

have been involved in this project from the start.

G. Deschutes Ground Water Briefing

Pagel said this group is continuing to meet monthly. They have been working on a written statement of mitigation concepts, and there is general agreement on the wording. The concepts are that the form of mitigation is flow, and that the amount of flow that needs to be mitigated for is in direct correlation to the amount of consumptive use from water rights issued after 1995 and for projected future growth. The period of time is twenty years. The expectation is the mitigation plan will identify an amount of expected new growth in that time frame, an amount of consumptive use from that projected growth, and will provide specific mitigation strategies to cover that amount of growth. If the growth proceeds at a faster pace so that the twenty-year projection is not accurate, then the plan will include some kind of a process to come back and add additional mitigation strategies. Some other principles are that the mitigation needs to be on-line before the new water use occurs, and that the mitigation hopefully will be accomplished through some sort of mitigation bank or water banking scheme. One of the key strategies being reviewed is canal lining or other irrigation district improvements that will conserve water. The goal of the group is to have the mitigation part of the plan ready by September. The work group members envision that they will continue working to develop the broader plan for the long range, but the initial obligation is to deal with the ground water/surface water impacts.

Nelson asked about judging what needs to be mitigated for—whether it is a net or a gross number regarding consumption. Pagel responded that the mitigation principles document the group has been working on identifies it as the consumptive use which is a net amount. One of the issues is how to identify or calculate consumptive use.

Frewing asked what the City of Bend is doing regarding conservation and metering. Roger Prowell, City of Bend, responded saying currently the City's metering program is such that on any real estate transaction one must install a meter to make that part of the legal transaction. In terms of numbers, the City is about 62 percent metered. The City will loan an individual money interest-free to install a meter.

H. Legislative Concepts Discussion

Tom Byler, Legislation and Rules Coordinator, gave the Commissioners an update on legislative concepts for the 2001 session. The next deadline is April 14, 2000, when the Department must file their legislative concepts with the Department of Administrative Services (DAS). July 1 is the deadline for submitting details for each of these concepts submitted to DAS. After that, the Department will work with Legislative Counsel in finalizing the potential bills with a final submission date to the Legislature on December 15, 2000.

Byler reviewed each of the eleven legislative concepts with staff recommendations as to whether to submit them to DAS or not. All concepts but three were recommended by staff for submission. Those three included temporary transfers for point of diversion and type of use; voluntary cancellation (a placeholder); and stewardship ideas/incentives (a placeholder).

Nelson said he is disappointed that the Stewardship Ideas/Incentives placeholder will not be submitted. Pagel said there will be a budget proposal for stewardship and supply; there just is not currently a legislative change that would go along with it.

Public Comment

Kimberley Priestley, WaterWatch, commented on legislative concept number 3, to allow final proof to be filed one year after denial of permit extension request. She said WaterWatch believes the proposed language may need some editing to clarify that the development that counts is only up to the point of the extension request. WaterWatch is sorry to see the stewardship ideas concept dropped. Over the years there has not been much stewardship legislation going forward. WaterWatch staff are disappointed that the idea of a public interest test on transfers is not being considered as a legislative concept. As a policy matter, over half of the Western states do have a public interest test on transfers. (tape 3, mark 444)

Steve Applegate, private consultant, asked that concept number 1, temporary transfers for point of diversion and type of use, remain on the list and at least be the subject of additional discussion. He said he has had contacts with a number of people who would like a provision for doing something on a temporary basis that involves either a change in point of diversion by itself or a change in the type of use. With the protections that are built into the temporary transfer process with respect to injury and impacts, this could be done without causing problems. (tape 3, mark 502)

Pagel said that with respect to concept number 1 there seemed to be little interest from the stakeholder group. And the whole issue of transfers and the public interest test was brought by staff to the Commission two years ago but the Commission did not want staff to pursue it at that time.

I. Budget Concepts Update -- Informational Report

Bruce Moyer, Administrator, Administrative Services Division, reviewed with the Commission the status of the agency's 2001-2003 biennial budget. We are now in the cycle where agencies identify their program needs and new initiatives they would like to include in an agency budget for consideration by the Governor. The agency budget will include the input of the Commission and stakeholders. Attachment 2 of the staff report lists budgetary and legislative concepts with budgetary impacts. Due to budget constraints, it is very unlikely that any of these concepts will

be included in the agency budget or the Governor's recommended budget. The latest economic revenue projections are pretty bright for general fund and lottery dollars for the 2001-03 biennium. However, there is a projected \$600,000,000 general fund shortfall to fund current service level budgets for all agencies in the next biennium. The Governor has certain priorities he has established for his final budget—each of the agencies has been requested to put together a reduction option package proposal of about ten percent. Other issues to consider are the impacts of popular initiatives and ballot measures being proposed.

