

Oregon Water Resources Commission Meeting
March 31, 1998
Corvallis

Members

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

Staff

Martha Pagel
Geoff Huntington
Tom Byler
Diane Addicott
Weston Becker
Al Cook
Charlotte Haynes
Tom Paul
Dwight French
Doug Parrow
Pat Lee
Dallas Miller
Mike Mattick
Greg Nelson
Lara Burgel
Weisha Mize

Others

Eric Glover
Ed Henricks
Todd Heidgerken
Karen Russell
Kimberley Priestley
Reed Benson
Renee Moulun
Judy Gove
Jerry Schmidt
David Moon
Tam Moore
Joe Rohleder
Steve Beyerlin
Steve Hinton
Doug Myers
Dick Helgesen
Joe Stevens
Sue Danver
Laura Schroeder
Chris Cauble
Scott Clifford
Don Greenwood
Dennis Becklin
Robert Buckmaster
Tom McMurray
Dale Smith
Bob Hunter

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

A. Commission Meeting Minutes

The minutes for meetings of December 19, 1997; January 16, 1998; and January 22-23, 1998, were offered for consideration by the Commission. Frewing moved that the minutes of the December 1997 meeting be accepted as presented; seconded by Thorndike. All voted in favor. Nelson moved approval of the minutes of the January 16th meeting; seconded by Frewing. All

voted in favor. Jewett moved approval of the minutes of the January 22-23 meeting; seconded by Nelson. All voted in favor.

B. Commission Comments

Nelson reported that he had been in Washington D.C. seeking federal funding for the Oregon Water Trust and the Deschutes Basin Resource Conservancy.

C. Director's Report

Pagel briefly summarized the prior day's work session which included a presentation on global warming by George Taylor and Jack Dymond, and a discussion on preparing for the 1999 Legislative Session.

Frewing suggested having a discussion at an upcoming meeting on agency programs and policies in relation to global warming and how staff make assumptions about future resource conditions. Perhaps a student intern might be available to gather information for such a discussion.

Pagel has been involved in continuing efforts regarding the Klamath Basin adjudication. She was in Washington D.C. in early March for a meeting of the Western States Water Council and also to speak with the Oregon congressional delegation about establishing federal fees for the Klamath adjudication. The federal agencies have filed claims in the adjudication but by federal law are not required to pay the state fees. That is causing a deficit in funding the adjudication processing. Congressman Bob Smith is working with other members of Congress to bring forward a bill that would require the payment of these fees.

Pagel reminded those present to visit the Department's web site. The site continues to grow with new information -- recently some new hydrographic data has been added.

Pagel said there has been much interest in how state agency employees gain access to private property in the performance of their duties. Our proposed rulemaking on OAR 690-250-090 deals with this; and it is also an issue for other state agency employees in connection with water quality programs under the federal Clean Water Act. There may be some legislation pertaining to this in the upcoming legislative session.

Huntington reviewed the issues scheduled for consideration at upcoming Commission meetings.

Before discussion of agenda items D.1 and D.2, Mike Jewett and Dan Thorndike disclosed that both had received copies of several letters directed to the Commission supporting Savage Rapids Dam removal. The other Commissioners also received copies of these same letters which were forwarded to them from the Department. Jewett added that he had talked with several people on

the issue including Bob Hunter of WaterWatch, staff of the National Marine Fisheries Service, Tom McMurray, and various patrons of the Grants Pass Irrigation District.

Jewett also commented on the issue of Bob Hunter being on staff at the law offices of Jacobsen, Jewett and Thierolf. Bob Hunter has retired from law practice; Jewett's three partners have taken over some of his files which do not include any WaterWatch work. Hunter is technically "of counsel" to Jewett's law firm, but does not maintain an office there. There have been great efforts to avoid any partnership relationship or financial interest between Jewett and Hunter.

D.1 Grants Pass Irrigation District – Consideration of Exceptions to the Contested Case Hearing Proposed Order of February 24, 1998, and Entry of a Final Order.

Leonard explained that the Commission would be considering the question of whether to withdraw the Order completely which would then make the exceptions moot. Those offering public comment on this item were asked to limit their comments to whether the Order should be withdrawn, rather than commenting on the exceptions.

