

Oregon Water Resources Commission
Meeting
April 6, 2001
Salem

Members

Nancy Leonard
Tyler Hansell
Dan Thorndike
Susie Smith
Jim Nakano
Ron Nelson

Staff

Paul Cleary
Meg Reeves
Sharyl Kammerzell
Tom Byler
Cindy Smith
Fred Lissner
Bob Devyldere
Tom Paul
Barry Norris
Day Marshall
Mike Zwart
Karl Wozniak
Bruce Moyer
Donn Miller
Doug Woodcock
Gary Ball
Dave Jarrett
Ken Lite
Rich Marvin
Jerry Grondin
Dick Bailey

Others

Kimberley Priestley
Ed Henrichs
Chuck Miholto
Marilyn Reeves
Martha O. Pagel

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 called the meeting to order and announced a change in the meeting agenda. The Commission would consider temporary rulemaking relating to the drought mitigation rules following Item D.

A. Commission Meeting Minutes

The minutes of the February 8-9, 2001, meeting were offered to the Commission for their consideration. Thorndike moved for approval of the minutes as presented; seconded by Hansell. All voted approval.

B. Commission Comments

Nakano said that Idaho Power met with Ontario irrigators to pursue purchasing water from them, but they could not agree on a price. He said there is still concern by water users about the difficulty in meeting the proposed TMDL's on the Snake River.

Thorndike said that he and his family traveled the state during Spring Break and enjoyed visiting the different river basins.

Hansell said he was intrigued by the discussion of hydroelectric power load-reduction offers and rate systems given at the previous day's work session. Very few people in the Hermiston area have taken up Bonneville Power's offer to purchase water from them.

Leonard said that after recently spending time in southern Arizona, even in a period of drought Oregon seems to have so much more water. It's all relative.

Smith shared an example of how the drought is affecting the urban environment. Springfield has been gifted an historic millrace which has become a natural stream corridor bearing several kinds of fish. The mills along the stream are dependent upon the mill race flows for fire protection. The water is now so low that there are stranded fish in the mill pond; and mills are without access to water for fire protection.

Nelson said he recently spent a week in Washington D.C. seeking funding for Deschutes Basin efforts. The Deschutes Basin Resources Conservancy has been busy working on establishing a water bank.

C. Director's Report

Clery discussed the drought situation and the Department's newly-developed "Drought Watch" Web page. With the water, energy, and agricultural/economic conditions, this is a great opportunity to encourage and teach efficient use of water. He said staff have been involved with the Klamath Basin water situation and will be in that area for four days of meetings next week. The Governor will be speaking in Klamath Falls Thursday, April 12. The water shortage has

caused an extremely difficult situation; but in these times people begin to think more creatively and reach some balanced long-term solutions.

Cleary updated the Commission on Savage Rapids Dam. Grants Pass Irrigation District representatives will be meeting with the Oregon Congressional delegation soon regarding legislation to fund removal of the dam and replace it with a pump system.

Cleary said he recently attended a conference in Seattle that brought together federal, state and tribal leaders along with regional authorities and major stakeholders to discuss Columbia River Basin water issues.

D. Request for Adoption of Hydroelectric Decommissioning Rules (OAR Chapter 690, Division 052)

Dick Bailey, Water Rights/Adjudication Division Administrator, offered proposed rules for consideration. He explained that these rules would establish standards and procedures for decommissioning certain state authorized hydroelectric projects that are not also regulated by the Federal Energy Regulatory Commission (FERC).

Representatives from state agencies, investor-owned utilities, publicly-owned utilities, municipalities, environmental organizations, non-utility hydroelectric operators, small hydroelectric owners, and agricultural organizations were invited to serve on a Rules Advisory Committee. This committee met periodically from October 1999 to November 2000.

Bailey said that on October 23, 2000, the Department held a public hearing for these rules; no testimony was received.

Smith moved to adopt the final proposed rules as recommended by staff; seconded by Thorndike. All voted approval.

Following the vote, Bailey gave the Commissioners an update on the Hydroelectric Application Review Team process.

