

and clear public comment provisions benefit the public at large. (tape 2, mark 337)

Jan Lee, Oregon Water Resources Congress (OWRC), commented that there was not concurrence on the broader rules that had come out of the Rules Advisory Committee. These newly-revised rules would allow the Department to try to work out how staff can best do this — OWRC is willing to provide the trust to see how the process works. If changes must be made, there is always a legislative opportunity or an ongoing work group that can look at this closely. Lee said there was never a problem with applying the new rules to new permits; so perhaps as you issue new permits you might look at the broader rulemaking, and as you consider issuing extensions for existing permits you might look at the narrow rulemaking. One of the proposals in the broader rulemaking was to provide a time frame in which to treat the existing applications under a different process — by having two sets of rules, this could be accommodated. Another concern is what is a community water supplier and how does that deal with the municipal issue. Irrigation districts statewide supply wholesale untreated water to most of the rural cities. Lee said that OWRC would like to be part of that working group and have a valid role because of their connection with future water supplies for cities. More than half of the comments received on these rules are fairly broad and do not include constructive suggestions for change. Although there are comments that there appears to be some dodging of the issues — it is possible to fix many areas through legislative changes. (tape 2, mark 470)

Roger Bachman, Oregon Trout, said his organization concurs generally with WaterWatch's comments. The only good thing about the purposed shorter version of rules is the incorporation of the public notification and comment period. The opening up of the possibility of granting a permit extension for the time necessary to complete the project just extends the whole business of speculation and water rights. We have been trying to hold this back. Oregon Trout will object to this rulemaking. Bachman said he had hoped that staff would comment on the issue he raised regarding what kind of decisions should be made by staff and what kind made by the Commission. There are a number of questions that he believes should be decided upon only by the Commission, such as hardship and other value terms. (tape 2, mark 470)

Pagel expressed appreciation for the members of the Rules Advisory Committee and their hard work and many meetings over the past year. She and staff realize that consensus may not be reached on all issues of these proposed rules. Sooner or later the Department will likely end up in litigation concerning a decision made either under the current rules, the proposed rules, or the statute. The Department is trying to figure out the most effective way to deal with this possibility. With the upcoming legislative session there may be bills proposed that would dramatically change the statute because of the disagreement over what the current law is intended to say. In the meantime there is a backlog of pending permit extension applications. Staff seek direction to either retain the old rules and start processing pending applications or adopt an abbreviated form of rules. There is an opportunity to negotiate issues with key interest groups and return to the Commission with yet another alternative.

Pagel said a comment was made that the revised rules would eliminate the one year to begin construction. This is a statutory requirement — no version of the proposed rules could make that change.

Either version of the proposed rules would change the one year to complete the project. The statute says the Director, not the Commission, may extend a permit for the amount of time necessary to complete the construction. The current statute and the Attorney General's opinion indicate that staff have to do a good cause evaluation and that evaluation should include a consideration of the resource.

The purpose of this report was to update the Commission on the rulemaking effort. No action was taken.

### **G. 1999-2001 Agency Budget Discussion**

Geoff Huntington offered this report to update the Commission on the budget proposal. Attachments to the staff report list the individual budget packages, total funds required for each package, and required staffing.

The agency budget is divided into a set of program option packages carried by the Department and a small set of option packages to be incorporated into a memo budget carried on behalf of the Oregon Plan. The Department's option packages total approximately \$9.4 million general fund and amount to approximately 67 full time equivalent (FTE) staff; the total value including other funds such as start card fees or federal fund limitation brings that to approximately \$12.1 million. The Water Resources Department portion of the Oregon Plan memo budget adds on approximately \$2.1 million and five FTE.

Huntington reviewed the individual option packages and the Oregon Plan memo budget packages, responding to questions and comments by Commissioners.

The agency requested budget will be presented to the Governor and considered with all the other state agency requests. The Governor will then issue his recommended budget.

### **H. Public Comment**

Roger Bachman, Oregon Trout, said his organization provided \$20,000 toward removal of the Jackson Street Dam in Medford. Bachman said he had hoped that Oregon Trout's project at the mouth of the Wood River would have been mentioned in yesterday's presentations on watershed restoration. Bachman distributed copies of pages from the technical report that supports this project and helped Oregon Trout raise approximately \$1.4 million. He explained the project saying it will restore over 3,800 acres of wetland.

Bachman said his organization is pleased to learn of the cooperation with the Oregon State Police for the Oregon Plan and hopes it can be extended to the rest of the state — the fact remains that more enforcement is still needed. (tape 3, mark 448)

## **I. Legislative Concepts Discussion**

Geoff Huntington, Deputy Director; Tom Byler, Legislation and Rules Coordinator; and Dwight French, Water Rights Division Acting Administrator, led this discussion on proposals for the 1999 legislative session. Byler said that staff met with the stakeholders group twice in June, and held a July 2<sup>nd</sup> workshop on stewardship and water supply.

