

**Water Resources Commission**  
**March 24, 2008**  
**Salem, Oregon**

**WRC**

Dan Thorndike (by phone)  
Jay Rasmussen (by phone)  
Charlie Barlow (by phone)  
Susie Smith (by phone)  
Ray Williams (by phone)

**Staff**

Phil Ward  
Tom Paul  
Cindy Smith  
Brenda Bateman  
Debbie Colbert  
Tracy Louden  
Jerry Rodgers  
Ruben Ochoa  
Bob Devyldere  
Kyle Gorman (by phone)

**Others**

Kimberley Priestly  
Justin Denham  
Helen Moore  
Anita Winkler  
Jerry Schmidt  
Amanda Rich  
Martha Pagel  
Katie Fast

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.

Commissioner Thorndike opened the meeting.

Director Ward briefed the audience on the Agenda.

Director Ward explained that the Department develops a few legislative concepts each biennium and that they tend to be technical in nature providing regulatory streamlining or statutory clarifications. The Department typically partners with its stakeholder community to advance legislative concepts of a more strategic nature.

Commissioner Thorndike suggested moving through the process one concept at a time and taking comments related to that concept before moving onto the next.

Commissioner Williams asked for clarification regarding the Department's April 4<sup>th</sup> deadline to get legislative concepts in to Department of Administrative Services (DAS).

Director Phil Ward explained that the Department has until April 4, 2008, to get legislative concepts to DAS, the same deadline applies to all state agencies. The Department will have from April to August to amend the concepts.

Brenda Bateman, Senior Policy Coordinator, discussed potential legislative concepts for 2009.

1. Instream Leasing. This concept would allow the instream lease of a Claim of a Water Right that has been included in a Final Order of Determination. It modifies ORS 537.348 for WRD to make a Claim of a Water Right eligible for in-stream lease prior to the court's issuance of a final decree. Instream leases provide a water right holder with

evidence of use and are a valuable tool for protecting water rights for years when the water is not used for consumptive beneficial use. Allowing additional water right holders access to the instream leasing option will help protect water rights while waiting for a court's final decree, which can take months or even years to issue.

2. Recognizing and Establishing Mitigation Banks Statewide. This concept would modify ORS 536, to give WRD explicit authority to recognize and establish mitigation banks state-wide for the purpose of off-setting the effects of new water supply projects, as required in many new permits. ORS 537.746 specifically authorizes WRD to establish a system of water mitigation credits in the Deschutes River Basin. Although the Department and legal counsel believe WRD has the authority recognize or establish mitigation "banks" statewide, this legislative concept would explicitly authorize the Department to do so.

Kimberley Priestley, WaterWatch of Oregon expressed her concerns regarding the concept.

Amanda Rich, Special Districts of Oregon, commented in support of the concept.

3. Deschutes Mitigation Program Placeholder. WRD plans to conduct a review of the Deschutes Mitigation Program, pursuant to HB 3494, with a resulting report to the 2009 Legislature. ORS 537.746 requires a report to the Legislature, no later than Jan. 31, 2009, that includes a summary of: (a) the cumulative rate of water appropriated under all ground water permits approved in the Deschutes River Basin after July 29, 2005; (b) the volume of water in acre-feet provided by the mitigation bank; and (c) the measured stream flow of the Deschutes River and its major tributaries. Depending on the recommendations of the task force, WRD may propose language modifying the Deschutes Basin Mitigation Program. WRD will likely make any modifications through Administrative Rules, but would submit this placeholder in the event the task force has statutory recommendations.

Kimberley Priestly, WaterWatch of Oregon, expressed her concerns regarding the concept.

4. Irrigation District Transfers. Water right holders can make certain changes to their existing water rights through a water right transfer application. A supplemental water right or permit is an additional appropriation of water to make up a deficiency in supply from an existing water right and is used in conjunction with a primary water right. If an applicant applies to change the place of use as identified in the primary water right, any supplemental water rights or permits must either be moved or cancelled as part of the place of use transfer application. Currently, statutes related specifically to irrigation district transfers (ORS 540.570 and 540.580) do not explicitly permit the transfer of supplemental permits along with the transfer of water rights, while statutes pertaining to other water uses (ORS 540.510 and 540.523) do. WRD proposes to modify ORS 540.570 and 540.580 to address this gap and provide greater consistency.

Anita Winkler, Oregon Water Resources Congress, commented in support of the concept.

5. The Water Development Fund. This concept would revise ORS 541.700 through 541.855 to update the language structuring the Water Development Fund, used last by the Department during the early 1980s to help communities finance water supply projects.

Pursuant to SB 1069 (2008 Oregon Laws), the Department will administer a grant fund, assisting communities to conduct the feasibility studies necessary to evaluate water conservation, re-use, and storage projects. The Department anticipates that as more communities are able to complete feasibility studies, there will be a greater need to find funding for subsequent stages of project development.

