

Oregon Water Resources Commission Meeting
May 15, 1998
Hermiston

Members

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

Others

Kimberley Priestley
Brian Posewitz
Roger Bachman
Fred Ziari
Todd Heidkerger
Jerry Schmidt
Bob Hoeffel
Bob Hale

Staff

Martha Pagel
Geoff Huntington
Diane Addicott
Tom Paul
Mike Ladd
Dwight French
Mitch Lewis
Mary Grainey
Adam Sussman
Kent Searles
Bruce Moyer
Doug Parrow
Tom Byler
Dick Bailey

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

Minutes of the March 1998 meeting were offered for consideration by the Commission. Nelson moved that the minutes be accepted as presented; seconded by Hansell. All voted in favor.

B. Commission Comments

Nakano thanked Hansell and local residents of the community who planned yesterday's tour. It was interesting and educational.

Hansell said he recently spoke at the Municipal Water Conservation Planning Workshop in Pendleton. He thanked Fred Ziari for his help with yesterday's tour.

Thorndike thanked Hansell and his family for hosting the Thursday evening barbecue. He too expressed appreciation for the previous day's tour — very interesting.

Nelson also thanked Hansell for the barbecue and the community for the tour.

C. Director's Report

Pagel introduced staff from the Department's Eastern Region and North Central Region offices.

Pagel reviewed yesterday's activities— the morning tour, work session, and dinner at the Hansell home. An executive session was held Friday morning to discuss with legal counsel current litigation involving Grants Pass Irrigation District.

Commissioner Frewing is home recovering from surgery and is doing well.

Ken Weese, Administrator for WRD's Administrative Service Division, has accepted another position with the Oregon State Police. Bruce Moyer and Terry Persons-Hill are stepping in as acting administrators until this vacant position is filled.

Pagel reminded Commissioners that new information will continue to be added to WRD's computer Web page.

Pagel thanked the Department's Resource Management Division staff for planning and presenting the recent Municipal Conservation Planning Workshop. This workshop was primarily targeted at small municipal water suppliers who are required to do conservation and management planning.

Huntington distributed copies to the Commissioners of the upcoming WRC meeting forecast.

D. Flow Prioritization Briefing

Geoff Huntington, Deputy Director, and Doug Parrow, Field and Technical Services Division, updated the Commission on the Department's work under the Oregon Plan to prioritize streamflow restoration needs in coastal basins. This project is a cooperative effort between the Departments of Fish and Wildlife (ODFW) and Water Resources (WRD). Rick Kruger, ODFW, helped develop a quantitative approach for assessing habitat needs. WRD watermasters and ODFW district biologists along the coast worked together in developing the final product.

Parrow reviewed the handout explaining the process of arriving at streamflow restoration priority areas. ODFW focused on biological needs; WRD watermasters then suggested where opportunities for flow restoration might exist. It was decided to use water availability basins as

the unit of evaluation. Rick Kruger and district biologists identified biological factors such as current resources, habitat integrity, water quality problems, riparian conditions, and relative risk confronting fish in each of approximately 1,000 water availability basins on the coast. Another factor considered was the consumptive use estimates. ODFW then produced their biological needs ranking focusing on the location of the key biological resources in each of the areas, where water use has had the most impact on the resource, and areas where fish would likely respond most positively to flow restoration. All of that information was placed in a matrix and ranked into four categories — highest, high, moderate, and low. The watermasters did their own independent "optimism" analysis of each of the water availability basins, ranking them "very good, good, fair, or poor" on the potential of being able to achieve flow restoration. The watermasters were asked to check on whether there were water availability model anomalies. As an example, the model was designed to evaluate whether or not to allow new appropriations of water from natural flow; it does not consider the presence of stored water. The watermasters were also asked to consider the effects of nested water availability basins in the model; the nature of water uses — domestic or other, small or large, low or high crop value; and strategies included in the Oregon Plan available for flow restoration, such as instream leases and transfers, improved efficiency, enforcement and monitoring, etc. The merger of input from ODFW and the watermasters became the flow restoration priorities that will be used this field season. Staff are working with watershed councils and coordinators discussing these initial priorities and asking for their assistance with streamflow restoration. Field staff are working on strategies that will work in each water availability basin. At the end of the year, the process will be reevaluated by staff and watershed councils, and a flow restoration schedule developed.

