

Water Resources Commission
Meeting
Salem, Oregon
May 12, 2011

WRC Present

Charlie Barlow
Carol Whipple
Ray Williams
John Roberts
Jeanne LeJeune

Staff Present

Phil Ward
Tom Paul
Cindy Smith
Brenda Bateman
Alyssa Mucken
Juno Pandian
Dwight French
Kyle Gorman

Tracy Louden
Ruben Ochoa
Ken Stahr
Barry Norris
Doug Woodcock
Mike Mattick
Bill Ferber
Renee Moulun

Others

Anita Winkler
Brad Hill
Brad Taylor
Jason Heuser
Kimberley Priestley
Brent Stevenson
Peggy Lynch
Rachel Walker
Patrick Giffiths
Tod Heisler
Alan Unger

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.

Vice Chair Barlow welcomed everyone to the meeting. Commissioners and staff introduced themselves to the audience.

A. Integrated Water Resources Strategy Update and Discussion

Brenda Bateman, Senior Policy Coordinator, and Alyssa Mucken, Integrated Water Resources Strategy Policy Coordinator, briefed the Commission on the progress of the Integrated Water Resources Strategy (IWRs).

Topics include:

- Public Comments Received on IWRs Issue Papers (November 18, 2010 – March 31, 2011)
- Public Policy Discussion: Workshop and Feedback Loop

More than 25 sets of public comments were received between late November and late March 2011, focusing specifically on the IWRs issue papers. Comments were received from state and federal agencies, water users, conservation groups, neighborhood and industry associations, and private citizens.

Commenters were pleased to see the addition of new topic areas. New topics were federal storage, conjunctive management of groundwater and surface water, and public health.

Some thought that key issues were still missing, such as “the commoditization of water,” and “transboundary competition.” Several commenters were eager for these papers to begin to describe “recommended actions”. The “recommended actions” are still in development and will be addressed in papers scheduled for public review later in 2011.

Public Policy Discussion: Workshop and Feedback Loop to the PAG

During the February 2011 Commission meeting, Commissioners took the opportunity to identify and discuss “top pick” recommendations, helping the Project Team narrow the scope of potential actions in the Strategy.

The Commissioners were asked what kind of regional approaches should be taken under the Strategy, in order to comport with the previous guiding principles.

Commissioner LeJeune stated that regionalization is an issue of political will. She feels that there is a lack of political will to make efficiencies and effectiveness happen on behalf of the rate payers. These are very complex and difficult issues. She asked if incentives can be given.

She commented that over time, the more attention that can be provided regarding regionalization, the better.

Commissioner Williams asked if additional criteria, “efficiency” could be added. The definition would be, is there a better way, such as a regional approach, versus an individual water unit to show efficiencies. He asked, what incentives there are to do this.

Commissioner Roberts asked, how should regionalization be recommended with regards to the IWRS.

Commissioner Whipple commented that the first thing we are supposed to do is provide leadership. She noted that she doesn’t feel that a watershed basin’s capacity is a matter of political will. Her understanding of what regional approach means, is, what do we have and how do we distribute it to where we are using it.

Deschutes County Commissioner Alan Unger commented that Commissioner LeJeune was right on point. He said that in Deschutes Basin, people are working hard at convening local governments. He also said that they have a political will and are moving forward on a regional basis. The challenge before them are planning dollars.

Patrick Griffiths, City of Bend, commented that he feels that the basin plans are very solid. There is a need for regional help to keep them up to date. He also noted that they would like to be a part of a bigger panel on regionalization. They are using the Bureau of Reclamation’s WaterSmart Basin Framework to help guide the information that they need to do their planning.

Commissioner Williams complimented staff for their detailed, proactive and professional work on the IWRS.

B. Informational Report on 2010 Field Regulation and Enforcement Activities

Doug Woodcock, Field Services Administrator, and Juno Pandian, Manager, Well Construction and Compliance Section, updated the Commission on the 2010 field regulation and enforcement activities. Michael Mattick, Watermaster, District 2, updated the Commission on the activities in his district.

