

# Oregon Water Resources Commission

July 28, 2005  
Salem, Oregon

## Minutes

### WRC Members

Dan Thorndike  
Jay Rasmussen  
Susie Smith  
John Jackson  
Mary Meloy  
Gary Reed  
Charlie Barlow

### WRD Staff

Phil Ward  
Tom Paul  
Cindy Smith  
Debbie Colbert  
Mary Graine  
Larry Mentee  
Dwight French  
Gary Ball  
Jerry Rodgers  
Kyle Gorman

### Others

Emilie Wolff  
Wyatt Rolfe  
Jerry Schmidt  
Doug Myers  
Dan James  
Bob Hunter  
Rob Schab

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.

### **A. Minutes**

The minutes of the April 14 and 15, 2005, meeting were offered to the Commission for their consideration. Commissioner Smith moved to approve the minutes as presented; seconded by Commissioner Rasmussen. Voting for the motion: Commissioners Smith, Thorndike, Rasmussen, Barlow, Jackson, Meloy, and Reed. Voting against the motion: None.

### **B. Commission Comments**

Chair Thorndike asked new commissioners to say a few words about themselves.

Commissioner Gary Reed is located in Hermiston. He is a retired OSU experiment station superintendent and research entomologist. He serves on the Umatilla Ground Water Task Force. He represents the East Side at Large.

Commissioner Susie Smith commented on how quiet it is in her area considering how empty Fern Ridge Reservoir is. The Corps is working hard to complete the repair work on the dam in a year. She represents the West Side at Large.

Commissioner Jay Rasmussen had nothing to comment on. He represents the West Central Region.

Commissioner Mary Meloy is located in Tumalo. Meloy is retired after nearly 30 years of government service. She represents the North Central Region.

Commissioner John Jackson is located in Cornelius. He is a retired aquatic biologist. His career covered 30 years. He started at the Department of Environmental Quality dealing with non-point source pollution in agriculture, forestry and urban settings. He then moved to the regulated community as the planning director for Clean Water Services of Washington County. He was involved in the formation of the Tualatin River Watershed Council. He represents the Northwest Region.

Commissioner Charlie Barlow is located in Nyssa. He is a partner in his family farm which irrigates about 1000 acres. He represents the Eastern Region.

Chair Thorndike welcomed all the new Commissioners. He complimented staff for the new Commissioner orientation that was presented earlier that day.

### **C. Director's Report**

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

Ward commented that Dick Bailey, Water Right and Adjudication Administrator, passed away in June. Dwight French was appointed as Acting Administrator.

Tom Paul, former Field Services Administrator, was hired to fill the Deputy Director position in a half-time capacity.

Dave Jarrett, former NW Region Manager, was appointed as Acting Field Services Administrator.

Bill Ferber, former District 16 Watermaster, was appointed as Acting Northwest Region Manager.

Adam Sussman, Senior Policy Coordinator, took a job in Corvallis with CH2M Hill. Debbie Colbert, former Water Policy Analyst, was hired to fill the position of Senior Policy Coordinator.

Director Ward commented that staff are in the process of doing rulemaking with regards to the hydroelectric program, water right permit extensions and water right adjudications.

### **D. Legislative Update**

Director Ward gave a brief update to the Commission on current legislative activities. Throughout this session, the Department tracked a total of 82 bills. The Department introduced six bills that were enacted during this session.

Commissioner Rasmussen asked how soon would a summary of legislation be available.

Debbie Colbert, Senior Policy Coordinator, commented that the summary would be provided to the Commission as soon as possible.

## **E. Budget Update**

Mike Auman, Administrative Services Administrator, updated the Commission on the Department's 2005 – 2007 Budget. The Department's budget had not been legislatively adopted at the time of the meeting.

Auman gave a powerpoint presentation to the Commission on this issue.

## **F. Recognition**

The Commission recognized Daniel Rich from Boy Scout Troop 77 in Salem for his help in building ten recorder shelters for the Department's ground water program. The Department provided supplies and plans for his use in building these shelters. These shelters house water level equipment and are installed over wells throughout the state. The shelters were his Eagle Project which is one step toward becoming an Eagle Scout.

## **G. Significant Diversions Update**

Dave Jarrett, Acting Field Services Administrator; Gary Ball, Hydrographics and Water Use Reporting Manager; and Mike Ladd, North Central Region Manager, briefed the Commission on the Department's progress on the inventory and assessment of significant diversions statewide.