Public Comment

Roger Bachman, Oregon Trout, commended staff for this work. Oregon Trout has an active River Keeper program; the River Keeper volunteers have been waiting for this information. There is a new initiative measure that hopefully will be on the ballot asking that half of 15 percent of the net proceeds of the Oregon Lottery shall go to parks and half to financing restoration and protection of native salmonid populations, watersheds, fish and wildlife habitat. The uses would include the purchase of land or water rights. (tape 1, mark 484)

E. Contested Case Exceptions: Schneider, Rotchford and Barker

Adam Sussman, Water Rights and Adjudications Division, presented this contested case hearing to the Commissioners. Sussman introduced representatives of the parties to the Commission — Mike Kilpatrick, representing the applicant, Schneider and Barker Family Trust; and Brian Posewitz, representing WaterWatch of Oregon. Meg Reeves reminded the Commissioners that all issues discussed must be part of the material that had been presented in the record before the Administrative Law Judge.

Sussman offered background on the issue and displayed maps showing the Logan Valley area under consideration. The application which was submitted in August 1990, asks for approximately 18.9 cfs of water for flood irrigation through ditches of approximately 750 acres. The request is from McCoy Creek, Big Creek and Lake Creek — the majority of water, 14.3 cfs, would come from Big Creek. Sussman pointed out the location of instream water rights upstream from the point of diversion under consideration, and three senior instream water rights on the Malheur downstream from this Logan Valley area. In August 1996 the Department issued a Proposed Final Order which conditionally approved the application for a limited season of use from March through May due to water availability. Issuance of a permit was contingent on the applicant demonstrating that beneficial use of the water could be made in that limited season. Based on the conditions of the Proposed Final Order, staff made a determination that a public interest presumption had been established. The applicant protested the Order focusing on the proposed seasonal limitation. The application was also protested by WaterWatch arguing that the public interest presumption was not established. A contested case hearing was eventually held October 22, 1997. The Administrative Law Judge (ALJ) proposed to deny the application. Exceptions to the ALJ's proposal were filed by the applicant.

Nakano asked if the applicant has any other water right. Sussman attempted to respond but was interrupted by Brian Posewitz saying that this is factual information and was not presented at the contested case hearing. Sussman agreed.

Mike Kilpatrick, representing the applicant, offered comments to the Commission. He said he believes it is in the record where there is a total listing of water rights. Oxbow does have other water rights on land around the area. Kilpatrick said he believes there are eight acres that are included in this application where these would be supplemental. The Malheur Basin decree does not have any season of use.

Sussman said that the Proposed Final Order does indicate that there is a water right conflict on the west side of this piece of property and that some of the acres applied for would have to become supplemental. This information is in the application file.

Mike Kilpatrick commented that the day and a half hearing was not transcribed so there may be disagreements about what is actually in the record. Kilpatrick said the application was filed in 1990. He said the Department sat on it because they gave priority to the instream water rights of the Department of Fish and Wildlife. A related issue has gone to the Ninth Circuit Court of Appeals. These applications were filed, they were accepted by the Department, the record says they are in proper form. They have everything required. Kilpatrick said he would take exception to the comment that there was some agreement about the issue of beneficial use. He does not believe there was ever any such agreement. The hearings officer decided to make that an issue, but not by agreement of any parties. Kilpatrick said he only called one witness to the hearing, Bill Beal. Mr. Beal was a former watermaster in the area, a life-long resident in the

