

Oregon Water Resources Commission
Meeting
August 25, 2000
Salem

Members

Nancy Leonard
Tyler Hansell
Dan Thorndike
Susie Smith
John Fregonese
Jim Nakano

Staff

Paul Cleary
Meg Reeves
Sharyl Kammerzell
Tom Byler
Diane Addicott
Al Cook
Tom Paul
Bruce Moyer
Adam Sussman
Dave Jarrett
Lara Burgel
Reed Marbut
Renee Moulun
Steve Brown
Janet Halladey
Juno Pandian
Mike McCord

Others

Steve Applegate
Kimberley Priestley
Andrea Scharf
Jim Adler
Jerry Franke
Bruce Estes
Dike B. Dame
Doug Myers
Steve Brutscher

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 97301-4172. Audiotapes of the meeting are on file at the same address.

Chair Leonard opened the meeting with an announcement that Governor Kitzhaber would be stopping by later in the morning to talk with the Commissioners about the Endangered Species Act and how it affects the Commission and the Department. She also announced that an additional item under "Other Issues" will be added to the meeting agenda dealing with a need for delegation of authority from the Commission to the Director relating to the release of water from impoundment or diversion structure.

Since there were no minutes to present for approval, the first item was "Commission Comments."

B. Commission Comments

Hansell thanked Paul Cleary and Tom Paul for attending an August 10 meeting at the Port of Morrow and participating in a local tour along with Rep. Bob Jensen and Sen. Bob Nelson.

Nakano said Paul Cleary and Tom Paul came to Ontario August 11 to attend a meeting of the Joint Interim Committee on Water, Agriculture, and Natural Resources. They did a wonderful job responding to questions and comments.

Fregonese said he has been working on projects for the states of Utah, Colorado, and Texas. In all three states there is an emphasis on the need for water conservation at the municipal level. He does not see that happening in Western Oregon.

C. Director's Report

Cleary said he is looking forward to getting to know the Commission members better. He has been very impressed with their dedication and interest in staff work. He also appreciates the dedication of staff to problem-solving as opposed to simply managing programs; and the willingness of the water users and interest groups to search for common ground.

He spent the week of August 7 in Eastern Oregon. During that week he met with the Klamath Tribes, irrigators, irrigation district managers, ground water and municipal interests, federal agencies, conservation and agricultural groups, and WRD staff in the three regional offices east of the Cascades. He said when the field managers are asked to take on more responsibilities, they also want to know what can be taken off their list. He thanked Commissioners Hansell, Nakano, and Nelson for the time spent with him that week. His plans are to cover the west side of the Cascades as soon as possible.

In July he attended a Western States Water Council meeting held in Rapid City, South Dakota. At that meeting he visited with former colleagues from Wyoming who updated him on a recently settled lawsuit between Wyoming and Nebraska that was initiated in 1986. Both sides spent tens of millions of dollars in legal fees. Cleary said the tools of conflict can be extremely expensive and hopefully will not be the tool of first resort. The Klamath Alternative Dispute Resolution process, the Deschutes Work Group, the Endangered Species Act Work Group are all examples of people working together to find solutions that will work well and be less expensive than going to court.

He told the Commissioners that the Department is holding vacant staff positions open due to the uncertainties of ballot measures in the upcoming election.

Cleary said it has been a dry year without late spring rains, and in many areas of the state watermasters are regulating back to the 1870s and 1880s. There have also been ground water declines in the Willamette Valley.

The states of Oregon and Washington are co-hosting a Western States Water Council workshop in Vancouver September 6 and 7 dealing with water quality and quantity. The Clean Water Act as well as the Endangered Species Act will indeed be a force to reckon with. Cleary said that attending meetings of multi-state organizations offers the opportunity to find out what is working in other states.

D. Annual Enforcement Report

Adam Sussman, Manager of the Enforcement Section; Juno Pandian, District 20 Watermaster; and Mike McCord, Well Construction Specialist, provided the 1999 annual enforcement report to the Commission.

Sussman explained that the bulk of the staff report deals with regulatory actions by watermasters. The definition of a regulatory action is any action that causes a change in use or maintenance or a field inspection that confirms that no change is needed to comply with the water right, statute or order of the Department. In the 1999 season there were over 8,000 regulatory actions where watermasters or field staff went out and checked on water users for one reason or another. During all those visits, in only seven occasions was it necessary to mail a notice of violation rather than just asking for voluntary compliance. In that same year there were no referrals to the Salem office for surface water enforcement — Sussman said this says a lot for the great work done by field staff with water users to gain voluntary compliance.

