

Oregon Water Resources Commission  
Meeting  
February 7, 2002  
Salem

Members

Tyler Hansell  
Jim Nakano  
Dan Thorndike  
Ron Nelson  
Susie Smith  
Ron Nelson  
Jay Rasmussen

Staff

Paul Cleary  
Meg Reeves  
Richard Whitman  
Adam Sussman  
Diane Addicott  
Cindy Smith  
Barry Norris  
Kyle Gorman  
Bob Devyldere  
Debbie Colbert  
Fred Lissner  
Mike Zwart  
Donn Miller  
Tom Paul  
Jerry Grondin  
Dave Jarrett

Others

Ed Henricks  
Roger Prowell  
Mike Miller  
Mike Elmore  
Patrick Griffiths  
John Frewing  
Kat Ricker  
Sam Kaser  
Bob Fuller  
John Williams  
Aubrey Russell  
Brad Harper  
Sharon Jones  
Doug Riggs  
Brad Taylor  
Steve Shropshire  
Pat Dorning  
Neil Bryant  
Kate Kimball  
Steve Brutscher  
Pat Dorning  
Michelle McSwain  
Chip Dale  
Todd Griffith

Others (cont'd)

Elmer McDaniels  
Leo Busch  
Rex Barber  
Jerry Fletcher  
Kimberley Priestley  
Douglas MacDougal  
Kelly Caruso  
Mary Zemke  
Anita Winkler  
David Newton  
Rick Kepler  
Catherine Van Horn  
Dick Nichols  
Malia Kupillas  
Don Christensen  
Ian Madin  
Chad Bettesworth  
Peter Mohr

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.

### **A. Commission Meeting Minutes**

The minutes of the November 29, 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**

Nakano said he recently attended a Northwest Farm Credit meeting in Spokane. While there, he had the opportunity to visit with three Klamath Falls land owners who were very appreciative of the help offered by Department staff in issuing drought permits and limited licenses for wells during the drought last summer.

Hansell said that all commercial use of chemical pesticides is now required to be reported to the Department of Agriculture. In January Hansell spoke at a meeting of the Oregon Water Coalition.

Nelson said he and Rasmussen attended an Oregon Watershed Enhancement Board meeting at the coast; at this meeting funding was approved for Savage Rapids Dam projects. He also attended meetings in Salem recently regarding budget issues, and met with irrigators in Klamath Falls regarding their water-related concerns.

Rasmussen thanked staff for helping him feel so welcome as a new Commission member.

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

Cleary referred to his written report to the Commissioners updating them on recent Department happenings. This report included an update on the drought status, budget issues, ground water studies, committees and task forces, administrative rulemaking, the Lower Columbia Coho Management Plan, Savage Rapids Dam, the Department's Field Services conference, and interagency coordination with the Department of Fish and Wildlife.

Cleary spoke on the Bureau of Reclamation's 2002 Klamath Project Draft Biological Assessment that is available for public comment, and the recently released National Academy of Sciences Report on the 2001 Biological Opinions for operation of the Project.

#### **D. Department of Geology and Mineral Industries (DOGAMI) Presentation**

John Beaulieu, State Geologist and Director of DOGAMI; Don Christensen, Chair of the DOGAMI Governing Board; and Ian Maddin, Geologic Services Division, attended this meeting to talk about opportunities for their staff and those of WRD to work together on water issues and geologic mapping.

#### **E. Managing Exempt Ground Water Use in the Willamette Valley Aquifers**

Fred Lissner, Manager of the Ground Water/Hydrology Section, presented this report to the Commission. He said the Department is conducting, in cooperation with the U.S. Geological Survey, a detailed investigation of the Willamette Basin ground water resources. In the Basin there are approximately 112,700 exempt use wells; and ground water supply issues are developing in both the basalt and marine sediment aquifers. Lissner explained the geologic differences between the marine sediment and basalt aquifer groups; and how the geology controls ground water — how it moves; where it can be developed; and where it interacts with surface water.

Department staff have been talking with local governments about basing land use decisions, in part, on the availability of ground water. Cleary said John Fregonese recently suggested that staff consider using an overlay of development zoning with ground water resource and geologic mapping, and share the results with local governments. Lissner agreed that would be a good starting point. Anything more aggressive at this time would require diverting staff from other projects to focus more intently in the Willamette Basin.

Lissner said staff are working on, and committed to, three major ground water investigations. One of these studies, scheduled for completion in 2003, is in the Willamette Basin. It focuses on the alluvial aquifer system in the northern half of the Willamette Valley that has been providing ground water for agriculture, industry and municipalities for decades.

