

Oregon Water Resources Commission  
Meeting  
November 29, 2001  
Salem

Members

Tyler Hansell  
Jim Nakano  
Dan Thorndike  
Ron Nelson  
John Fregonese

Staff

Paul Cleary  
Meg Reeves  
Sharyl Kammerzell  
Adam Sussman  
Diane Addicott  
Cindy Smith  
Dave Jarrett  
Ken Lite  
Craig Kohanek  
Debbie Colbert  
Barry Norris  
Mike Zwart  
Kyle Gorman  
Bob Devyldere  
Bernadette Williams  
Bob Rice

Others

Martha Pagel  
Ed Henricks  
Malia Kupillas  
Karen Russell  
Kimberley Priestley  
Douglas MacDougal  
Bill McFarland  
Becky Petig  
Scott Ashcom  
David Newton  
Rick Neff  
Tom Byler  
Brad Harper  
Pete Test  
Rick Kepler  
Doug Myers  
Marshall Gannett  
Gail Achterman

Written material submitted at this meeting is part of the official record and on file at the Oregon Water Resources Department, 158 12<sup>th</sup> Street NE, Salem, Oregon 97301-4172. Audiotapes of the meeting are on file at the same address.

The meeting was opened by Dan Thorndike who was recently appointed chair by Governor Kitzhaber.

Commissioner Nakano moved to elect Ron Nelson as vice-chair to serve until July 2002; motion was seconded by Hansell. All voted approval.

## **A. Commission Meeting Minutes**

The minutes of the September 24-25, 2001, meeting were offered to the Commission for their approval. Nakano moved to approve the minutes as presented; seconded by Hansell. All voted approval.

## **B. Commission Comments**

Nelson said there has been a lot of welcome snow so far in Central Oregon. He said Governor Kitzhaber recently visited the Bend area to view water conservation projects that have been implemented.

Nelson invited all people interested in water policy to attend an upcoming conference, The State of the Deschutes, to be held at Kah-Nee-Ta on December 6-7, 2001.

Hansell said he recently facilitated a public hearing in Prineville and Madras. He suggested that staff consider shortening the advertised duration of public hearings since often there are very few people attending; and if more people do attend and want to comment, the hearing could be extended.

Fregonese said there are concerns relating to land use planning and shortages in ground water availability in the Willamette Valley and other areas in Oregon.

Nakano reported on a recent meeting he attended in Vale regarding the Beulah Reservoir; people are concerned about what the Bureau of Reclamation might ask for the 2002 minimum pool. The Department of Environmental Quality's Total Minimum Daily Load allocations on the middle Snake River are set, but it will take several years for the water users to meet them.

Thorndike said it is really great to see rain and snow in the Southwest Region.

## **C. Director's Report**

Cleary referred to a written report updating the Commissioners on recent Department happenings. This report will be provided to the Commissioners at each meeting. Cleary also offered to mail Commissioners copies of his remarks given to various groups throughout the state.

He said staff are responding to concerns of domestic well owners in the Klamath area that the production wells approved last summer during the drought might be interfering with their

shallower domestic wells. The Klamath mediation has come to a halt for the time being because the Kandra lawsuit has been dismissed by the plaintiffs.

Cleary said Monday, December 3, the budget forecast will be announced — a shortfall is expected. A special legislative session will likely be convened. State agencies have been asked to put together a revised proposed budget reflecting a 10 percent reduction in General Fund dollars. WRD has the highest percent of total funding coming from the General Fund among the natural resource agencies.

Cleary said the Department received about 100 comments on the proposed Deschutes ground water mitigation rules. A second draft of the rules will be prepared and circulated. The goals of these rules are to sustain existing uses, accommodate new growth, protect senior rights and scenic waterway flows, facilitate restoration of the Middle Deschutes and other tributaries, and make mitigation preferable to litigation or legislation.

Nakano asked if the drought-related wells drilled by the state of California in the Klamath area are limited for use only if another drought is declared. Cleary said he wasn't sure of the answer but will check into it.

#### **D. Upper Deschutes Basin Ground Water Study**

Ken Lite, Hydrogeologist; and Marshall Gannett, U.S. Geological Survey, presented a briefing on the study, entitled "Ground Water Hydrology of the Upper Deschutes Basin, Oregon." The report describes the results of an investigation undertaken to provide hydrologic understanding in order to evaluate the connection between ground water and streamflow, and the behavior of the regional ground water flow in general.

Lite explained that approximately ten years ago the Commission became interested in the impacts new ground water permits might have on existing permitted uses and surface water in the Deschutes Basin. This study was undertaken because available information did not exist to accurately assess the situation.

