

**Water Resources Commission  
Meeting  
Corvallis, Oregon  
February 29, 2008**

WRC Present

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

Staff Present

Phil Ward  
Tom Paul  
Brenda Bateman  
Cindy Smith  
Tracy Louden  
Dwight French  
Renee Moulun  
Jerry Rodgers  
Doug Woodcock  
Debbie Colbert  
Kyle Gorman  
Bill Ferber  
Tim Wallin  
Ruben Ochoa  
Ken Lite

Others

Kimberley Priestley  
Ward Armstrong  
Kim Grigsby  
Martha Pagel  
Alan Unger  
Tod Heisler  
Jon Skidmore  
Doug Riggs  
Amanda Rich  
Linda Modrell  
Rick Allen  
Steve Johnson  
Mark Yinger  
Tom Hickmann  
Said Amali

Helen Moore  
Greg Roland  
Willie Tiffany  
Patrick Griffiths  
Jason Hale  
Anita Winkler  
Sandy Lonsdale  
Nunzie Gould

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.

On Thursday, February 28, 2008, the Water Resources Commission attended the “Aquifer Storage and Recovery and Artificial Recharge in Oregon” Symposium. The Symposium was held at Oregon State University and was co-sponsored by the Department.

Chair Thorndike called the meeting to order.

**A. Minutes**

The minutes of the November 29 and 30, 2007, and January 30, 2008, meetings were offered to the Commission for consideration.

Commissioner Jackson suggested a change to the January 30, 2008, minutes that would clarify a statement he made with regards to watershed councils. The proposed change was on page 2, 3<sup>rd</sup> paragraph.

Commissioner Smith noted a typographical error in the November 29, 2007, minutes.

Commissioner Smith moved to approve the November 29 and 30, 2007, as revised and the January 30, 2008, minutes with the suggested modification as requested; seconded by Commissioner Rasmussen. Voting for the motion: Commissioners Thorndike, Smith, Rasmussen, Barlow, Jackson, Williams and Meloy. Voting against the motion: None.

## **B. Commission Comments**

Commissioner Williams commented that he toured the Sand Hollow Project in Umatilla and Morrow Counties with Department staff. He noted that it is an impressive project and he appreciated the opportunity.

He commented that the Department will be coming back to the Commission with a proposed change in the Walla Walla Subbasin Rules regarding the use of winter water for recharge.

Commissioner Smith commented that things have been quiet in the Willamette Valley and that there was still snow in the foothills.

Commissioner Rasmussen commented on the previous day's conference. He felt that this was a good way for the Commission to start thinking about aquifer recharge. He appreciated the Department's role in the conference.

Commissioner Jackson had no comments.

Commissioner Meloy commented that she has had a lot of activity with regards to the Deschutes Mitigation Program. She also said that she has had an interest in the Umatilla Basin Aquifer Recharge situation and proposed mitigation bank. She has done a lot of research over the last couple of months and thinks that there are some parallels in the Deschutes Basin that could be useful to the Umatilla Basin.

Commissioner Barlow thanked the Department for the coordination of the day's meeting along with the previous day's conference. He said that there are some great people working for the Department.

Commissioner Thorndike recognized the efforts of the Oregon State University's Institute for Water and Watersheds and the Department for putting on the previous day's conference. He also commented that the Commission had received a request from the Association of Oregon Counties to formalize a relationship. He said that at the August meeting, the Commission will invite representatives of local government to discuss issues. He also stressed that if an issue comes up involving local government which includes the county, to please bring it forward.

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

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

Renee Moulun, Legal Counsel, discussed pending litigation.

#### **D. Legislative Update**

Debbie Colbert, Field Services Administrator, gave a follow-up to the 2008 Supplemental Legislative Session. Colbert discussed specifically the passing of SB 1069 relating to water conservation, reuse and storage and SB 5556 related to funding for SB 1069.

#### **E. How the Governor's Headwaters to Ocean (H<sub>2</sub>O) Strategy Intersects with the Water Resources Department Draft 2009 Budget Proposal**

Brenda Bateman, Senior Policy Coordinator, and Tracy Louden, Administrative Services Administrator, briefed the Commission on how the overall approach and structure of the 2009 budget and requests meet the Commission's and the Governor's stated goals.

During the Commission's August 2007 Planning Retreat, a list was created of top priorities related to the management of Oregon's water resources. These visionary statements were subsequently incorporated into a guidance document produced by the Governor's office. Entitled "Headwaters to Ocean (H<sub>2</sub>O): Ensuring Sustainable Water Resources for Oregon's Future," the Governor's strategy document outlines what an H<sub>2</sub>O Initiative may look like during the next few years.