Meg Reeves, Assistant Attorney General, explained that in November 1997 the Commission entered an Order proposing to require particular reporting requirements by the Grants Pass Irrigation District (GPID) designed to demonstrate continuing diligence toward dam removal. The Order provided for restriction on use for failure to comply with those requirements, and made available the opportunity for a contested case hearing. A contested case hearing was held on February 19, 1998, and a proposed final Order entered. The hearing officer examined the November 1997 Order and concluded that the Commission had not found with sufficient clarity that GPID was not being duly diligent, and therefore recommended that the Commission conclude that they were not authorized to enter that November 1997 Order.

Reeves continued to explain that the parties had filed exceptions which are summarized in the staff report. Staff recommended that the Commission withdraw the November 1997 Order and deny both sets of exceptions as being moot. When the Commission sent this case to hearing, it did so with the understanding that it had found failure of due diligence and wanted the hearing officer's assessment of the facts and whether the remedy was appropriate. Because of the hearing officer's resolution of this case, he did not get to that issue. Reeves suggested that if the Commissioners were to proceed at this time, they would do so without the benefit they had sought in the contested case hearing.

Reeves said that there are pending before the Commission several items that would allow the Commission to address the diligence issue without a record that is clouded by the hearing officer's assessment of the November 1997 action.

Public Comment

Laura Schroeder, attorney for the Grants Pass Irrigation District, said that GPID supports withdrawal of the November 1997 Order but suggested changes to the draft proposed Order attached to the staff report. She encouraged the Department to adopt only the portion of the proposed final Order on page 6 of Attachment 5, starting at line 13. The rest of the document, while interesting, tries to support one position or another, and may create an appealable order. Schroeder said, if you are doing a withdrawal of an Order, you need not make any findings because you are withdrawing the Order that had the findings and order in it; here you are just withdrawing. (tape 1, mark 464)

Frewing said that he was concerned with Schroeder's suggestion that the Commission eliminate the explanation of the basis for the action in this Order. Reeves agreed with Frewing that the Order has to have findings of fact, conclusions of law, and an Order.

Reeves said that the Commission could authorize either entry of this Order or by a date certain if the District agrees to stipulate to a different Order along with a waiver of attorney fees and judicial review. Schroeder expressed interest in pursuing this.

After much discussion, Jewett moved to withdraw the November 12, 1997, proposed Order by April 15, 1998, either by entry of an Order substantially in the form of Attachment 5 of the staff report, or in the alternative, by an Order that simply withdraws the November proposed Order, perhaps makes more cursory findings of fact and conclusions that the Department staff and GPID agree to, provided that GPID waives judicial review of this final Order and waives any attempt to seek attorney fees. The motion was seconded by Nelson. All voted approval.

Reeves explained that if the Grants Pass Irrigation District and Department staff do not reach agreement on an alternative by April 15, 1998, the Commission will enter an Order substantially in the form of the Order attached to this staff report.

D.2 Consideration of and Action on Grants Pass Irrigation District Annual Report and Request for Permit Modification

Al Cook, Southwest Region Manager, presented the Annual Progress Report submitted by GPID for the Commission's consideration. Cook said the District's report contains evidence of reasonable steps toward compliance with permit conditions relating to the conservation plan. However, the report does not show similar diligence toward compliance with the permit's requirements for implementation of dam removal.

The GPID progress report also included a requested modification of implementation schedules in order to continue compliance with the due diligence requirements, continue to attempt resolution

of fish passage issues, and continue to build community consensus regarding fish passage goals. On February 12, 1998, the District submitted five volumes of material entitled "Revised Fish Passage Plan for Savage Rapids Dam." However, the volumes do not include any description of the specific permit modifications requested by the District, or specific changes in the implementation schedule.

Laura Schroeder, Scott Clifford, and Chris Cauble, Attorneys for GPID; Don Greenwood, GPID Board member; and Dennis Becklin, GPID Board Chairman, came forward as a group to speak before the Commission. (tape 2, mark 14)

Schroeder comments: They had an opportunity to review the staff report and prepared a written response. Schroeder pointed out Attachment 2 of the staff report, page 331 of the October 1994 Order, the second sentence of Finding 4 reads, "The district's decision to recommend removal of the dam was based on specific conditions including the receipt of water rights sufficient to meet the district's needs, resolution of funding issues, and the opportunity for reconsideration of the decision if sufficient funding is identified to adequately repair the dam and fish passage facilities. Further in Finding 4, the next to the last sentence begins, "The district anticipates obtaining federal funds" Schroeder said that is an important point. The last sentence in Finding 5 of the same page reads, "This order provides time for implementation of the approved plans." On page 332 of Attachment 2, last sentence of subsection 4, "However, at the request of the permittee, the Commission may approve modifications in the plans or implementation schedules." Finding 5, end of second sentence reads, "... if appropriate, include a request for modification of the implementation schedules."

