

Oregon Water Resources Commission
Meeting
April 12, 2002
Salem

Members

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

Staff

Paul Cleary
Meg Reeves
Shannon O'Fallon
Adam Sussman
Diane Addicott
Debbie Colbert
Cindy Smith
Barry Norris
Kyle Gorman
Bruce Moyer
Fred Lissner
Juno Pandian
Dwight French
Jerry Grondin
Mike Zwart
Bob Rice
Laura Snedaker

Others

Roger Prowell
Kimberley Priestley
Karen Russell
Steve Applegate
Dan Bradley
Doug Myers

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 work session are on file at the same address.

Chair Thorndike opened the meeting. He announced that John Fregonese has resigned from the Commission due to the heavy demands of his business and out-of-state travel.

A. Commission Meeting Minutes

The minutes of the February 7, 2002, meeting were offered to the Commission for their approval. There were two corrections to the minutes: Jay Rasmussen had attended the meeting but was not listed as being present; and Sam Kaser's name was listed twice. Rasmussen moved that the minutes be approved as corrected; seconded by Hansell. All voted approval.

B. Commission Comments

Nakano said he recently attended a meeting with the Soil and Water Conservation District to review the local water situation. The two reservoirs expected to fill are Unity and Bully Creek. Owyhee Reservoir irrigators are expected to get their four acre feet and make it through the season. Warm Springs Reservoir and Beulah Reservoir are approximately 32 percent full. The required minimum pool for Beulah last year was 2,000 acre feet — if more acre feet are required this year, it could really hurt the district.

Hansell said he spoke at a meeting of the Oregon Water Coalition in Hermiston recently. Robert Lohn, the new region administrator for the National Marine Fisheries Service (NMFS), visited Hermiston and met with members of the community to discuss water issues and ways NMFS and the community might work together.

Nelson said he attended a water law conference in San Diego, and traveled recently to Washington D.C. on behalf of the Deschutes Resources Conservancy to pursue federal funding and to explore projects with other agencies. In the Deschutes Basin he said that five of the eight irrigation districts are forming a board of control to better utilize resources and manage water. He reminded people that there would be a hearing in Bend on the proposed Deschutes Basin Mitigation rules on April 22.

Smith spoke on a City of Springfield water reclamation project that will help the Willamette River in several ways.

Thorndike said that on April 19 at Southern Oregon University there will be a forum on water issues in the Rogue Basin for the 21st Century.

C. Director's Report

Cleary thanked Debbie Colbert for her work in compiling the written update of Department happenings given to Commissioners at each meeting. Cleary briefly reviewed the report submitted at this meeting.

Cleary said that staff have been very busy — the Department has seen a one-third increase in workload with a 15 percent decrease in total staff over the last decade. Any process we add to their workload must have value to the resource, can't create unrealistic expectations, and can't set the agency up to fail.

Nakano asked Cleary to explain the hold-up in the Klamath adjudication process. Cleary said that there are more than 700 claims in the adjudication, with some 5,600 contests. About 400 of these claims are from Tribes and federal agencies, and are usually very complex. Total expenses per month on the adjudication have been close to \$45,000 per month for the work of WRD staff, the hearings officer panel, and state attorneys. The Department has requested financial support for the adjudication from the federal government. Klamath Tribes are concerned about an acceleration of pace for the adjudication because of their limited resources, and want the process to emphasize settlements.

Nelson asked Reeves about the status of the Warm Springs Settlement. Reeves said the settlement needs to be incorporated into the Deschutes Decree. She said she believes we are through the exception stage and need to put it in front of the Circuit Court once the approval of the recent amendments are signed in agreement by the federal government.

Legislative Concepts and Budget Development

Adam Sussman, Senior Policy Coordinator; and Bruce Moyer, Administrative Services Division Administrator, presented this report that was held over from the previous day's work session. Sussman reviewed the written staff report and the list of legislative concepts for the 2003 Legislative Session, responding to Commissioners' comments. He said staff have met with stakeholders to explain and discuss the legislative concepts.

Moyer briefed the Commissioners on the 2003-05 biennium budget development. He said a General Fund shortfall is projected between available resources and the current service level spending needs of agencies. A small 2001-03 ending balance, the use of one-time revenues to pay for long-term expenses, and the outcome of ballot measures could present a \$500-750 million revenue shortfall. Moyer reviewed the written staff report along with the 2003-2005 budget development schedule and budget concepts.