area. Beal was asked two questions: Could the applicant make beneficial use of this. Beal answered, yes. And would wildlife benefit if this was done. And his answer was yes. Kilpatrick said there was much commotion about the supposition that this is some giant iceberg up there covered with snow. That is what the ALJ said. WaterWatch called an expert that has never been to Logan Valley who said, yes, if you suppose the ground is saturated, and yes if you suppose it is covered with snow through the end of May, than it probably does not do much good to irrigate — but he had never been there. There is no evidence in the record that any of those facts exist. That is one of the basic problems. On the flip side, Mr. Beal, a watermaster for many years on this land, and also born and raised in the area, says it will work. To the north of Logan Valley is the Strawberry Mountain Wilderness Area. There are several other ranches in Logan Valley and there are water rights — they do the exact thing same on land just across the fence and have for many years. The application in this case was signed by the manager of the Oxbow at that time; noted on the application by the gentleman signing the application is that the ditches in this area have been used since 1940 to flood irrigate. This water has been used longer than anyone can remember on this land. Kilpatrick said that in this case the rules have been applied backwards. The application is in proper form, there is water available, the public interest presumption has been met, and the right needs to be granted. The Malheur River Decree is somewhat different than most decrees. First, it does not have a season of use; secondly, it recognizes flood irrigation. In the Malheur Basin Plan are findings that flood irrigation is an acceptable beneficial use and that wildlife benefits from flood irrigation. Area instream water right findings indicate there is water available and that irrigation is a beneficial use and benefits wildlife. Much was made of Exhibit 47 submitted by WaterWatch which is a letter from an adjoining property owner, Mr. Stranbro, regarding applying for a water right. In the letter Mr. Stranbro indicates he wants to proceed with the application but disagrees with the shut off date of May 31st because some years the runoff has not started by then; Stranbro asked that the Department consider a shut off date of at least July 15th. Kilpatrick said the runoff referred to in this letter is from the Strawberry Mountain Wilderness — it isn't that this ground is covered with snow. He said the Commission needs to make a policy choice; it is not up to the staff to determine that this water right in question is only good from March through May. There is water there. In Exhibit 36 Mr. Beal, watermaster at the time the proposed order was reviewed, indicated that in most years there is still snow in the area, and to extend the use until at least June 30th.

Jewett asked Kilpatrick what season he is requesting now on behalf of his clients. Kilpatrick said he is requesting a longer season than March through May.

Posewitz said the Department staff have determined there is no water available beyond May. Regarding March through May, the question is can the applicant make beneficial use.

In response to a question by Nakano concerning regulation, Sussman said that in 1992 the Commission adopted the allocation policy. By adopting this policy the Commission moved away from the concept of issuing a water right and relying on the watermaster to regulate if there

is a problem. Instead the Commission expects water to be available a certain amount of time. Kilpatrick said there has been a lot of argument on waste. If the water right is issued and it appears that waste is occurring, it could be the subject of cancellation. But it is not a proper argument that flood irrigating a meadow is not beneficial because it is waste. Kilpatrick said this is WaterWatch's argument.

Kilpatrick said there is another policy issue — should 1992 rules be applied to a 1990 water right application. The administrative law judge said that taking water out of a creek might harm some fish.

Brian Posewitz, attorney representing WaterWatch and Oregon Trout, offered comments to the Commission. He said the primary issues of argument are: is water available and can this applicant make beneficial use of the water in the period when water is available. Even assuming that water is available and beneficial use can be made during that period, under the water laws and regulations of the state it must still be decided if the use is in the public interest. There are lots of other considerations that come into play. WaterWatch presented evidence that even if water is available and can be used beneficially, there are several other very important considerations including water quality. Bull trout in these creeks are proposed for federal listing and red band trout in these creeks are a state sensitive species. The Department of Fish and Wildlife testified that granting the permits would harm those fish. The National Marine Fisheries Service testified that allowing diversions of this type would be harmful to their efforts to try to recover salmon and steelhead in the Snake and Columbia Rivers. Leaving aside the water quality and fish considerations, Posewitz said these permits should not be granted. The evidence showed clearly there is not a period when water is both available and could be put to a beneficial use. The applicant applied for use during the entire year without any limitation as to season. There has never been any statement of a particular need or proposed limited period of use by the applicant.