Schroeder comments: In the staff report it was suggested that GPID had not addressed the public interest in the modification. The public interest is reviewed pursuant to Finding 6 of Attachment 2, which says that any person may object to any modification to the plans or implementation schedule. Any objection to an extension or modification shall be on the basis that the modification or extension impairs or is detrimental to the public interest under ORS 537.170 or is prohibited by law. The public interest requirement therefore as to subsections 4 and 5 in the Order does not exist. The modification does not have to address those, it is only upon the objection that those have to be addressed.

Schroeder comments: The Order says there are some conditions which involve resolution of funding issues and a reconsideration or re-opener provision. The Order specifically adopts this plan. Schroeder referred to a blue spiral-bound report entitled GPID Comments Agenda Item D to OWRC Meeting of March 31, 1998. Included in the spiral-bound report is Chapter 8 of the GPID Water Management Study; Section 2.3 of this chapter is entitled Environmental Consequences — Schroeder read this section. Schroeder also read from Subsection 1 of Chapter

11 entitled "Implementation Schedule of Recommended Alternatives" in the spiral-bound report. Chapter 10, though not specifically adopted in the Order, talks about the funding issues. Schroeder read from Chapter 10, page 10, paragraph 3.2 of this same spiral-bound report.

Jewett asked Schroeder if she was contending that the 1994 Order unless modified does not require dam removal. Schroeder replied that she was saying it does not require it, it conditions dam removal. Schroeder said that in Finding 4 of the 1994 Order, the second sentence reads, "The district's decision to recommend removal of the dam was based on specific conditions including the receipt of water rights sufficient to meet the district's needs, resolution of funding issues, and the opportunity for reconsideration"

Jewett asked Schroeder if she was contending that these were conditions precedent to the duty to remove the dam. Schroeder answered, "I am, and the plan supports that."

Page1 asked Schroeder if she distinguished between Finding 4 and Condition 4 under the 1994 Order. Schroeder said she did not see any inconsistency between the Finding 4 and the Order 4; Order 4 specifically adopts chapters 7, 8 and 11 of this plan.

Schroeder comments: Schroeder read to the Commission the 3rd sentence in paragraph 1.2 and the last half of paragraph 3.0 of Chapter 11 of the GPID Water Management Study in the spiral-bound report. Schroeder reviewed table 11.2 on page 8, Chapter 11, which has been adopted in a policy-way as an implementation schedule. Comments on the table task items include "assumes Commission adopts fish passage plan acceptable to all" and "assumes fish passage plan has broad base of support." Schroeder said this has not happened. The condition is the funding which requires a broad base of support.

Schroeder comments: Schroeder read from an October 19, 1994, memorandum from John Frewing to Doug Parrow. In his comment number 13, Frewing said there is no budget or income identified in this plan. Frewing continued to write that the cornerstone of this plan is flexibility, and that it is not clear whether section 7 of the Newton report or section 11 is the plan. In comment number 22 of the same memo, Frewing wrote that on page 11 of the summary, reference is made to a set of conditions prepared by the Board which must be satisfied before the Board will consent to the removal of any portion of Savage Rapids Dam. In comment number 26 Frewing wrote that page 2 of chapter 2 in the Newton study refers to sediment flushing associated with current operation of the district and dam; is such sediment flushing permitted by DEQ, and would it be harmful to the stream. Schroeder said that only recently has the Board looked seriously at Frewing's statement and decided that sediment flushing could be a big issue to consider. In comment number 30 Frewing wrote that given the news clippings provided to the Commission, he didn't perceive the broad base of support which is indicated necessary to go to the federal government for financial support of GPID's system improvements. In comment number 34 Frewing wrote that the economic analysis of alternatives in Chapter 10 of the Newton

study says variously that "all" costs will be included, that federal funding should be not be relied on, and that any cost sharing with the federal government cannot be included in the analysis. Schroeder said the federal funding is not there because there is no broad base of support.