Another major investigation is in the Klamath Basin. With changing priorities for surface water use and new restrictions, local irrigators and the U.S. Bureau of Reclamation are eager to develop ground water as a supplemental water supply. Lissner said the issues include how much ground water can be produced on an annual basis; where it is acceptable to produce that water; and what the long-term impacts will be on the aquifer, surface water, and water users in both Oregon and California. This study will address these issues and provide the data for managing the conjoined ground water/surface water system.

The third study being planned is in the Umatilla Basin. This Basin has three critical ground water areas and one area where ground water is restrictively classified because of declining

ground water levels and aquifer overdraft. The study being planned will provide the necessary tools to manage the conjoined ground water/surface water resource.

Because staff are committed to these three projects, they will not be available to study the basalts and marine sediments of the Willamette Valley until 2005. In the meantime, people who intend to make use of ground water for either permitted or exempt uses will be given access to all Department data upon request so they can make informed development decisions. When uses are allowed, permits will be issued with conditions designed to facilitate regulation for the protection of the ground water resource and senior users.

Lissner said the Department does not have legal authority to place restrictions on existing exempt domestic wells. It may be possible under statute to declare a Ground Water Management area in which permits could be required for exempt uses; however, this declaration would bring an enormous workload to the Department staff just in processing the several thousand applications per year.

Hansell, Nelson, and Smith expressed concern about unregulated exempt domestic wells. They agreed that communicating the Department's concerns regarding limited ground water in certain areas would be helpful.

Cleary suggested convening a workshop with the Department of Land Conservation and Development, and Willamette Basin county and municipal planning directors. Rasmussen suggested staff planning that workshop might consider inviting two counties at a time to keep the group smaller and the discussions more focused.

Cleary said staff would also look into creating an overlay of development zoning and ground water resource geologic mapping as suggested by Fregonese.

#### **F. Award Presentation to Tumalo Irrigation District**

Elmer McDaniels, Secretary-Manager of Tumalo Irrigation District, was presented a plaque and letter of appreciation from Governor Kitzhaber. McDaniels was recognized for his personal efforts and those of the District staff in responsible management, conservation, and restoration of Oregon's water resources. Their efforts will result in enhanced flows under instream rights that benefit both Tumalo Creek and the middle reach of the Deschutes River. Bill Fujii, Field Liaison, presented a slide presentation of the District's conservation projects.

## **G. Public Comment**

Sam Kaser, from Cline Falls, expressed appreciation for the expertise of the Department staff and spoke on his concerns for a proposed water use mitigation fee. He said it seems unfair to impose a fee on a small group of people — instead it should be across the board and reasonable.

Clery explained that the concept of a payment to provide for mitigation obligations is being considered in the draft Deschutes mitigation administrative rules. If people choose to do their own mitigation, they don't have to take advantage of this opportunity. The Department is in the middle of the rulemaking process and will be presenting revised draft rules for a second round of public comment.

Chad Bettesworth, representing Hooker Creek Companies, a sand and gravel producer and an agricultural user in the Deschutes Basin, explained problems he was having with his application for a water right transfer on their company wells. Tom Paul, Manager of Field Services, met with Mr. Bettesworth at the meeting regarding his particular situation.

John Frewing, former Water Resources Commissioner from the Portland area, said that dollars always seem to be short. When he was on the Commission he suggested that there be a fee for annual maintenance for all water rights. This additional income would help the Water Rights Division to better administer and track rights. He suggested that staff prepare a legislative proposal for such a fee. Regarding the Willamette Basin and land use issues, he suggested that counties be asked to review water right applications and consider development of any particular area. With regard to the Deschutes, he suggested a Commission policy on how to deal with uncertainty. He suggested being very conservative in matters of the Deschutes.

Jerry Fletcher, President of Chaparral Water Control District, asked that the Department consider an amendment to the regulations for the Deschutes Basin similar to the California rules that limit the use of high quality water for power plant cooling. California instituted this regulation because of its findings that there was no available water for allocation in some basins. That is what's happening in the Deschutes Basin. Cogentrix Energy needs 5,000 acre feet of water for power plant cooling and steam generation. This would be a wasteful use of a valuable resource. He suggested letting the power plants use air cooling and reduce their water use by 90 percent. Fletcher asked that representatives of concerned citizens in the Deschutes Basin be added to the advisory group on the proposed mitigation rules — at present, there is no one representing the public.

Meg Reeves spoke on the one-stop permitting process for energy facilities in Oregon that is handled by the Energy Facility Siting Council. She explained that WRD will take the water right application up to the proposed final order, seeking public comment, and then will forward the



information to the Energy Facility Siting Council. The Siting Council will consider WRD's recommendation, hold a contested case hearing, and make the final decision.

