

Oregon Water Resources Commission
Meeting
September 24, 2001
Silver Falls Conference Center

Members

Susie Smith
Tyler Hansell
Dan Thorndike
Ron Nelson
Jim Nakano
John Fregonese

Staff

Paul Cleary
Meg Reeves
Sharyl Kammerzell
Diane Addicott
Cindy Smith
Fred Lissner
Dave Jarrett
Tom Paul
Marc Norton
Dick Bailey
Doug Woodcock
Bill Ferber
Bill Fujii
Bruce Sund
Gary Ball
Robin Straughan
Bruce Moyer
Mike McCord
Dwight French
Tom Byler
Karl Wozniak
Mike Ladd
Jerry Rodgers
Adam Sussman
Kyle Gorman

Others

Terry Cawfield
Kimberley Priestley
Malia Kapillas
Susan Hammond
John Goodson
Mary Goodson
Tom Lynch
John Schwarthal
Don Kelley
Elmira Boehmer
Jill Gustin
Menno Seethoff
Ed Henricks
Mert Edgar
Kathy Edgar
Bob Yandell
Irene Yandell
Harry Waters
Ray Rivoli
Sue Rivoli
Susan Twealy
Nick Coffey
Jerry Schmidt
Rob Hallyburton
Lori Holt
R. E. Gilmore
Harry Boehmer

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. Copies of written material and tapes are available upon request.

A. Commission Meeting Minutes

The minutes of the July 26-27, 2001, meeting were offered for approval. Thorndike moved to approve the minutes as presented; seconded by Nakano. All voted approval.

B. Commission Comments

Nelson said that public hearings will be held this week in Bend, Prineville, and Madras on the proposed Deschutes Ground Water Mitigation rules. Commissioner Hansell will preside at the two Wednesday hearings. Nelson asked if it might also be possible to schedule a hearing in Eastern Oregon on the proposed adoption of instream water right rules.

C. Director's Report

Cleary offered an update on the Klamath situation. He said the state of Oregon is an aggressive participant in a court-ordered mediation. This forum could help resolve the problems in the upper basin by shifting some of the burden and including some of the efforts in the lower basin. The federal operating plan will be out soon and will be a critical indicator as to whether the Bureau of Reclamation, Fish and Wildlife Service, and the National Marine Fisheries Service have been able to take a fresh look at both the science as well as the operation of the project. Hopefully in future dry years there will be at least a minimum amount of water made available for the irrigation project. The state mediation group has taken the position that the outcome cannot include a zero water delivery for irrigation — there must be a "share the shortage" approach, as opposed to the entire burden being placed on the project. Cleary said there is a federal legislative initiative underway involving the Oregon and California congressional delegations relating to funding for supply augmentation, demand management, habitat restoration, fish passage and screening, and water quality improvements.

Cleary said the drought impact could have been much worse than it was in Oregon. There were no extreme hot spells; and people were working to conserve energy and water.

Judge Hogan recently reversed the decision to list the Oregon Coast Coho Evolutionary Significant Unit which extends north from Cape Blanco.

Cleary mentioned the public hearings on the draft Deschutes Ground Water Mitigation Rules. The deadline for written comments is October 18, 2001.

The revenue forecast at the end of August was a two percent decrease from the forecast at the close of the Legislative Session. Very likely agencies will soon be instructed to begin containing costs and preparing budget reductions.

Meg Reeves, Deputy Director, reported on the recent Western States Water Council ESA Implementation workshop in Seattle. The workshop covered presentations on a series of case studies in various basins. She said the Walla Walla Basin is characterized as a success story — the irrigators in that area have again this year entered into an agreement with the Fish and Wildlife Service and are operating with a slightly increased bypass flow from last year. There is still a lot of optimism in that area for a basin-wide HCP that will allow them to operate in the long term. The Walla Walla people said they were successful, in part, because they ignored process and just jumped in with on-the-ground actions. Reeves said the Lemhi Basin in Idaho is also considered a success story. There had been a threatened enforcement action by NMFS in that area this year that did not materialize because irrigators worked together to get some water in stream for fish passage purposes.

Cleary announced that the Department will be holding the Annual Municipal Water Management Conservation Workshop October 25, 2001, in Aspen Hall west of Bend. Interested parties can register on the Web or contact the Salem office.

