

Oregon Water Resources Commission Meeting
January 13, 2005
Salem, Oregon

WRC Members

Dan Thorndike
Jim Nakano
Tyler Hansell
Jay Rasmussen (by phone)

WRD Staff

Phil Ward
Shannon O'Fallon
Cindy Smith
Debbie Colbert
Adam Sussman
Kyle Gorman
Juno Pandian

Others

Emilie Wolff
Susan Hammond
Dwight Hammond
Karen Russell
Scott Ashcom
Jan Lee
Roger Prowell
Steven Johnson
Patrick Griffiths
Doug Myers
Tim Smith
Bruce Aylward
Dale Wymore

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 called the meeting to order.

B. Commission Comments

Commissioner Hansell provided an update on the Umatilla Groundwater Task Force. The Task Force has recommended to the county that domestic wells will not be a major influence on the ground water resources and should not be restricted at this time. No action has been taken by the county at this time. He complimented the Department for their participation in the meetings.

Adam Sussman, Senior Policy Coordinator, reminded the Commission that exempt uses will be on the April 14 and 15, 2005, agenda.

Commissioner Thorndike commented that he attended the Oregon Water Resources Congress Annual Conference in Hood River. He facilitated a round table discussion on water marketing.

C. Director's Report

Barry Norris, Technical Services Administrator, gave a briefing on current water conditions. Norris said that the forecast from the Climate Prediction Center calls for above normal temperatures and below normal precipitation through February.

Adam Sussman, Senior Policy Coordinator, reviewed the written report to the Commission summarizing on-going staff work in several different areas.

D. Legislative Update

Adam Sussman, Senior Policy Coordinator, gave a brief update to the Commission on current legislative activities. The Legislative Assembly convened in Salem on January 10, 2005. The Department has six pre-session filed bills, four co-sponsored by the Office of Regulatory Streamlining.

E. Budget Update

Mike Auman, Administrative Services Division Administrator, updated the Commission on the Department's 2005 – 2007 Governor's Recommended Budget. The Governor is making an investment to fully fund the Klamath Adjudication and is proposing to renew limited duration positions associated with the Department's 2003 fee bill.

G. Office of Rural Policy

Jim Azumano, Governor's Rural Policy Advisor, described to the Commission the role of the recently created Office of Rural Policy and its Rural Policy Advisory Committee. In April 2004, Governor Kulongoski signed an executive order (EO 04-04) recognizing that rural communities in Oregon face a complex mix of challenges. The executive order requires certain state agencies, including the Department, to designate an individual to act as Rural Policy Liaison to assist the Office of Rural Policy. Debbie Colbert, Water Policy Analyst, is the Department's liaison, working closely with region managers located around the state.

H. Measure 37 Update

Richard Whitman, Department of Justice, briefed the Commission on temporary administrative rules that establish the procedure for filing and processing State claims under Measure 37.

Measure 37 was passed by Oregon's voters on November 2, 2004. Since its passage, at Governor Kulongoski's direction, the Department of Administrative Services (DAS) has worked with the Department of Justice and affected state agencies to implement a centralized, statewide system for receiving and processing claims involving state government. Measure 37 is currently being implemented by administrative rule under OAR Chapter 125, Division 145 and requires all claims involving state government to be submitted directly to DAS.

J. Deschutes Mitigation Program Annual Implementation Report

Adam Sussman, Senior Policy Coordinator, and Laura Snedaker, Senior Water Resources Coordinator, briefed the Commission on its annual evaluation of the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505; and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules, OAR Chapter 690, Division 521. These rules implement Senate Bill 1033 (1995 Oregon Laws) and HB 2184 (2001 Oregon Laws) and provide for mitigation of impacts to scenic waterway flows and senior water rights while allowing additional appropriation of ground water in the Deschutes Ground Water Study Area.

The Department is required by rule to annually report on and evaluate implementation of the Deschutes Ground Water Mitigation Rules and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules.

Snedaker described the Department's implementation of the Deschutes Ground Water Mitigation Rules and Deschutes Basin Mitigation Bank and Mitigation Credit Rules. Ground water permit

applications and mitigation projects are moving through the required process. The program is producing positive benefits as more mitigation water has been approved and protected instream than required for the 19 ground water permits issued. Active mitigation projects in the General, Squaw Creek, and the Crooked River zones of impact (locations of new ground water permits) have resulted in a surplus of mitigation water (credits), including the reserve mitigation credit obligation for those permits using temporary mitigation credits.