Juno Pandian talked about her responsibilities as Watermaster of District 20 and responded to Commissioners' questions and comments. Her office is in Oregon City, and her district covers Columbia County, Multnomah County, and the Sandy drainage in Clackamas County. Pandian said she inspects eight to ten dams annually of the 32 dams located in her district. In 1999 there were approximately 750 wells drilled in District 20. Referring to the Oregon Plan, Pandian has identified 16 high priority Water Availability Basins with a potential for increasing stream flow. She spoke on different ways she is working with water users and government agencies to try to improve stream flows in those areas.

Mike McCord shared some of his job experiences as a well construction specialist in Salem. He said his Division is like the Department of Motor Vehicles of well drillers — if you can pass the test, you'll get a license; and if you don't get too many tickets, you can keep it. McCord said he

maintains the well construction administrative rules; revised rules will hopefully be presented to the Commissioners for their consideration in early 2001. Another big part of his job is to review special standard requests from drillers when standards currently adopted in rule cannot be met due to site conditions. McCord said he travels throughout the state operating the agency's down hole video camera to inspect construction of wells; as a demonstration he played a video tape of a well that showed co-mingling of aquifers. McCord said there is a well inspector in each of the Department's regions, and two in the Northwest Region due to the heavier work load. Working with the local drillers, the agency well inspectors are a great help to local watermasters.

At this time in the meeting the Governor arrived to greet the Commissioners and visit with them about Endangered Species Act (ESA) issues. He spoke on the potential conflict between Oregon water law and the need to protect streamflows to meet ESA requirements. The answer is to bring together a broad table of interests including stakeholders early in the process. He said we need to work closely with federal agencies to establish flexibility and creativity to ensure that water users comply with ESA guidance and yet have certainty for water withdrawals. Solutions are dependent upon good communication among the natural resource agencies within Oregon and between the state and the federal government. The Governor said he would consider putting together a group similar to the Community Solutions Team for addressing natural resource issues.

The Commissioners suggested to the Governor that a follow-up to his meeting with Boards and Commissions held last May would be helpful. They also would like an opportunity to break into small groups to discuss issues with members of other boards at such a meeting.

E. Update on Department Work Group and Task Force Activities

Tom Byler, Senior Policy Coordinator, reported to the Commissioners on the status of the efforts of five Department task forces and work groups. He said the Joint Task Force on Water Supply and Conservation has met six times since January 2000. Additional meetings are expected this fall. The task force has examined existing agency programs and authority relating to water supply and conservation. It has also discussed public financing options for water supply projects, whether additional information is needed for the development of water supply and conservation measures, and the role of the Department and other entities in planning for and meeting long-term water supply needs. The task force has been directed to submit preliminary recommendations to the Legislature in 2001 and final recommendations in 2003.

The Hydroelectric Task Force III has been meeting since March 2000, and will submit recommendations to the Legislature in 2001 with final recommendations in 2003. Byler said this task force is developing recommendations for the legislature on the decommissioning of projects not reauthorized, and technical amendments to improve the reauthorization process; they are also

working on establishing that state authorization for a new project is a water right, rather than a license.

The Community Water Supply Work Group was formed in response to concerns expressed by representatives of municipal water users during a 1998 rulemaking relating to the process to determine whether permit holders should have additional time to develop their permits. The group has discussed a broad range of issues relevant to securing and maintaining long-term community water supplies, including permit extensions and municipal water management and conservation plans. Currently a sub-committee is developing specific recommendations, including possible rule and legislative changes, for consideration by the full group.

The Deschutes Basin Work Group is a sub-group of the Deschutes Basin Steering Committee formed in 1999 to develop a plan that would mitigate for existing conditional ground water uses and allow for issuance of future ground water permits in a manner consistent with protection of senior water rights and scenic waterway flows in the basin. A variety of stakeholders have been involved in this work group.

The Peak Flow Work Group was formed to explore how the Department can ensure protection of peak flows for fish populations and habitat while allowing opportunities for storage. The group has been focusing on issues relating to stream morphology, fish biology, and hydrology.