Aubrey Russell, Oregon Trout, reviewed written testimony he submitted to the Commission regarding the draft Deschutes Ground Water Mitigation rules. He said Oregon Trout is very optimistic about the idea of mitigating for ground water use and that these rules can assure existing instream flows and lead to the restoration of the middle Deschutes. He suggested the Department reassert its commitment to protecting senior water rights. Other principles generally accepted by a large part of the majority of the steering committee members include that mitigation be identifiable in terms of specific quantities of water that are transferred instream; that water be transferred from existing uses to instream flow; that the water be legally protectable instream; and that the quantities of water be put instream at or above the point of impact. Russell referred to the second page of his written comments on bucket-for-bucket accounting, saying that the Department is departing from its practice of managing for discrete quantities of water that are deliverable to a point of diversion or through an identified reach. The Department has the proven ability to do this, and should continue to do so. The Department's on-going discussions regarding the Pelton Round Butte project's water right must be coordinated with this ruling. He asked that the new hydro license require passage of the instream right, or passage of inflow plus mitigation water, whichever is less.

Cleary explained that the Department re-opened the public comment period on the proposed Deschutes Basin Ground Water Mitigation Rules for the purpose of allowing testimony and a panel discussion at this meeting. Work is still being done on a revised version of the draft rules to be made available for additional public comment. All comments received on the rules, including the numerous e-mail messages, will be incorporated into the report to the Commission for their consideration when they review the final proposed rules for adoption or amendment.

Mary A. Zemke, Madras, read written comments on a petition signed by several residents of Central Oregon regarding the proposed Deschutes Basin Ground Water Mitigation Rules.

Peter Mohr, representing Workers for the Environment; Clean Air, and Renewable Energy; and International Brotherhood of Electrical Workers 280, commented on the proposed Deschutes Basin rules. He emphasized the need to include citizens who live in the Deschutes Basin in today's panel presentation. Answering questions such as where return flows go and how depletion of ground water affects the river, must be answered before large scale development is allowed in the Basin.

Thorndike told Mr. Mohr and others present that a staff report on the Deschutes Basin rulemaking effort that might be helpful to them was available on the information table.

Doug Riggs, representing the Central Oregon Cities Organization, read comments submitted to the Commission regarding the Deschutes Basin rulemaking.

## **H. Development of Legislative Concepts**

Thorndike announced that in the interest of time, this item would not be heard.

## **I. Proposed Deschutes Ground Water Mitigation Rules (Division 505) Panel Discussion**

Cleary explained that a second public review draft of the mitigation rules is being prepared. For clarification, these rules may be separated into two divisions since they implement two different statutes — the mitigation obligation (Senate Bill 1033 from the 1995 Session); and the mitigation banking system (House Bill 2184 from the 2001 Session). Staff plan to update the Commissioners at their April 2002 meeting, and present draft rules for the Commissioners' consideration in June 2002. Cleary reviewed the background of the rulemaking efforts discussed in the staff report and explained that the key Basin objectives where there is common ground include protecting flows in the Lower Deschutes, restoring flows in the Middle Deschutes and the tributaries, and meeting the Basin's growing water supply demands. Because there is a lack of consensus on the current proposed rules and those rules would place an impossible administrative burden on the Department, an alternative approach is being proposed. This would be to develop new proposed rules that use a performance-based approach rather than prescriptive requirements, and utilize a mitigation payment system to generate funds for streamflow restoration as one mitigation option. The Department's mitigation/restoration strategy and explanation are in Attachment 5 of the staff report.

Four panels offered their views and responded to Commissioners' comments and questions on the Deschutes Basin water management challenges and restoration opportunities, and on the proposed rules and alternative rule concepts presented at the Deschutes Basin Steering Committee meeting in January 2002. The first panel, representing municipalities and water suppliers, included Pat Dorning, City of Redmond; Roger Prowell, City of Bend; and Neil Bryant, representing Avion Water. The second panel, representing agriculture, included David Newton, Newton Consultants; Rex Barber, Water for Life; Todd Griffith, Swalley Irrigation District; and Douglas MacDougal, representing Swalley Irrigation District. The third panel, representing conservation, included Gail Achterman, Deschutes Resources Conservancy; Kimberly Priestley, WaterWatch of Oregon; and Kate Kimball, Sisters Forest Planning Committee. The fourth panel, representing government, included Chip Dale, Oregon Department of Fish and Wildlife; Steve Brutscher, Oregon Parks and Recreation Department; Dick Nichols, Oregon Department of Environmental Quality; Michelle McSwain, Bureau of Land Management; and Leo Busch, Bureau of Reclamation.

After the panel presentations, the Commissioners agreed the information shared by the various stakeholders was very interesting and helpful. They look forward to an update and policy discussion on the proposed rules at the next meeting.

There being no further business, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in black ink that reads "Diane K. Addicott". The signature is written in a cursive, flowing style.

Diane K. Addicott  
Commission Assistant