

**Water Resources Commission
Meeting
Burns, Oregon
May 29, 2008**

WRC Present

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

Staff Present

Phil Ward
Tom Paul
Brenda Bateman
Cindy Smith
Tracy Loudon
Dwight French
Jerry Rodgers
Debbie Colbert
Ruben Ochoa
Ivan Gall
Rick Lusk
Catie Kerns
JR Johnson
Barry Norris

Others

Kimberley Priestley
Roger Bachman
Steve Grasty
Jeanne LeJeune
Susan Hammond
Kenton Dick
Karen Moon
Richard Roy
Dan Nichols
Tim Smith

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 work session to order. Harney County Judge Steve Grasty welcomed everyone to Harney County.

Workshop: Strategy Session for Oregon's Integrated Water Conservation and Supply Strategy

Director Ward and Brenda Bateman, Senior Policy Coordinator, gave a powerpoint presentation that discussed Oregon's Integrated Water Conservation and Supply Strategy. During this discussion, they discussed the overall roles of the Commission and the Department, the rationale behind state water plans, and the diversity of planning models that other states have used.

Below are some statutory references that set the context for this work, as well as some summary notes from the brainstorming session.

Statutory Foundation

In ORS 536.300 (1) the Oregon Legislative Assembly directs the Water Resources Commission to study "existing water resources of this state; means and methods of conserving

and augmenting such water resources; existing and contemplated needs and uses of water for domestic, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses and for pollution abatement, all of which are declared to be beneficial uses...”

Further, in ORS 536.310, the Legislative Assembly directs the Water Resources Commission, as it formulates its water resources program, to take into consideration existing rights, and to incorporate the ideals of ORS 536.220 (b): “proper utilization and control of the water resources of the state can be achieved only through a coordinated, integrated state water resources policy, through plans and programs for the development of such water resources...”

Finally, ORS 536.241.(2), notes that “it is the policy of the State of Oregon to ensure a water supply sufficient to meet the needs of existing and future beneficial uses of water to adequately manage the state’s water resources.”

Initial Data-Gathering Efforts

To facilitate these efforts, in 2007 the Oregon Legislature funded and the Department undertook a data gathering effort known as the Oregon Water Supply and Conservation Initiative. The purpose of this Initiative is to gather the informational foundation upon which a long-term strategy for meeting Oregon’s water needs can be built.

The Department is requesting additional resources during 2009-2011, in addition to its base budget, to continue the data gathering effort. These requests include staff, equipment, and research monies to continue water demand assessments, basin yield and peak flow analysis, surface water measurement, and ground water studies. The requests also include two dedicated staff to provide the facilitation, documentation, and outreach required to help develop a long-term water resources strategy.

May 2008 Discussion

During the May 29, 2008 discussion, the Water Resources Commission began to discuss its vision of a long-term water resources strategy. Commissioners shared their thoughts on two primary topics: desired outcomes of a long-term strategy and what the process should include. The brainstorming results below list ideas in no particular ranking or order.

1. What are the desired outcomes of a long-term water resources strategy? It should:

- Be useful
- Have a structure that facilitates implementation
- Take time to implement properly, so we need to start now
- Include a process that lends itself to action, making things happen
- Be user friendly and beneficial
- Ensure adequate, long-term supply for all (recognized) beneficial uses
- Provide the water that is crucial for life, economics, community
- Address in-stream & ecological uses as well

- Allow for learning and adaptation
- Allow for constant re-adjustment (e.g., change in markets, climate, practices)
- Include in its next iteration the lessons learned from the previous round
- Be clear that each five-year look only represents “snapshot” in time
- Allow for an ongoing, evolving process
- Recognize that five-year reporting cycles tends to produce plans, not necessarily implementation
- Include a way to measure or evaluate water projects and studies
- Clearly explain whether and how the strategy relates to Oregon’s existing, and more prescriptive, Basin Plans
- Be based on science & local input.
- Use uniform protocols, in terms of data gathering
- Recognize that practices and needs will differ by Basin, while keeping a state-wide approach
- Utilize information, such as inventories, interactive maps, and databases, available to all.
- Result from an open process, available to water managers, water users, the public
- Note successful practices, such as conservation, supply, effective storage, effective re-use
- Provide incentives for stakeholders to participate in the planning process, such as local representation, planning grants, etc.
- Use lessons learned from Oregon’s land-use planning process. For instance, rely on local input, knowing that the process will not work in different parts of the state. Build in safety valves. Avoid getting overly complicated; use an iterative process.
- Get the best and latest technical information to communities so they can participate in the decision-making process. Note what has worked well and what has not.
- Include a preamble that explains why we are talking about this strategic plan right now. Such a section allows the state to accomplish several goals: host a conversation with Oregonians about water, remind participants of the 100th anniversary of Oregon Water Code, provide a common vehicle for planning, and provide clarity, talking points, and a vision. Describe the value of the planning process in this section. This will be the document stakeholders and legislators refer to in future years.
- Use lessons learned from Oregon’s coastal model. For instance, avoid recommendations that are complicated, legalistic, and administrative. Focus more on recommendations that are visionary and challenging.
- Involve analysis at the staff level, evaluating the Basin Plan process, other state plans (tools, requests, outcomes, lessons learned).
- Commit to maintaining/sustaining beneficial uses.
- Be fair and creative.
- Offer a suite of potential solutions: outreach, education, regulatory, loans, other...
- “Take care of Oregon’s water.”
- Not prioritize public funding opportunities by regions or basins. Reward regions that are already working together collaboratively.

