

Water Resources Commission
Teleconference
Salem, Oregon
January 27, 2011

WRC Present by phone

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

Staff Present

Phil Ward
Tom Paul
Cindy Smith
Brenda Bateman

Dwight French
Renee Moulun
Ruben Ochoa

Others

Martha Pagel
Kimberley Priestley
Chris Fick
Kim Swan
Niki Iverson
Willie Tiffany
Mark Landauer
April Snell

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 John Jackson welcomed everyone to the teleconference meeting. Roll call of the Commission was taken. In order to inform the Commission of who was in attendance for the teleconference meeting, staff and the audience introduced themselves.

Commissioner LeJeune sent her written apologies through Chair Jackson, saying she was not able to attend this meeting due to prior commitments.

A. Request for rulemaking that would establish rules requiring public notice of the issuance of certificates of water rights

Tom Paul, Deputy Director, briefed the Commission on the request for rulemaking that would establish rules requiring public notice of the issuance of certificates of water rights.

The Water Resources Commission received a Petition for Rulemaking to adopt an Oregon Administrative Rule (“OAR”), Chapter 690 Division 330 to require public notice of water right certificate issuance within seven days of issuing. The petition was received on November 10, 2010, from WaterWatch of Oregon. The State of Oregon Administrative Procedures Act and the rules of the Water Resources Commission direct that petitions of this nature must be either denied or rulemaking initiated within 90 days of receiving the petition. (ORS 183.390; OAR 690-001-0005; OAR 137-001-0070 (2006)). The Commission must act by February 7, 2011 to either deny the petition or direct the Department to initiate rulemaking.

A water right certificate is created based on information contained in the notice of completion, final proof survey, and final proof report describing how and where water was used. The water right certificate issued in accordance with the provisions of the water right act is conclusive evidence of the right. Oregon Revised Statute (ORS) 537.260 provides that any person owning a water right application, permit, or certificate subsequent in priority to a

newly issued water right certificate may contest the issuance of the new certificate within three months of issuance.

A water right certificate is a final decision of the Department, making it an action which may be reviewed by the court.

This rulemaking petition proposes a rule that would require the Department to provide notice of water right certificate issuance in the Department's weekly notice. The Department has requested advice from the Department of Justice regarding the interpretation of relevant statutes pertinent to certificate issuance, as those statutes relate to questions of judicial review.

The Department is continuing to work with its legal counsel to resolve some outstanding questions. The issue will be presented to the Commission at a future meeting, once the Department has received advice on the questions it has posed to the Department of Justice.

Renee Moulun, Legal Counsel, said that she will make it a priority to get advice to the Commission at its May 2011 meeting. If something should arise and she is not able to meet that deadline, she will inform the Department.

April Snell, Oregon Water Resources Congress, commented in support of the direction the Department is recommending. She said that the Oregon Water Resources Congress would like to be involved in any process that may come of this.

Kimberley Priestley, WaterWatch of Oregon (the petitioner), highlighted specific points in the petition.

Chris Fick, League of Oregon Cities, strongly urged the Commission to adopt rules that reflect existing statutes. He mentioned a letter sent by the League of Oregon Cities, Special Districts Association of Oregon, and Oregon Water Utilities Council to the Commission. He said that the organizations who co-signed the letter would like to be involved in any future rulemakings.

Commissioner Meloy moved to deny the petition; seconded by Commissioner Barlow. Voting for the motion: Commissioner Meloy. Voting against the motion: Barlow, Williams, Jackson, Whipple and Roberts. The motion did not pass.

Commissioner Williams moved to deny the petition and direct the Department to return to the Commission with a process to provide notice of certificate issuance; seconded by Commissioner Roberts. Voting for the motion: Commissioner Barlow, Williams, Jackson, Whipple and Roberts. Voting against the motion: Commissioner Meloy. The motion passed.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Cindy Smith
Commission Assistant