Thorndike asked Schroeder if it is GPID's position that under the 1994 Order without a modification approved by the Water Resources Commission, the 1994 Order does not require dam removal or at least reasonable progress toward dam removal. Schroeder responded that the 1994 Order requires progress toward dam removal with conditions; and those conditions are stated in the 1994 Order and they are stated in the plans in chapters 7, 8 and 11.

Thorndike asked if the focus then comes on a request for modification. Schroeder said that is correct.

Schroeder comments: Because GPID cannot make those conditions at the present time, a modification is necessary and the request has been made. The request does not have to be adopted as written; perhaps a couple of Commissioners could sit down with GPID representatives and write the modification in a way that fits within this plan. And the modification has to be subject to public interest review.

Reeves commented that to the extent that Ms. Schroeder is arguing bases for modifying the Order, the 1994 Order in the part that is a condition of this water right states unambiguously that dam removal is required. Reeves said she listened to the tapes of that meeting and to the extent there is any ambiguity, this issue came up about the District purporting to recommend this conditionally and the response was, this is not a conditional requirement. The Commissioners' intent was very clear from the tapes of that meeting that they intended to make this a firm, not a conditional, requirement. Reeves said she would distinguish between the argument that as a legal matter this 1994 permit extension does not require dam removal, and policy arguments about why it should not or should be changed.

Jewett commented that there is absolutely no doubt what was intended. The Order does not lend itself to any ambiguity.

Schroeder comments: She agrees there is no ambiguity. There is dam removal with conditions. The conditions are clearly stated not only in the findings and order but in the plan. According to Schroeder, when Pagel testified on April 5, 1995, before the Senate Land and Water Use Committee on the hearings for Senate Bill 1006 (noted on page 2 of the April 20, 1995, letter from David Moon to Dan Shepard, Part B of the spiral-bound report), she was clear about the fact that the Commission has never required removal of the dam, but GPID must comply with the permit. Schroeder said, when Senator Bryant asked who would be paying for this, Parrow answered that the assumption was made based on benefits to fishery by dam removal that the federal government would pay for removal. Bryant asked if the permit was conditioned on

obtaining federal funding. Parrow responded, not specifically conditioned on obtaining federal funding because the District could come back and propose other options to solve fish passage issues. Schroeder said Pagel also provided a response that provisions do exist in the permit that if no funding is obtained, the District can come back to the Commission still underlying the fish passage issues.

Don Greenwood read the following material in quotations from Page 3 of the minutes of the Grants Pass Irrigation District Board of Directors Meeting of October 11, 1994, copied in the spiral-bound report. Greenwood explained that he was not a Board member at that time but an interested participant. Catherine Davis was on the Board at that time. The minutes read that Ms. Davis said "the Board has not recommended removal, only conditioned it. There is a lot of things that has to be satisfied before Savage Rapids Dam would be removed. Ms. Davis does not want the audience to hear that comment, and think that the Board did. Also under the Order, Item 3: If the Board decision to conditionally remove Savage Rapids Dam, with a 'what if' scenario. What if the constituency of the board changes and the new board were to say they that they didn't agree with that decision, we want to save Savage Rapids Dam at all cost. In order to avoid this very severe penalty, cancellation, they would have to come to you first, [the Water Resources Commission] and get a modification approved by the Water Resources Commission. Mr. Douglas Parrow concurred."

Schroeder comments: We are, when talking about this, talking about due diligence since February of last year to now. What has the GPID done to try and get dam removal and get past those funding issues? The funding issue is really a consensus issue. What we want to do is solve the fish passage issue pursuant to the plan. In that regard, Schroeder asked Chris Cauble to review some of the things done by GPID.

