

**Water Resources Commission  
Work Session  
Bandon Community Center  
Bandon, Oregon  
August 10, 2006**

WRC Present

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

Staff Present

Phil Ward  
Tom Paul  
Debbie Colbert  
Cindy Smith  
Barry Norris  
Dwight French  
Mike Auman  
Kim Grigsby  
Doug Woodcock  
Mitch Lewis  
Larry Menteer  
Bruce Sund  
Bill Ferber  
Amanda Owen  
Doug Parrow

Others

Kimberley Priestly  
Lisa Brown  
Tom Forgatsch  
Robert Ater  
Leslie Clarke  
John Griffith  
Tom Purvis  
Wayne Scherer  
Ron Kasper  
Dan Hanthorne  
Dan O'Brien  
Paul Bauge  
Paul Siebert  
Delmer Robison  
Jeff Hager  
Cortney Duke  
Leslie Clarke  
David Smith

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.

The Commission toured local sites in the morning. The tour stops included Bandon Dune Golf Course, Russell Cranberry Company, Windhurst Reservoir, and the Oceanspray Receiving Station.

Vice-Chair Rasmussen called the meeting to order.

**A. 2005 Field Activities Report and Watermaster Presentations**

Tom Paul, Deputy Director; Larry Menteer, Watermaster District 13; and Mitch Lewis, Watermaster District 19, briefed the Commission on field activities. Tom provided information on statewide activities while Watermasters Menteer and Lewis described activities and issues within their districts.

Menteer and Lewis gave a PowerPoint presentation to the Commission on this issue.

**B. Commission Dialog with Local Representatives**

Coos County Commissioner John Griffith welcomed the Commission and Department to Coos County. He thanked the Commission for their service to the State of Oregon.

Commissioner Rasmussen facilitated a conversation with John Griffith, Coos County Commissioner; Tom Purvis, Natural Resources Conservation Service; and Wayne Scherer, Bandon Water Control District.

### **C. Greenberry Irrigation District Update**

Dwight French, Water Rights and Adjudication Administrator, provided background on the Commission's consideration of the basin program exception and the Department's issuance of Permit S-54059 to Greenberry Irrigation District (GID).

On January 3, 2003, GID filed an application (S-85410) to use 52.93 cubic feet per second (cfs) of surface water from the Willamette River for irrigation of 4248.5 acres. Since irrigation is not a classified use of water in the Willamette River at their location, the applicant requested an exception to the Willamette Basin Program under ORS 536.295.

On February 14, 2003, the Commission granted the exception to the Willamette Basin Program due to extreme hardship. The basis for the hardship exception was that the alternative source of water through a stored water contract with the US Bureau of Reclamation for Willamette Basin Project water was not available.

The Commission granted GID's exception after discussion of this permit as a temporary bridge for GID until contract water was available.

The applicants filed a protest to the PFO. Eventually a settlement agreement was reached, and a permit was issued on April 26, 2004.

Dan O'Brien, Greenberry Irrigation District Manager, provided an update on GID's efforts to obtain a Bureau of Reclamation contract. To date, GID has been unable to obtain a contract for water service from the Bureau.

Dan Hanthorne, City of Corvallis, Water Treatment Plant Manager, also spoke on cooperative efforts between the City of Corvallis and GID with regards to water reuse.

French, Hanthorne and O'Brien gave a PowerPoint presentation to the Commission on this issue.

### **D. Other Comments**

Tom Forgatsch, Cranberry Grower, spoke on the need for storage.

Ron Kasper, Project Manager for the Johnson Creek Project, spoke on the need for storage.

David Smith, Retired Engineer, spoke regarding water use and water management.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Cindy Smith  
Commission Assistant

**Water Resources Commission  
Meeting  
Bandon Community Center  
Bandon, Oregon  
August 11, 2006**

WRC Present

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

Staff Present

Phil Ward  
Tom Paul  
Debbie Colbert  
Cindy Smith  
Barry Norris  
Dwight French  
Mike Auman  
Kim Grigsby  
Doug Woodcock  
Mitch Lewis  
Larry Menteer  
Bruce Sund  
Bill Ferber  
Amanda Owen  
Doug Parrow

Others

Kimberley Priestly  
Lisa Brown  
Helen Moore  
Glenn Barrett  
Leslie Clarke  
John Griffith  
Adam Sussman  
Steve Shropshire  
Bill Brown  
Sen. Doug Whitsett  
Edward Bartell  
Roger Nicholson

Tom Griffith  
Jim McCarthy  
Paul Heikkila  
Chad Rabe  
Cortney Duke  
Fritz Paulus

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 Rasmussen called the meeting to order.

