

**Water Resources Commission
Retreat
Salem, Oregon
August 29, 2007**

WRC Present

Dan Thorndike
Jay Rasmussen
Charlie Barlow
Susie Smith
John Jackson
Mary Meloy
Ray Williams

Staff Present

Phil Ward
Tom Paul
Barry Norris
Cindy Smith
Debbie Colbert
Kim Grigsby
Doug Woodcock

Others

Kelvin Koons
Brenda Bateman
Anita Winkler
Kimberley Priestly
Mike McArthur

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. Kelvin Koons, OSU, facilitated the meeting.

The Commission and staff met to discuss water resources issues and priorities. Specific topics discussed were the Oregon Water Supply and Conservation Initiative; a request from the Association of Oregon Counties; a Statewide Water Supply Task Force; and key water resources issues.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Cindy Smith
Commission Assistant

Water Resources Commission
Meeting
Salem, Oregon
August 30, 2007

WRC Present

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John Jackson
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Ray Williams

Staff Present

Phil Ward
Tom Paul
Barry Norris
Cindy Smith
Debbie Colbert
Kim Grigsby
Doug Woodcock

Others

Lisa Brown
Helen Moore
Anita Winkler
Cory Engel
Gordon Root
Boyd Gayfield
Rachel Walker
George Gerspacher
Martha Pagel
John Rehm
Judy Messner
Peter Mohr
Kathy Freeborn
Gerald Freeman
Julie Keil

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Chair Thorndike called the meeting to order.

A. Minutes

The minutes of the May 31 and June 1, 2007 meeting were offered to the Commission for their consideration.

Commissioner Smith moved to approve the May 31 and June 1, 2007 minutes as submitted; seconded by Commissioner Rasmussen. Voting for the motion: Commissioners Thorndike, Smith, Rasmussen, Barlow, Jackson, Meloy and Williams. Voting against the motion: None.

B. Commission Comments

Commissioner Barlow commented he attended the celebration of the 75th Anniversary of the Owyhee Dam Project. Phil Ward and Jerry Rodgers also attended the celebration.

Commissioner Smith had no comments.

Commissioner Meloy had no comments.

Commissioner Rasmussen commented that he met the newest member of the Commission, Ray Williams.

Commissioner Jackson commented that he attended the Tualatin Flow Managers Annual Meeting. There was discussion regarding Scoggins Reservoir and municipal conservation at the meeting. He also met with Andy Duyck, Rural Washington County Commissioner, and Tom Bryan, County Commission Chair. During his meetings with these individuals, they discussed Measure 37 and water, and the issue of land use versus management of the public's water. He commented on the fact that Washington County has a new park, Stubb Stewart State Park. Jackson was a part of the

concept team that developed the administrative rule. He also attended the dedication for the State Park.

Commissioner Williams introduced himself as the newest member of the Commission. He expressed how impressed he was by the Commission and staff's sense of responsibility and concern. He said he was looking forward to working with everyone.

Commissioner Thorndike commented that he attended an OWEB meeting in Maupin. He said that they discussed a move towards bigger signature projects being funded. Potential move toward being more proactive. He commented that it is important not to lose track of opportunities for funding through OWEB.

C. Director's Report

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

Renee Moulun, Legal Counsel, gave an update on the Fort Vannoy case.

Commissioner Barlow made a motion that the Commission supports the Department of Justice and Water Resources Department's decision to move forward with the appeal process regarding the Fort Vannoy case, seconded by Commissioner Smith. Voting for the motion: Commissioners Thorndike, Smith, Rasmussen, Barlow, Jackson, Meloy and Williams. Voting against the motion: None.

Commissioner Rasmussen encouraged having a joint Commission meeting with Department of Land Conservation and Development.

The Commission had a great deal of discussion on location and topics for the November work session. It was discussed that climate change and the Governor's Statewide Water Development Task Force would be on the agenda.

D. Legislative Update

Debbie Colbert, Field Services Administrator, briefed the Commission on outcomes from the 2007 Legislative Session along with a brief summary of what was happening in the 2008 Legislative Session.

Commissioner Jackson extended his appreciation to interest groups that stepped forward during the Department's budget process.

Commissioner Rasmussen echoed Commissioner Jackson's comments.

E. Public Interest Reviews of Application G-16773, Boyd Gatfield and Application G-16775, James and Marjorie Shelley

Dwight French, Water Rights and Adjudication Administrator, briefed the Commission on a request for the public interest reviews of Application G-16773, Boyd Gatfield and Application G-16775, James and Marjorie Shelley.