Cauble comments: He would be talking about issues in the press, mostly relating to community consensus and funding. As a resident of Grants Pass and GPID patron, he is aware of the community's feelings. This is summarized in Appendix G and H of the spiral-bound report relating to news articles and funding. There has been much uproar in the community regarding attempts to remove the dam, coming from both patrons and non-patrons. That includes people who live above the dam who have property interests in the lake created by the dam, and also patrons who do have the benefit of lower costs of water as a result of lower operating costs of the dam. Generally, public opinion has been completely against dam removal. That is witnessed by the fact that there was a recall election — absolute hostility toward the Board of Directors when they voted to reverse their position, and voted to take out the dam. There was a recall election and general elections in which all members who had supported dam removal were recalled, generally by wide election margins. Understanding that it is the irrigation district and that it does not follow the entire community, but it is a very large sampling of the members of the community. It is a clear mandate from the community that it does not support dam removal. They do support fish passage; everybody is interested in saving the species. Nobody is

convinced that dam removal is the only way that you can save the species and deal with the fish passage problems. Cauble read the second paragraph of a May 20, 1997, letter from Congressman Bob Smith to Governor Kitzhaber in respect to a funding request that the Governor made to help implement the Savage Rapids Dam Task Force (Appendix H of the spiral-bound report). The letter referred to the lack of community consensus.

Jewett asked Cauble if he agreed that the District does not intend to remove the dam. Cauble responded by saying that at this point it is politically impossible for there to be dam removal. Community consensus simply is not there. Cauble said it may come to a point where there is no choice for the District and that dam will be removed. The issue is the due diligence period from February 1st to now.

Becklin comments: He referred to a group of resolutions that are actions of the Board since January 6, 1998. However, the previous Board continued to support its responsibilities to show due diligence under the Order of 1994. Becklin said that, at a previous Board meeting, they broadly complimented the performance of the previous Boards because they had an opportunity to review the progress reports provided to the Commission. Any suggestion that the current Board is not supportive of due diligence should be set aside immediately. During 1997 the Board did take steps in an attempt to educate the community; there were contacts with legislative staff and Oregon representatives to Congress. The Board during the most recent reporting period was diligent.

Schroeder comments: Schroeder referred the Commission to the contract between the District and the Rogue Valley Council of Governments, in Part D of the spiral-bound report. These groups tried to work toward consensus so that funding might be available. Schroeder also referred to another example of due diligence in the Bureau of Reclamation section, at the end of Part F of the spiral-bound report.

Becklin comments: He said the current Board has met on a weekly basis since January 6, 1998 — they are now meeting every other week. During the first two months that he chaired the Board, Becklin said the Board passed about 55 resolutions. It is clear that the current Board is broadly supportive of improving fish passage at the facility. Becklin hopes the Board will approve Resolution 180 which calls for the District installing NMFS compliant screens.

Jewett asked Becklin if he planned for dam removal.

Becklin reply to Jewett: This Board has not changed the position of the resolution passed by the GPID Board on January 4, 1994. The Board has preferred to continue to pursue an evaluation of good science and engineering so that when the Board moves forward to seek funding for the permanent solution it will be able to ensure that they protect the river, the fish, and the community. And that there is broad-based consensus that the Congressional delegates will

demand to come up with necessary funding. That is why in the proposed modification that GPID, through the use of consultants, exceptional biologists and fish passage experts, has offered a modification that includes a dual track proposal that would allow the Board to make a final conclusion on the basis of good science and engineering. Some portion of that science being the evaluation of the sediment core sample analysis, and the Department has received the core sampling plan. There is an independent effort underway to ensure that the core samples of this sediment will be taken during the month of April, and the Board will have the benefit in the future to be able to evaluate any potential adverse impacts that might result to this wonderful river and its fish as a result of any permanent solution, including dam removal, that this Board ultimately recommends for funding. Becklin said if he has not been clear enough already, so the record is absolutely clear about his personal position and so the media is able to hear it from him again, he chaired the Savage Rapids Dam Task Force without having a position with regard to dam removal or dam retention; he ran for the GPID Board on a platform supporting the recommendations of the Task Force; but his continuing position is that the final decision of this Board must be made on the basis of good science and good engineering — it does not all exist today. Becklin continued that we must have an adequate consensus to be able to take a package including the potential for dam removal with good science and good engineering; we must have consensus in our community or we are not going to get the \$10-15 million necessary to do this job.

Jewett asked if the short answer to his question is that Becklin does not know yet. Becklin said, that is right.

Becklin comments: The Board continues to stand on the resolution passed January 1994 and the eleven conditions. None of those conditions have been met. They include the issuance of permanent water right, sources of funding to the District, and the indemnification of the District from potential law suits by property owners who currently have homes on the lake.