E. Adoption of Temporary Rule Amendments to OAR Chapter 690, Division 19, Drought Mitigation Rules

Tom Byler, Senior Policy Coordinator, presented proposed temporary rule amendments to the Commissioners for their consideration. Byler explained that statute sets out the authority for the Water Resources Commission to mitigate the impacts of a declared drought. The rules in OAR Chapter 690, Division 19, provide guidance on the process and standards to implement emergency drought provisions. Division 19 rules were last amended in 1994, and a number of

changes to statute and other administrative rules have taken place since that time. Several of the proposed rule amendments reflect these changes by assuring the rules are consistent with current statutory authority and updating cross-references to other administrative rules. Other changes proposed by staff would make the rules more useful to meet the changing needs of the water user community.

Byler explained that the request for temporary rulemaking action, rather than permanent rulemaking which would take several months, is due to the immediate need to have useful up-to-date rules available to water users in areas where drought declarations are made. Staff would then enter into a permanent rulemaking process to propose and adopt the rule revisions.

Byler reviewed the proposed rule changes with the Commission. Thorndike suggested that "pursuant to ORS 536.750" be added to the definition of a temporary drought transfer in line 4, subsection (12), page two.

Byler suggested changing "shall" to "will" in line 1, subsection (a), page five. He also suggested changing "may" to "does" in line 2, subsection (b), page five.

Thorndike suggested adding " or approval" after "application" in line 12, subsection (5), page five.

Hansell suggested adding language to subsection (4) of page 5 limiting the temporary drought transfer to one year or the term of the Governor's declared drought, whichever is shorter.

Public Comment on Item E

Martha Pagel, Schwabe Williamson and Wyatt, representing Oregon Association of Nurserymen, commented and submitted written testimony. She expressed concern with the proposed change on page 3, line 29, relating to emergency water use permits, that adds the language "not to exceed one year." That would add a workload on Department staff to automatically review each of these permits annually, and also add a workload on the applicants having to reapply. Perhaps another thought would be to include a condition that says they shall be reviewed, but not necessarily that the entire process would have to be repeated.

Pagel referred to her handout of proposed rule changes for temporary drought transfers. In OAR 690-019-0055, subsection (1)(b), this new language would solve an identified underlying problem. The current rules say that the total water use at the new location may not exceed either the amount in the right or the amount in the transferred right, whichever is smaller. It is the "whichever is smaller" language that does not seem to make sense. For example, she has an irrigation water right with a duty of 100 acres and there is a drought situation, so she acquires through a temporary drought transfer 50 acres of a right. This language would allow her to use

only 50 acres total amount; the original right would have let her use 100 acres. She strongly urged the Commission to correct this language. She suggested on line 3, page 5 of the Department's proposed temporary rules, that after "unable to use water" to either eliminate the remainder of the sentence or say, "shall not exceed the amount in the original water right or rights for that location." So the total water use at the receiving location shall not exceed the amount in the original water right or rights for that location. If you had a duty you would be allowed to meet that maximum duty. She expressed support for all the other proposed changes in the rules. (tape 2, mark 53)

Kimberley Priestley, WaterWatch, said that in general WaterWatch supports the temporary rules, especially the instream lease provision because it puts instream water rights on an equal footing with other rights. She referred to page 4 of the proposed temporary rules, subsection (9), relating to the national pollutant discharge elimination system permit, saying she understands the Department's intent. But she said the language does not seem clear that it is not tied to a low flow problem in the river. For instance, it is reliant on a drought declaration but it may be on a stream that does not have low flow problems to warrant this. It would perhaps be helpful to tie this language to either a finding by the Department that flows are inadequate in that stream reach to meet the DEQ permit or some other mechanism. She said the other point is that perhaps consultation with ODFW might be helpful. (tape 2, mark 135)

Byler said it his understanding that DEQ does consult with ODFW in their process and analysis of whether they can land apply effluent that by a permit has historically been discharged into a water body.

