

**Water Resources Commission
Meeting
Salem, Oregon
February 22, 2007**

WRC Present

Jay Rasmussen
Mary Meloy
Susie Smith
Charlie Barlow
John Jackson

Staff Present

Phil Ward
Tom Paul
Debbie Colbert
Cindy Smith
Barry Norris
Dwight French
Mike Auman
April Snell
Mike Reynolds
Liz Klicker
Mike Ladd

Others

Roger Bachman
Helen Moore
Kimberley Priestly
Gerry O'Keefe
Cortney Duke

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.

A. Oregon Coastal Coho Conservation Plan

Sue Knapp, Governor's Office, MikeLadd, Acting Field Services Administrator, and Liz Klicker, ESA Recovery Planning Coordinator, presented to the Commission commitments identified in the State of Oregon Conservation Plan for the Oregon Coast Coho Evolutionary Significant Unit (ESU).

In 2005, Oregon completed an assessment of Oregon Coast coho. The assessment was used to determine current status, identify key limiting factors, evaluate effectiveness of Oregon programs, and inform the NOAA Fisheries listing decision under the Endangered Species Act (ESA).

The Conservation Plan for Oregon Coast Coho was developed to ensure continued viability of Coast coho salmon and achieve a desired status that provides substantial ecological and societal benefits. It was developed with significant input from a diverse group of stakeholders, NOAA Fisheries Technical Recovery Team, and Oregon Plan Core Team members. The Conservation Plan meets requirements of the Native Fish Conservation Policy and provides the basis for recovery plan development and implementation at the local scale.

The Department has been involved in an extensive interagency and stakeholder process to assess Oregon Coast Coho and identify key factors limiting the ESU.

Natural resource agency directors were asked by the Governor to seek the Commission and Board's endorsement of commitments made under the Conservation Plan for the Oregon Coast Coho ESU.

Roger Bachman, Oregon Trout, asked a question of staff as to whether or not cities like the City of Lincoln City, are adopting sensible conservation plans and conserving water so that sources like Schooner Creek will not have to be tapped.

Dwight French, commented that a settlement has been made with the City of Lincoln City with regards to their water management and conservation plan. Since this settlement, the City has submitted their water management and conservation plan to the Department.

Vice-Chair Rasmussen asked staff to follow-up at a subsequent meeting on the City of Lincoln City Settlement Agreement.

Kimberley Priestly, WaterWatch of Oregon, commented on significant diversions. She encouraged the Commission to better refine the commitment in the coho plan to better reflect what the Department's commitment is as far as requiring measurement.

Commissioner Smith moved endorsement of the Department commitments under the State of Oregon Conservation Plan for the Oregon Coast Coho ESU, and continued cooperative Department participation under the Oregon Plan for Salmon and Watersheds; seconded by Commissioner Jackson. Voting for the motion: Commissioners Smith, Rasmussen, Barlow, Jackson, and Meloy. Voting against the motion: None.

B. Informational Update on Scenic Waterway Evaluations with Respect to Ground Water in the Grande Ronde Basin

Barry Norris, Technical Services Administrator, gave an update to the Commission on Scenic Waterway Evaluations with Respect to Ground Water in the Grande Ronde Basin.

The Scenic Waterway Act was enacted during the 1970's. In the 1980's, flow levels were adopted for scenic waterways. In 1995, the state Scenic Waterway Act, ORS 390.835, was amended to include ground water interference with surface water as a consideration in maintaining scenic waterway flows.

The Department evaluates all new ground water applications for hydraulic connection and potential for substantial interference with local surface waters. Within or above scenic waterways, ground water applications are further evaluated to determine if a preponderance of evidence exists that indicates the proposed use will measurably reduce surface water flows necessary to maintain the free-flowing character of the scenic waterway.

A generally accepted hydrogeologic method is required to perform the scenic waterway evaluations. For this, Ground Water staff rely on peer-reviewed analytical models to calculate interference between a proposed ground water use and local surface waters.