Section XI of the Constitution has already established the Water Development Fund with many of the Fund's basic features, specifying that the fund "shall be used to provide financing for loans for ...construction of water development projects." Specifically, the Constitution notes that secured repayment is a "prerequisite" to the advancement of money from the fund. Finally the Constitution states that "not less than 50 percent of the potential amount available from the fund will be reserved for irrigation and drainage projects. For municipal use, only municipalities and communities with populations less than 30,000 are eligible for loans from the fund."

ORS 541.700 - .855 contains outdated language (e.g., \$100 fees) that would need to be modified before recapitalizing and using the fund.

Katie Fast, Oregon Farm Bureau Federation, commented in support of the concept.

Commissioner Rasmussen stated that he appreciated the comments.

6. Wave Energy. Wave energy projects are currently included under the hydropower licensing requirements of ORS 543. Because these statutes were originally written for river-based hydroelectric projects, however, some of the statutes may not work particularly well in an ocean setting. WRD may propose revisions to ORS 543 hydropower licensing requirements, to address circumstances unique to wave energy.

Commissioner Rasmussen commented in support of the concept.

7. Start Card Fees. WRD uses Start Card Fees, which arrive with the notification of construction of new wells to assist in funding the Department's well inspection program. The \$125 fee per new well does not sustain the current level of well inspection. WRD last increased start card fees in 2003, and believes—with encouragement from stakeholders—that fee increases should be moderate and frequent, in order to keep pace with the increasing cost of doing business. Staff is considering an increase to start-card fees.
8. Establishment of Fees for Geotechnical Wells. In tandem with the above fee increase, a new fee on the entry of data coming from geotechnical wells will ensure that WRD can maintain a complete well construction data base with the most current information. WRD suggests a new \$10 administrative fee for on-line filing and \$25 for paper filing.

Kimberley Priestly, WaterWatch of Oregon, commented in support of the fee concepts.

Chair Thorndike stated that he feels the Commission has an underlying interest to get to more of a fee based structure. He would like to see the Department moving toward incremental increases and to shift from relying on general fund money. The Commission would like to look at full cost recovery and to see where the Department is in this regard.

Commissioner Smith agreed.

Commissioner Williams agreed as well and stated there should be a focus on limited licenses.

Commissioner Barlow commented that there are also outside protests. The fees should apply to the protestants as well as the applicants.

Director Ward responded that there are fees for non-applicants who protest. The fee is \$350.00. He commented that he was certain that the Department spends much more than that on each protest.

Director Ward stated that the Department will bring a report to the Commission in May with the major fee categories outlined. The Department will have discussions with stakeholders and ask for feedback on the need for a greater percentage of cost recovery with regards to fees. The Commissioners supported this report for the May meeting.

Commissioner Smith asked about exempt wells and measurement. She feels that this is important and should be looked at further, even though they didn't succeed in the 2007 Legislative Session.

Director Ward stated that Representative Jackie Dingfelder has asked the Oregon Consensus Center at Portland State University to take the exempt well issue specifically on and organize a consensus effort for the next legislative session. The Department has asked to be involved in this process. The Commission may also be asked to be involved in this effort. The Department expects to see more on measurement in the next session, but not necessarily brought forward by the Department.

Martha Pagel representing Schwabe, Williamson and Wyatt asked the Commission to consider a future legislative concept that would protect groundwater rights from forfeiture, the same way instream leases do for surface water rights. Pagel also commented that she supports the concept for fee increases.

Chair Thorndike stated that he cannot see Ms. Pagel's concept going forward at this time due to timing. However, it would be a good idea for a future session.

Commissioner Williams commented regarding split season-leases and asks if any discussion regarding legislation had been brought forward to address these issues.

Director Ward explained that there will be additional opportunities for legislation. The stakeholder groups, through their legislators, will be looking at potential concepts to be considered.

The Commission expressed an interest to discuss the big picture and the issues surrounding it.

Director Ward said that generally the Department approaches “big picture” strategy in two ways. The first is through legislative concepts and the second is the budgetary process. In the Governor’s State of the State Address, the Governor emphasized Water Conservation, Water Supply and Water Quality and tied them closely to his climate change agenda. The Department has been told by the Governor’s Office that the intent is to fund those projects largely through the budget by bringing in new resources.

Commissioner Smith commented that there is not enough staff to support these new projects, and would like to know how all of the pieces will fit together to adequately accomplish all the aspects of the projects.

Director Ward said he appreciated Commissioner Smith’s concerns regarding the staffing issue, and would gladly accept the Commission’s counsel on this issue.

Commissioner Rasmussen said that he hoped the Director will be assertive with the Governor’s Office and specifically Mike Carrier regarding these issues. He would like to have a significant work session at the May meeting for the H<sub>2</sub>O Initiative. He would like a half day set aside to work on this issue.

Commissioner Barlow made the comment that it would be helpful to know where the Governor’s Office is going with this before the Commission spends a lot of time on it.

Director Ward stated that the Commission should have the next draft of H<sub>2</sub>O document from the Governor’s Office in May to work from.

Chair Thorndike commented that if there is information from the Governor’s Office, there should be time set aside for discussion at the May meeting.

There being no further business, the meeting was adjourned.

Respectfully,

Brandi Elmer