After discussion, Byler reviewed the additional changes to the proposed temporary drought mitigation rules attached to the staff report. On page 2, subsection (13), following "diversion" add "authorized pursuant to ORS 536.750." On page 3, line 16, subsection (4)(a), change the language to "Public notice of receipt of emergency use applications or approval of such applications will be included in the Department's regular public notice of applications." On page 5, line 1, subsection (a), change the "shall" to "will." On page 5, line 2, subsection (b) change the language to "Total water use at the receiving location does not exceed the maximum rate and duty for the receiving location." On page 5, line 10, subsection (4), change the language to "The expiration date for the temporary drought transfer granted pursuant to this rule shall not exceed one year or the term of the Governor's declared drought, whichever is shorter." On page 5, line 12, subsection (5), change the language to "Public notice of a temporary drought transfer application or approval of such application shall be included in the Department's weekly notice." On page 5, line 35, subsection (5), change the language to "Public notice of a temporary drought instream lease application or approval of such application shall be included in the Department's weekly notice."

Hansell moved to adopt the proposed temporary rules attached to the staff report with the amendments listed above; seconded by Nelson. All voted approval.

F. Ground Water Projects

Fred Lissner, Manager of the Ground Water/Hydrology Section, introduced his staff and this presentation on agency ground water activities. He explained that there are eight hydrogeologists in the Salem office, one in the Grants Pass office, and one in the Bend office. These staff members work on a number of studies and projects throughout the state.

Ken Lite spoke on the Upper Deschutes Basin Ground Water Study. He explained that the study was a cooperative effort of the U.S. Geological Survey (USGS); OWRD; Deschutes and Jefferson Counties; the Cities of Bend, Redmond, and Sisters; and the Confederated Tribes of the Warm Springs of Oregon. Additional funding also came from the Environmental Protection Agency and the Bureau of Reclamation. The study encompasses an area of approximately 4,500 square miles and is located in the southwest part of the Basin. Ground water from the Upper Basin contributes approximately 80 percent of the mean annual discharge to the Lower Deschutes River. Issues driving the study included increasing demand for water due to a growing population and economy, questions regarding ground water/surface water interaction, and the general lack of quantitative information on ground water hydrology for the Basin. All the major project tasks of the study have been completed; and staff are currently completing the two final summary reports. Staff have published a data report, a water chemistry characterization report, and a hydrology report. All work on this study is to be completed by September 30, 2001.

Ken Lite also spoke on the Upper Klamath Basin Ground Water Study that is a cooperative effort between the USGS and OWRD with additional funding from the Bureau of Reclamation. This study encompasses an area of approximately 8,000 square miles and includes the entire Klamath Basin above Iron Gate Dam in California. It also includes about 3,000 square miles in California. Driving issues include increasing demand for water, questions as to the availability of ground water to supplement or replace the use of surface water, questions regarding ground water/surface water interaction, and the lack of quantitative information on ground water hydrology. The project objectives include developing a quantitative understanding of the regional ground water flow system, and providing scientific information for use by agencies and the public in addressing the regional issues related to water. There is a four-phase approach to this study — data compilation and evaluation, data collection and quantitative conceptual model development, numerical model development, and optimization modeling. Lite said information on this study is available on the Web. The work on this study is to be completed by the end of September 30, 2005.

Karl Wozniak spoke on the Willamette Basin Ground Water Study. He explained that this is a cooperative project between the USGS and OWRD. The Willamette Basin, stretching from the crest of the Coast Range on the west to the crest of the Cascades on the east, contains approximately 70 percent of Oregon's population. The main emphasis of this study is in the lowlands where most of the water use occurs. There are two phases to this project — one is to develop a regional water budget that encompasses the entire lowland; the other involves taking a more detailed look at an area between Salem and Wilsonville. The main issues driving this study include population growth and limited surface water supply. Factors that limit ground water supply in the Basin include interference with surface water, seasonal interference between wells, long-term water level declines, natural water quality problems, low yield aquifers, and climatic cycles. Staff have developed a data report that is available on CD Rom and the Web, and a report on the distribution of arsenic. Staff are working on a surface water report that describes the recharge to the ground water system and the discharge from ground water to surface water, the ground water flow system, and the construction and calibration of the model. Wozniak said they will be able to simulate potential future allocations and impacts based on the model.