C. Water Resources Commission Revenue Enhancement Subcommittee

Commissioner John Roberts discussed the subcommittee's activities since the February 2011 meeting.

During the last meeting, the Subcommittee recommended several components to reducing the reliance on the general fund. One of those components was a water right management fee. During the last meeting, it was decided to take a couple of pilot projects and try to assess the effect of an annual \$100 water right management fee on an entity that held multiple certificates and permits held.

Barry Norris, State Engineer, and Ken Stahr, Hydrologist, discussed the Fessler Pilot Project process near Woodburn.

Commissioner Roberts discussed his look at a pilot project. He looked at Naumes, Inc., Rogue Valley Orchard Holdings. He looked at the effect of what a \$100 water management fee would be on a large grower. Naumes, Inc., has more than 6,000 acres, which has 16 orchards, and 54 different permits.

Commissioner Roberts commented that the Commission and Department needs to make a strong case for what is the value to the landowner for paying the water management fee.

Commissioner Williams asked about placing a cap on the fee for owners with multiple water rights.

Commissioner Roberts asked for direction from the Commission on where we go from here.

Director Ward discussed having staff pull together information for the Subcommittee to bring back for a possible consideration by the Commission.

D. Providing Notice of the Issuance of Certificates of Water Rights

Tom Paul, Deputy Director, briefed the Commission on the process to provide notice of water right certificate issuance. The Department issues water right certificates as the final step of acquiring a perfected, vested water right. The Department does not currently provide a notice to the public when it issues water right certificates.

On November 10, 2010, the Commission received a Petition for Rulemaking from WaterWatch of Oregon to adopt an Administrative Rule. The rule would require public notice of water right certificate issuance within seven days. The Commission denied the petition on January 27, 2011, but directed staff to return with a process to provide notice of certificate issuance.

ORS 537.260 does not state whether the Department is required to inform persons who may contest that the Department has issued a certificate. The statute does instruct the Department to hold a hearing if a contest is brought. Notwithstanding the lack of explicit direction to provide notice of certificate issuance to persons who may contest the certificate, legal counsel advised that the Department had implied authority to provide such notice, and may do so without conducting a rulemaking first. The Department has the authority to determine the content of such a notice without adopting an administrative rule.

The Department proposed to provide notice of certificate issuance in its weekly notice. The notice will contain information sufficient to provide persons owning an application, permit, or water right certificate subsequent in priority to the issuing certificate an opportunity to contest issuance of the certificate pursuant to ORS 537.260. Staff will conduct audits to ensure that notice is provided consistent with this proposal.

Commissioner Roberts moved to approve the proposed water right certificate notice process as submitted; seconded by Commissioner LeJeune. Voting for the motion: Commissioners Barlow, Williams, Roberts, LeJeune and Whipple. Voting against the motion: None.

E. Request for an Exception to the Willamette Basin by Eugene Water and Electric Board (EWEB) pursuant to ORS 536.295

Dwight French, Water Rights Services Administrator, briefed the Commission on a request for an exception to the Willamette Basin by Eugene Water and Electric Board (EWEB) pursuant to ORS 536.295.

Under ORS 536.295, the Water Resources Commission may, under certain circumstances, allow the Department to consider an application to appropriate water for a use not classified as an allowable use by the applicable basin program. Eugene Water & Electric Board (EWEB) requested an exception to the Willamette Basin Program based on one or more criteria provided in the statute. The Commission must evaluate whether the proposed use is consistent with the general policies of the applicable basin program.