Under OAR 690-507-0030(3)(a)(B), the Commission must review and consider the public interest for water right 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 Milton-Freewater. Under OAR 690-507-0070(3)(d)(D), the Commission must review and consider the public interest for certain ground water uses within a five-mile radius of a municipal well of the City of Hermiston.

Application G-16773 in the name of James and Marjorie Shelley proposes to use 0.03 cubic foot per second (cfs) of water from a well for irrigation on 2.0 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 for approval under OAR 690-507-0070(3)(d)(D).

Application G-16775 in the name of Boyd Gatfield proposes to use 0.08 cfs of water from a well for irrigation use and supplemental irrigation use on 5.4 acres. The well is located within a five-mile radius of the City of Milton Freewater'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 Milton-Freewater has an approved water management and conservation plan. Therefore, the application meets the criteria for approval under OAR 690-507-0030(3)(a)(B).

The Department has determined that it is necessary for the Commission to review and consider the public interest for these applications for the following reasons:

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

Commissioner Smith made a motion that the Commission determine that Applications G-16773 and G-16775 are consistent with the public interest, and allow the Department to continue processing the applications with an affirmative finding regarding the basin-program element of the public interest presumption; seconded by Commissioner Rasmussen. Voting for the motion: Commissioners Thorndike, Smith, Rasmussen, Barlow, Jackson, Meloy and Williams. Voting against the motion: None.

F. Request for an Exception to the Willamette Basin Program by Portland General Electric Company (PGE) pursuant to ORS 536.295

Dwight French, Water Rights and Adjudication Administrator, briefed the Commission on a request for an Exception to the Willamette Basin Program by Portland General Electric Company (PGE) pursuant to ORS 536.295.

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.

The Commission was asked whether or not to allow the Department to consider new hydroelectric use under the application for reauthorization even though the “hydroelectric use” is not classified under the basin program. If the exception is granted, the reauthorization will then be reviewed in the same manner as any other reauthorization of a major hydroelectric project.

Based on the information provided, staff concluded that the basin program exceptions submitted by PGE meet at least one of the criterion under ORS 536.295 and that the proposed uses are consistent with the general policies of the Willamette Basin Program.

Martha Pagel, Schwabe, Williamson and Wyatt spoke in support of the request.

Julie Kiel, PGE, spoke in support of the request.

Commissioner Jackson made a motion that the Commission approve the request by PGE for exception to the Willamette Basin Program; seconded by Commissioner Meloy. Voting for the motion: Commissioners Thorndike, Smith, Rasmussen, Barlow, Jackson, Meloy and Williams. Voting against the motion: None.

G. Consideration of Exceptions and Issuance of Final Order on Notice of Assessment of Civil Penalty for John C. Webber, Jr.

Juno Pandian, Enforcement Manager, briefed the Commission on a Consideration of Exceptions and Issuance of Final Order on Notice of Assessment of Civil Penalty for John C. Webber, Jr.

The Commission was asked to consider exceptions filed by John C. Webber, Jr. to a Proposed Order resulting from a contested case hearing regarding an enforcement action for using water without the benefit of a water right.

This proceeding was initiated by field staff during water use regulation activities in the Prineville area. Voluntary compliance was requested but was not obtained; therefore, a Notice of Violation was issued to the John C. Webber, Jr., Testamentary Trust, Thomas La Follett, Trustee, and Becky Jones, Successor Trustee. The watermaster did not obtain compliance resulting in the November 4, 2005, Notice of Assessment of Civil Penalty; Proposed Order and Opportunity for Hearing being served on the Trust. On November 8, 2005, a request for hearing was filed with the Department and on December 8, 2005, the Department referred the matter to the Office of Administrative Hearings (OAH).

A contested case hearing was held on April 20, 2006 at the Department’s office in Salem, Oregon. John C. Webber, Jr. (Respondent) appeared and testified on his own behalf as the appropriator and water users of the water right for the property described in the Notice. The Department was represented by Juno Pandian. Jeremy Giffin, District 11 Watermaster, testified as a witness on behalf of the Department. The record closed at the conclusion of the hearing.

On June 6, 2006, ALJ Gutman issued a Proposed Order. On June 9, 2006, a corrected Proposed Order was issued to reflect the accurate language for administrative review. On July 3, 2006, Respondent timely filed exceptions to the Proposed Order.

Mr. Webber timely filed exceptions to the Corrected Proposed Order on July 3, 2006, arguing that his water use is exempt under ORS 537.545(1)(d), which allows ground water use for single or group domestic purposes in an amount not exceeding 15,000 gallons a day.

