

Byler reminded the Commissioners that Department staff, in attempting to advance the objectives of the Stewardship and Supply Initiative with limited funding, would be gathering and organizing existing data, not new data. This process will surely expose some data gaps, but will still be providing helpful information.

The Commissioners appreciated hearing this report which was for informational purposes only -- no Commission action was requested.

F. Rulemaking Forecast

Tom Byler, Legislation and Rules Coordinator, handed out a proposed rulemaking schedule and reviewed each division with the Commissioners. He explained that rulemaking may be required by statute or may be necessary to conform to recent legislation; and some, as a result of last year's triennial rule review. Included in this rulemaking schedule are the following divisions of Chapter 690 of the Oregon Administrative Rules: Division 1, Rulemaking: Attorney General Model Rules; Division 2, Procedural Rules for Contested Cases; Division 3, Timelines for Processing Applications; Division 11, Applications and Permits; Division 17, Cancellation of Perfected Water Rights; Division 26, Filing and Processing of Spring Registrations; Division 52, Decommissioning of Certain Hydroelectric Projects; Division 53, Reauthorization of Hydroelectric Projects; Division 509, Powder Basin Program; Divisions 200-225 and 240, Well-related Rules; Division 76, Establishment of Minimum Perennial Streamflows; Division 79, Reservations of Water for Future Economic Development; Division 82, Acceptance of Applications for Water Uses in Addition to Classified Uses; Division 506, John Day Basin Program; and miscellaneous rule divisions that have obsolete references to Division 11 rules.

Byler said the Community Water Supply Work Group will be reconvening in December. This group was formed in response to the permit extension rulemaking, and may want to consider some rule changes.

Public Comment

Roger Bachman, Oregon Trout, asked about the status of the Peak Flow Working Group. Dwight French, Acting Administrator for the Water Rights Section, responded that Pat Lee who had been staffing this group left for a job outside of the Department. Staff are now working on getting the group together to finalize the informational development paper -- this document will then be brought before the Commission. (tape 2, mark 98)

G. Public Comment

Roger Bachman, representing Oregon Trout, announced that he will soon be retiring from this organization. He thanked Pagel and the Commission for making great progress in focusing the work of the Department on strategic issues. Bachman said that at the same time he has been actively criticizing staff work on certain aspects of the tactics to carry out the strategies. He hopes that when the Klamath adjudication is complete, the Willamette might be deferred, and staff could work on some of the smaller basins. Bachman mentioned a situation on Scappoose Creek involving a pre-1909 water right; WaterWatch believes the water right is not being properly used but the land owner has applied for adjudication so enforcement is not possible. Bachman said he is disappointed that there has not been more streamflow restoration in the nine years he has been involved with the Commission. His review of conservation plans of municipalities and irrigation districts has shown that they do not always comply with the conservation rules now in existence. And, Bachman said, the Department's response to these inadequate plans has been soft, particularly in places like Bend and Redmond where there are water shortages. The water users still have most of the advantages and want more, with very little streamflow restoration.

H. Deschutes Ground Water Briefing

Geoff Huntington, Executive Director of the Oregon Watershed Enhancement Board; and Lara Burgel, Resource Management Division, briefed the Commission on the collaborative process occurring in the Deschutes Basin to develop a water management plan for the Basin. In 1998 the Department and U.S. Geological Survey completed a study of the ground water system in the Upper Deschutes River Basin. The findings of this study indicate that the ground water and surface water are hydraulically connected. The lower Deschutes is a state designated scenic waterway and also protected by numerous senior instream water rights.

Burgel said that the continuing population growth in the Deschutes Basin has resulted in an increase in the number of water right applications. There are now approximately 38 pending applications for a total of more than 40,000 acre feet of water. Staff are working with applicants on ways to move forward with the permitting process, either by issuing administrative holds during the water management planning process or with the development of individual mitigation plans.

Department staff explored the implications of the 1998 study and developed a public involvement program to bring the issues to the water user interests in the basin. As a result of public meetings it was decided that the interest groups would negotiate a memorandum of understanding (MOU); a copy of the MOU was available in Attachment A of the staff report. Burgel reviewed the goals of the MOU saying that the document's purpose is to establish a process to develop a water management plan and to form the relationships and cooperation

between participants. Burgel said that over 40 parties signed the MOU, representing irrigators, irrigation districts, local government, interest groups, private and municipal water providers and development interests.

Huntington said the Deschutes Work Group is working toward developing a water budget for the Basin including potential consumptive use needs, instream flow needs, and necessary improvements. The Work Group will also break into issue groups to investigate potential ways to mitigate for new consumptive uses. The end result will be a management plan and a set of mitigation options available for permit applicants.