Pagel said the list of possible option packages (Attachment 2) is way beyond what we will be submitted to the Governor, but it is a way to see where there are gaps between the Department responsibilities and available funding.

Jewett asked if the Commissioners could review this report and respond to the Department within the next few weeks. Moyer agreed that would be fine.

Thorndike asked if they could have an approximate cost for each item. Moyer said he would get that information to the Commissioners as soon as possible.

Public Comment

Kimberley Priestley, WaterWatch, on behalf of the WaterWatch staff thanked John Frewing and Mike Jewett for their time and commitment over the years serving on the Commission.

After public comment, the Commission went into an Executive Session under ORS 192.660(1)(h) to consult with counsel regarding legal rights and duties of the Commission with regard to current litigation concerning Carey Act Lands. Following the Executive Session, the public meeting reconvened.

J. Withdrawal of Order for Reconsideration, Carey Act Lands

Reeves announced that Pagel would not be participating in this discussion because she is involved in conversations about possible employment on or after her departure from the Department with the law firm representing Mr. Lane.

Commissioner Nelson disclosed for the record that he is a patron of the Tumalo Irrigation District.

Bruce Moyer, Administrator, Administrative Services Division, presented this item for consideration by the Commission. He explained that the Commission, on advice from the Attorney General's office, was asked to withdraw for reconsideration its order of April 30, 1999. This order authorized entry under the Carey Act to a parcel of land in Deschutes County, and

reserved an easement across the parcel.

Due to additional documents and information produced during the course of discovery in litigation, the Attorney General's office advised the Department that their initial advice as to the status of the property had changed. He said the Attorney General's office now believes that the previous advice was incorrect and that the April 30, 1999, Order should be withdrawn. Parcel 1 passed into private fee ownership, by operation of law, effective November 16, 1912, free and clear from any Carey Act restrictions. And if Parcel 1 is not Carey Act land, the Commission would not have authority to grant an easement across it. Further discovery and document review may also alter the Attorney General's initial conclusions as to Parcel 2.

Frewing asked how the Commission has the authority to withdraw this Order for reconsideration. John Urquhart, Assistant Attorney General, responded that the 1999 Legislature provided for withdrawal of orders in other than contested case hearings where the withdrawal is for the purpose of reconsideration.

Public Comment

John Gill, representing Rock Springs Guest Ranch and his father Rockne Gill, said he assumes that eventually he will find out the change in status of the eighty-acre piece he is interested in from the prior indication of where the title is vested. (tape 4, mark 89)

Shoshana Hermeling introduced herself as the landowner to the east of parcel one. She said she purchased the land knowing the easement had been granted by WRD and that it was being addressed with an appeal. Her interest is access to her property because of the easement issue. (tape 4, mark 100)

Phil Lane, applicant in this proceeding, commented on the short notice of this meeting. He said they did have a meeting with Mr. Urquhart last Thursday off the record, but he did not realize they were being put on notice for the Commission meeting. Both attorneys on this case were unavailable to attend today's meeting. He asked for more time to come before the Commission at another meeting. Lane said that on the draft order and the discussion, it states that the A.G.'s office now advises they have additional documentation and information produced during the course of discovery—he has not seen this additional information but would like to do so. Lane asked the Commissioners to postpone until May any action on the issue of withdrawing for reconsideration the April 1999 Order. (tape 4, mark 114)

Urquhart said that delaying a decision will not change the fact that the earlier A.G. advice was not correct due to an incomplete record. If the new information is correct, then WRD does not have jurisdiction over this parcel of property, and would not be able to enter into a settlement that would take care of the interest that Mr. Lane wants to obtain. The only way to settle the matter

with respect to the ownership of the parcel and the agency's jurisdiction over the parcel is to go forward and obtain a quiet title. To have the court make a determination months from now and send it back by remand would be a delay for everyone.

Kammerzell said that by withdrawing this Order the matter does remain before the Commission and will be taken up at the next meeting.

After discussion, Thorndike moved to adopt the proposed Order to withdraw for reconsideration its Order of April 30, 1999, related to Agenda Items D-1 and D-2; adequate notice of the action was given to Mr. Lane and his counsel as evidenced by Mr. Querin's letter of March 9, 2000. Motion was seconded by Hansell; all voted approval.

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

Respectfully submitted,



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Commission Assistant