**E. Minutes**

The minutes of the May 4 and 5, and the June 28, 2006, meetings were offered to the Commission for their consideration.

Commissioner Jackson recommended a change to the May 5, 2006 minutes. Under Commission Comments, page 4, the minutes noted that static levels were up 15 feet in his area. The change clarifies that the static levels were up 15 feet in his well.

Commissioner Smith moved to approve the May 4 and 5, 2006, minutes as revised; seconded by Commissioner Barlow. Voting for the motion: Commissioners Smith, Rasmussen, Barlow, Jackson, Meloy and Reed. Voting against the motion: None.

Commissioner Jackson moved to approve the June 28, 2006, teleconference minutes; seconded by Commissioner Reed. Voting for the motion: Commissioners Rasmussen, Barlow, Jackson, Meloy and Reed. Commissioner Smith abstained from the vote. Voting against the motion: None.

## **F. Commission Comments**

Commissioner Barlow commented on the previous days' meeting. He complimented the community for looking at other water sources.

Commissioner Reed applauded the people in the area and across the state for their demand that the legislature find a way to help the Department study reservoir development. He said he hopes that people not only consider reservoirs, but also storage in the ground. He wants people to maintain the State's standard for protecting the environment.

Commissioner Meloy appreciates being in different areas of the state when the Commission travels. She said that she also appreciates the community and their efforts. She said the Commission learns more being able to see what is happening first hand in the area.

Commissioner Smith echoed Commissioner Meloy's comments. She commented on the Willamette Total Maximum Daily Load (TMDL) development. The Department of Environmental Quality (DEQ) will be signing the final order on the TMDL at the end of August.

Commissioner Jackson echoed a thank you to the local community for the tour. He commented that Department staff are attending the DEQ meetings.

Commissioner Rasmussen echoed a thank you for the previous days meeting and tour. He commented that he spent three weeks in India and explained the water situation there.

## **G. Director's Report**

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

## **H. Budget Update**

Mike Auman, Administrator of the Administrative Services Division, briefed the Commission on the 2007-2009 budget process.

Commissioner Smith commented that she was pleased with what happened at the June 28 teleconference with regards to the budget. She recently listened to a presentation from Stephanie Hallock, DEQ Director, where they are taking a similar approach.

Commissioner Rasmussen commented that the Commission has been involved in the budget formulation both in restoration and enhancement.

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

The Commission discussed a draft letter to Michael Carrier, Governor's Natural Resources Policy Director, prepared by the Commission in support of the Department's budget.

## **I. Commission Discussion**

Commissioner Jackson gave an update on the recent meetings of the Funding Subcommittee. The Funding Subcommittee consists of Commissioner Barlow, Commissioner Jackson and Commissioner Reed. The committee has met twice since it was created in May. This subcommittee looks at where the existing budget goes and where

it comes from. The committee spent time brainstorming options to adjust the funding sources. It was suggested that a stakeholder group needs to be formed so that their ideas can be incorporated.

Commissioner Smith suggested making a list of stakeholders along with the services and interests they have in what we do; how might we provide a manageable sized representative group; and what would the scope be.

Commissioner Rasmussen commented that the committee give another update at the November meeting.

Commissioner Smith gave an update on the recent meeting of the Future's Subcommittee. The Future's Subcommittee consists of Commissioner Smith, Commissioner Meloy and Commissioner Reed. The subcommittee has met once since it was created in May. This subcommittee looked beyond supply at a new integrated framework for the state that integrates the interests and missions of all the resource agencies that address water instream and out-of-stream, for various needs for environmental and fish purposes as well as human consumption and economic development. The Department needs more tools to be able to look at true long-term sustainability.

Commissioner Smith said that the subcommittee agreed to create a one-pager to try to simplify this complex concept down to the basics about what the objectives would be, what the successful project would look like, a potential process, and what the time frame would be.

The subcommittee's objective is to work with staff to frame a process and a method for approaching it and a potential timeframe for bringing it back to the Commission.

#### **J. Final Proposed Rules Related to Water Right Transfers and Modifications to Ground Water Registrations – OAR Chapter 690, Divisions 380 and 382**

Bill Ferber, West Region Manager, and Doug Parrow, Transfer Program Coordinator, requested the Commission adopt final proposed rules under OAR Chapter 690, Division 380 related to Water Right Transfers and OAR Chapter 690, Division 382 related to Modifications of Ground Water Registrations. The proposed Division 382 rules implement House Bill 2123 (2005 Oregon Laws, Chapter 614) by defining the process and standards for recognizing ground water modifications. The proposed rule amendments in Division 380 implement provisions of HB 2123 related to surface water to ground water transfers and also clarify other provisions related to transfers.