Posewitz said Kilpatrick claimed that the Department evaluated the applicant's request for use for an entire year and concluded that there is only water available for this use from March through May. Mr. Beal's testimony was that he believed water is available into June — his remark was not supported by any measurements he had made, but was limited to his observation on these particular tributaries as opposed to an analysis of the entire watershed. Mr. Beal acknowledged that his observations were based on his history of regulating this area. He said he didn't usually get up there until June or July because that's when people down stream start complaining. Posewitz said Beal doesn't know about these creeks in this particular time of the year, only when someone down stream asks for regulation. There are instream water rights downstream in the Malheur that have until now been junior to other rights — so Mr. Beal has never had to regulate to protect those downstream instream water rights. These proposed applications would be junior to the instream water rights. Posewitz said there was some inconsistency in Mr. Beal's testimony. Beal said in his opinion there was water there until June,

but he had testified in a previous hearing regarding water in this basin that McCoy and Lake Creeks have only 1.5 to 2 cfs flow in June. This applicant is seeking 1.85 cfs from Lake Creek and 2.62 cfs from McCoy Creek. Posewitz encouraged the Commission to rely on the Department's modeling and measurements over the general comment by Beal.

Posewitz said there is a rule, OAR 690-300-0010(57), dealing with water availability. This rule says that if someone proposes a use in a particular season and it is determined that water is not available during any portion of that proposed period of use, the applicant then must show that the water is not needed during the entire period, or that the applicant has an alternative source during the period when water is not available. There is no evidence in the record that the water is not needed during the entire period or that there is an alternative source. So by rule there is not water available at all for these applications.

Jewett asked if the permit could be conditioned to limit the irrigation season and get around this administrative rule. Sussman said that SB 674 directs the Department to run this application, and any other pending application at the time SB 674 was adopted, through the bill's public interest criteria. The 690-300 administrative rules help staff with this process.

Posewitz said that to issue a permit with questionable water availability and then rely on the watermaster to regulate is poor public policy and is contrary to the statutes and administrative rules of the state. According to testimony by biologist Wayne Bowers, Oregon Department of Fish and Wildlife, the pastures to be irrigated from March through May do not actually need irrigation. In May the snow just begins to melt and the runoff begins — these fields are still saturated with water at that time. Bill Beal also said that in most years it is not possible to get to the area in May to irrigate because of the snow. Posewitz said that Mr. Stranbro, a neighboring rancher, had applied for a water right and withdrew the application. Stranbro said that in most years the snow runoff has not started until May.

Posewitz said there is no evidence in the record that this applicant can make beneficial use from March through May. The issue of beneficial use was part of WaterWatch's protest and an issue identified at the contested case hearing for discussion before the Commission. The only evidence that Mr. Kilpatrick relies on is testimony from Mr. Beal. Mr. Beal was not asked if the applicant could make beneficial use of the water during this limited season. Beal was asked in general if these pastures could benefit from having water put on them. Beal answered, yes he thought so. It was not a comment that was specific as to time or to this applicant. Beal said he believed the water use would benefit wildlife and help the riparian areas. There was no statement regarding this proposed water use being beneficial to the pastures.

Thorndike asked if the applicant would be willing to accept a limited season permit. Kilpatrick said the applicant would accept whatever might be granted.

Posewitz said the evidence shows there is not water that is sufficiently available under the statutes and rules to allow water to be taken out of the stream. Acknowledging that irrigation is a beneficial use, it would not be a beneficial use in this case.

Nakano said he is familiar with the Logan Valley area and does not understand how there could be a stream temperature issue for fish from March to May.