Donn Miller said he is working with Mike Zwart and Marc Norton on a basalt aquifer ground water update in the Umatilla Basin funded through the General Fund. The driving force is to gain information for managing basalt ground water as a sustainable resource for a variety of beneficial uses. At the present time there are three critical ground water areas in the Umatilla Basin. Staff see continuing water level decline in many aquifer wells in the Basin. Morrow and Umatilla Counties have asked for water availability information that will help in their land use regulations. The Butter Creek and Stage Gulch Critical Ground Water Areas both have rule provisions that require an assessment periodically as to the management controls changing the allowable access to water in those areas. The approach of this study is compiling existing information, screening for quality control purposes, and using the flow meter readings over time to generate information on the water use at individual wells. The main product will be published and available as electronic data some time during the third quarter of this year. The data will then be analyzed for water management. Miller said that staff will report back to the Commission on the study results.

Jerry Grondin spoke on the ground water investigation in the Lost River Subbasin. This area is approximately 920 square miles in the southeast portion of the Klamath Basin located east of Klamath Falls. During the late 1980s and early 1990s, this area was in the grip of a drought and the Department issued a number of drought permits for use of ground water. In addition to those drought permits, 36 applications were received to use ground water on a permanent basis. This raised concern about the potential for ground water interference between wells and concern about the connection between ground water and surface water. Protests on these applications were filed by the town of Bonanza and environmental groups. Rather than deny the permits, the Commission asked staff to do a more detailed investigation to gather more technical information. So the Department issued five-year permits to allow time for research — that five year period

ends in July 2001, but extensions are likely. Data are collected from area wells and placed on graphs to show the long-term and seasonal trend. Data have shown that the water levels in the ground water system are very sensitive to climate and the system does respond to ground water use. The hydrographs were also used to distinguish areas that are related and distinct from other areas. Staff put together a water table map to see the ground water flow directions, and conducted a seepage run of the Lost River to find where ground water and surface water are connected. In most cases ground water does contribute flow to the surface water — the biggest inflow is at the town of Bonanza. Data analyzed from aquifer tests helped staff to characterize the aquifer system in terms of ground water flow and storage. Based on that information, staff were able to calculate drawn-down from the wells related to the 36 permit applications previously mentioned. A remaining task is to calculate the impact on stream flow, compile a report, and recommend the fate of each permit.

Mike Zwart reported on the Shasta View Project. In 1998 the Klamath U.S. Bureau of Reclamation office approached the Department with a proposal to fund a ground water demonstration project. The purpose would be to investigate options to increase water supply in the Klamath Basin. The Shasta View Irrigation District near Malin was selected for this project. The District irrigates over 4,700 acres from the Bureau's D Canal. There are existing irrigation and domestic wells in the vicinity of the District — most penetrate an aquifer developed in basalt rock, but several develop in overlying sedimentary aquifer. Some of the irrigation wells produce greater than 2,000 gallons per minute. Regular monitoring of static water levels has been ongoing since 1998. An aquifer test was conducted at one of the irrigation wells in the Spring of 1999 — the data analysis suggests that additional water development is possible without injury to the resource or to senior water users. A second well is being prepared for testing, and an observation well has been constructed. A final report will be prepared and available in late 2002; it should include determinations as to how much, if any, additional development of the ground water resource is possible in the area.

