

Oregon Water Resources Commission
Meeting
November 20, 2003
Salem

WRC Members

Dan Thorndike
Tyler Hansell
Jim Nakano
Jay Rasmussen
Susie Smith

WRD Staff

Paul Cleary
Walter Perry
Cindy Smith
Debbie Colbert
Tom Paul
Diane Addicott
Adam Sussman
Dave Jarrett
Doug Woodcock
Bill Fujii
Bill Ferber
Marc Norton
Barry Norris
Juno Pandian
Dwight French
Kimberly Grigsby
Greg Nelson
Laura Snedaker
Tracy Eichenlaub
Bernadette Williams
Jerry Grondin
Mike Zwart
Renee Moulun

Others

Ed Henricks
Paul Matich
Kimberley Priestley
John DeVoe
Doug Myers
Ken Friday
Malia Kupillas
Brad Harper
Edwin Sharer
Rachel Walker
Tamra Mabbott
Mike Propes
Martha Pagel
James Buchal
Clinton Reeder

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, Suite A, Salem, Oregon 97301-1271.
Audiotapes of the meeting are on file at the same address.

A. Commission Meeting Minutes

The minutes of the June 26-27, 2003, meeting were offered to the Commissioners for their consideration. Nakano moved to approve the minutes as presented; seconded by Rasmussen. All voted approval.

B. Commission Comments

Nakano said he served as hearing officer at the August 25, 2003, public hearing in Bend on the Deschutes Ground Water Mitigation rules. He thanked Adam Sussman and Laura Snedaker for their time and efforts in organizing the hearing. He also reported that farmers and ranchers in the Ontario area are pleased with a good growing season that was helped along by a wet spring.

Rasmussen said he and other Oregon State University directors and deans attended a meeting yesterday in Corvallis with directors of state natural resource agencies. The purpose of the meeting was to share strategic plans and priorities, and identify opportunities to work together to address Oregon's natural resource and environmental challenges.

Smith said she served as hearing officer at the August 26, 2003, public hearing on the draft rules that would amend the Willamette Basin Program to designate the Amity Hills/Walnut Hill Ground Water Limited Area. She expressed appreciation for the staff work and community involvement in the rulemaking process.

Hansell said he attended the October 23, 2003, public meeting of the Umatilla County Planning Commission to consider a proposed overlay zone that would deny building permits where water use is dependent on ground water within a Critical Ground Water Area (CGWA). The Planning Commission voted to table the proposed overlay zone and appoint a task force to identify alternate approaches to addressing ground water resources in CGWAs.

Thorndike said he attended a meeting of the Oregon Watershed Enhancement Board. That meeting's agenda included a discussion of funding some of WRD's core activities.

C. Director's Report

Cleary reviewed his written report to the Commissioners and responded to their comments and questions. He mentioned there will be a follow-up meeting to the October 23 Umatilla County

Planning Commission meeting on ground water use December 4, 2003, at a Farm Fair in Hermiston.

Cleary said there was good attendance at the November 13-14, 2003, Oregon Water Law Conference. He gave the key-note address at the conference focusing on looking toward 2009 in water law management, our next century in water management. The Statutory Water Code was adopted effective February 24, 1909. Cleary said in preparing his remarks he reviewed the first three biennial reports of the Oregon State Engineer and found many similarities to where we are today. The reports include a description of what that State Engineer considered to be a good water law – a water law that provides certainty of rights; security of investment; accurate and accessible information; and reduction of unnecessary conflict and litigation. Cleary said he believes those to be good solid objectives and goals for our second century as well.

Cleary acknowledged the work of Mike Propes, Polk County Commissioner, serving from January 1989 to October 2003. He presented Commissioner Propes with a certificate of appreciation and thanked him for being such a strong advocate of the Oregon Water Resources Department and water supply planning throughout his years of service in Polk County.

Cleary introduced John DeVoe, the new Executive Director of Oregon WaterWatch. Mr. DeVoe shared his background and spoke to the Commission about his goals for WaterWatch.

The Commissioners reviewed and approved their meeting schedule for 2004.

D. Amity Hills/Walnut Hill Ground Water Limited Area

Doug Woodcock, Manager of the Ground Water/Hydrology Section, offered this report to the Commission. Using PowerPoint, Woodcock showed maps of the proposed limited area, and reviewed issues and public comments as included in the written staff report. He explained that the Department re-opened the public comment period on the proposed rule adoption for the purpose of allowing written testimony to be submitted addressing whether “other options should be considered for achieving the rule’s substantive goals while reducing negative economic impact of the rule on business” (House Bill 3120, 2003 Legislature). Woodcock said the proposed rules would not affect existing water rights nor will they preclude future agricultural development.

Cleary summarized the changes to the proposed rules since the re-opening of the public comment period. He said the original proposal was to limit the uses to only exempt uses in both the Columbia River Basalt and marine sediment aquifers. Then it was decided to consider leaving the marine sediment aquifers open to any uses. As a result of re-opening the comment period, a fourth alternative is now offered for the Commission’s consideration that would leave the marine sediment open to any uses and allow limited licenses for establishment of crops out of the Columbia River Basalt.