The study area covers about 4,500 square miles of the upper Deschutes River drainage basin. Cities within the study area are Bend, Redmond, Sisters, Prineville, and Madras. Using maps and graphs, Lite talked about the ground water flow in the Basin and the geological framework. Gannett spoke on water level and discharge fluctuations, and computer simulation of the flow system.

Gannett said the connection between ground water and surface water is well established in the Upper Deschutes Basin. This connection was observed, documented, and measured from 1902

to the present. At least 85 percent of the annual streamflow at Madras can be attributed to ground water discharge; during the summer it is essentially all ground water. The specific stream reaches to which ground water discharges, or does not discharge, are known. Ground water discharge varies in response to climate-cycles. The effects of recharge and pumping are delayed and spread out with distance. The computer model provides the capability to predict how the ground water system will respond to new sets of conditions.

#### Public Comment on Item D

Martha Pagel, Douglas MacDougal, and David Newton, representing Swalley Irrigation District, came forward to speak to the Commissioners.

Pagel spoke on the topic of final rules for the Deschutes Basin and referred to a graph showing flows in the Deschutes River. She pointed out the area where the ground water discharge occurs and an area where there are several diversions primarily due to irrigation. She said there is an opportunity now with technical information and the requirement for mitigation, to restore flows in the Middle Deschutes. A few years ago when this ground water study was coming together, the Department put together a local steering committee that spent hours working on concepts that were eventually considered in the rule drafting. However, the group didn't quite get to consensus. The rules submitted for public comment were basically the Department's attempt to keep the ball moving forward, not draft rules that were totally agreed on. Now, having had public comment on those rules and having more information, she requested that the Commission and Department consider a process between now and final rule adoption of bringing people back together to articulate the goals and discuss how they might be accomplished. The steering committee could be brought back together or perhaps a rules advisory committee with representatives of the basin.

Pagel said the proposed rules do not allow for canal lining. But the rules do suggest that water conservation projects may qualify as mitigation which would appear to open the door to these types of projects. Where it gets shut down is in the legal analysis of the application; if you are eliminating some seepage that has been included in the ground water study and the model, would mitigation be required for that. The practical incentive for a mitigation project is eliminated if it's necessary to mitigate for your mitigation. It would have to be clearly stated as a desirable objective to help restore streamflows that conservation canal lining and piping is a legitimate tool; and that the loss of water seepage would be dealt with in some other way.

MacDougal said Swalley Irrigation District (SID) irrigates about 4,500 acres in Central Oregon. It is the holder of the oldest water rights on the Deschutes River. SID has been working on a

of its canals to pipes; the water saved from evaporation and leakage will be returned to the stream. If the rules allow, the District will obtain credit for this conservation work. The credit, collectively called mitigation credits, will be conveyed to the city of Bend which is paying the cost of piping. If all goes well, the city will use those mitigation credits for its ground water application. The project will put 100 percent of SID's conserved water in stream, augmenting flows to the Middle Deschutes. From the District's point of view, this is the perfect project in the ideal basin. MacDougal said he is concerned that the rules may be adopted too quickly before the underlying issues and problems have been resolved, resulting in an opportunity for protests, contested cases, and litigation. Another concern is that the rules don't offer more explicit mandates and directions; they could be interpreted with excessive conservatism on the part of the Department.

MacDougal said the rules, in their present form, could kill this conservation project. The main problems have been clearly defined — the Middle Deschutes River is in desperate need of help, and there are cities with water needs. There is well defined hydrology with almost perfect connectivity in the Basin. There are irrigation districts with leaky canals near urban areas, and irrigators willing to participate in conserved water conservation projects that cities are willing to fund. There has been broad local and political support, a large community of stakeholders that have spent much time and energy working on the process, and House Bill 2184 that signals strong support to innovative ideas like mitigation credits to make projects of this sort work.

Newton said this is a unique aquifer system. The Bureau of Reclamation has been looking at this Basin since at least the early 1970s evaluating how the water could be used more efficiently. He said canal lining is an obvious answer. Most of the irrigation districts can't meet their entitlement even in a good year. They can't get the water from the point of diversion out into the system. The irrigation districts have written conservation plans that call for reducing seepage, for becoming more efficient, and for putting more water in the streams. Newton said his one concern is that the lining of the canals could have an effect on the lower river. But would this effect really cause injury; it's important to better manage the waters in the Basin and put the water where it is needed when it is needed the most.

Cleary said staff are working on a summary of the comments submitted on the draft rules. The summary will be shared with stakeholders, and a second public review draft will be prepared and circulated. The rules should be adopted this spring or early summer.

#### **E. Stewardship/Supply Pilot Project - Klamath Basin**

Bob Devyldere, Manager of the Information Services Section, briefed the Commissioners on this pilot project and demonstrated the interactive computer technology. He explained that over the years the Department has compiled water resources data in the form of hard copy basin reports,