Pandian noted a grammatical error. On page 13 of 13 of the draft final order, it states that penalties are due within 60 days of service of the Final Order. It should read that penalties are due within 70 days of service of the Final Order.

Commissioner Jackson noted a grammatical error. On page 8 of 13, first paragraph, last sentence, it should read, Respondent has thus been provided notice...

Commissioner Jackson noted a grammatical error. On page 11 of 13, first paragraph, last sentence, it should read, ...Respondent would still be limited ...

Commissioner Rasmussen made a motion to deny Mr. Webber's exceptions and issue a Final Order that is consistent with the Draft Final Order as corrected; seconded by Commissioner Jackson. Voting for the motion: Commissioners Thorndike, Smith, Rasmussen, Barlow, Jackson, Meloy and Williams. Voting against the motion: None.

H. Update on Rulemaking on Special Area Well Construction Standards, OAR Chapter 690, Division 200

Juno Pandian, Enforcement Manager, and Doug Woodcock, Ground Water Section Manager, gave an update on Rulemaking on Special Area Well Construction Standards, OAR Chapter 690, Division 200.

The Department was contacted by members of the public expressing concerns about the ground water supply in the Petes Mountain Area. The Department was also contacted by the Petes Mountain Water Company and by the Petes Mountain Homeowners Association. Both groups shared concerns that the water table may be declining due to current demands and that declines may increase due to potential new development associated with Measure 37 claims. The Homeowners Association and Petes Mountain Water Company are aware that special area well construction standards may be established.

Under the Commission authority to adopt rules to ensure the safe development of the ground water resource (ORS 537.780), the Department developed proposed rules establishing special area well construction standards. The proposed rules require all new, altered, deepened or converted wells constructed in the Petes Mountain Area to have a ¾ inch diameter dedicated measuring tube, and all new wells to have at least an eight inch diameter well casing.

Notice of the rulemaking was published in the *Oregon Bulletin* and provided to interested parties on July 2, 2007. In addition to the opportunity to provide written comment, a public rulemaking hearing was held in Canby on July 23, 2007.

On July 27, 2007, staff met with the Commission's Ground Water Advisory Committee (GWAC), which advises the Commission on rules for the development and protection of

ground water (ORS 536.090). After lengthy discussion among committee members, GWAC's advice to the Commission was to not move forward with the hearing draft of the rules. GWAC also recommended that the Department work with the Driller's Technical Committee on specifications for the measuring tube.

The public comment period closed on August 1, 2007. The Department is evaluating the comments and will be working with the Driller's Technical Committee to resolve some of these concerns.

Staff are scheduled to bring back a proposed action to the Commission at its November meeting.

I. Update on Eola Hills Ground Water, Polk County, Oregon

Doug Woodcock, Ground Water Section Manager, gave an update to the Commission on a recent hearing held regarding Eola Hills Ground Water Limited Area (EHGWLA). The hearing was held August 1, 2007 and the public comment period closes on August 31, 2007. The hearing provided water users the opportunity to offer additional information to the Department about their specific water problems and to hear about how a Serious Water Management Problem Area (SWMPA) designation might affect them.

The EHGWLA is an 80-square mile area where ground water development is limited to exempt uses, renewable five-year permits for drip or equally efficient irrigation, and fire protection from Columbia River Basalt aquifers. Landowners within the EHGWLA requested the Commission further restrict ground water development by removing exempt uses as a classified use in the area. They contend that ground water development in the area has resulted in supply problems for existing water users from both surface water and ground water sources and that continued development will exacerbate these problems.

Department staff are collating existing and additional information on the underlying geology of the EHGWLA, field locations of wells and springs, ground-water levels, water rights of record, and surface water data. This information will be merged with the data collected from the public comments to determine the extent of water problems across the EHGWLA.

At the close of the comment period, the Department will analyze the information, follow up with data provided in the written record, and develop a recommendation about whether serious water management problems exist.

Staff are scheduled to bring back a recommended action on the EHGWLA to the Commission at its November meeting.

Gerald Freeman, landowner, spoke against the SWMPA.

J. Public Comment

George Gerspacher, landowner, expressed concerns regarding sensitive ground water areas in the Stayton, Sublimity and Aumsville area.

John Rehm, Comprehensive Plan Supporters, expressed his concerns regarding Application G-12415.

K. Other Issues

The issue of where to hold the November meeting was discussed. After some discussion, staff was asked to work with Commissioners on a meeting location. There being no further business, the meeting was adjourned.

Respectfully Submitted,

Cindy Smith
Commission Assistant