Public Comment on Item D

Ken Friday, County Planning Division Manager representing the Yamhill County Board of Commissioners, said the main concern of the Board has been the effect the rules would have on agricultural uses, especially vineyards. Mr. Friday said he believes the Board would be in favor of the addendum as presented to the Commission at this meeting. He thanked staff for their hard work during the development of the proposed rules and he encouraged the Department to continue monitoring in the area.

Mary Phillips, area resident and representing Friends of Yamhill County, spoke in support of creating a ground water limited area and continued monitoring.

Malia Kupillas, Pacific Hydro Geology, Inc., spoke in support of alternative four in the addendum to the staff report.

Edwin R. Sharer, real estate broker and vineyard operator, spoke in opposition to any water restriction and asked for continued monitoring.

Smith moved to approve alternative four – “adopt final proposed rules similar to those in Attachment 1 but further modify 690-502-0210 to provide for new limited irrigation use from the Columbia River Basalt aquifers under a limited license pursuant to ORS 537.143(6),” and that staff will continue to conduct all necessary monitoring and adaptive management strategies in the Amity Hills/Walnut Hill ground water limited area. Motion was seconded by Rasmussen. All voted approval.

Staff agreed to report back to the Commission with an update on this ground water limited area as needed and within three years.

E. Contested Case Exceptions

Renee Moulun, Protest Program Coordinator, presented exceptions filed by C.C. Meisel Co., Inc. in a contested case proceeding on water right applications R83820 and S83821. Using a PowerPoint presentation she described the location in Yamhill County, and gave the Commissioners an overview of the dispute and exceptions before them.

TDM Company filed application R83820 requesting to store 202.5 acre-feet of water in Muhs Quarry, an excavated gravel pit that has filled with water. TDM’s application S83821 requests to use stored water for supplemental irrigation of 125 acres. C.C. Meisel Co., Inc. filed protests against both applications.

Walter Perry, Assistant Attorney General, explained that the parties had agreed to hear the preliminary matter first, and then address exceptions. He said this matter had been resolved under a summary judgment procedure which allows litigants to resolve an issue without going through an evidentiary hearing if there are no facts contested. The hearing officer decided there were no disputes about important facts and that he could go ahead and decide the issue as a matter of law. Perry reminded the parties that discussion must be kept to the facts presented in the affidavits. He said the very narrow question before the Commission is to consider if there is a factual dispute about whether TDM has the easement required by law.

Martha Pagel, attorney representing C.C. Meisel Co., Inc., filed a motion before the Commission to reopen the hearing record for the purpose of receiving further evidence.

Pagel and James Buchal, representing TDM Co., both testified before the Commission on this request to reopen the record concerning the scope of the easement.

Walter Perry, Assistant Attorney General, explained to the Commission that the Protestants are relying on OAR 690-002-0180 which allows for the reopening of a record if there is good cause for the lateness in presenting this evidence, and if the information is significant and could affect the outcome of the proceeding. Those are the two questions that need to be answered.

After comments by both attorneys, Perry suggested viewing this as a stipulated motion to reopen the record to let the record reflect that a lawsuit has been filed.

Thorndike moved to accept the stipulation of the parties; seconded by Smith. All voted approval.

Attorneys Pagel and Buchal then argued the question of the scope of the easement before the Commission.

Hansell moved to adopt Alternative 1 of the staff report – to deny protestant’s exceptions but allow the exception to Statement 18 regarding a typographical error and direct issuance of a Final Order Dismissing Protests and Approving Applications in the form of that in Attachment F to include the following changes in the Draft Final Order: On Page 3, Findings of Fact #4, change the first sentence to read “During the widespread flooding that occurred in the flood of February 1996 the quarry filled with water and might have overflowed but for emergency pumping efforts.” On Page 3, Findings of Fact #5, change the word “ditch” to “route.” On Page 11, delete “as moot” in #1 of the Order under the heading Applicant TDM Co.’s Motion for Summary Judgment is GRANTED. Motion was seconded by Rasmussen. All voted in favor of the motion.

F. Public Comment

Tamra Mabbott, Planning Director for Umatilla County; and Clinton Reeder, Vice-Chair of the Umatilla County Planning Commission, spoke to the Commission on their efforts to address County ground water issues in response to a land use planning Periodic Review work task. Umatilla County had proposed an overlay zone that would deny building permits where water use is dependent on ground water within Critical Ground Water Areas (CGWA). Due to recent statutory changes, however, the County is no longer required to address ground water use in the CGWAs in their comprehensive plan update. The suggested overlay zone was tabled and instead the Umatilla County Planning Commission chose to appoint a task force to further study ground water problems in the County.

There being no further business to discuss, the meeting adjourned.

Respectfully submitted,



Diane K. Addicott
Commission Assistant