Ferber distributed an errata sheet with proposed additional modifications to 690-382-0500, 690-382-1000, 690-380-2110. The additional modifications are as follows. The proposed additional modifications are in CAPS with double underline.

#### ***690-380-2110***

##### ***Change in Point of Diversion or Point of Appropriation***

**(1) No change in point of diversion or appropriation may be made except as described under OAR 690-380-0010 or as approved or recognized by the Department through a water right transfer, permit amendment under ORS 537.211, or certificate of registration modification under OAR Chapter 690, Division 382.**

**(2)** Except as provided in ORS 540.531 and OAR 690-380-2130, a change in point of diversion is restricted to the same source of surface water. A change in point of appropriation **UNDER A WATER RIGHT OR CERTIFICATE OF REGISTRATION MODIFICATION** is restricted to the same aquifer.

**(3)** ~~[(2)]~~ As provided in ORS 450.695(2), a water authority may change the points of diversion **or appropriation** or move the water intake sources of the water use permits or certificates conveyed to it by the districts and municipalities that formed the water authority. For the purposes of this subsection, moving a water intake source is the same as changing the location of a point of diversion. Water authorities shall be subject to the following requirements:

(a) A request by a water authority to change the location of a point of diversion **or appropriation** from that authorized by a water right certificate shall be made pursuant to ORS Chapter 540 and OAR Chapter 690, Division 380 transfer rules;

(b) A request by a water authority to change the location of a point of diversion **or appropriation** authorized by a water use permit, as defined in OAR 690-380-0100**(14)**~~[(13)]~~(c), shall be subject to the same statutory and administrative review criteria prescribed by ORS Chapter 540 and OAR Chapter 690, Division 380 transfer rules for water uses subject to transfer; and

(c) A request by a water authority for changes in the point of diversion **or appropriation** for water right permits other than those covered under subsection **(3)**~~[(2)]~~ (b) of this rule, shall be made pursuant to ORS 537.211.

#### **690-382-0500**

##### **Fee Refunds**

**If an applicant for a modification to change the point of appropriation abandons the original well IDENTIFIED IN THE CLAIM according to well construction standards within one year of the Department's recognition of the modification, the applicant may request a refund of \$100 of the fee paid under OAR 690-382-0400(17)(b).**

#### **690-382-1000**

##### **Recognition of Modifications**

**(1) An application for modification of a certificate of registration shall be recognized if the Department determines that:**

**(a) The proposed modification would not result in enlargement as defined in OAR 690-382-0100(2);**

**(b) The proposed modification would not result in a state Scenic Waterway receiving LESS WATER THAN previously available [WATER] during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;**

**(c) The proposed modification would not result in injury as defined in OAR 690-382-0100(3); and**

**(d) Any other requirements for modification of the certificate of registration are met.**

**(2) Except as otherwise provided in OAR 690-382-0800(7), the Department shall issue a final order consistent with the preliminary determination described in OAR 690-382-0700 if no protests are received under OAR 690-382-0900.**

**(3) Issuance of the final order recognizing changes in character of use or place of use shall terminate the right to use water for the character of use or place of use under the original certificate of registration or a previously recognized modification of a registration.**

**(4) ~~Issuance of the final order recognizing~~ THE ORDER RECOGNIZING a modification of a certificate of registration MAY ~~SHALL~~ not be construed as A final**

**DETERMINATION OF THE RIGHT TO APPROPRIATE GROUND WATER UNDER THE REGISTRATION OR MODIFICATION. SUCH A DETERMINATION WILL OCCUR IN ~~[OR CONCLUSIVE until it is DETERMINED UNDER]~~ an adjudication proceeding under ORS 537.670 to 537.695.**  
**(5) A copy of the final order and all supporting documentation will be filed with the original request for registration and made available at the time of adjudication under ORS 537.670 to 537.695.**

Helen Moore, Water for Life, spoke in opposition of the Division 380 and 382 rules.

Commissioner Smith moved that the Commission adopt the final proposed Division 380 and 382 rules with additional modifications as provided; seconded by Commissioner Meloy. Voting for the motion: Commissioners Smith, Rasmussen, Barlow, Jackson, Meloy and Reed. Voting against the motion: None.

Ferber and Parrow gave a PowerPoint presentation to the Commission on this issue.

