

Oregon Water Resources Commission Work Session
July 9, 1998
Klamath Falls

Members

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

Others

Roger Bachman
James R. Ottoman
Kimberley Priestley
Richard Fairclo
Ron Hathaway
Tam Moore
Jim Bryant
Mark Stern
Kirk Mullis
Jim Carpenter
Anita Ward
Ambrose McAuliffe
Steve West
Alice Kilham
David McCarley

Staff

Martha Pagel
Geoff Huntington
Diane Addicott
Tom Byler
Tom Paul
Bob Main
Dick Bailey
Rebecca Geisen
Dwight French
Dennis Glender
Del Sparks
Gary Ball
Larry Carey

Written material submitted at this work session 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 work session are on file at the same address.

1. Annual Enforcement Report

Tom Paul, Northwest Region Manager, and Bob Main, South Central Regional Manager, offered this report of 1997 field activities to the Commission and responded to their questions and comments.

Paul said that last year an enforcement action resulting in a civil penalty led the Department to

conclude that, in some instances, staff may not have properly followed the administrative rules relating to entry onto private property. Since then, field staff have been working with administrators to correct this situation. Staff now make every effort to personally contact a land owner prior to entering on that property.

The Department has entered into an agreement with the Oregon State Police to develop a working relationship between WRD field staff and the Game Division as part of the Oregon Plan. The agreement includes coordination meetings, education, cooperation and information sharing. Field staff are also pursuing better coordination with field staff from other natural resource agencies.

The Oregon Plan has prompted field staff to focus resources on specific activities and areas throughout much of the state. Watermasters have opened up temporary field offices in Tillamook, Newport and Florence for better access and collection of water data. Each region has a Senior Water Right Inspector position to help coordinate Oregon Plan activities.

The 1997 Legislature approved funding for an additional watermaster located in Medford. The Southwest Region office has a hydrologist and a hydrogeologist working on a ground water study in the south coast area.

Paul explained how watermasters regulate water use in their areas by monitoring streamflow, responding to complaints by senior users, and checking for illegal water use. Watermasters and their assistants were involved in regulating 229 streams in 1997.

The Department received 7,464 well reports in 1997 documenting well alterations, deepenings, and new construction. Staff try to inspect at least 20 percent of new wells constructed to maintain a credible regulator presence — 34 percent were inspected in 1997. Since the well labeling program began in early 1996, over 25,500 identification tags have been distributed to well constructors and land owners. The purpose of the labeling is to provide information to consumers about the existence of a well on a parcel and facilitate obtaining well information. Enforcement staff continue to work on the Groundwater Resources Information Distribution (GRID) — to date, over 137 businesses and individuals outside the agency have signed up for this Internet connection. The Department recently started producing cd-roms with GRID data.

Hydrogeologists and watermasters monitor water levels and water use in critical ground water areas. Normal field activities include annual water level measurements in over 250 wells and reading meters on wells throughout the critical areas where water is allocated.

During 1997 field staff inspected about 230 dams statewide. Watermasters perform most of the dam inspections working closely with John Falk, Dam Safety Coordinator. Results of the inspections are shared with landowners and attention is focused on deficiencies of the dams.

Bob Main introduced Del Sparks, Watermaster for the Klamath Basin; Dennis Glender, Watermaster for Lake County; Larry Carey, well inspector; and Rebecca Geisen, field liaison from Salem for the South Central Region. Larry Carey spoke on well construction inspection activities in the South Central Region and responded to Commissioners' comments; Dennis Glender and Rebecca Geisen spoke on field activities in Lake County.

2. Klamath Basin Issues and Watershed Improvement Efforts

This discussion began with welcoming remarks by Steve West, Klamath County Commissioner. Following West's remarks, Jim Bryant, Operations Manager for the Klamath Project, Bureau of Reclamation; and Dick Fairclo, Klamath Falls attorney, offered an overview and history of the Basin and Klamath Project

Bryant displayed many interesting maps showing the Klamath River Basin in years past and explained the Bureau's water use development over time. Dick Fairclo explained the history of water use and natural irrigation in the Basin prior to the Bureau's Klamath Project.

In response to a question about water use measurement within the basin, Pagel explained that the adjudication process would quantify water rights and put numbers to them but would not necessarily establish measuring — the Alternative Dispute Resolution (ADR) process provides the opportunity to discuss long-term management which could include commitments to measurement, watershed restoration, etc.