Attorney Scott Clifford gave closing comments: In Part E of the spiral-bound report are minutes of the Board of Directors meeting for October 11, 1994. This was a time when the Board had the Commission's proposed Order before them that is at issue now. Before the Commission makes any decision they should review those minutes in detail and specifically review the nature of Mr. Parrow's comments regarding the Board's reluctance to adopt or go along with that Order. Mr. Parrow in that meeting went so far as to ask the District if in alternative to the Order they wanted a certified water right for 149 cfs right now. We all know that Mr. Parrow was not authorized to offer the District, but he encouraged them saying they needed more water, let's let it hang out for another five years, let's get these issues resolved. Throughout the minutes you will find Mr. Parrow saying if there is any problem you just come back to us and we will work with you. That is the impression that the 1994 GPID Board had when it agreed to this Order. It knew that if there were problems in meeting the conditions, it could come back to the Commission and they would work together to get this resolved. Since the adoption of the 1994 Order, the Board has

faced opposition from the land owners above the dam who have threatened suit against the Board on taking issues – taking away their ski area that has existed for years. There have been threats from parties that fear contamination of the river by sediments. There is opposition from all of the local government officials—Josephine and Jackson County Commissioners; Mayor and City Council of Grants Pass. Every local governmental agency is coming out officially for dam retention. You have virtually all of the state government officials, state Senators and Congressmen from southern Oregon... You have the federal government officials saying, no consensus, no money— don't even bother to come to us. You have funding agencies, you have the local residents, and then you have recreational groups both local and outside. This has resulted in threatened law suits against the District, refusal by government officials to make any attempts at funding, the introduction and passage by the House and Senate of SB 1005, passage of SB 1006, complete recall and replacement of the District's Board, petitions circulating with over 13,000 signatures, statistics on patron disapproval of removal of the dam of over 70%, and even one set of statistics showing the Grants Pass area voter approval of over 83% for retention. So, Clifford asked the Commissioners, how in the face of this opposition is the Board to move ahead? Any of the members could take a position on the GPID Board and come out in favor of dam removal and would be subject to a recall election. There is no community consensus for dam removal.

Thorndike asked Clifford if he was saying that even if he wanted to, dam removal is not a viable alternative.

Clifford comments: At the present time. All of the government agencies, as far as GPID coming out... and we saw what happened with the Board flip flopping. They wanted to say let's go dam removal, and then the fire came in. The Board cannot win.

Schroeder comment: GPID has continued to work with the Rogue Valley Council of Governments, the Bureau of Reclamation, and constituents to seek consensus.

Becklin comments: It is exceedingly important for the Commissioners to understand the character of the people who are now involved in the irrigation district board. Becklin said he has taken this job, not because he needed it, but because he sees it as a public service. Board members have taken a very business-like approach, redirected the Board with a new mission statement, cooperated with other users of the river, and changed operations to eliminate sediment flushings. This is a board, contrary to the manner in which they are cast on occasion in the media, that is working toward resolving this problem permanently. Becklin said that in the interim, speaking for himself as a conservationist, as a fly fisherman, unhappy with how the dam was operated in the past, the Board has undertaken operational changes that do minimize the adverse impact of fish passage both for juveniles and adults. Becklin said he is personally dedicated to protect the river, the fish and the community. The Board wants to work with the Department and Commission and engage in a constructive dialogue.

Public Comment

Robert Buckmaster commented: He said he was around in 1917 when the infancy of the idea of the Grants Pass Irrigation Company was in focus. By 1921 they began with the idea of building the dam. Since then, it has been nothing but an inharmonious situation. Buckmaster lived in California for some time and moved to Grants Pass in 1949; his brother became a guide on the Rogue River. Buckmaster shared stories about fish mortality as a result of the turbines and being swept onto dry land with irrigation water. With all the problems he has seen, Buckmaster believes taking the dam out would be an asset. (end of tape 2, into tape 3)