Doug Woodcock spoke on a South Coast ground water project and one in the Illinois Basin. The South Coast study is taking place on a small strip of sand about three miles wide and thirty miles long, surrounded by coast range highlands. This area consists of elevated marine sands and gravels, and is ideal for growing cranberries. The Department's interest in this area was peaked with the very large demand being made on the ground water resource. The ground water in the area is stored in semi-consolidated sands and gravels that leak water to streams and provide the base flow for Summer flows. The concern is the impact of ground water development on these Summer flows. The Cranberry Water Control District sought to hire a ground water consultant to do a surface water/ground water study. The Bureau of Reclamation considered the District's efforts to be an in-kind match, and agreed to do watershed studies to complement the ground water study. The Bureau additionally said they would be interested in numerically modeling the data collected to provide scenarios to show how the streams might be impacted. WRD staff are providing critical data collection and project oversight. Woodcock said streams flow directly

across terraces and provide fish habitat — that is a concern with ground water developments. Staff have conducted six surface water flow measurements from the top of the drainages across the terraces to determine whether ground water is providing inflow to the streams or whether the streams are providing water to the ground water system. Every drainage measured showed that there is leakage from the ground water system to the streams. Local wells are being tested to identify water bearing zones in the sands and gravels, and identify the bottom of the aquifer system — with this information, an area map of the water table will be created.

Woodcock continued with a report on the Illinois Basin, a subbasin of the Rogue Basin. This project is a result of identifying priority streams needing stream flow restoration. Problems include naturally low Summer and Fall stream flows, large irrigation withdrawals, and the use of push-up dams in streams to divert water. Push-up dams are created with heavy equipment pushing up gravels and sands to block the stream and divert water down irrigation ditches. These dams can impede fish passage, facilitate siltation of the streams, and promote waste because of leaky ditches. The goals of this project are to identify alternate water supplies for surface water users, map the distribution of gravel aquifers, assess aquifer properties, and assess surface water/ground water interaction. To accomplish these goals exploratory wells will be drilled, contracting with the Department of Geology and Mineral Industries for surface and subsurface geologic mapping, conducting geophysics across the basin to define the basin geometry, and conducting aquifer tests and seepage runs along the drainages. To date, one well has been drilled; there is grant money available for three additional wells; and geological mapping and the geophysics should be conducted this Summer. A challenge will be to provide incentives for surface water users to transfer to ground water sources.

Lissner closed this presentation with a discussion of other tasks of the ground water staff, and some past projects with ongoing monitoring. He said staff are now developing a data base of ground water information which will soon be available on the Web.

Public Comment on Agenda Item F

Merilyn Reeves, President of Friends of Yamhill County, thanked the ground water staff for their presentation. She said she worked with Ken Lite and the League of Women Voters to supply public information on Clear Lake in Florence. She just completed six years as chair of the Hanford Advisory Board, a federal board in which the state of Oregon is an official member. She urged OWRD to maintain their involvement with that board. She also urged the Department to continue to pursue public education. Perhaps through the county building permit process there could be a standard sheet provided to the public urging them to have their water tested annually, telling them when a water right is required, and other important information. There is no point doing studies unless there is a way to transfer what those studies mean to the public and give people an opportunity to use the results for water management. She said that Yamhill County has development issues — Friends of Yamhill County are interested in protecting forest,

agriculture, and water resources; and maintaining and enhancing Oregon's land use laws. Many of the small towns in Yamhill County have old out-dated drinking water systems. After mediation, a permit was granted for five wells with conditions to improve infrastructure. There is a link between ground water and water quality issues both for communities and for wells. She had her well sampled with poor test results. No one is responsible for passing on information about contamination of wells — it seems that some agency, perhaps the Health Division, should receive these results. She said the wells in her area are down 40 to 50 feet in the Winter time.
(tape 3)

Because of lack of time, Cleary suggested that the Stewardship/Supply agenda item be moved to the next Commission meeting.

G. Legislative and Budget Update

Tom Byler, Senior Policy Coordinator, reviewed the bill tracking log and updated the Commissioners on legislative issues. There are approximately 25 bills that have a direct affect on water policy; ten of these bills are moving along in the system. There is only one natural resources committee on the Senate side which limits the number of bills the members can consider. The Senate has suggested that committees should complete their work on Senate bills by April 16 and on House bills by early May; the House has an April 27 deadline for their committees to complete their work on House bills and a May 18 deadline for Senate bills.