Kirk Mullis, U.S. Fish and Wildlife Service, spoke on his agency's interest and responsibility in watershed restoration. Their main objectives in the Klamath Basin watershed area are restoration, coordination, planning and outreach. Mullis showed slides of restoration projects dealing with water quality issues and explained how they work.

Mark Stern, The Nature Conservancy (TNC), explained that his organization is a national conservation organization operating on a state-by-state basis. The Oregon office was established in the early 1960's. The mission of TNC is to protect biodiversity as represented by native plants, animals, and natural communities. The Conservancy has 55 preserves in Oregon totalling approximately 60,000 acres. Two of their larger preserves are located in the Klamath Basin. Stern showed slides and spoke on the Conservancy's work at the Sycan Marsh and the Williamson River project.

Alice Kilham, Klamath Compact Commission and Upper Basin Working Group, distributed a time line history beginning with the listing of the Short-nose and Lost River Suckers in 1988 and the 1992 and 1994 drought years to explain the present situation in the Klamath Basin. Kilham said the community has shown interest in finding local solutions, and in working with government agencies and nonprofit environmental groups to resolve issues.

Ambrose McAuliffe, Wood River Valley landowner, spoke on voluntary stream protection and installation of fish screens and fish ladders in the area. Over 80 percent of the Wood River has been fenced from livestock; sections of creeks in the area have also been fenced and willow trees planted. The Department of Fish and Wildlife has helped land owners by providing fence building materials; land owners then build the fence and maintain it.

Bud Ullman, Attorney for the Klamath Tribe, offered a tribal perspective on water issues in the Klamath Basin. The Klamath Tribes have the oldest most senior water right in the Basin. Ullman referred to a Bureau of Reclamation map showing the former Klamath Reservation to the northeast of Upper Klamath Lake. Dewatering of the Upper Klamath Lake has proven detrimental to fish and is a matter of tension among the Bureau of Reclamation, the Tribes, and other water users. The Tribes' treaty of 1864 with the United States assures the Tribes of continued access to their water-dependent resources. The Tribes believe adjudication to be inadequate to resolve all the issues and that the Alternative Dispute Resolution process is most helpful. The Alternative Dispute Resolution process offers everybody in the Basin an opportunity to address the full range of water issues including stream flows and endangered species listings. Issues of concern include water quality of Klamath Lake; water quantity throughout the Basin; water temperature; health of riparian systems; the impact of Endangered Species Act concerns; and upland management. Ullman said stream measurement and monitoring, enforcement of water duties and existing permits, and being alert to illegal water use is essential to the Basin.

The work session ended with Martha Pagel and Dick Bailey explaining the adjudication and Alternative Dispute Resolution (ADR) process. Bailey, manager of the adjudication process, said this process began in the Klamath area in the mid 1970's with aerial photographs and subsequent mapping of water uses and diversions. An initial claim taking occurred in 1990-91; issues were resolved and the final claim taking occurred in 1997. There are approximately 700 claims to be reviewed over the next year, then a water quality and water use report will be developed. The claims will be identified in a summary document and an open inspection period will be held. Contests of the claims will then be filed. These contested claims will then have the opportunity to go through the ADR process for resolution and if necessary go to a contested case hearing. Once the issues have been resolved, Bailey will prepare findings of fact and an order of determination for all claims within the general stream basin to be filed in Klamath County Circuit Court. Exceptions to the order can then be filed. Once all exceptions are resolved, a decree will be issued and then the final water right certificates issued.

Pagel, manager of the ADR process, explained that the ADR process approaches adjudication by not only looking at the vested rights before 1909 but also by looking forward to how the Basin will meet future needs and address related issues. The ADR process was initiated by the vision of the Klamath Tribes nearly two years ago to pursue a negotiating process similar to that used with the Warm Springs Tribes. ADR meetings with approximately 60-70 people in

attendance have been held since September 1997. A broad array of interested people and local citizens have attended these day-long public meetings. This group has established goals that deal with balancing water supply and demand in a practical and feasible manner, trying to reach as many agreements as possible to facilitate adjudication, looking for creative solutions such as water supply or water-related initiatives that would help address meeting the historic and future needs, and developing an information base that would facilitate the ADR process. Along with the monthly formal meetings to keep everyone informed, there are small groups and subcommittees working on a variety of issues. Ultimately, the ADR formal recommendations will be submitted to Dick Bailey as the adjudicator to incorporate into the various steps of the adjudication.

There being no further discussion, the work session was adjourned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Diane K. Addicott".

Diane K. Addicott
Commission Assistant