F. Request for Concurrence with Land Management Rules for the John Day Scenic Waterway System

Tom Paul, Administrator of the Field Services Division; and Steve Brutscher, Oregon Parks and Recreation Department, presented this request to the Commission for their consideration. Under the Scenic Waterway Act, the Parks and Recreation Department must obtain Water Resources Commission concurrence of rules relating to the management of lands adjacent to state scenic waterways.

Tom Paul explained that the rules being considered at this meeting govern management of lands adjacent to the John Day River Scenic Waterway system and were adopted by the Parks and Recreation Commission May 31, 2000. In particular, the rules address land management within the quarter-mile corridor on either side of the river, set design and siting standards for structures within view of the river, and address vegetation management. Water Resources staff identified no conflicts between the proposed rules and the Commission's policies and rules.

Thorndike moved to concur with the Parks and Recreation Department rules as presented; motion was seconded by Smith. All voted approval.

G. Public Comment

Andrea Scharf and James Adler, members of Yachats Area Watershed Council, appeared before the Commission. Ms. Scharf read from written comments she submitted to the Commissioners. She said that she has been involved with supporting the Governor's Salmon Recovery Plan and in interactions with the city of Yachats over their efforts to exercise their water rights on the Yachats River. She asked the Commission for support as WRD determines its response to their petition for reconsideration. She believes the city has failed to meet the requirements of their permit, and the Department should start the revocation process. The petition for reconsideration raises issues about the Department's commitment to water conservation. The city of Yachats failed to complete six of the eight elements in their Water Management/Conservation Plan. Scharf said this indicates a serious lack of commitment to both conservation and system efficiency. She asked that the Department hold the city accountable so that WRD's commitment to salmon restoration is clear. She believes that conflicts between water use and environmental concerns are increasing and will continue to increase.

James Adler added that this issue will likely appear frequently on the Oregon coast. Conservation is a tremendously important role in solving problems. The coast has not had water problems; the huge increase in tourism and new construction is something new. These water providers are just beginning to find they will have to make the turn. Sending the message that conservation is important is necessary for the Department. In terms of effective tools, conservation is a good approach. He asked if the Department will now enforce on the permit, or require the environmental groups to enforce by taking other action. (tape 3, mark 233)

Cleary said staff are concerned that if the Department were to allow the water right permit to expire, the only hook to hold the city of Yachats to completing their conservation plan may be lost.

Dike B. Dame, Yachats Area Watershed Council member, commented. He said he first began working on this water permit issue in 1985 when the City of Yachats Public Works Director informed him that he was going to condemn a portion of his pasture land for a pumping station. Dame said he requested a hearing before the Water Resources Commission; after a period of about three years his letters got lost and kind of went away. Subsequently the city made an effort to break his in-holder rights as a lessee with the U.S. Forest Service; these efforts were rebuffed by the Forest Service. Finally, the city, WRD, and various individuals including himself entered into an agreement. While doubting the city's sincerity, he said he felt encouraged since all parties agreed to the arrangement in a formal setting with a state mediator. He was surprised to read a letter dated August 10, 2000, from WRD to the city with no courtesy copies to other parties to the agreement, saying that WRD appeared to have no intention of holding the city accountable to the terms of the agreement. He said to properly evaluate this situation, it is necessary to read the permit, their petition, and the August 2000 letter. The state should honor its

obligation under the contract even if the city never had any intentions of doing so. Dame said for the health of the river, and in support of the Governor's Salmon Plan, the permit needs to be canceled.

Meg Reeves, Deputy Director, said the Department has not yet responded to the Petition for Reconsideration. She said the staff's view is that the city is close on the conservation plan and it makes more sense to continue to work with the city to make that happen. She agreed that the petitioners should have been contacted about the Department's communication with the city regarding the schedule.

