

Oregon Water Resources Commission Meeting
November 5, 1998
Grants Pass

Members

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

Staff

Martha Pagel
Geoff Huntington
Bonnie King
Bruce Moyer
Weston Becker
Al Cook
Meg Reeves
Larry Menteer

Others

Phil Lane
Kimberley Priestley
Kip Lombard
Tam Moore

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 September 1998 meeting in Baker City were offered for consideration. Thorndike moved that the minutes be approved; seconded by Hansell. All voted approval.

B. Commission Comments

Hansell said he spoke at the annual meeting of the Oregon Ground Water Association held October 9th in Pendleton. He said that he attended a meeting in Hermiston in which two members of the Northwest Public Power Council gave updates on their approach to Columbia River issues. Hansell said it might be helpful to have this type of presentation offered to the Commissioners.

Thorndike said he had a good time speaking with a class of six-grade students on water issues. He thanked Department staff for gathering some helpful informational material for the students.

Nelson said he had a chance to visit with some representatives of Lewis and Clark Law School

who were traveling around the state visiting with folks about the issue of water banking and marketing. Nelson said he has been invited to a November 19th workshop to discuss future policy options on that same issue. Nelson said that Department staff and interested persons from the Deschutes Basin area have been meeting regularly to discuss issues related to ground water.

Leonard said that she attended a Governor's Watershed Enhancement Board (GWEB) meeting; approximately 150 grants for watershed improvement projects were approved at that meeting.

Nakano said he had the opportunity to attend the GWEB conference in Ontario recently; at the conference he attended a very interesting workshop on tools and techniques of water management.

C. Director's Report

Pagel said that she, Geoff Huntington, and Meg Reeves were panel participants at the annual Oregon Water Law Conference held in October. Pagel also spoke in Seattle at a meeting on the Interstate Council on Water Policy, and has been attending the regular monthly Alternative Dispute Resolution meetings in Klamath Falls.

Pagel said she was very pleased with the community turn out at the Deschutes Basin meeting mentioned by Ron Nelson. This working group will meet regularly to focus on ways to mitigate for interference with surface water flows that might occur because of ground water pumping, and to consider strategies to serve the entire Basin in dealing with future growth.

She said the Department is currently in a recruitment process for a Resource Management Division administrator to replace Charlotte Haynes. Staff are continuing to negotiate with other agencies and the Governor's office as the Governor prepares his recommended budget. In late September staff attended a full day meeting with the Senate Interim Committee on Natural Resources focusing on water supply and stewardship issues; the meeting provided a good opportunity to give background information to new committee members and discuss issues prior to the legislative session.

Pagel commented on the special Commission meeting held October 23rd. This was a telephone meeting with four Commissioners and the other three present in the Salem office. The meeting was held to consider permit extension rules. Following discussion and public comment, the Commissioners voted unanimously to approve those rules.

Geoff Huntington, Deputy Director, spoke on the 1999 Commission meeting dates. Diane will be in touch with each Commissioner over the next few weeks about proposed dates. Commissioners did agree that February 18-19 would work for the first meeting. Huntington asked the Commissioners to be thinking about work session topics for the Thursday meetings

held in Salem during the legislative session. Regular Commission telephone conferences will be held during the session.

Huntington said that Charlotte Haynes had mailed to the Commissioners the final version of the public information piece of the Stewardship and Supply Initiative. More copies will be available upon request as a public information tool.

D. Status Report on 1999-2001 Legislative Concepts

Martha Pagel, Director, and Geoff Huntington, Deputy Director, discussed the Department's legislative concepts with the Commissioners. These legislative concepts must be filed by December 1st with Legislative Counsel.

Huntington said the Department will be pre-session filing a bill to make changes to the statute that regulates the Water Development Loan Fund. One change would be to allow the Loan Fund to accept a second lien position on property used as collateral rather than first lien status as now required. This would be especially helpful for private property owners seeking a loan. The bill will also include changes to the definition of terms.

The legislative concept for fee increases had initially included the areas of extensions, transfers and "other" protests. After much discussion with Commissioners and stakeholders Huntington said staff are recommending a fee increase only on protests filed on new water right applications.

Thorndike asked what most of the protests have involved since the passage of SB 674. Pagel said she believes they are split between protests claiming injury to other water rights or other adjacent property owners who have interests on issues and public interest issues by environmental organizations. It is now a small percentage of applications that are protested.

Leonard said it would be helpful to know the appeal fee amount for other state agencies such as the Land Use Board of Appeals.

Pagel said if the Commissioners would like to discuss the fee bill further at the December Commission meeting, the Department could file the bill by December 1st without a fee amount or with a token number that could be amended through a Department request at a later date. The other option would be to not file a bill and instead seek the assistance of a legislator to sponsor a bill.

With the understanding that a request for amending the amount of the fee could later be submitted, the Commissioners agreed that staff would file the pre-session fee bill indicating a \$100 fee.

