

Oregon Water Resources Commission Meeting
October 22, 2004
Ontario, Oregon

WRC Members

Dan Thorndike
Jim Nakano
Jay Rasmussen
Tyler Hansell
Susie Smith

WRD Staff

Phil Ward
Barry Norris
Cindy Smith
Debbie Colbert
Adam Sussman
Shannon O'Fallon (by phone)

Jerry Rodgers
Ron Jacobs
Tom Paul
Renee Moulun

Others

Emilie Wolff
Susan Hammond
Jerry Franke
Karen Russell
Lisa Brown
Darrell Standage
Donna Stovall
Chad Karges
Dan Joyce

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 Thorndike opened the meeting.

A. Commission Meeting Minutes

The minutes of the May 20-21, 2004 meeting and the August 5 – 6, 2004 field tour were offered to the Commission for their consideration. Commissioner Nakano moved to approve the minutes as presented; seconded by Commissioner Hansell. Voting for the motion: Commissioners Smith, Nakano, Thorndike, Hansell and Rasmussen. Voting against the motion: None.

B. Commission Comments

Commissioner Smith commented that she was glad to be in the area and see Eastern Oregon. This was her first time to the area.

Commissioner Rasmussen commented on the field tour that the Commission had in August of the Eugene and Springfield areas. He also thanked Commissioners Smith and Hansell for the great time he had during the tour.

Commissioner Rasmussen commented that he would be chairing a meeting on November 1, 2004, of the Fee Work Group created through HB 2268.

Commissioner Hansell commented that he is still a member of the Umatilla County Ground Water Task Force. The next meeting will be held November 3. Barry Norris from the Department is scheduled to be in attendance. Commissioner Hansell stated that the Department has been a great help. The problem that the Task Force is tackling is a very complex problem with regards to exempt wells.

Commissioner Nakano commented that he was invited on a tour by the water right permittees and the U.S. Forest Service of the North Fork of the Malheur River to view riparian areas. A lawsuit that was pending against the permittees has been dropped. This will help the ranchers in the area.

Commissioner Nakano also said that he has been working with the U.S. Bureau of Reclamation and Department staff to put in measuring devices on the Upper North Fork of the Malheur River. The first one will be put in within the next month or so.

Commissioner Thorndike commented that he attended an Oregon Watershed Enhancement Board meeting. He praised the Department for the assistance he receives from the Department staff to get him prepared for the meetings with regards to the grant requests that are of importance to the Department.

Commissioner Thorndike also attended a tour of a WISE Project in the Rogue Basin.

Commissioner Thorndike said that he will be participating in a panel at the Oregon Water Resources Congress Annual Meeting in December.

C. 2003 Field Regulating and Enforcement Activities

Barry Norris, Technical Services Administrator; Kris Byrd, Well Program Specialist; and Ron Jacobs, Watermaster, District 9, reported to Commissioners on the past year's surface water regulation, well program activity, and formal enforcement.

Commissioner Hansell thanked staff for their use of powerpoint during their presentations. It enables the Commission to have a better understanding of what is going on in the area(s).

Commission Thorndike agreed with Commissioner Hansell. The information that is presented is useful and helps the Commission have a better understanding of the material presented.

Commissioner Nakano expressed that he would like to see powerpoint presentations used during contested case hearings.

D. Exempt Ground Water Use

Barry Norris, Technical Services Administrator, gave a brief review of exempt ground water uses and the Department's past and current efforts to address their impact on ground water supplies.

Norris explained that the expansion of exempt ground water uses for residential development can lead to problems for existing ground water users. These uses can occur without any prior approval or water availability assessment by the Department. Staff are working to provide technical assistance to local governments who make land use decisions that impact or lead to expanded exempt ground water use.

Karen Russell, WaterWatch, brought before the Commission a copy of HB 3622 (2001 Session, not enacted). Russell brought this forward as a possible legislative change for the future and a way to address the issue.

