution programs. She would bring to the Commission a perspective of how state agencies can be more involved in alternative dispute resolution and avoid litigation.

On October 16, 1997, the Department held a water management and conservation plan workshop designed primarily for local governments and small municipalities that supply drinking water. Commissioner Leonard gave the opening remarks at the workshop. The workshop was very well attended.

A public meeting on the Eola Hills Ground Water issue was held October 7. Staff will brief Commissioners at a future meeting.

Pagel reported that staff are still in the final stages of dealing with a few contested case matters that may or may not come before the Commission. Adam Sussman has been working with the parties and resolving some of the contested matters that came out of the water right backlog process. Staff have yet to deal with possible contested cases on a number of instream water right applications -- hopefully a dispute resolution process can be used to avoid contested case hearings.

Tom Paul reported on the transfers backlog. The processing of transfers was assigned to the field staff in October 1996. Since January 1997 staff have processed approximately 250 transfers, leaving a backlog of nearly 670. Before moving the transfer program to the field, there was only one person in the Salem office assigned to this work. The past legislative session approved the hiring of two new positions to work with the transfer program. The filling of these two positions is dependent upon revenue received from fees; when the account balance grows we will be hiring.

Dick Bailey reported on the certificates backlog. In the past year, two full-time staff have been assigned to work on certificates and recently Don Knauer has been appointed as manager of adjudications and certificates. In the past six months staff have completed approximately 650 certificates related to the Bureau of Land Management claims. There are remaining approximately 3,500 certificate files yet to be processed; these files need a thorough review by staff and will take more time to complete. Pagel explained that in the past the Department had the responsibility for completing final proof surveys and issuing certificates on water rights that had been fully developed. That became too much of a burden on limited Department staff so a new law was passed about ten years ago which put the final proof survey responsibility on the permittee. At that time, the Department retained the obligation to complete the final proof survey on some of the earlier water rights and adjudications. This has been a difficult backlog to manage as limited staff resources face increasing program responsibilities.

Bailey also reported on ponds. HB 2153 (1993) allowed people to file for a certificated water right for an existing pond or to have their pond declared exempt. In the exemption process the watermaster would look at the pond and determine if it did indeed meet the exemption criteria. The 1993 law called for issuing of the certificates before a public comment period. Over 10,000 ponds received certificates of water right. The comment period was open until August 1, 1997; the Department received approximately 1,000 comments. The allegations were to meet certain criteria and comments that were unclear were returned -- most of those comments did not come back to the Department. About 450 allegations remained to be considered. A letter was mailed to the pond owners with a copy of the allegations and a request for the pond owners to respond to the Department by December 10, 1997, with any additional information. Staff will then review the pond owners' responses and determine whether further investigation by the watermasters is necessary. A mitigation order will be developed and sent to the pond owners for ponds causing

injury. Those pond owners will then have the opportunity to request a contested case hearing.

Pagel thanked Mike Ladd, North Central Regional Manager, for the informational display on the Umatilla Basin Project. Ladd said he and Weston Becker put together the display which will be used by staff as an educational tool.

D. Proposed Extension of the Hood River Sub-basin Irrigation Season

Mike Mattick, Water Rights and Adjudications Division, Ves Garner and Steve Applegate, representing the Oregon Department of Agriculture (ODA), offered this item for the Commission's consideration and responded to their questions and comments.

Garner explained that the existing irrigation seasons were set by decrees and water rights established in the early 1900's based on the common practices of that day. Today new crops and new varieties of existing crops are being introduced to Oregon, and irrigation practices are changing. In 1995 the Legislature passed SB 2917 authorizing ODA to request an extension of a subbasin irrigation season which has been established by adjudication, administrative rule, permit or certificate condition.

Pagel added that by extending the irrigation season of an entire basin it opens the door for experimental crops and new irrigation practices so long as safe guards are met without asking all water right holders to go through the process of requesting an out-of-season use.

Applegate introduced Bill Stanley, Manager of the Middle Fork Irrigation District; and John Buckley, Manager of the East Fork Irrigation District.

Applegate said an informational meeting was held on April 7, 1997. Interested parties were invited and sent a summary of the irrigation season extension request. Representatives of the Oregon Departments of Agriculture and Fish and Wildlife, U.S. Forest Service, PacifiCorp, and the Confederated Tribes of the Warm Springs were in attendance. None of these groups expressed significant objections. Following the meeting, a letter was received from the Oregon Department of Environmental Quality expressing no objection. Applegate said that he would like to work with WRD staff on issues regarding water availability.

Mattick explained that in order to extend the irrigation season the Commission must make the following three findings: that water is available; that the use would not impair instream flows necessary to protect aquatic resources; and that the diversion and use would not impair the achievement or maintenance of water quality standards. He reviewed the findings discussed in the staff report.