In 2000, the Commission endorsed a strategy for statewide water measurement. The Commission's water measurement strategy included a program to inventory and complete field assessments of significant points of diversions. The Commission's goal was to complete the inventory and assessment by April 2005. The initial inventory work was completed in 2001. To date, 2425 significant diversions have been identified in 293 high priority watersheds. As the assessment proceeds, the number of diversions are decreasing. The original total listed in previous reports (2567) was estimated on individual water rights. As water rights are linked to diversion points, multiple rights have been found to share a single diversion, so the number of significant diversions are reduced. The latest estimate of significant diversions are approximately 2200 to 2300. According to water right records, 543 of these significant diversions are required by a condition in the water right to have a measuring device installed.

The Department continues to move toward the measurement goals previously identified in the Commission's strategy. With the exception of the Southwest Region, most site visits and data entry have been completed.

Jarrett, Ball, and Ladd gave a powerpoint presentation to the Commission on this issue.

## **H. Basin Program Exception**

Dwight French, Acting Water Rights and Adjudications Administrator; and Mary Grainey, Hydroelectric Project Coordinator, briefed the Commission on a request from the Coos Bay North Bend Water Board for an exception to the South Coast Basin Program as provided in ORS 536.295.

The South Coast Basin Program currently classifies uses allowed from Pony Creek above Lower Pony Creek Dam for municipal purposes only. The Coos Bay North Bend Water

Board (“CBNBWB”) applied to use water from the spillway of its municipal reservoir for a minor hydroelectric project.

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. CBNBWB requested an exception to the South Coast Basin Program as use of water would be largely non-consumptive in nature and not likely to be regulated for other water rights, and is necessary to ensure public health, welfare and safety; as provided in ORS 536.295(1)(c) and (d).

Rob Schab, Coos Bay North Bend Water Board, commented in favor of the exception request.

Commissioner Rasmussen moved to approve the request by CBNBWB for a basin program exception, recognizing that a permit, if issued, may be conditioned to protect the public health, safety and welfare; seconded by Commissioner Smith. Voting for the motion: Commissioners Smith, Thorndike, Rasmussen, Barlow, Jackson, Meloy, and Reed. Voting against the motion: None.

French and Grainey gave a powerpoint presentation to the Commission on this issue.

## **I. Grants Pass Irrigation District Consent Decree**

Dave Jarrett, Acting Field Services Administrator; and Bruce Sund, Acting Southwest Region Manager, briefed the Commission on the Grants Pass Irrigation District (GPID) Consent Decree and a request to join a stipulated order to allow GPID to divert water at Savage Rapids Dam until November 1, 2006.

In 2001, the Commission was party to an agreement in federal court that settled pending litigation and allowed the Grants Pass Irrigation District (GPID) to continue diverting 52.3 cubic feet per second (cfs) of water while it worked toward water conservation and removal of Savage Rapids Dam. That agreement included a deadline of November 1, 2005 for diversion at the dam. After that date GPID would have to rely on pumps for diversion of water. The consent decree also included other performance standards the district needed to meet. Due to the uncertainty of federal funding for the project, the consent decree also included an opportunity whereby the court could extend the deadline for diverting at the dam one year if GPID complied with the conditions of the court decree.

Based on information from the parties involved in the settlement agreement, GPID met its duties and obligations outlined in the consent decree.

Bob Hunter, WaterWatch of Oregon, spoke in favor of the stipulated order.

Dan James, Ball Janek Attorney, spoke in favor of the stipulated order.

Dave Howard, Grants Pass Irrigation District Manager, spoke in favor of the stipulated order.

Commissioner Smith moved to have the Commission join a stipulated order substantially in the form of the draft in Attachment 2 to extend the deadline in the consent decree one year to allow GPID to divert water at Savage Rapids Dam until November 1, 2006; seconded by Commissioner

Rasmussen. Voting for the motion: Commissioners Smith, Thorndike, Rasmussen, Barlow, Jackson, Meloy, and Reed. Voting against the motion: None.

Jarrett and Sund gave a powerpoint presentation to the Commission on this issue.

**J. Surface Water Summary Report**

Juno Pandian, Enforcement Manager; Kris Byrd, Well Program Specialist; and Larry Menteeer, District 13 Watermaster, reported to Commissioners on the Department's 2004 surface water regulation, well program activity, and formal enforcement.

Pandian, Byrd, and Menteeer gave a powerpoint presentation to the Commission on this issue.

There being no further business, the meeting was adjourned.

