

**Water Resources Commission
Meeting
Salem, Oregon
November 18, 2010**

WRC Present

John Jackson
Mary Meloy
Ray Williams
Charlie Barlow
Jeanne LeJeune
John Roberts
Carol Whipple

Staff Present

Phil Ward
Tom Paul
Cindy Smith
Brenda Bateman
Juno Pandian
Alyssa Mucken

Others

Tracy Louden
Ruben Ochoa
Doug Woodcock
Barry Norris
Anita Winkler
Peggy Lynch
Jim Myron
Mark Landauer
Joe Hobson
Jason Pulley
Steve Marx
Erika Wolters
Steve Shropshire
Kimberley Priestley
Said Amali
Niki Iverson
Todd Heidgerken
Chris Fick
April Snell
Monica Hubbard
Laura Hicks

Written material submitted at this meeting is part of the official record and on file at the Oregon Water Resources Department, 725 Summer St. NE, Salem, Oregon 97301-1271. Audiotapes of the meeting are on file at the same address.

Chair Jackson welcomed everyone to the meeting. Commissioners introduced themselves to the audience.

A. Integrated Water Resources Strategy Update and Discussion

Brenda Bateman, Senior Policy Coordinator, and Alyssa Mucken, IWRS Policy Coordinator, briefed the Commission on recent events, accomplishments and public policy issues that had taken place related to the Integrated Water Resources Strategy (IWRS) since the August 2010 Commission Meeting.

Topics discussed were:

- OSU's Public Attitudes Survey
- Policy Advisory Group (PAG) Updates
- Public Policy Discussion: Workshop and Feedback Loop

OSU's Public Attitudes Survey

Two graduate students from Oregon State University, Erika Allen Wolters and Monica Hubbard, presented their findings to two telephone surveys of the general public. The surveys were conducted during April and May 2010. One was focused on "Public Attitudes Toward Water Use in Oregon" and the other focused on "Oregon Water Policy."

The purpose was to assess citizen attitudes and opinions toward water issues in Oregon. More than 1,500 surveys were sent out, with a 52% return rate. Responses to the survey will be used for a variety of research projects, such as doctoral dissertations, published articles, and conference presentations, and to assist the Department in the Integrated Water Resources Strategy.

Policy Advisory Group (PAG) Updates

The PAG met for the fourth time on October 6, 2010 at the Department. The group spent majority of the meeting working with input gathered from the Open Houses, Stakeholder Workshops, public comments, and Agency and Policy Advisory Groups. Policy Advisory Group members had already completed some preliminary work, putting individual thought into which of the more than 80 issues identified during the input process were critical for inclusion in the first iteration of the Integrated Water Resources Strategy (2012-2017).

By the end of the October meeting, the Group had identified a number of issues that they believed needed to be addressed in the Strategy, and reserving the right to add or subtract from this list in subsequent meetings. With these issues identified, the Group was then able to spend a couple of hours scoping these issues. This involved asking for better clarification and definition of each issue. It also involved developing a set of questions to guide the Project Team as it adds more details, such as “What is the status of this issue today?” “How are other states handling this issue?” And, “How can we make use of modern technologies or collaborative partnerships to address this issue?”

Public Policy Discussion: Workshop and Feedback Loop to the PAG

The Commission, during its August 2010 meeting, had requested an opportunity to discuss recent IWRS issues and provide feedback to the Policy Advisory Group.

During the November meeting, the Commissioners were given a draft copy of the draft IWRS Framework and asked for their thoughts on the critical issues developed thus far. Commissioners were supportive of the tone and level of detail. Commissioner Barlow noted that the list of critical issues closely matched what he had heard during the Open House in Burns, Oregon.

B. Review of Conditions in Critical Groundwater Areas

Doug Woodcock, Groundwater Manager, gave an update to the Commission on the conditions in critical groundwater areas.

There are seven critical groundwater areas in Oregon. They were designated by order of the State Engineer or Water Resources Director. Each contains a unique set of control provisions and has a provision that provides for some periodic review of conditions in the critical groundwater area. In large, these reviews are for the purpose of determining the effectiveness of the controls for bringing about reasonably stable groundwater levels.