Cleary introduced Kyle Gorman as the newly-appointed South Central Region Manager.

D. Critical Ground Water Area Scheduling in the Willamette Valley Basin Basalt Aquifers

Fred Lissner, Manager of the Ground Water/Hydrology Section, presented this report to the Commissioners and responded to their comments and questions. He described the technical work necessary to declare a critical ground water area, the administrative process required by statute, and the time and staff requirements.

Lissner explained the ancient history of geologic events that created the Willamette Valley as it is today. A series of volcanic eruptions occurred resulting in lakes of lava that spread over thousands of square miles causing basalt flows that range in thickness from ten feet to a few hundred feet. There is a lot of variability both geologically and hydrologically in these basalts. Much of the valley basalt has not yet been mapped in sufficient detail to facilitate a ground water investigation.

Throughout the Willamette Valley, ground water supply issues are developing in the Columbia River Basalt aquifers. Lissner discussed the options of declaring a critical ground water area in only the Victor Point basalt aquifers; declaring a critical area in Victor Point along with the Sherwood/Dammash/Wilsonville, Glad Tidings, and Kingston areas in the Willamette Valley; and declaring a critical ground water area in all the basalt areas of the Willamette Valley. Using hydrographs Lissner showed how ineffective recharge is in basalt aquifers. He said that staff are now incorporating restrictive conditions on any of the permits that are tapping the ground water resources in the Willamette Valley basalts to help identify any water level decline.

He said the technical and administrative processes for focusing on one area, such as Victor Point, likely would take twenty-four months at the earliest to complete. Considering current work projects and priorities, work on all the Willamette Valley basalt aquifers cannot start before July 2005.

E. Proposed Withdrawal of Two Basalt Aquifers in the Woodland, Edison and Victor Point Road Area

Fred Lissner, Manager of the Ground Water/Hydrology Section; Marc Norton, Hydrogeologist; and Bill Fujii, NW Region Liaison, presented this proposal to the Commission. Lissner offered some background to the Commission. At its July 2001 meeting the Commission reviewed and denied a petition by the Woodland, Edison, Victor Point Homeowners Association for declaration of a critical ground water area, opting instead to address the problem of potential new well development in the area by proposing an order of withdrawal. He explained that withdrawing these basalt aquifers from further appropriation would not be a long-term solution to the water supply problems, but it would preserve the water resource for a time in which a solution might be found.

Lissner reviewed staff's administrative work in preparation for adopting the withdrawal. A boundary was drawn around the impacted area using the best technical data available. A notice was sent out to the public informing them of the proposed withdrawal. A public hearing was held at the Oregon Garden August 23, 2001. Lissner said staff are convinced that the aquifers will fail and suggest that a withdrawal be declared to prevent issuance of new permits, prevent new uses from wells completed after the effective date of the order, and prevent a user from changing from one basalt aquifer to another.

Marc Norton gave a PowerPoint presentation offering technical information on the withdrawal area. He pointed out the location of the wells measured regularly by the Homeowners Association; and showed hydrographs indicating decline of the deep aquifer over the past three years. Further development of the deep aquifer will increase that rate of decline. The shallow aquifer does appear to be stable but unused annual recharge to it percolates downward to provide water to the deep aquifer. Norton said that at least 60 percent of the wells in the area have already been deepened at least once.

Public Comment on Item E:

- Malia Kupillas, hydrogeologist representing the Woodland, Edison and Victor Point Neighborhood Association, said she has been working with this organization since the spring of 1999. She listed the junior water rights in the area and spoke on concerns about several homes that would be shut off to meet the various rights. She asked that this withdrawal include the stipulation that new households not be allowed to hook up to existing wells as that would place

an additional burden on the aquifer. In 1996 when the precipitation was above average, a water level decline occurred; so how will the aquifer ever recover. She said the aquifer may have been over-drafted and could have started to decline as early as the 1970s or 1980s. Several wells in the area have had to be deepened not just once but two or three times. There are also several wells with brackish water. She said the reason the neighborhood's water level data has minimum well pumping interference is because it was designed for water levels to be collected on a set Saturday every month; people would be aware of that and minimize their water use that day so a reasonable static water level measurement could be obtained. Kupillas recommended that the aquifers be withdrawn with an expanded boundary and not allow additional homes to be hooked up to existing wells.

