

Oregon Water Resources Commission
Special Meeting
October 23, 1998
Salem

Members

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

Staff

Martha Pagel
Dwight French
Pat Lee
Tom Byler
Meg Reeves
Bill Fujii
Weisha Mize
Diane Addicott

Others

Kimberley Priestley
Karen Russell
Jerry Schmidt
Steve Applegate
Timothy Kreder
Willie Tiffany
Molly Hickman
Roger Bachman
Tom Calabrese
Douglas McDougal
Gail Achterman
Jan Lee
Paul Eckley

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.

As the meeting opened, Tyler Hansell disclosed a potential conflict in that he has pending applications that would be affected by these rules.

The Commission called this special meeting to consider amended proposed rules for OAR Chapter 690, Divisions 315 and 320, relating to processing water right permit extension applications. These rules provide the process and standards by which holders of certain water rights may receive additional time to begin construction or completely apply the water to full beneficial use.

Tom Byler, Legislation and Rules Coordinator, reviewed the main staff report along with a supplemental report. He explained that this rulemaking began in August 1997. The need for the rulemaking is based on an Attorney General opinion requiring the Department to authorize permit extensions based on the expectation that the project can be completed within the time period allowed by the current administrative rules. This time period would be one year for non-municipal permit holders, and five years for municipalities. Those time periods are not based on a determination of the amount of time necessary to complete the project, as required by statute. Byler said that based on comments received at the August 1997 meeting, Commissioners directed staff to take a more comprehensive look at the permit extension process and recommend appropriate rules.

Byler said a Rules Advisory Committee met several times to work on the difficult issues. In preparation for the September 1998 Commission meeting, staff sought to develop a compromise recommendation for rules which might lead to consensus among the key interest groups involved. That compromise proposal recommended adoption of "short-form" rules to take effect upon adoption and remain in effect through June 30, 2000. On July 1, 2000, the "long-form" rules would then take effect. Byler said that both the short-form and long-form rules would allow the Department to carry out the statutory requirements and the advice from the Attorney General's office. The short-form rules would take effect immediately, relying on the language of the statute, which is more familiar to permit holders. The compromise would allow for a transition period before the more detailed provisions would take effect. Because this compromise proposal represented a significant change from previous versions of the proposed rules, the Department re-opened the public comment period and extended the time for comment until September 21, 1998. Staff gave the Commissioners an update on the rulemaking process at their September 11, 1998, meeting in Baker City and agreed to bring the rules back to them for adoption in November or at a special meeting to be called at an earlier date.

Byler pointed out the following amendments to the Division 320 proposed rules presented at today's meeting (Attachment 1 of the staff report): On page 1, lines 2 and 11, change the date from July 1, 2000, to July 1, 2001. Amendments to the Division 315 proposed rules (Attachment 1) included: On page 1, lines 11 and 13, change the date from July 1, 2000, to July 1, 2001; and delete lines 16 through 28 on page 1.

Dwight French, Water Rights Division, read written testimony from Pete Test of Oregon Farm Bureau agreeing with the proposed water right permit extension rules provided the shortened process is extended to July 1, 2001. Test wrote that this would allow time for the Department to prove to the Oregon Farm Bureau that the new system will not be overbearing on permit holders. Should the system become a problem, Oregon Farm Bureau will work with the Department or the 2001 Legislature on corrections.

Public Comment

Jerry Schmidt, representing the Oregon Association of Water Utilities, Oregon Ground Water Association, and Oregon Association of Realtors, commented on the proposed rules. He expressed concern with adopting rules that will not take effect for two or three years. He supported adopting the short-form rules and seeing how the process will work. He recommended opening the rules process after a few years of using the short-form rules. (tape 1, mark 310)

Roger Bachman, Oregon Trout, commented in support of the rules as amended. He did have some concern regarding speculation of water rights, but believes it is better to have the rules out there to prepare for the 2001 date. (tape 1, mark 407)

Tim Kreder, Dayton Prairie Water Association, commented in support of the proposed rules. He became interested in these rules because of the Dayton-Lafayette ground water applications for a water system near his farm. The application is for withdrawal of more than four million gallons a day. Kreder said water is growth; farmers want it, as do the municipalities. In the Willamette Basin Reservoir study by the Corps of Engineers, the Oregon Water Resources Department indicates that by the year 2035, the Yamhill Basin will need up to an additional 173,800 acre feet of surface water. The Bureau of Reclamation says there is no need for additional water, except that municipalities will need an additional 17,000 acre feet by the year 2040. The Bureau assumes that irrigation in 2040 will be the same as it is today. The Bureau indicates it will be not be financially feasible to build a project to supply the agricultural water. Kreder said municipalities have much more clout than the farmers do. Towns such as Dayton and Lafayette with a population of approximately 1,500 are asking for water that could supply a town of 30,000. Agriculture users seem to have a shorter time period to perfect a water right than cities. He would like to see farmers on an equal footing with the cities. (tape 1, mark 433)

Karen Russell, WaterWatch, said that in the early 1990s her organization first raised the issues of permit extensions and the standard of review. WaterWatch is willing to extend the short-form rules to 2001 with the understanding that the long-form rules will be adopted and implemented at the end of that period. She supports the amended proposed rules as presented. (tape 1, mark 480)

Gail Achterman, representing Inland Land Company, spoke in support of the amended short-form and long-form rules as presented. Department staff have done an outstanding job in a long process. The ability to achieve the transition from the short-form rules to the long-form rules will depend almost entirely on the performance of Department staff during the period when the short-form rules are in effect. An important thing now is to move forward to process pending permit extension requests in a fair manner. (tape 1, mark 523)

Jan Lee, Oregon Water Resources Congress, spoke in support of the compromise that has been reached. This will be a trial process to prove it is workable. Her organization still has concerns regarding the standing issue. She will continue to work with the group on community water supply issues and any other issues. She encouraged adoption of both the short-form and long-form rules at this time. (tape 1, mark 551)

Frewing hopes staff will update the Commission on how these rules are working. Leonard expressed appreciation for the compromise solution agreed upon by staff and stakeholders.

Jewett moved to adopt the amended short-form and long-form rules as presented by Byler; seconded by Thorndike. All voted approval.

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

Respectfully submitted,



Diane K. Addicott
Commission Assistant

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