If scenic waterway flows are not met and the subsequent cumulative interference exceeds one percent of the average daily flow or one cubic foot per second, whichever is less, the flows have been measurably reduced. The Department is precluded from issuing any permits that would further contribute to a reduction in flow.

The one cubic foot per second standard has been exceeded in the Grande Ronde Basin. The Grande Ronde Basin contains basin-fill or alluvial aquifers in hydraulic connection with surface water. Developing ground water from these aquifers ultimately reduces surface water flows. Scenic waterway flows in the Grande Ronde Basin are currently not met nine months out of the year. Tracking of ground water uses from the basin-fill aquifer has determined that more than one cubic foot per second of interference has occurred. Therefore, the flows, by definition, have been measurably reduced. The Grande Ronde Basin contains the only scenic waterway flows that have been determined to be measurably reduced.

The Department is meeting with local interests to explain how applications are reviewed under the scenic waterway statute and to provide information on options for new ground water development.

C. State of Washington Columbia River Water Management Program

Gerry O'Keefe, Washington Department of Ecology, briefed the Commission on the Columbia River Water Management Program adopted by the State of Washington.

O'Keefe gave some history of the program over the years. He said unmitigated water cannot be taken from the Columbia during the summer months. In 1980, the state established an instream flow on the Columbia River. It was set at the lowest level that flows had been measured on the Columbia, (1977 was the low flow year) and was written in a way that the state hoped would encourage the federal system operators to avoid interruption of water rights on the main stem of the Columbia River. In 1993, the first biological opinion came into affect. At that time, the State of Washington, through the Department of Ecology, issued a moratorium for new water rights from the Columbia River. It was a controversial action at the time, but was the best scientific information available. A law was passed to lift the moratorium in 1997. A caveat was added, by then Governor Locke, not to issue new water rights from the Columbia River until adequate flows are available to protect fish. O'Keefe said that this was the core of the controversy on the Columbia River.

During the last legislative session, a bill was created to find ways to get water into the river during the summer. It was determined that you have to mitigate for water use in the future. It was agreed that 1/3 of any stored water would be used for fish instream in the summer and 2/3 of any stored water could be used to mitigate for out-of-stream purposes. The governor proposed a \$200 million bond authorization before the legislation moved through passage. This is the key to what has been happening in Washington.

Since the bill was passed, the Department has completed a programmatic Environmental Impact Statement (EIS), looking at a range of policy options for implementing the bill. The state is working with the Bureau of Reclamation (BOR) and CH2M Hill on an

appraisal level study of four storage sites on the main stem Columbia, which will be completed soon. The first project inventory has been completed.

O'Keefe said that the Department is actively engaged with the federal Columbia River Power System. They are working with representatives from Canada and looking at options along the border to see if there are opportunities for enhancing summer water supply.

O'Keefe said that the State of Washington would like to have an ongoing partnership on water supply with the State of Oregon.

D. Public Interest Review of Application G-16618, Phillip Anderson

Dwight French, Water Rights and Adjudication Division Administrator, and Tim Wallin, Water Rights Manager, briefed the Commission on a public interest review for Application G-16618 in the name of Phillip Anderson.

Application G-16618 in the name of Phillip Anderson proposes to use 0.06 cubic foot per second (cfs) from a well in the Columbia-Umatilla Plateau Subbasin for irrigation on 1.42 acres. The well is located within a five-mile radius of the City of Hermiston's municipal wells and develops water from the basalt ground water reservoir. The Department has documented that a barrier to ground water movement separates the proposed well from the municipal wells, and, that there will be no interference with municipal wells. The City of Hermiston has an approved water management and conservation plan. Therefore, the application meets the criteria under OAR 690-507-0070(3)(d)(D).

Under OAR 690-507-0070(3)(d)(D), the Commission must review and consider the public interest for applications for uses other than municipal, group domestic and statutorily exempt ground water uses from basalt wells within a five-mile radius of a municipal well of the City of Hermiston.