Sussman offered to the Commissioners agency comments, and responded to their questions.

The main argument by Department staff is included in the written staff report. Sussman reviewed the policy issues. The SB 674 water right process laws and rules do apply to this application. The proposed final order states that issuance of a permit is contingent on the applicant demonstrating that beneficial use of the water during the limited season proposed can be made. Sussman asked the Commissioners to consider the entire nested basin and other area water rights when looking at water availability and the water allocation policy of the Commission. There may be a lot of water in the Logan Valley area in May but the water use below in the basin must be considered.

Sussman said the Department determined that water is available March through May. There is nothing in the record to indicate that analysis is incorrect. Bill Beal's knowledge of water availability did not take into account the instream water rights on the Malheur. There is no evidence in the record that this water applied for could be used beneficially during the period of March through May. There is substantial evidence in the record that if a permit were issued that extended beyond the May period it would be detrimental to the public interest. Irrigated agriculture does provide a benefit to the state, but the evidence does not demonstrate that this use during this limited period of time on these lands would provide that kind of benefit. Sussman said the application was processed under the required laws and rules. This application is being treated the same as any other application in that area with a similar or more recent priority date. Given the evidence in the record, the staff recommend that Commission concur with the hearing officer's order and deny the application.

Jewett moved that the Commission adopt the staff recommendation to deny the exceptions and direct issuance of a final order denying the application substantially in the form of the proposed order issued by the ALJ. The motion failed due to lack of a second.

Pagel clarified that the issue is whether the applicant can make beneficial use in the period the water is available and that no water is needed for the remainder of the growing season, or if a longer growing season is necessary that there is an alternative source.

Commissioners discussed the alternative of remanding the application to the ALJ for further hearings on whether beneficial use can be made through March and May under this application. Mr. Kilpatrick said that would be fine with him. Mr. Posewitz said this would be unfair to

WaterWatch — it was apparent from the beginning that the beneficial use would be an issue in this hearing. A remand on this issue would be unjustified and put WaterWatch staff through extra work.

After much discussion, Jewett again moved to adopt the staff recommendation. The motion again failed due to lack of a second.

The Commissioners continued to discuss various aspects of the issue and alternatives. Nelson moved to adopt the staff recommendation; seconded by Jewett. The motion passed with four votes; Nakano and Hansell abstained from voting.

F. Public Comment

Fred Ziari, IRZ Consulting, commented as a representative of Hermiston Development Corporation (HDC) and the city of Umatilla. He said he has lived in this area for approximately 16 years. His primary work is in the area of irrigation and water conservation. Farmers and ranchers in this area have been leaders in water and resource conservation. The agriculture community has been working with the tribes on fish habitat restoration in the Umatilla River. Ziari mentioned some issues covered in Thursday's area tour. Hermiston Development Corporation represents the cities of Pendleton, Stanfield, and Echo; and 23 farmers in a critical ground water area. HDC has a large component of fish restoration projects. The state of Oregon allocation from the Columbia River is .3 percent. Oregon is the smallest user of the Columbia River system. Ziari said that in 1992 he made a presentation to the Water Resources Commission and Department staff with technical information that showed there was no flow/survival relationship. Ziari asked the Commissioners to consider the following topics for future discussion: reject NMFS flow target; NMFS water policy violates Oregon water laws; review OAR 690-519 Columbia River Basin Reservation; in July 1997 the state of Washington removed their moratorium — Oregon should do the same; consider under the reservation program approximately one million acre feet of use for the next 20 years from the main stem of the Columbia for out-of-stream use. (tape 4, make 180)