HB 2712, introduced by Rep. Jensen, would allow split-season leasing of instream water rights. The bill passed out of Committee and passed the House floor. It was supported broadly by stakeholders. It did receive a sunset clause to test out its authority and usefulness. Rep. Jensen also introduced HB 2713; which would establish a water measurement cost-share program revolving fund. HB 2713 passed through the House committee and was referred to Ways and Means.

SB 319, a Hydroelectric Task Force consensus bill, covers primarily housekeeping issues related to the reauthorization process so that it conforms with the federal process. This bill has passed out of the Senate and is waiting a hearing on the House side.

SB 710 would allow the Department to create a work group to look at issues relating to municipal development of ground water resources and the impacts on agriculture users who share the aquifer. This bill has passed out of the Senate and is waiting a hearing on the House side.

Byler discussed SB 870, sponsored by the City of Pendleton. This bill would allow the Department to approve a water right point-of-diversion transfer despite the fact that injury is

determined to other water rights, provided there is consent by the injured water right holders. The transfer applicant would work with the injured water right holders to mitigate for the impacts of the injury.

Bruce Moyer, Administrator for the Administration Division, updated the Commissioners on the budget cycle. He said the Department budget has been passed out of the Ways and Means Subcommittee, and is now waiting to be presented to the Full Ways and Means Committee. It is anticipated that most budgets will be held until the May revenue forecast is announced. Moyer reviewed an information sheet with results of the Ways and Means Subcommittee budget recommendations.

Nelson asked what he and other Commissioners could do to help support the agency budget. Cleary responded that they might consider writing to their legislators as a constituent, a customer of WRD, and a member of the Commission.

H. Public Comment

Martha Pagel, Schwabe Williams and Wyatt, spoke on behalf of the Oregon Nurserymen's Association. She distributed a sheet of drought-related legislative concepts and reviewed it with the Commissioners. Existing law allows for surface to ground water substitution — one legislative concept would put that existing law on the list of expedited procedures in a time of drought. It would allow someone who has a supplemental water right from ground water to begin using that as their primary source substituted for the surface water. It could have potential benefit for leaving water instream for other users or for flow. She said the second legislative concept needs more work — to consider if there is a way of restructuring response to drought so that it is not always an emergency. This concept is to specify what can be done when there are early indicators of a drought — what authorities or processes could be triggered early on. The third legislative concept involves contingency planning — the most crucial for water users right now. Current law allows local government and the Water Resources Commission to plan ahead, to make advance arrangements for option agreements that would kick in during low water years. There is an extensive Department and public review process to get it all lined up and improved in advance. Any person with water rights should be able to negotiate similar advance agreements, go through the process, and have them ready to go if and when a drought is declared.

(tape 4, mark 1)

Following the agenda items, Nelson asked for an update on the Endangered Species Act (ESA) situation in Walla Walla. He and Thorndike both mentioned their hope to see the state pro-active in working with the federal agencies on ESA issues.

Reeves reported that the ESA Work Group has not met since the Legislative Session started, but WRD staff have met with federal agency representatives. At one meeting with representatives of Fish and Wildlife Service and National Marine Fisheries Service (NMFS), staff discussed the possibility of creating a memorandum of understanding and incorporating the priority system into the federal regulation under the ESA. NMFS has looked carefully at considering the priority system, but that may not work for them. Regarding a memorandum of understanding, it was decided that would take too long to get through the federal approval process; regular written communication would work better and faster. NMFS is interested in continuing to talk about advance notice and communicating with the state on any issues they may have regarding a particular basin. Staff also met with a large group of federal representatives and the state of Washington about the Walla Walla situation — there is another meeting scheduled for next week in Spokane. That meeting should be more focused on the state water rights system and the federal system. Perhaps those discussions will produce some outcomes that could be applied to other basins. The federal representatives are looking at a Habitat Conservation Plan (HCP) for the Walla Walla Basin. When the Legislative Session is over, Reeves suggested reconvening the ESA Work Group to discuss the HCP process.

There being no further discussion, the meeting was adjourned.

Respectfully submitted,



Diane K. Addicott
Commission Assistant