Patrick Griffith, City of Bend; Bruce Aylward, Deschutes River Conservancy; and Steve Johnson, Central Oregon Irrigation District, testified on behalf of the Deschutes Water Alliance (DWA). They all spoke in favor of the Deschutes Mitigation Program. The DWA received a grant funded under the Water 2025 program through the Department of Interior, and has a goal of heading off water crisis through proper planning, water management, and coordination.

Bruce Aylward discussed the cost of mitigation and the amount of credits needed to irrigate an acre of land. The cost of a mitigation credit is currently \$70 per credit. An individual needs to secure 1.8 credits per acre to irrigate.

K. Public Comment

Roger Bachman, Oregon Trout, discussed a pilot project that deals with water and economics optimization within the Ochoco Irrigation District.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Cindy Smith
Commission Assistant

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Mike Reynolds
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Jeremy Giffin
Kris Byrd
Donn Miller
Jon Unger

Others

Emilie Wolff
Susan Hammond
Dwight Hammond
Karen Russell
Barbara Scott-Brier
Steve Grasty
Cindy Grasty
Tim Smith
Donna Stovall
Chad Kargess
Ron Yockim
Fred Otley
Rick Kepler
Michael Eberle
Hal Simms
William Fletcher
John Taves
Cortney Duke

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Vice-Chair Nakano opened the meeting.

F. Ground Water Advisory Committee Appointments

Barry Norris, Technical Services Administrator, and Donn Miller, Hydrogeologist, offered a list of candidates to serve on the Ground Water Advisory Committee. Tim Smith was recommended for appointment to serve until November 30, 2007, in the ground water user category.

Recommended for reappointment to serve until November 30, 2007, was Paul Christensen (well industry) and Marilyn Reeves (environmental).

Nominee Tim Smith briefed the Commission on his background and qualifications for membership on GWAC.

Commissioner Smith moved approval of the GWAC appointments as recommended in Alternative 1 of the staff report; seconded by Commissioner Hansell. Voting for the motion: Commissioners Nakano, Smith, Thorndike, Hansell and Rasmussen. Voting against the motion: None.

L. Contested Case Exceptions

Adam Sussman, Senior Policy Coordinator, briefed the Commission on the contested case hearing exceptions and the draft Final Order Approving Water Right Application S-84222 in the name of the United States Fish and Wildlife Service (USFWS).

On October 27, 2003, the Office of Administrative Hearings issued a proposed order in the contested case proceeding concerning Application S 84222 in the name of the USFWS. Exceptions to the proposed order were filed by Harney County and Water for Life. Responses to the exceptions were filed by USFWS and WaterWatch of Oregon (WaterWatch).

On March 11, 2004, Harney County, Water for Life, WaterWatch, and USFWS presented oral arguments on the application and exceptions before the Commission. Following the presentations, the Commission appointed a subcommittee of two members to review the contested case record and report back to the Commission. The Commission also urged the parties to pursue settlement discussions, and continued the matter until its October 2004 meeting.

At its October 22, 2004, meeting the Commission received a report from staff on the status of negotiations. Subsequent to the report, the Commission directed the subcommittee to complete review of the hearing record by the Commission's January 2005 meeting. The Commission once again urged the parties to pursue settlement discussions. The Commission continued the matter until its January 2005 meeting.

Prior to the Commission's January 2005 meeting, the USFWS, Harney County and the Department entered into a settlement agreement. In signing the agreement, Harney County withdrew its exceptions to the Administrative Law Judge's Proposed Order. The only exceptions that remain are those of Water for Life. Sussman recommended that the Commission allow Water for Life's exceptions 1 through 6 and that the Commission deny the remaining exceptions and issue a final order and a draft permit as provided in the staff report.

The settlement agreement between USFWS, Harney County and the Department recognizes and protects historic agricultural and Refuge activities while providing opportunities for future appropriations in the Donner und Blitzen River Subbasin. The agreement provides for future water use opportunities by subordinating Application S 84222, for purposes of regulation, to certain future permits that may be issued by the Department. In addition to the subordination provisions, the agreement modifies the period of use for Application S 84222 to October 1 through March 1 of each year and establishes a volumetric limit for S 84222, in combination with other Refuge water rights, of 145,000 acre-feet annually.

Judge Steve Grasty, Harney County and Ron Yockim, representing Harney County, spoke in support of the settlement agreement.

Emilie Wolff, Executive Director, Water for Life and Cortney Duke, attorney for Schroeder Law Office spoke in opposition to the settlement agreement and the application.

Barbara Scott-Brier, representing US Fish and Wildlife Service, and Michael Eberle, US Fish and Wildlife Service, spoke in support of the settlement agreement and the application.