Commissioner Hansell expressed his concern regarding exempt uses.

Commissioner Smith agreed that there needs to be proactive steps taken to do something about the issue.

Commissioner Hansell suggested that staff efforts start with critical areas since the data already exists.

Commissioner Rasmussen complimented staff on the report. He asked that a follow-up discussion be brought up at a future meeting. At that meeting, he would like to have staff bring a list of tools that may be of use and specify which of those can be used in critical areas and which in serious areas. He would also like to have representatives from the counties and Department of Land Conservation and Development available. Commissioner Rasmussen asked for staff to bring back more information about the model ordinances or other technical assistance that may be useful regarding this issue.

Commissioner Smith agreed with Commissioner Rasmussen and asked that staff show what it would look like if the Department went forward with Commissioner Hansell's suggestion. With that, the Commission could decide if that is something they would consider moving forward with. Also, Commissioner Smith asked staff to include a look at lot size restrictions and how that pertains to exempt uses.

Commissioner Thorndike expressed his agreement on this issue.

Commissioner Rasmussen asked staff to bring back more information at the April meeting.

G. District Water Right Transfer Rules – OAR Chapter 690, Division 385

Tom Paul, Field Services Administrator, presented a request to amend, adopt and renumber rules under OAR Chapter 690, Division 385. Paul reviewed the final staff report and explained that the rules implement the district transfer statutes. The rules amend, reorder and renumber the previously adopted Division 21 rules. The Division 385 rules also implement the permanent district transfer process not previously addressed by administrative rule. The rules reflect the purpose of the temporary transfer statutes to grant users increased flexibility in the use of the water while preventing injury to other water rights. The final proposed rules unify district transfer processes under one rule division and systematically describe the criteria, process and procedures associated with each type of transfer.

Paul brought forward a modification to the rule under 690-385-5100(3)(B). The recommended modification was, "... Water Resources Department such as, but not limited to, submitting a water right transfer under OAR Chapter 690, Division 380 or a transfer to instream use under OAR Chapter 690, Division 77, prior to the end ..."

Commissioner Smith moved to adopt the final proposed rules in Attachment 1 as amended by staff with proposed new language brought before the Commission; seconded by Commissioner Rasmussen. Voting for the motion: Commissioners Smith, Nakano, Thorndike, Hansell and Rasmussen. Voting against the motion: None.

H. Water Right Cancellations and Allocation of Conserved Water Rules – OAR Chapter 690, Division 17 and Division 18

Adam Sussman, Senior Policy Coordinator, presented a request to amend rules under OAR Chapter 690, Divisions 17 and 18. Sussman reviewed the staff report and explained that the rules were based on the deliberations of the Department’s Notice and Concurrence Work Group. The work group also assisted the Department in developing modifications to the allocation of conserved water rules to implement House Bills 2456 and 2268 (2003 Oregon Laws).

Commissioner Smith asked that the Department send a summary report to the appropriate Legislators so they have good background and know about the Department’s efforts to build consensus. Sussman said the Department will put together some information about the progress that has been made.

Commissioner Rasmussen moved to adopt the proposed rules as indicated in Attachment 1 and Attachment 2 of the staff report; seconded by Commissioner Smith. Voting for the motion: Commissioners Smith, Nakano, Thorndike, Hansell and Rasmussen. Voting against the motion: None.

I. Water Right Transfer Rules – OAR Chapter 690, Division 380

Debbie Colbert, Water Policy Analyst, presented a request to amend rules under OAR Chapter 690, Division 380. Colbert reviewed the final staff report and explained that the final rules streamline the transfer application requirements and potentially reduce the cost associated with a water right transfer.

Commissioner Thorndike recommended a change to clarify the definition of Quitclaim Deed in 690-380-0100(9) to add the word “records.” The recommended change was “... means a document recorded in the deed records by the relevant”.