The H<sub>2</sub>O document reflects the majority of the Commission's priorities and also recognizes that Oregon has limited resources to dedicate to managing our waters. The document directs state agencies to use the following principles in the management of water resources:

- Coordinate among state agencies;
- Coordinate with stakeholders and the general public;
- Manage and administer water resources by looking at basins or watersheds;
- Conjunctively manage surface and ground water;
- Use conservation, efficiency, and re-use as part of water supply strategy;
- Recognize the connection between land and water resource management;
- Coordinate with the energy planning sector;
- Anticipate the future effects of climate change;
- Prepare for drought and flood events, as part of the state planning process;
- Protect existing water rights;
- Regularly evaluate opportunities for water conservation and supply development;
- Recognize the need to balance in-stream and out-of-stream needs.

Two important themes of the H<sub>2</sub>O document call for the development of Oregon's long-term water supply strategy, and the long-term availability of water. The document also places an emphasis on protecting existing water sources to achieve sustainable supplies and quality; increase water measurement, monitoring, and data management; assist local jurisdictions in the development and maintenance of critical water infrastructure; and develop financing strategies that address programmatic needs. The Department's draft budget reflects the mandates from the Governor and provides additional details about how to develop Oregon's water supply strategy and resources.

Commissioner Smith expressed her concerns regarding the budget proposals. What she sees missing is a budget package or position that provides an integrated water resource management strategy with more traditional supply and conservation planning with ODFW, DSL, DEQ to set a framework. She said she sees more projects emerging that are going to cause the same conflicts that have always emerged. She is concerned that as we get more capable staff, we will still be lacking that overarching piece that we need.

Director Ward agreed that there needs to be a close coordination between the agencies.

Commissioner Rasmussen expressed that he would like to clearly see a position that is tasked with the responsibility of developing a framework for water in Oregon. He feels that we are missing a great opportunity to continue the vision and leadership of the Department and Commission in a larger framework of water in Oregon.

Commissioner Barlow said that we are accomplishing much of the future vision and that to assure continued progress toward that vision we need to develop a process to measure progress toward our goals and continually evaluate what our next steps should be. He did not want there to be a belief that the task was completed at this time.

Commissioner Jackson suggested that the particulars of the vision statement are complex and we would be well served to better articulate what we are trying to accomplish.

Commissioner Thorndike agreed we need to put additional effort into developing materials that clearly communicate our vision and how it is implemented.

Commissioner Smith believes that a work plan that provides guidance on the next steps needed to accomplish the Commissions vision would be beneficial.

Commissioner Meloy commented that she would like to see future updates that indicate our progress toward achieving our strategic goals.

Commissioner Rasmussen suggested developing a work plan or schematic that would aid in the understanding of how the various initiatives fit into our overall vision.

## **F. Update: Oregon Water Supply and Conservation Initiative**

Brenda Bateman, Senior Policy Coordinator, gave an update on the Oregon Water Supply and Conservation Initiative.

The 2007 Oregon Legislature approved the Initiative, providing \$750,000 to begin data collection efforts that will help the Water Resources Department more effectively manage and plan Oregon's water resources. The Initiative has five components: 1) a state-wide water demand assessment; 2) an inventory of potential conservation projects; 3) an inventory of potential above- and below-ground storage projects; 4) grant funding for community and regional planning efforts; and 5) basin yield analyses (not yet funded).

Data collection efforts under the Oregon Water Supply and Conservation Initiative are well underway and scheduled for completion at the end of 2008. The information gleaned from the Initiative will serve as early steps in Oregon's long-term water supply strategy.

Kimberley Priestley, WaterWatch of Oregon, expressed concerns that the Initiative will not deliver everything that was promised to the 2007 Legislature.

**G. Deschutes Basin Ground Water Mitigation Program Annual Implementation and Evaluation Report**

**H. Deschutes Basin Ground Water Mitigation Program Five-Year Review**

Since the information from Item G is already part of Item H, only one presentation was given.

Debbie Colbert, Field Services Administrator, and Kyle Gorman, South Central Region Manager, briefed the Commission on the Deschutes Basin Ground Water Mitigation Program Five-Year Review.

On September 13, 2002, the Commission adopted the Deschutes Ground Water Mitigation Rules and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules. These rules implement Senate Bill 1033 (1995 Oregon Laws), HB 2184 (2001 Oregon Laws) and HB 3494 (2005 Oregon Laws). The rules provide for mitigation of impacts to scenic waterway flows and senior water rights, while allowing additional appropriations of ground water in the Deschutes Ground Water Study Area. By rule, the mitigation program allows an additional 200 cubic feet per second (cfs) of new ground water use.

The Commission is required to evaluate the mitigation program every five years. OAR Chapter 690, Division 505-0500 (2) identifies that the first evaluation is to occur prior to January 1, 2008, or upon reaching 150 cfs of the 200 cfs allocation cap, whichever comes first. The Department has not yet allocated 150 cfs to new ground water use.

It has been five years since the Department's administrative rules for the Deschutes Mitigation Program were adopted by the Commission. The evaluation demonstrated that the program is working and that instream requirements are being met more frequently as compared to representative based period flows. Current applications exceed the 200 cfs cap and have prevented a few applications from moving forward even though their use would have zero mitigation obligation. In the future, it would make sense to initiate rulemaking to adjust the way these "zero mitigation obligation" applications are counted in the total 200 cfs cap. By January 31, 2009, the Department is required to report to the Legislature on the implementation and operation of the Deschutes Ground Water Mitigation and Mitigation Bank programs.