**K. Request for Adopt Rules Related to Rulemaking, Protests and Contested Cases, and Public Records Requests (OAR Chapter 690, Divisions 1, 2 and 3)**

Kim Grigsby, Water Resources Policy Analyst, requested the Commission adopt final proposed rules under OAR Chapter 690, Division 1 related to rulemaking to reflect the latest version of the Attorney General's Uniform and Model Rules of Procedure, OAR Chapter 690, Division 2 related to protests and contested case hearings to be consistent with the Attorney General's Uniform and Model Rules of Procedure and OAR Chapter 690, Division 3 related to requests for public records and the Department's processing of those requests.

Grigsby noted an additional change in 690-003-0220. The additional modifications are as follows. The proposed additional modifications are bold underlined.

**690-003-0220**

**Fee Waivers and Reductions**

**(3) The Department may grant a request for a waiver or reduction of public records review or reproduction charges in some circumstances. ~~[(a)]~~ A person making a public records request may submit a written request for a waiver or reduction of the charges. The request must demonstrate that the public records request is in the public interest because making the public record available primarily benefits the general public.**

**~~[(b) If the Department determines that a waiver or reduction is not prohibited by law, it will review the request to determine whether disclosure of the records requested would benefit the community or society as a whole, rather than a concern or interest of a private individual or entity.]~~**

**(e a) If the Department finds the request satisfies the public interest test, it will determine whether to deny or grant the fee waiver or reduction, either in whole or in part.**

**(~~e~~ b) If the Department denies a request for a fee waiver or reduction, the requestor may petition the Attorney General or district attorney under the process provided under ORS 192.410 to 192.505.**

Commissioner Meloy moved that the Commission adopt the final proposed rules in Attachments 1 through 3 with the additional modifications as provided; seconded by

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

Grigsby gave a PowerPoint presentation to the Commission on this issue.

**L. Final Proposed Rules Related to Instream Water Right Rules, OAR Chapter 690, Division 77**

Debbie Colbert, Senior Policy Coordinator, requested the Commission adopt final proposed rules under OAR Chapter 690, Division 77 related to instream water rights. The proposed rules provide greater consistency with the water right transfer rules (OAR Chapter 690, Division 380), incorporate other general housekeeping changes, and clarify the standards for state agency applied instream water rights. The final proposed rules also clarify the provisions and processes affecting instream water rights established by instream transfers, instream leases, and allocations of conserved water.

Fritz Paulus, Oregon Water Trust, spoke in support of the rules.

Helen Moore, Water for Life, spoke in opposition of the rules.

Commissioner Jackson made a suggestion that the rules advisory committee get back together after the upcoming legislative session to continue to resolve issues that were not addressed in these proposed final rules.

Director Ward acknowledged Commissioner Jackson's request to have staff reconvene the rules advisory committee after the upcoming legislative session.

Commissioner Rasmussen asked that this issue be referenced in the November Director's Report.

Commissioner Jackson moved that the Commission adopt the final proposed rules in Attachment 1; seconded by Commissioner Smith. Voting for the motion: Commissioners Smith, Rasmussen, Barlow, Jackson, Meloy and Reed. Voting against the motion: None.

Colbert gave a PowerPoint presentation to the Commission on this issue.

**M. Final Proposed Rules Related to District Water Right Transfers, OAR Chapter 690, Division 385**

Debbie Colbert, Senior Policy Coordinator, requested the Commission adopt final proposed rules under OAR Chapter 690, Division 385 related to district water right transfers. The proposed rules implement temporary district transfer provisions enacted under House Bill 2875 by the 2005 Legislature. House Bill 2875 modified ORS 540.570 to provide districts the opportunity to temporarily (for one irrigation season) change a point of diversion for a water right in the event an emergency prevents a district from diverting the water to which it is legally entitled.

Colbert distributed an errata sheet with proposed additional modifications to 690-385-3145. The additional modifications are as follows. The proposed additional modifications are in CAPS.