2. What Should the Process Include?

- Throughout the state, present the purpose and vision of a long-term water resources strategy. Ask what people want to see addressed in this plan, such as: what are your

primary water resource issues in this region? How could a long-term strategy allow you to get your work done? Encourage input! Provide timelines and Department contact information. More Oregonians will become engaged during the course of the process.

- The role of the Department and Commission should be to hold/host these conversations. Start thinking now about how to engage Oregon communities. Invite both current and previous Commissioners to help host these discussions.
- Ensure that this is a bottom-up exercise.
- We need (but do not yet have) a broad framework in place that describes how to start the process, meet with stakeholders, etc.
- The current statutory framework provides planning authority. Make sure this process develops inside the statutory framework (i.e., the Commission would ratify the strategy and then the Department would manage the implementation).
- The Commission and Department have the authority and responsibility to lead these planning efforts, but not the resources. Put this in writing, formally.

Next Steps

The above discussion represents another valuable step toward formulating Oregon's long-term water resources strategy. It cites the statutory foundation and mandate for planning, and notes the vital datasets the Department will need in order to inform this planning work. Finally, it begins to lay out the desired outcomes and process the Commission would like to see. During the next several meetings, the Commission will have further opportunities to shape Oregon's long-term water resources strategy through dialogue with stakeholders, expert presentations, and brainstorming discussions.

Commission Dialog with Local Officers

Harney County Judge Steve Grasty welcomed the Commission and Department to Harney County.

A panel of local officials discussed water supply issues in the Malheur Basin. Panel members included: Harney County Judge Steve Grasty; Harney County Commissioner Dan Nichols; Tim Smith, Chair of the Department's Ground Water Advisory Committee; and Kenton Dick, Burns-Paiute Tribe.

There being no further business, the meeting was adjourned.

Respectfully,

Cindy Smith
Commission Assistant

**Water Resources Commission
Meeting
Burns, Oregon
May 30, 2008**

WRC Present

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

Staff Present

Phil Ward
Tom Paul
Brenda Bateman
Cindy Smith
Tracy Louden
Dwight French
Jerry Rodgers
Debbie Colbert
Ruben Ochoa
Ivan Gall
Rick Lusk
Catie Kerns
JR Johnson
Barry Norris

Others

Kimberley Priestley
Roger Bachman
Jerry Schmidt
Jeanne LeJeune
Susan Hammond
Kenton Dick
Floyd Sippel
Paul Christensen
Dan Nichols
Tim Smith
Leslie Bach
Justin Denham
Dominic Carollo
Greg Shabram

Patrick Griffiths
Amanda Rich
Anita Winkler
Bill Wilber
Willie Tiffany
Jay Chamberlin
Nancy Sippel

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.

A. Minutes

The minutes of the February 28 and 29, 2008, meeting were offered to the Commission for consideration.

Commissioner Meloy moved to approve the February 28 -29, 2008 and March 24, 2008, minutes as requested; seconded by Commissioner Williams. Voting for the motion: Commissioners Thorndike, Rasmussen, Barlow, Jackson, Williams and Meloy. Voting against the motion: None.

B. Commission Comments

Commissioner Jackson thanked those who were involved in the previous day's tour and dinner. He found the tour to be very impressive. He also commented that he had talked with people in the Northwest area with regards to the potential expansion of Scoggins Reservoir. He also said that people are getting ready to do more water level monitoring in wells in the local aquifer near where he lives. They are getting great support from the local Watermaster with regards to this effort. He also congratulated the Director on his live interview with Oregon Public Broadcasting.