Roger Bachman, Oregon Trout, referred to the white paper review presented by Olsen and Anderson at Thursday's work session. He commented on the fallacy of misplaced concreteness — the report uses only values that are measurable and can be expressed in numbers, and overlooks values that cannot be measured. There are many instances where people cite cost effectiveness, and yet we do many things which are not cost-effective such as having children. In the report the use of the Columbia is shown in acre feet and not flow. The question is how much of the flow is being diverted out of stream during the hot summer months. The study compares only the variable, flow, to adult returns. There are many other things to consider. The study assumes barging smolts each year will continue. Figure 11 of the report compares percentages of smolts released with adults returned—during the barging period there was a great

imbalance, in December it was exactly balanced. In December they don't do any barging. Carl Schreck, OSU, is doing a study of out-of-basin hatchery stray steelhead in the Deschutes which threaten the genetic viability of the native steelhead. The stress of fish being barged affects the release of hormones in the fish and can cause problems. Bachman suggested repealing the 1982 reservation of 30 million acre feet in the Columbia River Basin. (tape 4, mark 300)

Kimberley Priestley, WaterWatch, commented on the 30 million acre feet reservation in the Columbia Basin Program. She said this is not a reservation, but more likely a policy statement in the basin plan. The legislature has set up a process whereby state agencies can apply for reservations for future economic development. This has not been done in this case. To clarify a point regarding Washington's removal of the moratorium, it is true that the Governor repealed the moratorium; but it is Priestley's understanding that the state of Washington is not issuing any new water rights on the Columbia or any of the tributaries until instream flows are set on all of those reaches. (tape 4, mark 390)

Martha Pagel handed out a letter from Chuck Norris relating to the Columbia River.

G. Briefing on Proposed Legislative Concepts for the 1999 Legislative Session

Tom Byler, Legislative and Rules Coordinator, offered this update to the Commissioners. Byler reviewed the timelines the agency must work within to submit proposed legislation. WRD submitted 16 legislative concepts to the Department of Administrative Services on April 15, 1998. A number of those 16 concepts are place holders for legislative ideas that may be more fully developed over the next few months. Byler focused this discussion on five concepts — fee increases; well construction/landowner bond increase and landowner fee; state funding for county-funded positions; definition of "well"; and repeal of the one-year start of construction requirement for new surface and ground water permits.

Byler first discussed the concept of fee increases. This concept is a continuation of the effort that began under HB 2135 during the 1997 legislative session. HB 2135 was only partially successful in achieving fee increases for water right permit and transfer applications — going from a 25 percent cost coverage to 30 percent. Development of this concept for the 1999 legislative session will require an analysis of the costs involved for staff to provide the services necessary to process applications or respond to protests.

The well construction/landowner bond increase and landowner fee concept is an idea from HB 2094 of the 1997 legislative session; this bill died in Senate committee prior to adjournment. The concept would change the level of the bond required for licensed well constructors from \$4,000 to \$10,000, and landowners constructing their own wells from \$2,000 to \$5,000, to more accurately cover the costs involved in repair and abandonment of wells. In checking with other states, it was found that these proposed bond amounts are consistent with what most western

states now require. The concept would also increase the permit fee required for land owners who wish to construct a well on their own property without the assistance of a well driller from \$25 to \$75.

The concept of state funding of county positions is more of a budget issue than a legislative issue. Counties currently fund assistant watermaster and clerical positions which provide important services to water users across the state by regulating distribution of water for senior water right holders and acting as primary agency contact persons for the public. With the difficult fiscal issues local governments have faced in recent years, this change will create a more stable source of funding for these positions. This concept would shift the funding responsibility of 30.25 FTE (full time equivalent) positions from counties to the state.

The concept that would amend the definition of "well" and clarify requirements relating to "abandonment or conversion" of wells was part of HB 2094, a Department bill which died in committee during the 1997 legislative session. The definition of "well" would be amended to exclude temporary holes drilled for geotechnical ground water quality and water level information. In addition, the concept would amend the well construction statutes to ensure that they apply not only to well construction and alteration, but also to the abandonment and conversion of wells.