Tom McMurray, former chair of the GPID Board who was recalled in October 1997, commented: The two-track system that the current Board is running is a smoke and mirrors campaign. The residents above Savage Rapids Dam on the lake have no vested right in regard to GPID. The lake itself is nothing but a lucky accident. Only 18 percent of District 4 residents voted in the recall election. In the November election, out of the two Districts, approximately 23 percent voted. There is definitely no consensus. The result of the 1993/94 survey often referred to is somewhat misleading—30 percent voted to keep the dam regardless of cost; 40 percent voted for dam retention, however would not pay for it; and 30 percent voted for dam removal. Another survey conducted last year resulted in a turnout of 156 percent, out of 100 percent. Regarding the claim that 13,000 signed petitions—there are only 7,700 people in the entire District. GPID patrons are assessed and pay the bills. McMurray read from the GPID Board minutes of the January 5, 1994, meeting which include the eleven conditions. Of those conditions, if within 18 months of the Board's adoption of this motion, local community efforts generate sufficient funding to perform the necessary modifications to the fish ladders and repairs to the dam, then the Board reserves the right to reconsider its options at that time. That has sunsetted. A few years back, permit 50957 had a 60-day sunset clause in it, and nobody objected with a contested case. The GPID Board should begin plans for removal of the dam so there is adequate fish passage and adequate water for the District. (tape 3, mark 17)

Jewett asked McMurray if, while serving on the GPID Board, he had any doubt that the 1994 Order required dam removal.

McMurray comments: He had no doubt; and neither did the other Board members serving in 1994. Those Board members all wanted to retain the dam but they also realized the District would be hammered financially and other ways if they did not remove the dam, get the fish passage going, and the water right secured.

Dale Smith, Citizens for Responsible Irrigation, distributed copies of his comments: Smith said that history demonstrates that Savage Rapids Dam is a major contributor to the decline of the Rogue fishery. Smith included in his written comments a history of the dam's construction and modifications. Smith also recalled that in the 1940's dead salmon and steelhead smolt would be

deposited onto their pasture land through flood irrigation. In 1991 Smith and his wife were shocked to find thousands of downstream smolt in the GPID irrigation ditches near their home. During his 66 years of boating and fishing the Rogue, he has witnessed this fish kill at Savage Rapids Dam. The dam kills fish upstream in its poorly designed ladders and downstream in its poorly designed turbine, gravity canal system, and spillways. Smith urged the Commissioners to not continue to allow the 52 cfs requested by GPID until the GPID Board makes a firm commitment to dam removal. The fishermen are willing to pay their share for fish recovery, and GPID must do the same. (tape 3, mark 130)

Bob Hunter and Karen Russell, WaterWatch commented: (tape 3, mark 217) Hunter said that for the last ten years WaterWatch has been working with GPID and the Water Resources Department over the public interest concerns surrounding Savage Rapids Dam and the diversion of water at the dam. GPID was issued a final water right certificate in 1982. In 1987, the District applied to convert additional water to the same acreage for the same purpose. That application was challenged by WaterWatch, the American Fisheries Society, and the Rogue Fly Fishers, based on a number of public interest concerns including waste issues, state scenic waterway issues, flow issues, and the harm that the dam and District caused to the fishery. Negotiations were entered into at that time. The result was that permit 50957 was issued in 1990. At that time there was not enough information to know how to address the public interest concerns and to assist GPID with its needs; a four-year study was a condition of that permit to look into how to resolve those public issue concerns. GPID hired David Newton and Associates to conduct this study. That study was put forth as GPID's proposal to the Commission in terms of water conservation and solving the fish passage problems at Savage Rapids Dam; it suggested dam removal. WaterWatch and other groups were willing to sign off on a fairly weak conservation plan because the greater public interests were served with dam removal. The thought was that it was better for GPID to put its resources and efforts into the dam removal and replacement with pumps alternative than in the conservation area. This was how the situation was presented to the Commission in 1994 and resulted in the 1994 Order. At that October 1994 meeting in Medford, an overwhelming number of people in the room were supportive of the District getting their water right based on the condition of dam removal.

Hunter continued: After that time, WaterWatch moved forward to try to secure funding and assist the District in meeting its commitments. Jeff Curtis, Executive Director at that time, and Hunter went back to Washington D.C. to speak with federal and congressional staff; there was great interest in funding. Later, Curtis spoke with Senator Hatfield who was very interested in the project. In November 1994 the GPID Board changed its membership; the new Board stopped proceeding forward and instead went to the state legislature which resulted in SB 1006 and formation of the Savage Rapids Dam Task Force. Hunter said it is unfortunate that this situation exists today; he believes consensus could have been built and it would have been a good thing for GPID and the community. Hunter said he is surprised to hear the current Board say that permit conditions were not met because of lack of consensus; the whole requirement for