EWEB applied for a permit to divert 30.9 cubic feet per second from the Willamette River for year-round municipal use, generally serving the City of Eugene and numerous surrounding Water District's areas. Application S-87675 was filed to provide EWEB with a secure, duplicative authorization to use water from the Willamette River as a redundant supply, while EWEB's pre-1909 surface water claim (SW-354) is awaiting adjudication of the Willamette River Basin. The 30.9 cubic feet per second of water proposed by the application will not be additive to EWEB's existing water rights; rather, any permit issued for S-87675 will be conditioned such that the permit, in combination with EWEB's existing water rights, will be limited to the maximum rate currently authorized by EWEB's existing water rights.

The exception request is necessary because the Willamette Basin Program does not allow municipal use from the main stem of the Willamette River from July 1 through October 31 (OAR 690-502-0050(1)(d)).

EWEB asserted that a basin program exception is warranted on the basis that two criteria are satisfied. The Department believes that one of the criteria is satisfied and therefore qualifies for an exception.

French recommended a change to the staff recommendation. He suggested removing the word "currently". He said the word "currently" in a permit condition can cause some misunderstanding about the time in question.

Brad Taylor, Eugene Water and Electric Board, expressed his gratitude to the Department for their help on the application.

Commissioner LeJeune moved to approve the following staff recommendation without the word “currently”.

“The request is by the Eugene Water & Electric Board for a basin-program exception because the use is necessary to ensure public health, welfare and safety; and the use is consistent with the general policies of the Willamette Basin Program. Any permit issued for S-87675 will be conditioned such that the permit, in combination with EWEB’s existing water rights, will be limited to the maximum rate ~~currently~~ authorized by EWEB’s existing water rights and the permit will be conditioned to expire if, in the future, an adjudication affirms SWR-354.”

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

Other Discussion

Commissioner LeJeune asked for another update on the Willamette Storage issue.

Director Ward discussed the Revenue Forecast that was delivered on this day. The forecast for the current biennium was down by \$40 million from the adopted budget. There was a projection of a \$15 million shortfall that will need to be resolved before the end of June 2011. For the 2011-2013 Biennium, the revenue projection was up \$128.8 million.

Kimberley Priestley, WaterWatch of Oregon, commented on regionalization.

Martha Pagel, Schwabe, Williamson and Wyatt, commented on regionalization.

There being no further business, the meeting was adjourned.

Respectfully,

Cindy Smith
Commission Assistant

Water Resources Commission
Meeting
Salem, Oregon
May 13, 2011

WRC Present

Charlie Barlow
Carol Whipple
Ray Williams
John Roberts
Jeanne LeJeune

Staff Present

Phil Ward
Tom Paul
Cindy Smith
Brenda Bateman
Doug Woodcock
Barry Norris
Dwight French

Others

April Snell
Kimberley Priestley
Jim Myron
Peggy Lynch
Brent Stevenson
Doug Riggs
Angus Duncan
Dr. Phil Mote
Jim Rue
Richard Whitman

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.

Vice Chair Barlow welcomed everyone to the meeting.

F. Approval of Minutes

The minutes of the February 17 and 18, 2011 meeting were offered to the Commission for consideration.

Commissioner Roberts moved to approve the February 17 and 18, 2011 minutes as submitted; seconded by Commissioner LeJeune. Voting for the motion: Commissioners Barlow, Williams, Roberts, LeJeune and Whipple. Voting against the motion: None.

G. Commission Comments

Commissioner Whipple had nothing to report at this time.

Commissioner LeJeune reported that she had spent a month in India.

Commissioner Williams had nothing to report at this time.

Commissioner Roberts reported that had recently gotten involved with the Bear Creek Watershed Council. In addition, the Commission's Revenue Subcommittee, chaired by Commissioner Roberts, has begun to model scenarios for a water right management fee. It will be an ongoing effort. Third, the WISE Project (Water for Irrigation Streams and Economy) has been making efforts towards dealing with climate change, increased population and about 250 miles of canals in the Rogue Valley

which service approximately 35,000 – 40,000 acres. The piping project would gain approximately 50,000 acre-feet of water. There is a need for \$2 million to get the Environmental Impact Statement and cost benefit analysis done for this project.