Continued designation of critical groundwater areas are important for maintaining reasonably stable groundwater levels. The continued need for each critical groundwater area contemplates an understanding of its groundwater rights, groundwater pumping under those rights, and groundwater levels. In several of the areas, the use has declined and water levels have recovered well. In other areas, declines continue in spite of pumping curtailments. Groundwater rights are still in place that have the potential to re-create groundwater level declines.

The seven critical groundwater areas are: Cow Valley Critical Groundwater Area; The Dalles Critical Groundwater Area; Cooper-Bull Mtn. Critical Groundwater Area; Ordnance Gravel Critical Groundwater Area; Ordnance Basalt Critical Groundwater Area; Butter Creek Critical Groundwater Area; and Stage Gulch Critical Groundwater Area.

Groundwater levels in the Cow Valley critical groundwater area are at historic lows. Levels in two of the oldest critical groundwater areas (The Dalles, and Cooper-Bull Mtn.) have recovered well in response to less pumping. In Cooper-Bull Mtn., three aquifer storage and recovery (ASR) projects have also helped recovery there. Groundwater levels in the Ordinance Gravel Critical Groundwater Area have stabilized with the implementation of the County Line recharge project. However, groundwater level declines have generally continued but at a slower rate in the three Columbia River Basalt critical groundwater areas in the Umatilla Basin (Ordinance, Butter Creek, and Stage Gulch). Considerable staff effort is expended each year on the groundwater allocation process for the Butter Creek and Stage Gulch critical areas. Annual groundwater pumping is only a fraction of that permitted under the existing water rights for these areas. These restrictions and concerns for long-term groundwater supply have contributed to the formation of the Umatilla Water Commission and the Umatilla Recharge Project.

Commissioner Williams moved to concur with staff that the seven critical groundwater areas need to continue under their current control provisions; seconded by Commissioner Roberts. Voting for the motion: Commissioners Barlow, Jackson, Williams, Roberts, Meloy, LeJeune and Whipple. Voting against the motion: None.

C. Willamette Basin Supply Briefing

Tom Paul, Deputy Director – representing the Water Resources Department; Laura Hicks, Planning and Project Management Chief – representing the Portland District of the Corps of Engineers; Todd Heiderken, Manager, Community and Intergovernmental Relations, Tualatin Valley Water District – representing the Oregon Water Utilities Council; and Joe Hobson, Attorney – representing the Oregon Farm Bureau, briefed the Commission on the future of stored water in the Willamette Basin.

The panel discussed how they see the water needs in the Willamette Basin, and possible next steps to addressing those needs.

D. Performance Efficiency Review

Dwight French, Water Rights Administrator, and Steve Shropshire from Jordan Schrader Ramis, briefed the Commission on the recent activities that have taken place related to process improvement. The Commission received a similar update in February 2010, which focused on the recently completed “Lean Kaizen” process.

The Department held four meetings with a group of eight volunteers, including water law attorneys and consultants who are familiar with the processes. The group developed a list of ideas that might lead to process or customer service improvements. The Efficiency Review Group developed a final report, which includes recommendations and status reports for the changes in progress.

The Department thanked and recognized the eight volunteers who served on the Efficiency Review Group.

Kimberley Priestley, WaterWatch of Oregon, thanked the Department and the Efficiency Review Group for their efforts in this process. She also noted an objection with regards to temporary transfers in the report.

Director Ward commended Dwight French for his leadership on this issue, offered to modify the section on temporary transfers in the report, and noted that several of the Efficiency Review Group recommendations have made their way into the Department's legislative concepts.

The Commission also thanked the group.

There being no further business, the meeting was adjourned.

