

Oregon Water Resources Commission Meeting  
March 11, 2004  
Bend

WRC Members

Dan Thorndike  
Jim Nakano  
Tyler Hansell  
Jay Rasmussen  
Susie Smith

WRD Staff

Paul Cleary  
Phil Ward  
Debbie Colbert  
Cindy Smith  
Adam Sussman  
Diane Addicott  
Shannon O'Fallon  
Kyle Gorman  
Renee Moulun  
Dwight French  
Jerry Rodgers  
Jonathan LaMarche  
Juno Pandian  
Larry Carey  
Jeremy Giffin  
Ned Gates  
Jason Eklund  
Wayne Skladal

Others

John Herlocker  
Roger Prowell  
Donna Stovall  
Barbara Scott-Brier  
Tom Downs  
Jeff Steyaert  
Karen Russell  
Kimberley Priestley  
Roger Bachman  
Jan Lee  
Mary Meloy  
Rex Barber  
Steve Johnson  
Patrick Griffiths  
Susan Hammond  
Dwight Hammond  
Ron Yockim  
Steve Grasty  
Brad Harper  
Mickey Killingsworth  
Tammy Sailors  
David Newton  
Michael Eberle  
Chad Karges

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, thanking the City of Bend for providing the meeting room, and helping plan the morning field trip to water-related sites in the area. Thorndike also thanked Kyle Gorman, South Central Region Manager, for providing information during the tour and responding to questions and comments. Gorman introduced his staff members present at the meeting, and mentioned those unable to attend.

**A. Final Proposed Rules (SB 820, Deschutes Basin Transfers)**

Debbie Colbert, Water Policy Analyst, presented this request for approval of proposed rules implementing Senate Bill 820 under OAR 690, Division 380. These rules provide additional tools for accommodating water demand while protecting the Deschutes River and existing water rights. Colbert reviewed the staff report and explained that the proposed rules would establish the process to make changes from a surface water point of diversion to ground water wells in the Deschutes Ground Water Study Area. The proposed rules would also establish the process to make temporary changes in place of use and type of use from irrigation to municipal use in the Deschutes River Basin. The proposed rules would provide for adaptive management to fulfil the mandate of Senate Bill 820 to report annually to the Legislature on the implementation of the temporary transfer provisions and submit a detailed report in 2009, including recommendations for further legislation.

Smith moved to adopt the proposed rules as included in Attachment 1 of the staff report; seconded by Rasmussen. All voted approval.

**B. Sandy Basin Program Exception Under ORS 536.295**

Dwight French, Water Rights Section Manager, presented a request from Morse Bros., Inc. for an exception to the Sandy Basin Program (Application G-15324). Peter Mostow, attorney for Morse Bros., participated in the discussion by telephone. Jeff Steyaert, Morse Bros., was present to answer questions and further explain the situation.

Using slides, maps, and aerial photos French described the site location. He explained that Morse Bros. had requested a basin exception to allow the Department to consider their application to appropriate water for industrial use — a use not classified as allowable in the Sandy Basin Program. Department staff agreed that denial of the use would cause burdens to Morse Bros. that could not be easily overcome and that the exception is necessary to avoid extreme hardship.

Jeff Steyaert said surrounding well owners in the area were contacted regarding any water rights that might be transferred to Morse Bros. At the current time, none are available.

Hansell moved to approve the request by Morse Bros., Inc. for a basin program exception to avoid “extreme hardship” under ORS 536.295; recognizing that a permit if issued may be conditioned to protect the public health, safety and welfare. Motion was seconded by Rasmussen. All voted approval.

Following the motion, French asked the Commission if they might like to consider delegating authority to process basin program exception requests to the Director of WRD. The

Commissioners determined that they would like to continue to maintain approval responsibility for such requests.

Cleary suggested that it might be useful information for Commissioners if staff would report back to them with a ten-year history of exception requests categorized by type, disposition by the Commission, and status of permit issuance and subsequent development.

### **C. Mitigation Bank Charter Modification**

Adam Sussman, Senior Policy Coordinator, presented this request for approval of modification to the Mitigation Bank Charter for the Deschutes Water Exchange. The modification would provide the mitigation bank with greater flexibility by eliminating an annual March 1 deadline by which the bank must submit instream lease applications for consideration as mitigation credit projects.

Hansell moved to approve the modification to the Mitigation Bank Charter for the Deschutes Water Exchange as proposed in the staff report attachment. Motion was seconded by Smith. All voted approval.

### **D. Contested Case Hearing Exceptions**

Renee Moulun, Protest Program Coordinator for the Water Rights and Adjudication Division, presented for the Commission's consideration exceptions filed by Harney County and Water for Life in a contested case proceeding on water right application S-84222 in the name of U.S. Fish and Wildlife Service (USFWS).

Moulun introduced the parties: Ron Yockim, representing Harney County; Brad Harper, representing Water for Life; Barbara Scott-Brier, representing U.S. Fish and Wildlife Service; and Karen Russell, representing WaterWatch of Oregon.

Moulun reviewed the details of the application and the applicant's request before the Commissioners. She described the topography, land use, and hydrology of the drainage basin. The USFWS filed this application on July 28, 1999, requesting up to 820 cfs of water when available from the Donner und Blitzen River and tributaries for wildlife refuge management on the Malheur National Wildlife Refuge. The primary purpose of the Refuge is habitat and breeding grounds for migratory waterfowl. The proposed use would be an "off season" water use that could be used between October 1 and March 15 of each year to capture early runoff and floodwaters when available.

Protests were filed by Harney County; Harney County Soil and Water Conservation District; Water for Life; and WaterWatch of Oregon. The Oregon Department of Fish and Wildlife

participated as intervenors. A contested case hearing was held in Burns on April 30, 2002. An administrative law judge issued a Proposed Order on October 27, 2003, recommending that WRD approve the application with specified conditions. Exceptions to the Proposed Order were filed by Harney County and Water for Life. The USFWS and WaterWatch filed responses to those exceptions.

Barbara Scott-Brier, legal counsel for USFWS; Michael Eberle, hydrologist and Water Rights Manager for Region 1 USFWS; and Chad Karges, Deputy Refuge Manager, used a PowerPoint presentation to help explain the Refuge's water needs and the reason for requesting this water use.

Ron Yockim, attorney for Harney County; and Harney County Court Judge Steve Grasty spoke in opposition to the application and explained their concerns to the Commission.

Brad Harper, Water for Life Executive Director; and Susan Hammond, Harney County rancher, spoke in opposition to the application. Harper suggested that consideration of this water right application be tabled and brought back to the Commission at a later date, allowing settlement discussions to continue with the applicants, protestants, and Department staff.

Karen Russell, WaterWatch, objected to testimony given at the meeting beyond what was in the record. She spoke in support of the application and the draft final order in Attachment 9 of the staff report.

Shannon O'Fallon, Assistant Attorney General, reminded Commissioners that the oral argument heard at this meeting is not testimony to be considered as a part of the record. She said the Commissioners' responsibility is to look at the record and make a determination on the exceptions before them.

Rasmussen moved to table the matter to no later than the October 2004 Commission meeting pending additional settlement discussions and review of the record by a subcommittee of the Commission to be appointed by Chair Thorndike; seconded by Hansell. All voted approval.

There being no further business to discuss, the meeting adjourned to be continued the following day.

Respectfully submitted,

Diane K. Addicott  
Commission Assistant