

Oregon Water Resources Commission Meeting  
June 25, 1999  
Salem

Members

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

Staff

Martha Pagel  
Geoff Huntington  
Rebecca Geisen  
Sharyl Kammerzell  
Tom Paul  
Bruce Moyer  
Barry Norris  
Tom Byler  
Bob DeVildere  
Dave Jarrett  
Adam Sussman  
Diane Addicott  
Meg Reeves  
Dick Bailey

Others

Kimberley Priestley  
Steve Applegate  
Erik Nicholson  
Jan Lee  
Efrain Pena  
Steve Shropshire  
Carrie Rasmussen  
Peter Mostow

In addition to those listed above, other staff were present for particular segments of the meeting. Written material submitted at this meeting is part of the official record and on file at the Oregon Water Resources Department, 158 12<sup>th</sup> Street NE, Salem, Oregon 97310. Audiotapes of the meeting are on file at the same address.

**A. Commission Meeting Minutes**

The minutes for meetings of April 19; April 29-30; and May 17 were offered to the Commissioners for approval. Jewett moved to accept the minutes as presented; seconded by Frewing. All voted approval.

**B. Commission Comments**

Nakano said he was recently on a local Chamber of Commerce agriculture tour and viewed several different water-saving drip systems. The crops were in good shape and used about two-thirds the amount of water. He suggested that John Buckhouse from Oregon State University be invited to speak to the Commission on peak flows and nonstructural storage issues.

### **C. Director's Report**

Pagel summarized Thursday's work session which included a peak flow panel discussion and an update on the Department's information management.

She said she has spent most of the last month working on legislative matters. Just today the full Ways and Means Committee passed out the Department's budget with unanimous approval. A bill is moving forward that would move the Governor's Watershed Enhancement Board program from WRD's administrative control and would create the new Oregon Watershed Enhancement Board.

Pagel said the Bureau of Reclamation has appointed Bill MacDonald as new region manager, taking over the position vacated by John Keys who retired about a year ago. She and staff members are scheduled to meet with MacDonald to discuss issues including cancellation of water rights within projects served by the Bureau.

She will also be meeting soon with the Corps of Engineers on a potential legal dispute between WRD and the Corps regarding water rights for the land inundated by the John Day Reservoir when the dams were built.

Geoff Huntington reported on agenda items for the upcoming August Commission meeting in Roseburg. Thursday morning will be a work session focusing on the hydroelectric reauthorization process. That afternoon there will be a tour of a North Umpqua site owned by Pacificorp that is currently in a relicensing process with FERC and the State of Oregon. Friday's agenda will include consideration of protests to a contested case proceeding and the Grants Pass Irrigation District's request for extension of a water right.

### **D. Water Right Exchange Request**

Tom Paul and Larry Nunn of Field and Technical Services presented this agenda item for the Commissioners' consideration. They explained that an exchange application was requested by Kraemer Farms in conjunction with a water right transfer application. The applicant requested diversion of water from Butte Creek for both primary and supplemental rights; and proposed to replace the water diverted for the supplemental right with ground water discharged downstream into the creek. By statute exchanges must come before the Commission for approval.

### Public Comment

Kimberley Priestley, WaterWatch, spoke on the primary/supplemental issue. She said it is WaterWatch's position that the Department's proposal is contrary to rule. A supplemental right is granted to make up for a deficiency in supply of the primary right. Kraemer Farms has a

primary right for .044 cfs, which is less than the maximum allowable rate for 6.8 acres. She said that based on the rule if they cannot get the .044 cfs from Butte Creek then the supplemental right is to be used instead of the water from Butte Creek. According to Priestley, a supplemental right comes from a different source than the original right. So what staff are now proposing to do is contrary to rule. What the applicant wants is more water for this piece of land — there are other avenues for the applicant, such as the transfer process or the water right application process. Priestley distributed copies of a water availability table that shows over-appropriation in the months of June through November at the mouth of Butte Creek. She said this is a proposal to enlarge the surface water right, and the surface water is over-appropriated for several months. Approval of this exchange would allow further appropriation from this stream. Overall this would set bad precedence. This would not be in the public interest based on water availability and fishery needs. (tape 1, mark 241)

Pagel commented that historically the Department had used the term "supplemental" differently — we now have a definition of "supplemental" as Kimberley described. However, there are still a number of water rights that were issued before that definition came into place that are called supplemental. In this case, the Kraemer Farms' supplemental right was not issued to make up for a deficiency in water. She said that in the future, it would be helpful to clarify in the Department's rules that this ambiguity exists; and perhaps define "supplemental" water rights before and after a certain date.

During a break, Tom Paul checked to see if there is an instream water right on Butte Creek — he reported back that there is indeed an instream water right that runs from the mouth to River Mile (RM) 15. The ground water discharge in Butte Creek occurs at approximately RM 12, which means the diversion from Butte Creek to the proposed new location of the 6.8 acres is approximately at RM 13. With the exchange in operation the flow in this three-quarter mile reach would be reduced by 19.3 gallons per minute, an impact too small to be measured in the stream. Paul said that below RM 12 there would be no impact from the exchange. In reviewing the proposed exchange, the only request from Oregon Department of Fish and Wildlife was a request for fish screens.