Respectfully,

Cindy Smith
Commission Assistant

**Water Resources Commission
Meeting
Salem, Oregon
November 19, 2010**

WRC Present

John Jackson
Mary Meloy
Ray Williams
Charlie Barlow
Jeanne LeJeune
John Roberts
Carol Whipple

Staff Present

Phil Ward
Tom Paul
Cindy Smith
Brenda Bateman
Juno Pandian
Salem Opeifa
Tracy Louden
Dwight French
Doug Woodcock
Barry Norris
Tim Wallin
Bill Ferber

Others

Dan Bradley
Lisa Brown
Leslie Bach
Said Amali
JR Cook
Chris Fick
Martha Pagel
Helen Moore
Kimberley Priestley
Brent Stevenson
Anita Winkler
Jerry Schmidt
April Snell
Dennis Doherty

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Chair Jackson welcomed everyone to the meeting.

E. Approval of Minutes

The minutes of the August 26 and 27, 2010 meetings were offered to the Commission for consideration.

Commissioner Roberts moved to approve the August 26 and 27, 2010 minutes as submitted; seconded by Commissioner LeJeune. Voting for the motion: Commissioners Barlow, Jackson, Williams, Roberts, Meloy, LeJeune and Whipple. Voting against the motion: None.

F. Commission Comments

Commissioner Meloy reported that the Deschutes Water Alliance (DWA) had a ceremonial signing of the Memorandum of Understanding that creates the DWA. She also commented that the DWA applied for and received a grant from the Bureau of Reclamation to conduct a basin study. It totals \$400,000 over a two-year period.

Commissioner LeJeune commented that she is a liaison to the Policy Advisory Group regarding the Integrated Water Resources Strategy. She noted that it is a good diverse group of people. She also commented that she attended the Tri-State Water Utility Council Meeting (Washington, Idaho, Oregon), and that the State of Washington is facing the same budget issues as Oregon. She is also a member of the Commission's Revenue Enhancement Subcommittee. She commented that she would like to have occasional briefings on the Willamette storage issue.

Commissioner Roberts commented that he visited the Fort Klamath and Wood River Valley with Jim Root from the Klamath Basin Rangeland Trust (KBRT) on November 4, 2010. The KBRT's

focus is to increase streamflows, reduce stream diversions, and improve water quality. He noted that suggested to the KBRT that he thought it would a good idea for them to give a presentation to the Commission at the February meeting. He also attended the Bear Creek Watershed Council's Annual meeting on November 9, 2010. He noted that he floated the Rogue River near where the Gold Ray Dam was. He said that there were many changes in the area since the Dam was removed.

Commissioner Barlow said he has received many calls regarding the funding of the Department.

Commissioner Whipple did not have anything to report at this time.

Commissioner Williams said he had been involved in the Commission's Revenue Enhancement Subcommittee. He noted that he met with the Oregon Watershed Enhancement Board, while they were meeting in the Umatilla area. He reported that there is continuing work being done on the Columbia River Exchange. He also said that he has been involved in discussions regarding expanding the recharge areas and projects in the Walla Walla Subbasin.

Commissioner Jackson commented that he has been dealing with family issues for the most part. He noted that he will be attending a number of meetings over the next few weeks - Oregon Business Council meeting; Oregon Water Resources Congress Annual Meeting; Tualatin Valley Irrigation District Annual Meeting; and the Oregon Watershed Enhancement Board Meeting.

G. Director's Report

Director Ward reviewed his written report with the Commission and responded to their comments and questions.

H. Approval of 2011 Commission Schedule

The 2011 meeting schedule was presented to the Commissioners for their approval:

February 17 and 18	Salem
May 12 and 13	Salem
August 18 and 19	Salem
November 17 and 18	Salem

Commissioner Roberts moved to approve the 2011 Commission meeting schedule as submitted; seconded by Commissioner Williams. Voting for the motion: Commissioners Barlow, Jackson, Williams, Roberts, Meloy, LeJeune and Whipple. Voting against the motion: None.

Commissioner LeJeune said she would like for the Commissioners to continue to have water resource related field trips while meeting in Salem.

I. Ecological Flow White Paper Development

Barry Norris, State Engineer, gave an update on the development of the Ecological Flow White Paper.

