

Oregon Water Resources Commission
Meeting
March 10, 2000
Bend

Members

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

Staff

Martha Pagel
Meg Reeves
Tom Byler
Sharyl Kammerzell
Diane Addicott
Tom Paul
Bruce Moyer
Bob Main
Jerry Rodgers
Dick Bailey
Dwight French
Al Cook
Kyle Gorman
Doug Parrow

Others

Ed Henricks
Jan Houck
Eric Glover
Phil Lane
Kimberley Priestley
John Gill
Roger Prowell
Elmer McDaniels
Steve Applegate
Shoshana Hermeling
John Urquhart

Written material submitted at this meeting is part of the official record and on file at the Oregon Water Resources Department 158 12th St. NE, Salem, Oregon 97310. Audiotapes of the meeting are on file at the same address.

A. Commission Meeting Minutes

The minutes of the January 13-14, 2000, meeting were presented for approval to the Commission. Thorndike moved to approve the minutes as presented; seconded by Hansell. All voted approval.

B. Commission Comments

Hansell said he attended, and very much enjoyed, a weekend field trip offered by Dr. John Buckhouse, Oregon State University. He had the opportunity, along with several graduate students, to visit several sites of riparian habitat.

Hansell also attended the Corps of Engineers/National Marine Fisheries Service hearing on the proposed removal of the four Snake River dams.

Nelson thanked the staff and Commission for coming to Bend for this meeting and Thursday's Water Bank 2000 panel discussion.

C. Director's Report

Pagel announced that two new Commission members were recently confirmed by the Senate to begin serving April 1, 2000. Susie Smith from the Springfield area will represent the West Side at Large Region; John Fregonese, from Portland, will represent the Northwest Region.

Pagel said Commissioners were given copies of WRD's comments on the National Marine Fisheries Service 4(d) rules. She said that, in general, state agencies were disappointed with the proposed rules for a number of reasons. NMFS can adopt these rules but very likely will have further discussions and revise them; and WRD hopes to participate in that process.

Hansell and Nelson asked that the Commission as a public body become more involved and take a stand on the proposed rules. Meg Reeves offered to find out what the next steps will be on the NMFS proposed rulemaking and just how the Commission itself might become involved.

Nelson asked if the State of Oregon has been coordinating with other states regarding the 4(d) rules. Pagel responded by saying that Endangered Species Act issues are always a topic of discussion at the Western States Water Council meetings. The Council has gone on record identifying the potential conflict between state water law and the federal Endangered Species Act.

Reeves reviewed the Commission meeting forecast of agenda items. The Commissioners agreed to revise the meeting schedule by canceling the June meeting and changing the May meeting date to May 18-19.

Pagel said the Senate Bill 93 Task Force has held meetings to consider water supply and conservation. Sen. Veral Tarno and Rep. Bob Jensen are participating on this task force as well as representatives from a broad range of interest groups. Elaine Hallmark has been hired as a facilitator.

Nelson mentioned the recent letter from the Harney County Court inviting the Commission to meet in Burns. It was decided to hold the October meeting in that area.

D. Tualatin Basin Season Extension

Dwight French, Water Rights Section Manager; Brendalee Wilson, Water Rights Section; and Steve Applegate, representing the Department of Agriculture, briefed the Commission, and responded to their comments and questions, regarding a request by the Oregon Department of

Agriculture to extend the irrigation season in the Tualatin River Basin. This request is for the use of stored water only, to include the months of March, April, October and November. In 1960 the irrigation season was set by court decree as May 1 through September 30 of each year.

Wilson explained that the Commission must find that water is available from a storage source during the period of the extended irrigation season. It has always been a policy of WRD to consult with other state agencies that have overlapping interests to confirm they have no concerns or objections to the extended season.

ORS 537.385 makes four requirements on irrigators using stored water during an extended season: the use of water shall be limited to stored water; the use of water shall be subordinated to all existing and future water rights; the use shall comply with all conditions and limitations of the permit or certificate under which use is made, including the rate, duty, and place of use; and the use shall be regulated among irrigators for whom the season has been extended according to the priority date of the permit or certificate.

Applegate said crops in the Tualatin River Basin such as nursery stock, vegetables, and caneberries often benefit from water applied before May or after September. He said the Department of Agriculture (ODA) held an informational meeting on the request in Forest Grove in November 1999. As a result of concerns expressed at that meeting ODA reduced their request to involve only legally stored water.