Alan Unger, Mayor of Redmond, spoke in favor of the Mitigation Program.

Tod Heisler, Deschutes River Conservancy, spoke in favor of the Mitigation Program.

Patrick Griffiths, City of Bend, spoke in favor of the Mitigation Program.

Steve Johnson, Central Oregon Irrigation District, spoke in favor of the Mitigation Program.

John Skidmore, Skidmore Land Use Services, expressed his concerns regarding the Mitigation Program.

Nunzie Gould, Deschutes County Resident, expressed her concerns regarding the Mitigation Program.

Sandy Lonsdale, Native Restoration Fund, expressed his concerns regarding the Mitigation Program.

Martha Pagel, Schwabe, Williamson and Wyatt, expressed her concerns regarding the Mitigation Program.

Kimberley Priestley, WaterWatch of Oregon, expressed her thanks to staff for the hard work that has been put into this program. Priestley expressed her organizations continuing interest in the Mitigation Program.

Commissioner Rasmussen moved that the Commission direct staff to report back as part of its broader HB 3494 review of the program. In the meantime, the Department will review the applications that are waiting in the “queue” to ensure that appropriate and documented needs are requested and then report back to the Commission at the May meeting; seconded by Commissioner Williams. Voting for the motion: Commissioners Thorndike, Smith, Jackson, Barlow, Meloy, Williams and Rasmussen. Voting against the motion: None.

**I. Request for an Exception to the Willamette Basin Program by Paul and Patricia Jordan under ORS 536.295.**

Dwight French, Water Rights and Adjudication Administrator, briefed the Commission on the Request for an Exception to the Willamette Basin Program by Paul and Patricia Jordan (Jordans) under 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 Jordans have requested an exception to the Willamette Basin Program in order to use water for hydropower. According to their request, the use “is largely non-consumptive in nature and not likely to be regulated for other water rights” as provided in ORS 536.295(1)(c). In addition, the applicants maintain that the use of the water will provide a public benefit as provided in ORS 536.295(1)(f).

In November 2007, the Jordans applied for a water right to divert up to 2.16 cfs (from September to June) from Wilkerson Creek, for operation of a small hydroelectric facility. The application was placed on the December 18, 2007 OWRD public notice for the 30-day comment period and distributed, along with specific questions and a copy of the OWRD public

notice, to 19 entities and individuals that OWRD is required to contact when it receives a minor hydroelectric application.

To approve a basin program exception request under ORS 536.295, the Commission must find that the request meets statutory criteria and that the proposed use is consistent with the general policies of the applicable basin program. The applicant has demonstrated that approval of this request will allow for consideration of a proposed use that is largely non-consumptive in nature, is not likely to be regulated for other water rights, and is consistent with the general policies of the Willamette Basin Program.

Commissioner Rasmussen moved that the Commission approve the request by the Jordans for an exception to the Willamette Basin Program, as the use is largely non-consumptive in nature; seconded by Commissioner Jackson. Voting for the motion: Commissioners Thorndike, Smith, Jackson, Barlow, Meloy, Williams and Rasmussen. Voting against the motion: None.

#### **J. Public Interest Review of Application G-16862, Laurie and Michael Leroux**

Dwight French, Water Rights and Adjudication Administrator, and Tim Wallin, Water Rights Manager, briefed the Commission on the Public Interest Review of Application G-16862, Laurie and Michael Leroux.

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 the City of Hermiston. The Department has a pending application for ground water use that falls within these rule requirements. In order for the use to be consistent with the Umatilla Basin Program, the Commission is asked to review and consider the public interest for the application.

Application G-16862, in the name of Laurie and Michael Leroux, proposes to use 0.025 cubic foot per second (CFS) of water from a well (UMAT 3744) 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. As required by the administrative rules, 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).

Commissioner Williams moved that the Commission determine that the application as identified 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 Smith. Voting for the motion: Commissioners Thorndike, Smith, Jackson, Barlow, Meloy, Williams and Rasmussen. Voting against the motion: None.

#### **L. Public Comment**

No public comment was given.

**M. Other Issues**

The Commission and staff discussed scheduling a conference call in late March to review the Department's potential legislative concepts.

Commissioner Smith discussed a document from the Oregon Drug Take-Back Stakeholder Group. Smith serves as the chair of the Association of Clean Water Agencies (ACWA), and wanted to bring to the Commission's attention that ACWA will be sending a letter to the Department expressing interest in bringing Drug Take-Back and other Toxic Take-Back programs under the Governor's H<sub>2</sub>O Strategy.

The Commission discussed where the location of the May meeting was to be held. It was determined that Burns would be the first option, with Central Oregon as a back up if the first did not work out.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Cindy Smith  
Commission Assistant