Pagel reviewed LC-923 relating to water right transfers. She explained the need to allow water rights with specific industrial uses to be changed to more general industrial purposes. The other components of the bill are of a technical housekeeping nature.

Pagel said the Department was considering a water right transfer bill that would deal with elimination of the application backlog and designate specific time lines for processing applications. However, General Funds for such an ambitious project are not available at this time.

Pagel said another issue that the Commission considered during the last legislative session was looking at impacts on fish when considering transfer requests. Staff recommended waiting on this policy change until a major overhaul of the transfer statute is implemented. Leonard asked if it might be workable to somehow reference the Oregon Plan in the transfer bill regarding impacts on fish and the resource. Pagel said this has been discussed by staff and the concern is that a thorough analysis of the impacts on the resource would be a very expensive undertaking and would have a fiscal impact on the Departments of Water Resources and Fish and Wildlife.

Huntington said that the staff recommendation may not be to proceed with pre-session filing on LC 924, repeal of the water use registration statute. Since the water right application backlog no longer exists, this registration is no longer necessary. However, the city of Portland would like some time to study the situation and has asked that the Department not move forward with the repeal at this time.

Public Comment

Kimberley Priestley, WaterWatch, said that in general WaterWatch is disappointed with the Department's legislative package. Despite some of the good ideas discussed at previous meetings, the final package includes nothing that will help fish and/or rivers. Instead there are several special interest fixes for the users. WaterWatch is disappointed that the Department has backed away from the overall fee package that was introduced at the Klamath Falls meeting in July 1998. Now the only proposed fee increase is aimed at protestants or people opposing water right changes. Priestley said this seems unfair, especially to the public. Regarding correlating fees to the application amount, that would be a dangerous thing to even think about. The SB 674 fees were a result of long and intense negotiations and there was agreement in raising fees for protests. But in exchange the protestants received several rights. So, if people are going to fall back on that rationale, better public notice opportunities and better opportunities to comment should be considered. Priestley reminded Commissioners that WaterWatch opposes deletion of the current requirement to begin construction within one year. WaterWatch would rather see language that would grant exceptions to certain type of larger or complicated projects. Regarding the transfer bill, Priestley said WaterWatch requests that a broader public interest test be included. Transfers are essentially a renegotiation of a water right so there should be a look at

the impact on the public resource. Priestley said she does not agree that the Department should hold off on this because they want a bigger transfer package. Fish are being asked to wait for the next legislative session but industries are not. She urged the Department to protect the resource.
(tape 2, mark 311)

Pagel said she understands and agrees with WaterWatch's concern regarding impacts to fish. However, any proposal for gaining a legitimate view of the resources would result in a fiscal impact to the agency. Pagel said that the time is coming to consider a complete overhaul of the transfer program. This is the reason the Department is backing off on some of the minor changes during this legislative session.

Pagel said the types of applications that would be subject to the "other" protest fees would include limited licenses, transfers, and extensions. Public participation has increased with public notice and an opportunity to comment which occurs prior to filing a protest and paying the fee.

E. Carey Act Lands

Bruce Moyer, Administrative Services Division Administrator, offered this informational report to the Commissioners and responded to their questions and comments. The Department has received a request to grant access to a 40-acre parcel that belongs to the State of Oregon and to settle on that property. A second request has also been submitted by an adjacent property owner to grant an easement for access to property across this 40-acre parcel. The 40-acre parcel is located near Tumalo in Deschutes County and is fronted by the Tumalo Reservoir Road.

Moyer offered some background on the Carey Act. In 1905 the federal government granted desert lands to the State of Oregon; eventually the authority for management and disposal of these lands was transferred to the Water Resources Commission. Under the Carey Act any citizen of the United States, or any person intending to become a citizen, over 21 years of age, may apply for entry and use of not more than 160 acres. Since neither statutes nor rules provide direction to the form and content of an application for entry, Department staff are now working through a number of issues including the amount of payment which should be required as part of allowing entry.

Moyer said that staff plan to request Commission action on both requests at the December 1998 meeting.

Public Comment

Phil Lane commented. He said that a year ago he had not heard of the Carey Act, but through a misunderstanding when purchasing his adjacent property he was led to look into it. Mr. Lane

distributed copies of a document used in arbitration that covers historical aspects of the Carey Act and the specifics on this property. (tape 1, mark 415)

F. Other Issues

Meg Reeves, Assistant Attorney General, told the Commissioners that the attorneys for the Grants Pass Irrigation District had given her a submission they were offering to the Commission Thursday rather than Friday when this item is up for discussion. The attorneys offered it Thursday because of its size to allow the Commissioners time to read it before Friday's meeting. Reeves distributed the document to the Commissioners and said that Friday, when all the parties are present, the Commission could decide whether to accept the submission or not.

There being no further discussion, the Commission recessed for the day to reconvene Friday morning.

Respectfully submitted,



Diane K. Addicott
Commission Assistant