Tom Paul, Administrator for Field Services Division, gave a quick history of this situation. He said a water right permit was issued following application by the city of Yachats. That permit was protested and a meeting was held with interested parties. An agreement was negotiated between the applicant and the various interests, resulting in a new permit being issued incorporating the provisions of the agreement. Diversion facilities have not been constructed and no water has been used under the permit. There have been two time extensions granted to date. The last completion date granted by an extension of time was October 1, 1998. About that time the city submitted an additional extension request which is currently pending. There have been two permit amendment requests granted. The first one was to add an additional point of diversion from the source; the second was to change the originally authorized point of diversion to a new location. The original permit that was issued contained a requirement for the city to submit a water management conservation plan within one year of adoption of the Division 86 rules. The water management conservation plan requirements were continued through the negotiation process and are incorporated in the existing permit. There were a number of other conditions also placed in that permit; one was a requirement for the city to install a couple of stream gauges on the river prior to any diversion. No water can be diverted until the conditions are complied with in the existing permit. The only hook for a water management plan is the permit condition. The city is taking steps to improve their water system, including lining existing pipe lines to eliminate leaks. WRD staff are continuing to work with Yachats city administration on a better water management conservation plan.

H. Update on 2001-03 Agency Requested Budget

Bruce Moyer, Administrator of the Administrative Services Division, offered this report to the Commission. He said the agency requested budget provides an opportunity for the Department to seek resources necessary to maintain current services, meet current law mandates, and support new initiatives. The next step is for the Governor to evaluate WRD's funding request along with all of the state's other budgetary needs. The Governor will then release his recommended budget by December 1, 2000.

Moyer said an early estimate shows that resources will be short between \$700-900 million in meeting all state agency base budget needs. In addition, the November election could limit the financial resources available to fund state programs even more. The fiscal impact of voter passage of one or more of Ballot Measures 8, 88, and 91 could result in a reduction of approximately 20 to 30 percent in agency base budget expenditures.

During the budget discussion among the Commissioners, Cleary said WRD receives \$20.5 million from the General Fund for a two-year term. To place the budget on a simpler perspective, he broke it down to a "per person per month" basis which works out to 26 cents per person per month in the state of Oregon. The agency is now asking for 4 cents more per person per month. He said that would seem to be quite a bargain for services offered by this agency.

I. Proposed Legislative Concepts for the 2001 Legislative Session

Tom Byler, Senior Policy Coordinator, said staff have been working with the Commission and interested stakeholders since the beginning of the year to develop legislative concepts for the upcoming 2001 legislative session. The focus has been narrowed to four concepts: LC-996 would shift locally-funded assistant watermaster positions to state funds; LC-997 would allow final proof to be filed one year after denial of permit extension request; LC-998 relates to water management and mitigation banking pilot project authority; and LC-1002 relates to hydroelectric issues.

Byler explained that these legislative concepts are currently being drafted into bill form by Legislative Counsel. Final bills must be filed with the Legislature by December 15, 2000.

Hansell, referring to his concern for the Walla Walla Basin water users, said he would like to see some type of process developed to protect water given up by users for the Endangered Species Act, only to be taken by a junior user. Commissioner Smith agreed.

Tom Paul explained that concerning the Walla Walla River, there are no diversion points below the diversion dam — water is seeping into the channel.

Public Comment

Kimberley Priestley, WaterWatch, commented on LC-998. She said that WaterWatch does understand the interest in value and being able to experiment and respond to certain problems in certain basins. They are willing to talk about these projects, but would urge the Department and Commission to include language that would protect the interests of both the users and the instream needs. (tape 4, mark 311)

K. Other Issues

Meg Reeves, Deputy Director; and Reed Marbut, Federal Water Right Coordinator, brought a request before the Commission asking for delegation of authority to the Director under ORS 541.510-545, relating to release of water from impoundment or diversion structure. Reeves explained that the Bureau of Reclamation was proposing to release a large quantity of water out of Clear Lake through the Lost River channel and over onto the Klamath River side of the basin. Reeves said staff were monitoring the situation and would make a decision about whether to act under the statute. If there would be a reason to believe that the rapid release of water might create an unreasonable hazard to life or property, staff would notify the Bureau immediately. She said the town of Bonanza had contacted WRD regarding concern about the impact of the release on their wells. Using a map Marbut showed the Commission the point of release and the flow route, and responded to their questions.

Hansell moved to delegate authority to the Director all power, duty and function vested in the Commission under the provisions of ORS 541.510 through 541.545, relating to release of water from impoundment or diversion structure; motion was seconded by Thorndike. All voted approval.

There being no further business to discuss, the Commission went into Executive Session; following the Executive Session the meeting was adjourned.

Respectfully submitted,



Diane K. Addicott
Commission Assistant