Respectfully,

Cindy Smith  
Commission Assistant

# Oregon Water Resources Commission

July 29, 2005  
Salem, Oregon

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Mike Mattick  
Jerry Rodgers  
Bob Rice  
Renee Moulun

### Others

Emilie Wolff  
Wyatt Rolfe  
Jerry Schmidt  
Doug Myers  
Bob Hunter  
Carl Hopp  
Sam Henzel  
Lisa Brown  
Ross Day  
Bob Crouse  
Ron Yockim  
Glen Spain  
Greg Addington  
Dave Solem  
Robert Webber  
Martha Pagel  
Gail Whitsett  
Jim McCarthy  
Herman Baertschiger, Jr.  
Ross Day

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Chair Thorndike called the meeting to order.

Chair Thorndike stated that the Commission needed to elect a vice-chair. Commissioner Smith nominated Commissioner Rasmussen; seconded by Commissioner Reed. Voting for the motion: Commissioners Smith, Thorndike, Rasmussen, Barlow, Jackson, Meloy, and Reed. Voting against the motion: None.

### **J. Surface Water Summary Report (continued)**

Michael Mattick, District 2 Watermaster, reported to Commissioners on his district's field activities. Mattick gave a powerpoint presentation to the Commission on this issue.

## **EXECUTIVE SESSION**

The Commission broke into Executive Session to discuss pending litigation.

### **K. Consideration of Land Exchange between Ann Cobb and Tumalo Irrigation District**

Mike Auman, Administrative Services Division Administrator, and Paul Weddle, Department of Justice, briefed the Commission on the proposed land exchange between Tumalo Irrigation District and Ann Cobb.

In 1988, the Commission approved the transfer of certain land in the Tumalo Reservoir area to Tumalo Irrigation District (TID). The land was deeded to TID through a quitclaim deed with a reversionary clause. The deeded land is adjacent to a parcel of land owned by Ann Cobb. Ann Cobb desires to partition her property, but one of the partitioned properties will be land locked. The county will not approve such partition unless there is access from each partitioned property to a public road. The only possible access to Ann Cobb's properties is through the parcel deeded to TID by the Commission.

The Commission was asked to approve a land exchange between the land deeded to TID and Ann Cobb. Ann Cobb proposed to give up 0.58 acres of her parcel of land in exchange for 0.28 acres of the land deeded to TID. The land swap would provide public access to her land as necessary for her to obtain county approval to partition her land.

The Department understands that the Tumalo Project has been developed to the full extent of the physical limitations the reservoir area will allow. The Department consulted with the Department of Justice, Oregon Department of Fish and Wildlife, and TID in reviewing the request.

Carl Hopp, Tumalo, Irrigation District Attorney, described the area being transferred. Tumalo has no objection to this transfer.

Commissioner Smith moved approval of the lot line adjustment application and that the director be authorized and directed to record an instrument releasing the reversion on those portions released in attaching the reversion to that land obtained by Tumalo Irrigation District and that the Commission affirm the intent of the original quitclaim providing that land as the other lands now in ownership by the Tumalo Irrigation District remain open and free of obstacles for winter grazing; seconded by Commissioner Jackson. Voting for the motion: Commissioners Smith, Thorndike, Rasmussen, Barlow, Jackson, Meloy, and Reed. Voting against the motion: None.

Auman gave a powerpoint presentation to the Commission on this issue.

### **L. Contested Case Exceptions**

Tom Paul, Acting Deputy Director, briefed the Commission on consideration of exceptions filed by Fort Vannoy Irrigation District (FVID) and Herman E. Baertschiger, Jr. in a contested case proceeding on water right transfer T-8366 in the name of Ken Wal Farms, Inc.

Ken-Wal Farms filed Water Right Transfer Application (T-8366) on November 30, 1999. The application proposed to change the point of diversion for the lands appurtenant to the applicant's land, authorized under Water Right Certificates 2803, 3247, 15340, 8942 and

8943. The applicant's lands are within FVID. Water is diverted and delivered to the lands in question by FVID.

The transfer application proposed changes to two points of diversion, one each from the Rogue River and Vannoy Creek. The applicant has direct access to the two proposed points of diversion. Upon approval of the transfer, the water would no longer be diverted and delivered by FVID. Notice of T-8366 was published in the Grants Pass Daily Courier newspaper for three consecutive weeks ending on September 30, 2000. A timely protest was filed by FVID and Herman E. Baertschiger, Jr.

The matter of the protest was referred to the Central Hearing Panel. Following motions by the Department, the Administrative Law Judge ruled on the legal issues and order, finding in favor of the Department, resulting in the issuance of a proposed order.

Ron Yockim, representing Fort Vannoy, spoke in favor of the exceptions.

Herman Baertschiger, Chairman of the Board for FVID, spoke in favor of the exceptions.