Commissioner Smith moved to adopt the proposed rules as indicated in Attachment 1 of the final proposed rules, along with the modification to the quitclaim definition to say “recorded in the deed records”; seconded by Commissioner Rasmussen. Voting for the motion: Commissioners Smith, Nakano, Thorndike, Hansell and Rasmussen. Voting against the motion: None.

J. Malheur Wildlife Refuge

The Department’s Assistant Attorney General, Shannon O’Fallon was connected by phone.

Renee Moulun, Protest Program Coordinator, briefed the Commission on the Malheur Wildlife Refuge water right application. Moulun requested that the Commission continue its tabling of hearing exceptions to the contested case hearing on Application S-84222 in the name of U.S. Fish and Wildlife Service until the January 2005 meeting.

Moulun said that, since the March 2004 Commission meeting, there has been a second round of settlement negotiations. This effort was prompted by the U.S. Fish and Wildlife Service who submitted settlement concepts to the parties on August 10, 2004. Discussions are ongoing with

regards to the concepts in the proposed settlement. They hope to have a negotiated resolution by the January 2005 meeting.

Shannon O'Fallon, Department of Justice, reminded everyone about the rules that govern the Commission's consideration of exceptions in a contested case matter and the Commission's ultimate decision with regards to a final order.

Commissioner Smith asked if it would be sensible to move forward with the subcommittee. Moulun said, considering the volume of the record, it would be good for a subcommittee to form and start reviewing the record. The subcommittee consists of Commissioners Smith and Nakano.

Emilee Wolff, Water for Life, gave testimony asking the Commission not to table the issue until January 2005. Wolff asked the Commission to make a decision and vote on the issue at this meeting.

Chad Kargas, Malheur National Wildlife Refuge, U.S. Fish & Wildlife Service, gave testimony in favor of tabling the issue until the January 2005 meeting.

Commissioner Rasmussen expressed his disappointment that a settlement had not already happened. He feels that the subcommittee needs to convene as soon as possible to begin reviewing the record.

Commissioner Rasmussen moved to table the contested case hearing exceptions until the January 2005 meeting; seconded by Commissioner Smith. Voting for the motion: Commissioners Smith, Nakano, Thorndike, Hansell and Rasmussen. Voting against the motion: None.

K. Instream Leasing Program Review

Tom Paul, Field Services Administrator, updated the Commission on the instream leasing program. OAR Chapter 690, Division 77, requires that the Commission review the lease program no later than 2004, to determine if the current lease term length of five years should be modified, and if there should be changes made to the Split Season Use Instream Leasing Program.

In May 2004, the Department invited public comment on the instream leasing program. The Department received comments which generally supported maintaining the maximum five-year leasing term and the split season leasing option as it currently exists.

L. Director's Report

Phil Ward commented that this was his first Commission meeting as Acting Director with the exception of the tour in August. He expressed his view that the Department has a staff that he feels gets the work done in a professional and competent manner.

Ward commented on the development of the agency budget. The agency requested budget was submitted in August. There is a significant potential short-fall in state General Fund revenues. There is a 10% cut in the budget being considered. The agency currently has about 140 positions. With the potential for budget cuts, this would mean existing filled staff positions would be effected.

Ward commented that there will be no new Commission appointments until after the first of the year.

The 2005 Water Resources Commission schedule was brought before the Commission for their approval. The proposed 2005 dates were as follows:

January 13 & 14	Salem
April 14 & 15	Salem
July 28 & 29	Salem
Optional Tour	June, August or September
October 27 & 28	TBA

Commissioner Nakano moved to adopt the 2005 Commission meeting schedule; seconded by Commissioner Smith. Voting for the motion: Commissioners Smith, Nakano, Thorndike, Hansell and Rasmussen. Voting against the motion: None.

M. Legislative Update

Adam Sussman, Senior Policy Advisory, gave a brief update on the development of the Department's legislative concepts. Sussman said that staff continues to work with stakeholders during the legislative concept development process.

N. Other Issues

No other issues were brought forward.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Cindy Smith
Commission Assistant