The repeal of the one-year start of construction requirement for new surface and ground water permits is an idea that came from discussions relating to the permit extension rulemaking. This start of construction requirement was originally intended to compel certain permit holders to develop their permits in a timely manner. However, the requirement is difficult to monitor and not essential to the overall objective that permits be developed in a timely manner. This concept will not change the statutory requirements that permits be completed within certain time limits -- not to exceed five years after the date of approval of the application. This concept would only affect surface and ground water permits issued after the effective date of the measure.

Public Comment

Kimberly Priestley, WaterWatch, commented on the legislative concept that would repeal the one-year start of construction requirement for new surface and ground water permits. WaterWatch has major concerns regarding this concept. This would be contrary to the basic tenants of the prior appropriation doctrine -- water must be put to beneficial use without waste. When a user applies for a water right, the user needs to be ready and able to put that water to use. The doctrine does not allow for speculation. If a user cannot start construction within a year it is doubtful that they can put the water to immediate beneficial use as the doctrine provides. This concept is especially alarming in light of WRD's proposed extension rules; these rules will have check points but will allow people to get long-term extensions. Priestley said there is no need for this legislative concept -- if a user is not ready to begin construction, they are not ready to apply

for a water right. In some cases such as municipalities and larger storage projects, starting construction may take longer; however, municipalities are currently exempt from the one-year construction period. In the last legislative session, a law was passed that allows up to ten years to begin construction for storage projects put forth by counties, municipalities and districts. With these laws in place there is no need to tinker with the prior appropriation doctrine. There is no benefit to the resource in this proposal. This concept has the potential to hurt other users, both instream and out-of-stream. When a water right is issued, that water is taken out of the water availability model and therefore would no longer be available for other future users.

(tape 2, mark 187)

Roger Bachman, Oregon Trout, said he agrees with the WaterWatch issues. The Department has an informal process for letting a permittee speculate on when the clock begins for the start of development of a water right. The applicant does this by delaying payment of a registration fee at the time the final Order approving the permit is issued; the clock then begins when the fee is paid and the permit is issued. Bachman urged the Department to stop allowing this.

(tape 2, mark 257)

Page1 responded to Bachman's comments. Since the issue of delaying the clock came forward in the permit extension rulemaking process, staff have received legal advice that we were misunderstanding the law. Since receiving this legal advice, the Department has stopped the practice described by Bachman and "the clock" now begins running when the final Order is issued.

H. Budget Concepts Discussion

Geoff Huntington, Deputy Director, and Bruce Moyer, Acting Fiscal Administrator, offered this update to the Commission on proposed budget concepts for the 1999 legislative session. They explained various facets of the 1997-99 agency budget shown on charts handed out at the meeting. Staff are now working together to develop the 1999-2001 budget proposal; Huntington reviewed a listing of agency policy package concepts and responded to Commissioners questions.

I. Umatilla Certificate Project

Dick Bailey and Mary Grainey, Water Rights and Adjudications Division, briefed the Commissioners on the Department's remapping and certification effort in the Umatilla Basin. Grainey explained the background of this certification process and responded to questions and comments by Commissioners. The project is intended to update Department records and clarify actual irrigation uses in the area. Using maps, she identified the irrigation district boundaries and points of diversion. In 1989 the area was surveyed, and proposed certificates were issued 1993. In 1993 it was found that some of the irrigated areas were different than what was listed in the

permits. In 1995 legislation was passed to allow irrigation districts to perfect their water rights anywhere within their boundaries. Grainey explained the certificate process for Stanfield, Teel, and Westland Irrigation Districts. A certificate is also being prepared for water stored in McKay Reservoir which is shared by these districts and some private users. She reviewed the certificate process for the Hermiston Irrigation District which is unique because it requires a cancellation process to identify the location of the water rights, and involves major issues between surface water and ground water sources. When these water rights are certified, the water availability calculations in the Department's model should remain unchanged. The Department's model is based on good estimates of what is actually being irrigated in the Basin.

There being no further business to discuss, the meeting was adjourned.

Respectfully submitted,



Diane K. Addicott
Commission Assistant