Pagel said that it is very likely that the Commission may adopt administrative rules to implement the concept of a mitigation plan.

Nelson said he hopes the results of this Work Group could become the Basin stewardship and supply plan.

Frewing said he is concerned that pending applications have been put on administrative hold rather than accepting them or not according to existing rules. Huntington said that Senate Bill 674 allows any applicant to voluntarily put their application on hold, and that is what has happened in this situation.

Public Comment

Karen Russell, WaterWatch, said she has appeared before the Commission many times over the past nine years regarding the Deschutes ground water issue. Her comments often related to applications for new uses of water, raising the issue of ground water/surface water connection and concerns about continued growth in the Deschutes Basin and the effect on surface waters. She commended Pagel and Department staff for setting up the process to address this issue. Russell said she fears that a September 2000 completion date is optimistic, but hopes that it will work out. There are very diverse interests and strong feelings on all sides as to what interests should be protected. Critical to the process is creating a water budget. The Deschutes Basin is over-allocated; it is necessary to address how ground water should be allocated given existing claims to water and future development. How the Basin looks is being decided today with future water allocation decisions. Trade-offs for future development in the basin must be considered. All agree that the solution is not to dry up agricultural lands for municipal water supply. The solution is also not to further deplete instream flows in the basin for future economic development.

Russell said measurement is a goal. One of the limits to understanding are the unknowns -- what is acceptable mitigation, what is the extent of over-allocations, what is the extent of ground water/surface water interference, what is the extent of existing uses. Measurement is critical in the Deschutes Basin and throughout the state. There needs to be a connection between land and water planning. (tape 2, mark 850)

Roger Bachman, Oregon Trout, said he has long been concerned about pumping 50 degree water up to the surface to spray on golf courses which meant that the 50 degree water was denied at the springs that feed the lower Deschutes where fish need that cold water to thrive. This Deschutes process will be slow but it is essential to educate people on the need for conservation. There has to be a limit to the amount of water that can be used. There may be a need eventually for a water growth boundary similar to the urban land use growth boundary now in place. If we are in a global warming trend there will be less snow melt later in the season, leaving people more dependant on ground water. Water banking will cost money to operate -- perhaps an experimental water use fee in the Basin could be used to finance this. (tape 3, mark 57)

Nelson said local irrigation districts and the Deschutes Basin Resource Conservancy are looking into just what the creation of a water bank would entail.

Jerry Schmidt, representing the Oregon Association of Realtors (OAR) and the Oregon Ground Water Association (OGWA), commented. He said the Oregon Association of Water Utilities is represented on the steering committee by Avion Water Company and Deschutes Valley. The Oregon Association of Realtors and the Oregon Ground Water Association are not represented on the Work Group but have a very big stake in this issue and are very interested in the process. OGWA sponsored Senate Bill 1033, the amendments to the Scenic Waterway Act. This bill came about because at the time there were a number of ground water permits which were being held up because of the potential impact in scenic waterways. He said the organizations he represents are committed to watch the process and see if there is an opportunity to solve issues. One of the primary pieces of SB 1033 was the insertion of the words "measurably reduced;" some type of concrete evidence that flows were indeed being reduced. He agreed with Russell that September 2000 may be an optimistic date to have the issues resolved. But, nevertheless, getting people to the table for discussions is important. He cautioned the Commission to realize that land use and water are separate issues. The Commission is charged with managing the water resources, letting the land use forum sort out how they respond to that. Schmidt said he is nervous about how that issue is intertwined. He said he feels strongly that the Department's and Commission's role is to manage the state's water resources -- how the land use process treats that information is the land use process. He is not worried about exempt users over-utilizing the resource when in fact, the stance of the Department of Land Conservation and Development is that there is no development outside of the urban growth boundary. Less than one percent of the state's total water consumption is used by exempt users. The land use process is not focused on developing rural resources. The standpoint of OAR comes from their broad representation

which includes agricultural interests. Municipalities are also important to OAR because of their sales in urban areas. OAR also represents exempt users. OAR has some strong issues about how they protect the resources and how they utilize the resources both recreationally and consumptively. OAR is a broad organization that looks at the issues from the property owners' standpoint and thus represents a very diverse group of people. (tape 3, mark 135)

Nelson explained that the work group hopes to seek comments from every interest in the community; there will be opportunities for others to serve on subgroups and issue teams. The goal is to include all interests in some way.

There being no further business, the Commission went into an Executive Session. Following the Executive Session, the meeting was adjourned.

Respectfully submitted,



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