In the summer of 2009, the Oregon Legislature passed House Bill 3369, which provides grant and loan programs for water conservation and development projects. The bill further allows that proposed storage projects include protection for "peak and ecological flows." In an effort to define a

process for implementation of this mandate, the Oregon Water Resources Department (OWRD) organized a group of expert scientists to serve on an Ecological Flow Technical Advisory Group (EFTAG). The EFTAG was tasked with the development of a white paper that sets a scientific framework defining peak and ecological flows, and available methodologies.

A draft paper was completed by the EFTAG and sent out for peer review by the Independent Multi-Disciplinary Science Team (IMST) in July 2010. Four additional peer reviews were completed by August 1, 2010, along with additional edits and comments from the members of the EFTAG itself. The edits, comments and suggestions were incorporated into the paper as appropriate. Most of the substantive content remains unchanged. Structurally, however, the format of the paper has changed considerably, including the addition of information that provides clarification and examples. The paper references 93 endnotes which provide a library of relevant scientific literature for future use.

The white paper is nearly complete and scheduled for released by the end of November 2010.

The Commission asked for another briefing and discussion on this issue at the next meeting.

J. Commission Approval of Appointments to the Groundwater Advisory Committee

Doug Woodcock, Groundwater Manager, briefed the Commission on the approval of appointments to the Groundwater Advisory Committee.

The nine-member Groundwater Advisory Committee (GWAC) had three members with terms expiring on November 30, 2010. OAR Chapter 690, Division 235 rules describe a process for soliciting candidates. Staff used this process to generate a list of candidates for the three open positions.

The Department recommended the appointment of Jim Carleton to replace Tim Smith in the Water User category; John Messner to replace Marilyn Reeves in the Environmental category; and Garry Zollman to replace Terry Daugherty in the Water Supply or Monitoring Well Drilling category. Terms for these three members would begin on December 1, 2010 and continue through November 30, 2013.

Commissioner Barlow moved approval of the appointment of Jim Carleton, John Messner and Garry Zollman to the Groundwater Advisory Committee; seconded by Commissioner Roberts. Voting for the motion: Commissioners Barlow, Jackson, Williams, Roberts, Meloy, LeJeune, and Whipple. Voting against the motion: None.

Commissioner LeJeune asked that staff thank the outgoing members for their service on the Groundwater Advisory Committee.

K. Key Performance Measure Report

Brenda Bateman, Senior Policy Coordinator, briefed the Commission on the final report on the Department's 2009-11 Key Performance Measures.

The Department has 14 Key Performance Measures. These performance measures cover agency programs related to surface water restoration, protection, and measurement; groundwater monitoring; and regulatory and outreach actions. The Department has had most of its measures in

place since 2005 or earlier, and is building a solid data set that helps track how the Department is doing and identifies areas for improvement.

Each year, the Department submits a report that tracks the Department's Performance in key areas. This is an essential part of the Department's budget presentation to the Governor's Office and Legislature. The Department submitted its most recent report on August 2, 2010.

The Key Performance Measures are:

- #1 - Flow Restoration
- #2 - Protection of Instream Water Rights
- #3 - Monitor Compliance
- #4 - Streamflow Gaging
- #5 - Assessing Groundwater Resources
- #6 - Equip Citizens with Information
- #7 - Equip Citizens with Information
- #8 - Water Measurement
- #9 - Promote Efficiency in Water Management and Conservation Plan Reviews
- #10 - Promote Efficiency in Water Right Application Processing
- #11 - Promote Efficiency in Transfer Application Processing
- #12 - Promote Efficiency in Field Staff Regulatory Activities
- #13 - Increase Water Use Reporting
- #14 - Customer Service (biennial survey)

Achieving the Department's performance targets is a challenge, given state budget limitations that affect the recruitment and retention of technical staff. All of these challenges will influence our ability to meet performance targets for our measures in the future. To meet these challenges, we continue to streamline processes, develop technological solutions, and strengthen partnerships with water users and other stakeholders. We also continue to request the budget resources necessary to provide timely and accurate service to our customers.

L. Anticipated Rulemaking Activity for 2010 – 2011

Tom Paul, Deputy Director, gave the Commission an update on the status of future rulemaking activities of the Department.