Public Comment

Kimberley Priestley, WaterWatch, commented on this request saying that initially there were many concerns about it within the environmental community and some of the natural resource agencies. With the change from the natural flow request to stored water, many of those concerns have been satisfied. Ensuring that users do stay within their rate and duty is still a concern. She requested that the language be amended in Condition 5 to make people measure and report. WaterWatch believes that these irrigators are getting a huge benefit by the extension of their season, and in return should measure and report. WaterWatch agrees with the concerns of Tualatin Riverkeepers. Priestley asked that there be language in the Order that ensures flows in Gales Creek. (tape 2, mark 27)

Tom Paul, Administrator for Field Services, said there are a number of reservoirs in the Tualatin River Basin; the Department has not been faced with regulation of those in the past. It would require considerable research and staff time to organize a reporting process. Most of these reservoirs are very small and scattered; most are off channel or on intermittent streams and are limited to the capacity of the reservoirs. Most of the reservoirs are for supplemental irrigation; because of their size staff do not believe there is a risk of exceeding their 2.5 acre foot duty. The Tualatin Valley Irrigation District does measure and report by law. The Tualatin is one of the

highest regulated basins in Oregon.

Pagel said the goal of universal measurement and reporting is very appropriate, but in practical terms with the current staffing level, it is best to concentrate on what can be reasonably done and the benefits derived from the added information.

Hansell moved to adopt Alternative 1 of the staff report and issue an order, with conditions, extending the Tualatin River Basin irrigation season to include the period from March 1 through April 30, and October 1 through November 30 of each year; and to correct the language in Condition 7 of the proposed Order by adding "Valley" between the words Tualatin and Irrigation. The motion was seconded by Thorndike. All voted approval.

E. Update on Hydroelectric Program Activities

Dick Bailey, Administrator for Water Rights and Adjudications Division, gave a brief history of the Department's Hydroelectric Program and discussed two program activities relating to decommissioning of hydroelectric projects.

He explained that the Department has assembled a rules advisory committee (RAC) to provide comments on proposing decommissioning rules for non-Federal Energy Regulatory Commission licensed projects where the operator fails to submit a notice of intent to seek reauthorization. The goal of the RAC is to create a simple but effective decommissioning process that considers impacts to both the operator and the environment.

Bailey said that HB 2162 authorized the Department to convene Hydroelectric Task Force III to develop recommendations on decommissioning projects not reauthorized, to consider changes to update the process for obtaining a water right for a new hydro project, and to address any remaining technical changes needed to the reauthorization statutes. The Department will work with this task force to set realistic priorities and goals so that recommendations supported by all members can be presented to the 2001 Legislature.

F. Update on the Tumalo Project

Doug Parrow, Field Services Division; Bob Main, WRD South Central Region Manager; Elmer McDaniels, Tumalo Irrigation District Manager; and Eric Glover, Bureau of Reclamation (BOR), briefed the Commission on the status of a proposed project of the Tumalo Irrigation District to use the Allocation of Conserved Water Program to increase its water use efficiency and increase instream flows to Tumalo Creek. Parrow said the application has been received; the deadline for comments is April 10, 2000. A copy of the public notice of this application was included in the staff report as Attachment 2.

The District's conservation project consists of piping the Bend Feed Canal, enlargement of the Tumalo Feed Canal diversion, and closure of a portion of the Columbia Southern Canal. The District is proposing assignment of the conserved water which would be allocated to provide additional instream flows in Tumalo Creek and to replace existing 1961 priority rights on existing lands.

The Department, Bureau of Reclamation, and Tumalo Irrigation District have entered into an agreement to pursue the allocation of conserved water and the assignment of the resulting water rights as described in the application. Per the agreement, Department staff will work with the parties to help develop the application. A copy of the agreement was included in the staff report as Attachment 3.

Parrow said staff believe that the District's proposed allocation of conserved water will yield benefits to instream uses and that it is consistent with the Department's trustee responsibility for instream water rights.

Public Comment

Kimberley Priestley, WaterWatch, spoke in support of the application. This is a great way to get senior water rights instream and at the same time benefit irrigation. This application is unique because it involves two separate conservation projects; one that has already been completed. It involves two different water sources. And it involves a very complex transfer and/or swap of water rights. WaterWatch wants to be sure that the water rights swap that is specific to this project does not set a precedent for the Department having free rein to decide what is best for instream water rights. As this project moves forward it should be clear that the Department's position is limited only to this application. WaterWatch would like to see a letter from the Department of Fish and Wildlife stating agreement with the swapping of water rights. WaterWatch's biggest concern is that the public arguably is not getting all their water that it paid for as provided in the conserved water statute. Much of the water saved by the project has not been claimed under the conserved water application. In Attachment 4 of the staff report, under number 5, it reads the actual amount conserved is 29.87 cfs and under the application they are only claiming 17.12 cfs. If the application actually covered all this water that has been served, instream flows would get more. As it is the District is getting more. It is not clear that this violates the conserved water statute, but it does show that the conserved water statute is much more flexible in its allocation scheme than has commonly been perceived. Despite that concern WaterWatch is inclined to support the project. It does provide more flow benefits to Tumalo Creek and the Middle Deschutes; it is a voluntary, not mandatory, program; and WaterWatch wants to see the conserved water statute work. (tape 2, mark 611)

Pagel thanked Priestley for her comments saying the Department is hopeful that the conserved water statute can provide flexibility. She commended the tenacity and vision of the folks who