With regard to the review and consideration of the public interest, the Department found that all of the elements of the public interest presumption, besides the basin-program element, have been satisfied. With regard to the review and consideration of the preservation of the public welfare, safety and health, the Department found that the proposed use will ensure the preservation of the public welfare, safety and health.

Commissioner Barlow moved approval of the recommendation that the Commission determine the application is consistent with the public interest and allow the Department to continue processing the application with an affirmative finding regarding the basin program element of the public interest presumption; seconded by Commissioner Meloy. Voting for the motion: Commissioners Smith, Rasmussen, Barlow, Jackson, and Meloy. Voting against the motion: None.

E. OAR Chapter 690, Division 340 Follow Up

Dwight French, Water Rights and Adjudication Division Administrator, and Tim Wallin, Water Rights Manager, gave a follow up to the OAR Chapter 690, Division 340 rules that were adopted at the November 2006 Commission meeting.

At the November 17, 2006 Commission meeting, the Commission adopted rules that implement HB 2178 (2005) to provide an expedited review process for applications to use stored water exclusively. During the discussion, which concluded with the Commission adopting the proposed rules, there was concern about the Department's ability to raise public interest issues on these applications. The Commission asked Department staff to report back on this issue.

The recently adopted Division 340 rules provided a streamlined process for reviewing applications to use stored water. Under the new expedited storage statute, the Department may issue a permit if no public interest issues have been raised. At the time of Commission discussion, the Department thought that the statute meant that it may not refuse to issue a permit on the basis of public interest issues, unless those issues were raised through comments. Department staff met with the Assistant Attorney General who advised that the enacting statute (ORS 537.147) and newly adopted rules (OAR 690-340-0060) do not preclude the Department from raising public interest issues or causing applications to be moved into the regular reservoir application process. Department staff are reviewing each application using a checklist of potential issues.

Kimberley Priestly, WaterWatch of Oregon, spoke in favor of the Attorney General's advice. She asked the Commission to direct the Department to include this on their housekeeping list for rulemakings.

The Commission asked for something in writing from the Attorney General regarding their advice on this issue.

Renee Moulun, Assistant Attorney General, agreed to this.

F. Minutes

The minutes of the November 16 and 17, 2006 meeting were offered to the Commission for their consideration.

Commissioner Rasmussen asked for Commissioner Thorndike's name to be added to the list of attendees at the November meeting.

Commissioner Smith moved to approve the November 16 and 17, 2006 minutes as amended; seconded by Commissioner Barlow. Voting for the motion: Commissioners Smith, Rasmussen, Barlow, Jackson, and Meloy. Voting against the motion: None.

G. Commission Comments

Commissioner Smith commented that she has been working with Commissioners Meloy and Barlow on the Future Subcommittee.

Commissioner Barlow said that he had the opportunity to stop by the Malheur watermaster office and visited with Ron Jacobs. While visiting the watermaster office, he saw former Commissioner Jim Nakano. Nakano said to tell everyone hello.

Commissioner Meloy commented that she visited with Director Ward regarding Reimbursement Authority. She received a report that things are going well. She expressed her concern about the budget. Using all tools available for the budget is necessary. Meloy offered her assistance during the budget process.

Commissioner Jackson commented that he was invited to attend a meeting in Portland with Representative Jackie Dingfelder on water management. Debbie Colbert also attended the meeting. Something that came out of the meeting was how to deal with Measure 37 issues from an urban services in a rural area. Jackson said he was asked to attend a Sustainability Summit Conference in Washington County. He looked at some visioning efforts for Washington County in water management and environmental issues. Jackson contacted Lorna Stickel, Portland Water Bureau and John DeVoe, WaterWatch of Oregon regarding the urban conservation as it relates to the Oregon Water Supply and Conservation Initiative.