Three main issues for discussion with the Commissioners at this meeting were transfers, fees, and stewardship and supply. Byler reviewed a number of legislative ideas relating to the transfer programs listed in the staff report. Frewing suggested in Item 8 of that list to also consider if "place of use" and "type of use" transfers may cause harm to fish.

French discussed a preliminary proposal on fee increases with the Commissioners. He also reviewed the current fees and the history of how they came about.

Huntington reported on the July 2<sup>nd</sup> workshop on stewardship and water supply held in Salem. Many stakeholders attended this workshop along with three Commissioners — Nelson, Nakano, and Thorndike. The workshop focused on the concept of a new basin initiative. There was much agreement that collecting and packaging key data on a basin-wide scale and making this information more accessible and useful to a greater number of people is a good idea. As a result of comments at the workshop, staff proposed the development of a budget option package that would provide the funding necessary to produce a series of comprehensive basin assessments. Staff will meet again soon with stakeholders and Commissioners to better define the potential initiative, and the appropriate funding level to support it. This concept will be more fully discussed at the Commission's September meeting in Baker City.

Nelson said he was encouraged by comments of workshop participants supporting a broader look at basin planning. He asked the other Commissioners to think about the two questions asked at the workshop: How can Oregon respond effectively to the environmental needs of our river basins while assuring sustainable growth in the economy; and do we need to design a framework for a more pro-active, systematic and integrated approach to both our stewardship and water supply management needs?

Thorndike said the workshop provided a great opportunity for discussion; he would also like to see some way to be pro-active and eventually focus on potential future conflicts among water users.

Nelson suggested that it might be a good idea to meet individually with folks who did not attend the workshop, such as those representing other interests around the state and former Commissioners.

Frewing suggested that other state agencies such as Land Conservation and Development, Environmental Quality, and Economic Development be involved in developing this budget package supporting comprehensive basin assessments.

Huntington said state agencies were invited to this workshop but all were not able to send representatives. The Department is taking the lead since the focus is to provide a foundation for critical linkages for water use decisions and meeting water use needs in the face of population growth, water quality, and other peripheral issues. This could be the foundation for a business plan providing a more comprehensive assessment of activities in a basin for anyone who might have a particular interest.

Pagel said these workshops provide an opportunity to continue discussions on the ultimate structure for how decisions are made, and in the meantime, move toward getting the information base in place. The statutes give broad directives to the Department on basin planning. It is now time to take a cooperative look with all the stakeholders and figure out who should be doing what; and make sure that somebody is doing something to move us forward with addressing future water supply needs. This is about the full range of supply for instream and out-of-stream needs, and how that blends with stewardship.

#### Public Comment

Jan Lee, Oregon Water Resources Congress (OWRC), commented on the legislative concepts. OWRC generally supports the eleven comments relating to the transfer program listed on page two of the staff report. Lee likes the parallel of portions of the transfer process to the SB 674 process. If the SB 674 process really works for people, then it makes sense to use it as a standard. It is important for the Department to be keyed in on the point of diversion because that is really the factor that will be critical to fish. A point of diversion transfer should have a substantially larger fee than a change in use transfer that does not have the same immediate affect on the stream. Irrigation districts having only one or two points of diversion have mitigated transfers among their own users. Lee said OWRC supports the stewardship and will work with the staff and Commission on that. She suggested higher numbers on the permit extension and transfer fees. It would not be unreasonable to have a \$250 extension fee and a \$500 fee for a five-year extension. There should be a higher flat fee for a point of diversion change. The \$200 proposed fee for other protests seems fair. In the backlog of certificates is 500,000 acres in irrigation districts that the state is responsible for proving up — this is a critical issue for OWRC. OWRC plans to support the Department in getting money for certificates. (tape 4, mark 329).

Kimberley Priestley, WaterWatch, said that everyone on the WaterWatch staff has serious concerns with the list of transfer concepts on page two of the staff report. Most of these concepts provide more flexibility to water users rather than helping fish. It is important to remember that SB 674 provided an extensive public notice and comment provision — so if people are going to be paying \$200 to protest a transfer, there should be some sort of guaranteed process to go along with that. Priestley reminded the Commissioners that WaterWatch is very involved in Klamath Basin issues including the ADR process, enforcement activities, and monitoring water rights.  
(tape 4, mark 398)

There being for further business to discuss, the meeting was adjourned.

Respectfully submitted,



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