Commissioner Barlow reported that there was lots of water in the Eastern side of the state.

H. Director's Report

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

Director Ward introduced Keith Mills, the Department's new Dam Safety Engineer. Keith gave a brief description of his background.

I. Budget Update: 2011-13 Governor's Balanced Budget

Tracy Loudon, Administrative Services Administrator, gave an update to the Commission on the current financial situation the next biennium's budget as proposed by the Governor.

The Department provided testimony on the Governor's Balanced Budget to the Joint Ways and Means Natural Resources Subcommittee during the week of April 4, 2011. During the testimony, the Director reviewed the Department's program priorities, improvement efforts, reduction options, and key performance measures. No specific action had yet been taken by the Ways and Means Subcommittee regarding the Department's budget, although it is anticipated that there will be progress made in moving agency budgets forward in the near future.

The Department believes that the Governor's Balanced Budget actions will be adopted, which will include a reduction of four positions, a reduction of \$75,000 for groundwater studies, continued funding for the Integrated Water Resources Strategy, \$1.2 million SB 1069 Feasibility Study grants, \$15 million for Umatilla Basin loan, a fund shift for two Oregon Plan positions, a partial fund shift for Dam Safety position to fees, and continued Assistant Watermaster positions funded by counties and federal sources. Also in the Governor's budget, \$4 million for Klamath Basin Agreement was removed, \$6,000 in Commission travel and \$2,500 postage was removed, and an overall reduction in staff salaries/benefits of 5.5% was removed. In addition there is a possible 6.5% across the board reduction in Services and Supplies (to be managed by the Department) and a percentage "hold back" of funds applying to the second year of the budget in case the economy sours again. The Committee may also adjust the Key Performance Measures for the 2011-13 biennium.

J. May 2011 Legislative Update

Brenda Bateman, Senior Policy Coordinator, gave an update to the Commission on the Department's bills and other water-related bills being considered this session.

Oregon's 76th Legislative Assembly convened on February 1. During April, the Department presented its budget and program priorities to the Natural Resources Subcommittee of the Joint Ways and Means Committee. The Department are continuing to participate in and track a number of water-related bills that are moving through the process.

Department bills and Non-Department bills and where they are at this point in the session:

Department Bills:

- SB 126 Water Resources Department's bill regarding continuing education for Certified Water Right Examiners (CWREs). Passed the Senate floor with a 24-6 vote.
- HB 2133 Water Resources Department's bill allowing electronic communications with customers, in lieu of hardcopy communications, where agreed upon by both parties. Passed the House floor with a 57-0 vote (plus 1 absence, 2 excused).
- HB 2134A Water Resources Department's bill expanding eligibility in a water exchange to include groundwater recharge permits in the Umatilla Basin. Includes a "no net loss of flows in the Umatilla River" clause. Passed out of the House Energy and Environment Committee on April 14 with a 7-0 vote (plus one excused).
- HB 2135A Water Resources Department's bill reducing the number of required weekly newspaper notices to two in a row. Passed the House floor with a 59-0 vote (plus 1 excused).

Non-Department Bills:

- HB 2748 Sponsored by Representative Deborah Boone (D-Cannon Beach). Wave energy bill modeled after SB 195 (2009), providing exemptions to wave energy pilot projects under the state's hydroelectric statutes. Program sunsets 2022. Passed the House floor with a 59-1 vote.
- HB 2983A Sponsored by Speaker Bruce Hanna (R-Roseburg) and Representative Brian Clem (D-Salem). Removes renewal fees from the Department's instream leasing program. Also extends the sunset from the Department's split-season leasing program from 2014 to 2021. Passed the House floor with a 55-1 vote (plus four excused).
- HB 2873 Sponsored by Representative Brian Clem (D-Salem). Bill allows in-conduit hydroelectric projects to proceed without providing additional fish protections if the hydro project does not modify the point of diversion. (Passed out the House Energy Environment and Water Committee on April 21 with a 7-1 vote).
- HB 3109A Sponsored by Representatives Chris Garret (D-Lake Oswego) and Vic Gilliam (R-Silverton). Ecosystem services bill expands state land-use policy to include ecosystem services (i.e., creates a path for mitigation credits). Passed out of House Energy Environment and Water Committee on April 14 and subsequently referred to the Joint Committee on Ways & Means' Natural Resources Subcommittee.
- HB 3165A Sponsored by Representatives Vic Gilliam (R-Silverton) and Brian Clem (D-Salem). Establishes a stakeholder process related to water right transfers in the Willamette Basin Federal Storage System. Passed out of House Energy Environment and Water on April 21 with a 6-2 vote and subsequently referred to the Joint Committee on Ways & Means' Natural Resources Subcommittee.

HB 3623A Sponsored by Representative Gene Whisnant (R-Sunriver). Extends 2014 sunset on the Deschutes Mitigation Program from 2014 to 2029; requires the Department to report on progress to the Legislature every five years. Passed out of House Energy Environment and Water on April 21 with a 7-1 vote and subsequently referred to the Joint Committee on Ways & Means' Natural Resources Subcommittee.

SB 847 This bill focused on the idea of “unstacking” water rights. When water rights are layered, or “stacked” with a primary right appurtenant to the same area as a supplemental right, it is not possible to transfer one right to another piece of land, without transferring the second right as well, or forfeiting the second right. This bill intended to look more closely into this issue. Instead, the Department and Oregon Water Resource Congress proposed to form a working group during Fall 2011—no later than October 1st. The effort will require a few meetings to identify if changes in guidance, rule or policy are warranted. A likely outcome will be the development of a protocol which irrigation districts and the Department will be able to use to prevent unintentional layering in the future.

Measures worked their way through the first chamber from February through April. Policy committee chairs had to hold work sessions by April 21 in order to keep bills alive. Both chambers hosted extra floor sessions in order to vote on bills and move them to the next chamber.

Measures will work through the second chamber during May. Policy committee chairs in the second chamber must hold work sessions by June 1 to keep bills alive.

The Legislature plans to adjourn SINE DIE by June 30, 2011.

Lobbyists from the water industry were invited to engage in a discussion to share their observations for the 2011 Legislative Session. Panelists included: Patrick Capper, representing the Oregon Association of Nurseries (OAN); Mark Landauer, representing the Special Districts Association of Oregon (SDAO); Doug Riggs, representing the Central Oregon Cities Organization (COCO); and Jim Myron, WaterWatch of Oregon.

K. Oregon Climate Change Assessment Report

Dr. Phil Mote, Director of the Oregon Climate Change Research Institute and Oregon Climate Services College of Oceanic and Atmospheric Sciences Oregon State University; Jim Rue, Deputy Director of Oregon Department of Land Conservation and Development; Richard Whitman, Governor's Office; and Angus Duncan, President of the Bonneville Environmental Foundation and Oregon Global Warming Commission, gave a presentation on the Oregon Climate Assessment Report, the Oregon Climate Change Adaptation Framework, and the Roadmap 2020.

L. Public Comment

No public comment.

M. Other Issues

Director Ward discussed his meeting with the Full Ways and Means Committee, earlier that day, regarding the passing of the agency's budget. Phil also expressed his concern about a dairy lagoon bill, which if passed, would cause the Department to lose any dam safety authority related to the dairy lagoons.

The Commission agreed that they do not approve this dairy lagoon bill.

Director Ward discussed combining the August and November Commission meetings and having one meeting in September to allow for the Commission to travel to the Umatilla Basin.

Commissioner Williams asked to include the Walla Walla subbasin for a possible site visit.

The Commissioners agreed with this change in the meeting schedule.

Commissioner LeJeune stated that she like the use of conference calls to save money as well.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Cindy Smith
Commission Assistant