Assistant Attorney General Reeves suggested that this Order be revised to describe the nature of the water rights being exchanged. During a break, Reeves worked with staff to revise the Order; this revised Order was offered to the Commissioners for their consideration. Reeves explained that the opening paragraphs of the revised Order were altered to describe the rights as being two water rights to irrigate the same 6.8 acres, one from ground water and one from surface water. On the third page of the Order, a new paragraph was added beginning with, "An instream water right exists for Butte Creek from the mouth to RM 15, which includes this reach. The discharge point...." Reeves said this new paragraph includes where the instream water right is, where the discharge point is in the exchange in relation to the instream water right, the fact that the instream water right is not met on an annual basis, how much this exchange will reduce the flow

in the three-quarter mile reach, the fact that below RM 12 there will be no impact from the exchange, the fact that ODFW was contacted and their only comment was a request for fish screens, and a proposed conclusion that the instream water right will not be injured.

Thorndike moved to adopt the revised staff findings as Commission findings and approve the exchange as shown in the modified Order; seconded by Nakano. The motion passed 5-1 with Frewing opposing.

#### **E. Water Right Applications Processing**

Dwight French and Pat Lee, Water Rights Division, presented this informational report to the Commission. Their presentation included a review of the processing of applications, a progress report on permit activities, and application filing trends from 1990 to the present.

French distributed a chart showing the water rights application process. He reviewed the chart with the Commissioners and responded to their comments and questions. French noted the many opportunities for public notice and comment, and added that the applicant can discuss the process with staff at any time and can file comments or a protest. He briefly reviewed the steps and timeframes associated with the alternate ponds application and review process established through HB 2376 (1995 Legislature).

Lee handed out a fact sheet and explained permit activity levels from July 1995 through the present. Since July 1995, there have been 1,523 water right applications filed, and 699 applications for ponds. As of June 15, 1999, there were 460 active applications on file in the agency.

Using pie charts and graphs, French gave interesting facts and details on applications filed since 1990.

#### **F. Deschutes Ground Water Briefing**

Due to lack of time, this agenda item was deferred to a later meeting.

#### **G. Legislative and Budget Update**

Geoff Huntington, Deputy Director; and Tom Byler, Legislation and Rules Coordinator, presented this update for the Commission.

Byler distributed a current bill tracking log and a bill status chart. Most of the bills of importance to the Department are waiting for the Governor's action. Budget negotiations are dominating everything at this time. SB 299, dealing with changes to pre-1909 water right

registration, is still alive having just recently passed out of the Senate and is scheduled for a hearing before the House Committee on Rules, Election, and Public Affairs. HB 2162, the hydroelectric bill, is in Ways and Means. HB 3225, involving use of Measure 66 funding and carving GWEB out of WRD to create the new Oregon Watershed Enhancement Board, has had several hearings and is still in Ways and Means. SB 93, sponsored by Senator Tarno, in part captured our stewardship and supply initiative, and is still alive and before Ways and Means. The Governor has signed into law HB 2163, the Water Development Loan Fund bill, and HB 2165, regarding the well construction statutes.

Bruce Moyer, Administrative Services Administrator, updated the Commissioners on the budget. The full Ways and Means passed out the agency budget today with no reduction in our base budget resources. The agency received a \$1.4 million increase in General Fund support which is approximately a 7.5 percent increase. The Klamath Basin Adjudication and Alternative Dispute Resolution was funded, which was a major goal. The agency water rights ADR position, currently a limited duration position, was funded as a permanent position under the General Fund. The Tillamook watermaster position was also funded under the General Fund. The Department received authority to take care of a lot of problematic classification issues with existing positions. We received additional resources to address declining cash flow in our water right fee revenues. The Department received resources to fund shift two existing positions from water right fees to the General Fund which will help our flexibility in addressing workload issues. Moyer said the agency was given three budget notes—a request to report back on the Department's ground water studies; a request to report back on the Department's Attorney General expenditures; and a request to report back on the status of the Klamath Basin adjudication.

Moyer said the Governor's recommended budget had proposed a \$2 million cash infusion into the Water Development Loan Fund; this will be reduced by \$1.45 million. The Emergency Board recognized that by doing this it would prolong the period of cash infusions that may be necessary in the future. Huntington said this is the reason WRD had no reduction of the overall base budget.

#### **H. Petition to Amend Administrative Rule, OAR 690-17-100**

Geoff Huntington, Deputy Director, and Tom Paul, Field and Technical Services, offered this petition for consideration by the Commission. Before the discussion began, Ron Nelson disclosed that he works for several irrigation districts and this issue could have potential impact on them.

Huntington explained that on June 9, 1999, the Oregon Water Resources Congress (OWRC) filed a petition for rulemaking seeking amendments to the Department's administrative rules