Rulemaking activity is initiated as a result of legislation, suggestions by staff and commissioners, and periodic review and petition by the public.

The Commission was given a list of anticipated rulemaking activity for the remainder of 2010 and 2011 (see attached list).

M. Request for Adoption of Rules Necessary to Administer the Columbia River Basin Water Development Loan Program Established under House Bill 3369, OAR Chapter 690, Division 95

Tracy Loudon, Administrative Services Administrator, briefed the Commission on the request for adoption of rules necessary to administer the Columbia River Basin Water Development Loan Program established under House Bill 3369, OAR Chapter 690, Division 95.

HB 3369, signed by the Governor on August 4, 2009, makes changes to the constitutionally established Water Development Loan Fund, among other things. The Bill required that the Commission adopt rules establishing standards for borrowers obtaining loans from the Water Development Loan Fund.

The Department created a new Division 95 to address the new requirements of HB 3369 and to clearly delineate between the new Columbia River Basin Water Development Loan Program and the older Water Development Loan Program, both operated under authority of Article XI-I(1) of the Oregon Constitution. HB 3369 added new requirements to strengthen the financial standards to ensure repayment and adequate loan security.

A rules advisory committee (RAC) was established and meetings with members of the committee occurred during the month of August, 2010. On September 1, a notice of public rulemaking was published in the *Oregon Bulletin* and a hearing draft of the proposed rules was made available on the Department's website. Public Hearings occurred on September 22 in Salem and September 29 in Hermiston.

Based on public comment taken through September 30, 2010, staff modified the hearing draft of the rules issued September 1, 2010. The final proposed rules provided procedures and requirements for the administration of loans in the Columbia River Basin Water Development Loan Program.

Kimberley Priestley, WaterWatch of Oregon, thanked staff for their work on these rules. She commented on the proposed changes.

Anita Winkler, Oregon Water Resources Congress, thanked staff for their work on these rules. She commented on the proposed changes.

The Commission had a lengthy discussion regarding the rules.

Commissioner Mary Meloy made a motion to approve the Division 95 final proposed rules with changes. The changes are as follows (bold and underlined = added text, bracketed = deleted text).

690-095-0030

- (1) Loans over three million dollars that meet the statutory requirements of ORS 541.600 through 541.855 and these rules **may only** [must] be approved by the commission.

690-095-0035

- (1) The director may appoint a loan advisory board to review applications made under the loan program and pursuant to these rules make recommendations thereon to the director. The scope of application review shall be limited to the adequacy of security, the potential for repayment, and economic feasibility of the project. Members shall be knowledgeable and experienced in the fields of banking, finance, economics, or related field. The members appointed to the board shall be subject to the approval of the commission.

690-095-0055

- (3) An [applicant may] appeal **of** a decision of the commission as a final order of the agency as authorized under ORS Chapter 183.

The motion was seconded by Commissioner Williams. Voting for the motion: Commissioners Barlow, Jackson, Williams, Roberts, Meloy, LeJeune and Whipple. Voting against the motion: None.

N. Budget Update: 2009-11 Budget and 2011-13 Agency Request

Tracy Loudon, Administrative Services Division Administrator, gave an update on the Department's 2009-11 Budget along with information regarding the Department's 2011-13 Agency Requested Budget.

The Office of Economic Analysis had briefed the Legislature that morning on a change in the General Fund revenue projection for this biennium and next. In the briefing, it was stated that revenue will increase by \$62 million which is a change of one-half of a percent.

The General Fund revenue projection has experienced two significant changes in the past. The first in June of 2010 projected a shortfall of \$577 million, of which Water Resource's share was \$952,740. In September 2010, the statewide shortfall was projected at \$377 million; the Department's share was \$629,560. This totals \$1.6 million in reductions or about 8% of the Department's original 2009-11 budget.

Very serious shortfalls are also projected for the 2011-13 budget. The projection is for a shortfall of \$3 billion or more, about 18% across the board.

The General Fund revenue forecast this morning announced an additional decrease of \$273 million, bringing the shortfall to \$3.5 billion or about 20%, if applied across the board.