Commissioner Rasmussen commented that he, along with Director Ward and Debbie Colbert, met with Representative Jackie Dingfelder regarding the Department's budget. He said the Department did a very good job delivering the message about where the Department's budget has been over the last 10 years along with expressing the support of Commission throughout the process. He also attended a committee hearing on the Department's fee bill with staff.

H. Director's Report

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

Commissioner Rasmussen suggested having a Water Day for the State of Oregon next year. Ward suggested having a partnership with Oregon State University on this.

I. Budget Update

Mike Auman, Administrative Services Division Administrator, updated the Commission on where the Department is at with the 2007-2009 Governor's Recommended Budget (GRB).

The Department will be presenting their budget presentation to Ways and Means March 6 - 14, 2007.

The Commission discussed having a Commissioner attend the Ways and Means presentation.

J. Legislative Update

Debbie Colbert, Senior Policy Coordinator, gave an update on the 2007 Legislative Session.

Staff gave an update on the status of the Department's bills and other water-related legislation that will likely be considered this session including water use measurement and exempt ground water use.

Kimberley Priestly, WaterWatch of Oregon, spoke regarding the Department's fee bill, HB 2101.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Cindy Smith

**Water Resources Commission
Meeting
Salem, Oregon
February 23, 2007**

<u>WRC Present</u>	<u>Staff Present</u>	<u>Others</u>		
Jay Rasmussen	Phil Ward	Tim Wallin	J.W. Meltor, Jr.	Ken Leach
Mary Meloy	Tom Paul	Bill Ferber	Justin Gericke	Linda Leach
Susie Smith	Debbie Colbert	Juno Pandian	Angelo Spada	Neil Bryant
Charlie Barlow	Cindy Smith	Kim Grigsby	Art Spada	Merilyn Reeves
John Jackson	Barry Norris	Kerry Kavanagh	Roger Bachman	Don Dean
	Dwight French	Jean Eastman	Tod Heisler	Steve Johnson
	Mike Ladd	Doug Parrow	Rex Barber	Dan Goffin
	April Snell	Kyle Gorman	Brad Taylor	Laurel Hines
	Mike Reynolds		David McGourty	Patrick Griffiths
			Helen Moore	
			Kimberley Priestly	
			George Gerspacher	

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Vice-Chair Rasmussen called the meeting to order.

K. Request for an Exception to the Willamette Basin Program by A and R Spada Farms under ORS 536.295

Dwight French, Water Rights and Adjudication Division Administrator, and Tim Wallin, Water Rights Manager, briefed the Commission on the request for an exception to the Willamette Basin Program by A and R Spada Farms, Application S-86739, under ORS 536.295.

Application S-86739 proposes to use 1.38 cubic feet per second (CFS) for irrigation use on 109.4 acres from a new diversion point on the main stem Willamette River. In the Department's initial review of the application dated February 9, 2007, the Department determined that water is available for new uses, but that irrigation use is not a classified use from the main stem Willamette River in the Willamette Basin Program (OAR 690-502-0050(1)(b)).

In November 1991, the applicant submitted two transfer applications, T-6645 and T-6646, to the Department in order to consolidate four surface water diversion points on two old Willamette River channels under Certificates 13772 and 13774. Certificate 13772 authorizes the use of 0.65 CFS from an "old channel of Willamette River" for irrigation use on 52.0 acres. Certificate 13774 authorizes the use of 0.73 CFS from an "unnamed slough, tributary of Willamette River," for irrigation use on 57.4 acres. During the irrigation season, the two sloughs described in Certificates 13772 and 13774 are often not connected to the present-day Willamette River channel. Thus, the

Department determined that the sloughs are technically different sources than the mainstem Willamette River under the transfer rules, and thus not subject to a simple point of diversion transfer.