Ross Day, representing Ken Wal Farms, Inc., spoke in opposition of the exceptions.

Ron Yockim, representing Fort Vannoy, gave rebuttal.

At the request of Commissioner Smith, the Commission went to Executive Session to consult with legal counsel.

## **EXECUTIVE SESSION**

The Commission returned from Executive Session.

Commissioner Rasmussen moved that on the basis of ORS 540.521(2)(a) and OAR 690-015-0060 that are referenced in Attachment 3 – draft final order, and Attachment 4 – draft transfer order, that we deny the exceptions and issue a final order substantially in the form that is contained in those two drafts; seconded by Commissioner Meloy. Voting for the motion: Commissioners Smith, Thorndike, Rasmussen, Barlow, Jackson, Meloy, and Reed. Voting against the motion: None.

Paul gave a powerpoint presentation to the Commission on this issue.

## **M. Klamath Basin Petition**

Lisa Brown, WaterWatch of Oregon; Bob Hunter, WaterWatch of Oregon; and Glen Spain, Pacific Coast Federation of Fisherman's Association, briefed the Commission with regards to the petition.

The petition was submitted by WaterWatch of Oregon and ten other organizations to either initiate emergency rulemaking under ORS 183.390 and 183.335(5) to close the Klamath and Lost River Basins to further appropriation via a basin program rule or take immediate action under ORS 536.410 to withdraw from further appropriation all of the unappropriated surface and ground waters of the Klamath and Lost River Basins.

Petitioners requested that the Commission maintain a withdrawal or closure by basin classification until the following actions are complete:



1. Ongoing ground water studies have been completed and they demonstrate additional ground water development is sustainable;
2. A final order of determination in the Klamath Basin adjudication has been entered;
3. Water is available for future appropriation after meeting instream and tribal needs and existing rights;
4. Measurement and reporting devices have been installed on all major diversions; and
5. The Department has implemented an aggressive enforcement program.

Barry Norris, Technical Services Division Administrator, briefed the Commission on the science that the Department is using to address issues in the Klamath Basin and recommended the Department return to the October meeting with a full presentation on surface water and ground water investigation and permitting activities.

Commissioner Smith stated that at the October meeting, she would like to have a more in depth review of department and other agency activity in the Klamath Basin. Commissioner Smith also asked:

1. Is there a good working relationship and adequate communication between staff and Oregon Department of Fish and Wildlife and the US Fish and Wildlife Service concerning issues such as the petition, permitting and other related issues?
2. Are there other considerations and actions that staff could be taking regarding issues not normally considered such as protection of marshes, wetlands, sensitive habitat and wildlife refugia?
3. Where are we with flow restoration efforts?
4. Where are we with our basin investigations?

Commissioner Rasmussen asked what new conditions or requirements the Department is considering when making a decision on new ground water permits.

Staff will return at the October meeting with information regarding the above questions.

Jim McCarthy, Oregon Natural Resources Council, spoke in favor of the petition.

Greg Addington, Klamath Water Users Association, spoke in opposition to the petition.

Sam Henzel, Klamath Drainage District, spoke in opposition to the petition.

Dave Solem, Klamath Irrigation District, spoke in opposition to the petition.

Robert S. Webber, retired educator, spoke in favor to the petition.

Martha Pagel, Schwabe Williamson & Wyatt, spoke in opposition to the petition.

Gail Whitsett, Basin resident and spouse of Senator Doug Whitsett, spoke in opposition to the petition.

Emilie Wolff, Water for Life, spoke in opposition to the petition.

Commissioner Rasmussen moved to take no formal action on the request for withdrawal of the Klamath Basin for further water appropriations at this time; seconded by Commissioner Barlow. Voting for the motion: Commissioners Smith, Thorndike, Rasmussen, Barlow, Jackson, Meloy, and Reed. Voting against the motion: None.

Commissioner Rasmussen asked that staff provide a matrix of the issues and matrices of tools that are or might be used to help in the Klamath situation.

Commissioner Smith noted that she would like additional discussion to include staff and other agencies to think creatively about whether there are additional tools that can be looked at besides the permitting process.

Commissioner Rasmussen moved to deny the petitioners request for emergency rulemaking to classify the waters of the Klamath Basin as they indicate to prevent further water allocation; seconded by Commissioner Smith. Voting for the motion: Commissioners Smith, Thorndike, Rasmussen, Barlow, Jackson, Meloy, and Reed. Voting against the motion: None.

Norris gave a powerpoint presentation to the Commission on this issue.

**N. Public Comment**

There was no public comment.

**O. Other Issues**

There were no other issues.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Cindy Smith  
Commission Assistant