Water Resources anticipates that additional reduction options above 25% will not be requested.

This forecast will be updated at least three more times before the end of session.

O. Water Resources Commission Revenue Enhancement Subcommittee Report

Commissioner John Roberts, Commissioner Jeanne LeJeune and Commissioner Ray Williams were appointed to the Revenue Subcommittee at the Commissions August 2010 meeting. The Subcommittee met by phone in September and October to identify possible revenue options and to "scope" out additional details. During the Subcommittee discussions, the members agreed that there were a few key values that were particularly important:

1. There is a key role for the use of some General Funds in managing the State's water resources for the benefit of all Oregonians.
2. The individual beneficiaries of services or water rights must have a larger financial responsibility for the services they receive, whether that be through increased cost recovery or new fees for the services they receive individually.
3. The solutions must be equitable between rural and urban areas, between agricultural and urban users, between in-stream and out-of-stream uses, and in all geographic sectors of the State.
4. Direct services, particularly field services, must be protected.
5. Solutions must make clear that funds collected and dedicated for specific purposes (i.e. fees for services) must be protected from any future attempts to "redirect" these funds if the Department is to be able to deliver customer service as expected.
6. The Department must continue to demonstrate operational efficiencies. While significant strides have been made to reduce backlogs, speed processing, and coordinate with partners and

stakeholders in recent years, customers can better accept fee increases and other solutions if they continue to see visible improvement in how the Department operates and communicates.

The Subcommittee believes that while the options pursued may be challenging to achieve, an investment in Oregon's water resources now will translate into a long-term investment for Oregon's economic development and quality of life. Therefore it is absolutely critical to develop broad based funding options at this time.

The Subcommittee met with approximately 25 Stakeholders on November 17 in which they discussed the following potential revenue sources for the Water Resources Department:

1. Increasing cost recovery on water rights transactions, up from the current rate of 50 percent today.
2. Expanding the reimbursement authority program. Today customers can pay 100 percent of transaction costs and receive expedited processing of their water right applications, certificates, and transfers. This program could likely be expanded to other Department programs as well.
3. Implementation of an annual water right management fee. Possibly \$100 per water right with a cap to be determined for property owners with multiple water rights from different sources. This would include a one-time cleanup of the State's water rights database that is estimated to cost approximately \$2 million over the next two biennia.
4. Locating exempt use wells. A one-time "look back" fee to locate, map, and record exempt-use wells to support the Department's groundwater program.
5. Adding a nominal fee onto already existing Oregon fishing license fees administered by the Oregon Department of Fish and Wildlife, which would be used to support the Department's in-stream work.
6. Adding a nominal fee onto the already existing invasive aquatic species permit administered by the Oregon Marine Board and Oregon Department of Fish and Wildlife to support the Department's in-stream work.
7. Minimizing reductions to the Department's general fund budget. Much of the Department's work benefits the public and the public interest, and should continue to receive support from the state's General Fund.

After meeting with the Stakeholders, another 21 options were brought forward.

While it has not yet been fully determined what combination of revenue generating options will prove most feasible to pursue, the Revenue Enhancement Subcommittee believes strongly that new revenue sources must be aggressively pursued.

Commissioner Dennis Doherty, Umatilla County, made the comment that in the discussions that he has been involved with, a general level of support and recognition is increasing and growing. He also noted that the spirit of collaboration and compromise is growing.

The Subcommittee will continue to work on this and come back to the February meeting with more information.

P. Public Comment

Kimberley Priestley and Lisa Brown, both from WaterWatch of Oregon, brought before the Commission a Petition for Rulemaking that they submitted to the Department on November 10, 2010.

Q. Other Issues

Commissioner LeJeune commented on the rulemaking process, noting she doesn't feel that she can really contribute as well as she should during the rulemaking process. She asked for better clarification on the policy issues when looking at rulemaking.

Director Ward suggested bringing legal counsel in to help clarify the constraints that the Department and Commission are faced with.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Cindy Smith
Commission Assistant