ORS 536.295 authorizes the Commission to allow the Department to consider an application to appropriate water for a use not classified in the applicable basin program if the use is consistent with any one or more of seven statutory criteria. The applicant provided the Department with a basin program exception request on January 3, 2007. The applicant stated that the basis for the request is that the use will provide a public benefit such as riparian or watershed improvement pursuant to ORS 536.295(1)(f). The applicant proposes to transfer existing water rights (evidenced by Certificates 13772 and 13774) to permanent instream use to offset the new irrigation right from live flow in the Willamette River.

Staff believe that the basin program exception submitted by the applicant will provide a public benefit meeting the riparian and watershed improvement criterion under ORS 536.295, and that the proposed use is consistent with the general policies of the Willamette Basin Program.

Justin Gericke, Jordan Schrader, spoke in favor of the exception request.

Commissioner Jackson moved approval of the request for an exception to the Willamette Basin Program to provide a public benefit, namely riparian and watershed improvement, provided that the instream transfers are approved simultaneously, and that the applicant provide documentation that benefits will be maintained, as a condition of a permit, if issued; seconded by Commissioner Meloy. Voting for the motion: Commissioners Smith, Rasmussen, Barlow, Jackson, and Meloy. Voting against the motion: None.

L. Deschutes Basin Ground Water Mitigation Program Annual Implementation and Evaluation Reports

Kyle Gorman, South Central Region Manager, Tom Paul, Deputy Director, and Rick Cooper, Hydrogeologist, briefed the Commission on the 2005 and 2006 annual evaluations 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.

The Department continues to implement 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 processes. The program is producing positive benefits as more mitigation water has been approved and protected instream than required for the 45 ground water permits issued. The Deschutes Mitigation Model shows that because of these mitigation activities the instream requirements in the lower Deschutes River will be met slightly more often than in the past. Active mitigation projects in the General, Middle Deschutes, Whychus Creek (formerly named Squaw Creek), Little Deschutes, 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.

Representatives from Deschutes Water Alliance gave a presentation on their activities in the basin. Representatives included Neil Bryant, Attorney; Jan Wick, Avion Water Company; Tod Heisler, Deschutes River Conservancy; and Steve Johnson, Central Oregon Irrigation District.

Director Ward complimented the representatives for their efforts. He emphasized his appreciation for the partnerships that have been developed between agencies and the local community.

Roger Bachman, Oregon Trout, commented on how encouraged he has been by all the efforts discussed.

M. Public Comment

Patrick Griffiths, City of Bend, gave a handout to the Commission regarding HB 2538. This bill relates to continuing education for landscapers.

A group of individuals spoke to the Commission regarding Measure 37 and its effects in the area. The following individuals spoke to the Commission.

Ken Leach, Salem
Merilyn Reeves, Amity
Don Dean, Salem
Dan Goffin, Aumsville
George Gerspacher, Sublimity
Laurel Hines, Salem
David McGourty, Salem

N. Other Issues

Commissioner Rasmussen asked staff about the land use planning letter that was in their packet.

Tom Paul, Deputy Director, and Mike Ladd, Acting Field Services Administrator, explained the letter to the Commission.

SB 82 from the 2005 Legislative Session created the Oregon Task Force on Land Use Planning, otherwise known as the Big Look Task Force. The Task Force looks at the effectiveness of Oregon's Land Use Planning Program in meeting current and future needs of Oregonians in all parts of the state along with the roles and responsibilities of state and local governments in land use planning and land use issues specific to areas inside and outside of urban growth boundaries.

The Task Force meets around the state to identify where there are land use issues.

Following the response letter to Chair Thorne that the Commission received, the Department was invited to present to the Task Force, who the Oregon Water Resources Department is and what the Department's charge and responsibilities are, along with

what the interface is between our water management activities and land use planning activities. The Department spent about an hour before the Task Force providing this information. The Department has an invitation back to attend a future meeting of the Task Force.

Commissioner Rasmussen discussed the Commission meeting schedule and upcoming retreat. Commissioners discussed possible topics for the upcoming retreat. It was discussed to have the retreat during their August meeting.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Cindy Smith