Karen Russell, WaterWatch of Oregon, spoke in support of the settlement agreement.

Commissioner Smith commented that, as a member of the subcommittee that reviewed the record, she felt that the staff report that was before the Commission was a good summary representation of what is in the record. She expressed appreciation to Harney County and US Fish and Wildlife for their willingness to work together in the spirit of compromise. She also expressed appreciation for the efforts of staff throughout this process.

Commissioner Nakano commented that, as a member of the subcommittee that reviewed the record, he felt that staff did an excellent job of getting through this process. He commented that he was pleased with the final result.

Commissioner Rasmussen commented that he was pleased to hear that the parties have come to an equitable compromise.

Commissioner Thorndike commented on how significant the application is and that it has not been taken lightly. He felt that staff and the Commission gave as many opportunities as possible for people to work out a mutual solution. He thanked the Harney County Court and the US Fish and Wildlife Service for their efforts.

Commissioner Smith moved approval of Alternative 1 of the staff report; seconded by Commissioner Rasmussen. Voting for the motion: Commissioners Nakano, Smith, Thorndike, Hansell and Rasmussen. Voting against the motion: None.

After the Commission's vote, Chair Thorndike allowed members of the public to speak that were not a party to the contested case.

Fred Otley, rancher, spoke in opposition to the Settlement Agreement.

M. Proposed Extension of the Irrigation Season in the Donner und Blitzen Subbasins

Tom Paul, Field Services Administrator, briefed the Commission on the proposed extension of the Donner und Blitzen Subbasin irrigation season.

The Oregon Department of Agriculture requested that the Commission issue an order to extend the irrigation season in the Donner und Blitzen Subbasin from March 15 to March 1 of each year. In order for the Commission to issue this order, it must be found that water is available to extend the irrigation season and that an extended irrigation season will not impair instream flows for aquatic resources or meeting water quality standards. Staff analyzed water availability and consulted with Oregon Department of Fish and Wildlife (ODFW) and Oregon Department of Environmental Quality (DEQ) about the proposed extension. ODFW supported the extension with the conditions that we incorporated into the final order. DEQ was not opposed to the irrigation season extension. Staff concluded that the findings necessary to issue an order extending the irrigation season were established. Water use during the extended irrigation season would be subject to the statutory conditions to ensure no injury to existing or future water rights.

Commissioner Hansell moved approval of Alternative 1 of the staff report; seconded by Commissioner Nakano. Voting for the motion: Commissioners Nakano, Smith, Thorndike, Hansell and Rasmussen. Voting against the motion: None.

I. Consideration of Exceptions and Issuance of Final Order on Notice of Violation and Assessment of Civil Penalty for Dale L. Wymore, Water Well Constructor, License No. 1807

Juno Pandian, Enforcement Manager, briefed the Commission on the consideration of exceptions filed by Dale L. Wymore on a contested case proposed order proposing to assess civil penalties and suspend his license.

On December 10, 2003, the Department served a Notice of Violation; Assessment of Civil Penalty; Proposed License Suspension; and Proposed Order and Opportunity for Hearing on Dale L. Wymore. The notice identified 22 wells that Mr. Wymore constructed or abandoned between October 2002 and August 2003. Each of the 22 well reports were found to contain material misstatements of fact.

The contested case proposed order proposes to assess civil penalties in the amount of \$11,000 and a 660-day license suspension against Dale Wymore for 22 violations of ORS 537.747(7) material misstatement of fact on a well report.

Mr. Wymore's suspension shall commence on January 20, 2005 and continue through November 10, 2006.

Dale Wymore spoke on his behalf.

Commissioner Hansell moved approval of Alternative 1 of the staff report; seconded by Commissioner Smith. Voting for the motion: Commissioners Nakano, Smith, Thorndike, Hansell and Rasmussen. Voting against the motion: None.

A. Commission Meeting Minutes

The minutes of the October 21-22, 2004, meeting were offered to the Commission for their consideration. Commissioner Smith 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.

N. Climate Change Workshop

Barry Norris, Technical Services Administrator, introduced to the Commission a panel of experts and stakeholders to discuss global warming and its implications for water supplies in Oregon.

Panelists included: Dr. Philip Mote, Washington State Climatologist; Stella Coakley, Oregon State University; Lorna Stickel, Portland Water Bureau; Nancy Stephan, Bonneville Power Administration; Andrew Purkey, National Fish & Wildlife Foundation; and Sam Sadler, Oregon Department of Energy.

There being no further business, the meeting was adjourned.

Respectfully,

Cindy Smith
Commission Assistant