Public Comment on Legislative Concepts and Budget Development:

- *Karen Russell, WaterWatch*, urged the Department to consider a legislative concept that would address the issue of exempt wells. She said that exempt wells are often constructed for increasing development in rural areas, and other wells in the area can be affected. WaterWatch had proposed last Session that from the day of the act, that any ground water use would have to go through the permitting process. This would not affect existing exempt wells.

Sussman said that the Department is planning a September workshop with land use agencies to discuss the issue of exempt wells and increased development.

Nelson asked how Commissioners might help with situations and concerns regarding ground water and other issues such as those discussed at the Commission retreat last fall.

Smith suggested building time into each meeting agenda for Commissioners to discuss issues of their choice.

D. Instream Leasing Program Update

Bob Rice, Field Liaison, presented this informational report to the Commission and, along with Adam Sussman, Senior Policy Coordinator, responded to their questions and comments. Rice explained that the instream leasing program has grown over 300 percent in the last three years, increasing from 39 active leases in 1998 to 15 in 2001. As a result of that growth, staff recognized the need to update and streamline the application process. He provided an update on leasing activity, the development of new leasing forms based on stakeholder input, and revisions to the instream leasing manual; he also demonstrated a new database that tracks the processing of lease applications.

Nakano asked about the Department's review for injury. He mentioned a study on return flows being conducted by Dr. Stringham of Oregon State University that might be of interest to the Commission.

E. Lakeview Ground Water Briefing

Barry Norris, Technical Services Administrator; and Juno Pandian, Enforcement Manager, offered this briefing to the Commission. Norris gave the history of uranium ore processing north of Lakeview from 1958 to 1974 that produced tailings containing high levels of contamination. Ground water in the area remains contaminated, and the U.S. Department of Energy has determined that water quality below the mill site is unfit for human consumption.

To restrict ground water development in the contaminated area, the town of Lakeview and Lake County have adopted ordinances creating restricted ground water use overlay zones. Potable water in those zones must either be obtained by connecting to the town's municipal water system or developing a well with standards administered by the Department. The federal government has provided funds to extend Lakeview's municipal water system to the area affected by the mill site.

The Department is waiting for recommendations from the Oregon Office of Energy. With that information staff will develop administrative rules for special area well construction standards to apply to all new wells and alterations in the contaminated area. These rules will be brought to the Commission for adoption. In the meantime, staff are working with county health officials and other state agencies to notify the public of potential health concerns.

David Stewart-Smith, Oregon Office of Energy, responded to questions and comments of Commissioners. He explained that when the uranium mill tailings were removed from the surface of the processing site, soil was dug out to a depth of 70 feet, removing nearly all the radioactive contamination. There are salts and a little arsenic in the water, but no detectable quantities of radioactivity. He said the best way to deal with this is to encourage the use of municipal water and allow the system to flush itself over a period of many years.

F. Request for Adoption of Water Right Permit Extension Rule Amendment

Adam Sussman, Senior Policy Coordinator; and Dwight French, Water Rights Manager, presented this request for the adoption of minor housekeeping amendments to Chapter 690, Division 315. Sussman reviewed the written staff report and explained that under current rules, holders of municipal water use permits are outright precluded from making an application for an extension. These proposed amendments would provide that until July 1, 2003, holders of municipal use permits may, but are not required to, submit an application under Division 315 for an extension of time to develop their water rights if they desire, or they can choose to wait for the new municipal use extension rules to be adopted this summer or fall.

Hansell moved adoption of the proposed rule amendments as presented to the Commission; seconded by Nakano. All voted approval.

G. Public Comment

- *Roger Prowell, City of Bend*, commented on water recharge in the Deschutes Basin. The effects of mitigation in the Deschutes are masked by the magnitude of water in the system.

Prowell said in the instream water rights from 1989 to 1991 the flow is to be measured at the mouth. He expressed concern about interest groups and the Department focusing on flows at the Madras Gauge. The Deschutes Basin does not work like other rivers — it is unique. If the focus is on the Madras Gauge, it would appear that the river is over-allocated. He believes that measuring at the Madras Gauge does not give a true picture of flows.

Cleary said the instream water rights are for flows to be maintained in the Deschutes from Pelton Dam to the mouth of the river. The segment is identified, measured at both the Madras and Moody gauges, and reported. These are not minimum stream flows — when the instream water rights were adopted, it was known there was not water available to meet them because of prior allocations and climatic variability.

- *Karen Russell, WaterWatch*, presented a 20-minute documentary video on the Klamath showing the full range of interests affected in that basin.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Diane K. Addicott
Commission Assistant