*Temporary Change in Point of Diversion in Response to an Emergency*

- (1) As provided in ORS 540.570, a temporary change in point of diversion may be made in response to an emergency as defined in OAR 690-385-0100(19).**
- (2) A temporary change in point of diversion is restricted to the same source of surface water or to ground water from an unconfined aquifer that is hydraulically connected to the same source of surface water pursuant to OAR 690-385-3150, AND SHALL BE LIMITED TO DIVERTING NO MORE THAN THE QUANTITY OF WATER AVAILABLE FOR DIVERSION FROM THE SURFACE WATER SOURCE AT THE ORIGINAL POINT OF DIVERSION.**
- (3) Pursuant to OAR 690-385-3000(1), a district may submit and the Department may approve an application for a temporary change in point of diversion in response to an emergency for a period of time not to exceed one irrigation season.**
- (4) If more than one irrigation season is necessary to correct the emergency under OAR 690-385-0100(19), a district shall submit an application for a temporary change in point of diversion for the succeeding irrigation season.**
- (5) Under this rule, a district may be limited to filing no more than two temporary transfer applications, for successive irrigation seasons, in response to the same emergency.**
- (6) An applicant shall not divert water from a temporary change in point of diversion in response to an emergency prior to:**
  - (a) Submitting a complete application as required under OAR 690-385-3200(3)(a)(C) that lists the agencies and governments and contact names with whom the applicant has notified and consulted; and**
  - (b) Consulting with applicable state agencies such as ODFW and DSL, and applicable local governments and tribal governments about the temporary change in point of diversion.**
- (7) The Department shall consult with ODFW to determine whether a fish screen device is necessary for the diversion pursuant to OAR 690-385-3520.**
- (8) Pursuant to OAR 690-385-3500, a final order approving a temporary change in point of diversion in response to an emergency may include any conditions or restrictions necessary to prevent injury to another water right.**
- (9) If the proposed transfer affects an instream water right, the Department shall develop any conditions or restrictions necessary to prevent injury to the instream water right in consultation with the state agency that has management responsibility for the resources protected by the instream water right.**
- (10) The Department, may at any time upon determining a temporary change in point of diversion results in injury to an existing water right:**
  - (a) Impose conditions to prevent injury; or**
  - (b) Reject or revoke the change.**

Commissioner Reed moved that the Commission adopt the final proposed rules as provided in Attachment 1 with additional modifications as proposed; seconded by Commissioner Smith. Voting for the motion: Commissioners Smith, Rasmussen, Barlow, Jackson, Meloy and Reed. Voting against the motion: None.

Colbert gave a PowerPoint presentation to the Commission on this issue.

## **N. Water Right Permitting in the Klamath Basin**

Barry Norris, Administrator of the Technical Services Division; Tom Paul, Deputy Director; and Doug Woodcock, Ground Water Section Manager, briefed the Commission on water right permitting in the Klamath Basin.

The Commission previously considered administrative action that would limit water right permitting in the Klamath Basin. The Commission accepted the Department's recommendation that flexibility was needed to deal with the uncertainties presented in the outcome of the adjudication process and finding solutions to the Endangered Species Act (ESA) issues. At that time, the Commission chose not to adopt new administrative limits, thereby maintaining the Department's flexibility in dealing with Klamath Basin water-related issues.

During their deliberative process of considering new administrative limits, the Commission offered direction to staff. Specifically, staff were asked to give careful consideration to any requests for irrigation of new land. The Commission noted that the water availability model demonstrates that surface water is not available at an 80% exceedance level in the Klamath River, and new water rights that effect flow in the Klamath River would exacerbate problems for existing users and ESA needs.

In maintaining flexibility the Commission noted their desire was to put an emphasis on allocating remaining available water to projects that would not adversely impact other water rights, would benefit existing users, and would assist in solving ESA issues.

Glenn Barrett, Water for Life, spoke on water right permitting in the Klamath Basin.

Ed Bartell, Water for Life, spoke on water right permitting in the Klamath Basin.

Senator Doug Whitsett, spoke on water right permitting in the Klamath Basin.

Bill Brown, Klamath County Commissioner, spoke on water right permitting in the Klamath Basin.

Chad Rabe, Sprague River Watershed Area, spoke on water right permitting in the Klamath Basin.

Martha Pagel, Schwabe, Williamson & Wyatt, spoke on water right permitting in the Klamath Basin.

Tom Griffith, Landowner, spoke on water right permitting in the Klamath Basin.

Jim McCarthy, Oregon Water Resources Council, spoke on water right permitting in the Klamath Basin.

Lisa Brown, WaterWatch of Oregon, spoke on water right permitting in the Klamath Basin.

Roger Nicholson, Water for Life, spoke on water right permitting in the Klamath Basin.

Commissioner Reed asked for a summary of the water rights, both surface and ground water, the number of applications, and quantity requested, to be included in the November Director's Report.

Director Ward commented that the Department is using the best science available to make decisions on permitting in an attempt to fulfill and protect senior water rights.

Commissioner Rasmussen asked for an update on the USGS Report if completed by the next meeting. Rasmussen also noted the commitment to staff having public workshops including in the Klamath area after the report is out.

Norris, Paul and Woodcock gave a PowerPoint presentation to the Commission on this issue.

**O. Public Comment**

There was no public comment.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Cindy Smith  
Commission Assistant