- Don Kelley, attorney representing Ray and Sue Rivoli, spoke against declaring a withdrawal of the area. Mr. Kelley said this action could become the precedent-setting move for other basalt aquifers. The area in consideration today is only one square mile and seems small in importance compared to all the water issues of the state. He said staff are being asked to make a determination on important property rights for a limited number of property owners with incomplete and inaccurate information. There are twelve properties in the area that do not have homes on them. Over half of those properties already have wells drilled with plans to build. There is an anti-development bias in this situation. Mr. and Mrs. Rivoli own lots they have planned to sell for their retirement. Kelley said lay people, not professionals, collected most of the water level information. There is no complete picture of what the problem really is, including illegal uses. So, with such a lack of information, a precedent should not be established. Mr. Kelley asked the Commission for another extension of time to complete the needed studies and gather the facts.

- Nick Coffey, Coffey Geoscience, used slides during his discussion. He said he believes there are two or more aquifers within the deep aquifer. Before any action is taken it is important to know how many aquifers there actually are, where the water is coming from, and where the water is going. He said his data indicate that there may not be a long-term water level decline. There is no information on the effects of withdrawal as compared to the effects of regulation. Coffey said there are just not enough facts available at this time to take action toward withdrawal of the area.

After discussion, Smith moved to approve the withdrawal of both the upper and lower aquifers and to modify the draft order of withdrawal by adding findings of fact about ground water data collected earlier than 1998; adding findings of fact that the rate of decline in the deeper wells appears to be independent of climate conditions; and modifying the order to read substantially as follows: 1. The aquifers in the Columbia River Basalt Group in the area delineated in Attachment A are withdrawn from appropriation as follows: (a) All new uses requiring a water right permit; (b) All exempt uses from new wells with a priority date after September 24, 2001; and (c) All new appropriation, initiated after September 24, 2001, from replacement wells or deepened wells

that change from one aquifer to another. 2. This withdrawal order shall remain in effect until rescinded or modified by the Commission. The Commission may revoke or modify this order at any time on its own motion. At any time after September 24, 2003, a landowner or resident within the designated area may request the Commission to review the order for modification or revocation. All requests for modification or revocation submitted by a landowner or resident shall include supporting information and data. The motion was seconded by Fregonese. All voted approval.

F. Request for Adoption of Amendments to Well Construction Rules, OAR Chapter 690, Division 200 through 240

Adam Sussman, Enforcement Section Manager; and Mike McCord, Well Construction Specialist, presented this request to the Commission. McCord said the main focus of the proposed modifications is to make the rules consistent with new statutes, address new monitoring well technology, make "housekeeping" changes, and make the rules more understandable and useful to the drilling community and the general public. McCord explained a few minor changes to the proposed rules in the staff report — changing language in 690-210-0030(1), line 20, page 2, to read "except those in or underneath a building;" and on line 21, page 2, following the deleted "100 feet of any," add "50 feet of any."

Jerry Schmidt, Oregon Ground Water Association, spoke in support of the proposed rules and thanked the staff for allowing his organization to review the proposed rules. He said making the rules clear and understandable is very important to the Association.

Nelson moved to adopt the proposed rules with the two corrections offered by McCord; motion seconded by Thorndike. All voted unanimous.

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

Tom Byler, Senior Policy Coordinator, presented this request for rule adoption to the Commission. The proposed rules would replace temporary rules adopted by the Commission earlier in the year, and incorporate changes to the emergency drought statutes passed in the last legislative session.

Fregonese moved to adopt the proposed rules as presented; seconded by Nelson. All voted approval.

H. 2001 Legislative Final Report

Tom Byler, Senior Policy Coordinator, distributed copies of a summary of water legislation passed by the 2001 Oregon Legislature.

Paul Cleary, Director, expressed appreciation for the long hours Tom and staff committed to proposed water legislation, either working through the issues with folks or convincing them of better ways to approach their particular situation. Because of this it was not necessary for this agency to recommend any vetoes to the Governor.

I. Public Comment

Mr. Menno Seethoff from Molalla commented on his concerns about meeting the needs of increasing populations by regulating water use, conserving water, and considering storage options.

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

Respectfully submitted,



Diane K. Addicott
Commission Assistant