Commissioner Williams echoed others' expression of gratitude regarding the previous day's tour and hospitality. He also commented that progress is being made in changing the Walla Walla Basin rules to allow water to be taken from the river for the purposes of recharging the local aquifers.

Commissioner Rasmussen echoed thanks to everyone regarding the previous day's tour and hospitality. He also commented that he was honored to participate in the community grant process. About 30 applications were reviewed. The selection process was well designed and executed. He hopes that we will continue to have access to grants and tools to further the mission of the Department and Commission.

Rasmussen commented that he and Commissioner Thorndike will be attending the Oregon Business Council Meeting on June 2 regarding water supply planning. He suggested that the Commission prepare a letter that states it is committed to developing a strategic water plan for the State of Oregon. (See attached letter to Oregon Business Council).

Commissioner Meloy commented that the Commission and Department are leading the process for setting a framework that will be durable for the future and will provide over-arching guidance.

She also commented that there is work being done with regards to a detailed plan in the Deschutes Basin. It is a combination of different people in the basin coming together to try to do good things. The report will statutorily reflect what is needed and may also include additional reports. She will be involved in this as the Commissioner from the area.

She also said that she had a great time and thanked everyone for the hospitality in Burns.

Commissioner Barlow commented that he enjoyed the previous day's hospitality, the knowledge and desire of the community. He also commented that he has received several calls from people regarding the H₂O document. He expressed his concerns that it has been very frustrating for him to identify what has been going on.

He was invited to attend a tour of the Burnt River Project. He wasn't able to attend, but noted that staff did go. He expressed his appreciation for the invitation.

Commissioner Thorndike commented that he attended the OWEB meeting in Ontario the previous week. Good experience seeing the different landscape and interface between agriculture and eastern Oregon conservation efforts. He also commented that the southwest has a good snowpack.

C. Director's Report

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

Kimberely Priestley, WaterWatch of Oregon, commented in support of the Commission's planning process.

Director Ward announced the two new appointees to the Commission that are up for Senate Confirmation. New appointees are Jeanne LeJeune from Portland representing the West Side at Large position, and John Roberts from Jacksonville representing the southwest region. Their confirmation is scheduled for late June.

D. Water Resources Department's 2009 Proposed Budget

Brenda Bateman, Senior Policy Coordinator, and Tracy Loudon, Administrative Services Division Administrator, briefed the Commission on the Department's 2009 Proposed Budget.

The Commission was asked to assist the Department in prioritizing budget policy option packages. The agency's budget is due to the Department of Administrative Services by August 1, 2008.

Leslie Bach, The Nature Conservancy, expressed concern about the Water Supply and Conservation Infrastructure package, without having enough data in hand.

Kimberley Priestly, WaterWatch of Oregon, commented that they would like to see more balance in budget with regards to management and streamflow restoration.

Anita Winkler, Oregon Water Resources Congress, expressed support of the proposed budget.

Amanda Rich, Special Districts, expressed support of the proposed budget.

Willie Tiffany, League of Oregon Cities, expressed support of the proposed budget.

E. Water Resources Department's 2009 Proposed Legislative Concepts

Brenda Bateman, Senior Policy Coordinator, briefed the Commission on the Department's 2009 Proposed Legislative Concepts.

These concepts are meant to streamline Departmental operations, ensure the fees and resources necessary to maintain services, and provide greater consistency in statutory language.

As with its proposed 2009 budget, the Department has incorporated ideas that originated with the Commission, stakeholder groups, the regulated community, and the Governor's office. There are seven legislative concepts in all. They include two placeholders for the Governor's H₂O Initiative, as well as:

- Allow the Instream Lease of Claim of a Water Right that Has Been Included in a Final Order: Modifies (ORS 537.348) to make a claim of a water right included in the final order of determination eligible for in-stream lease prior to the court's issuance of a final decree in adjudication cases.

- Providing Flexibility to the Water Conservation, Reuse, and Storage Investment Fund: This legislative concept would modify the SB 1069 language (now residing in Chapter 13 of Oregon’s 2008 Laws) that established the Water Conservation, Reuse, and Storage Fund, broadening the language to address additional needs. While continuing to provide grant funding for feasibility studies, it would add a new section allowing the Department to provide loans and/or grants for subsequent stages of project development as well.
- Exempt Certain Wave Energy Projects from Hydroelectric Licensing Statutes: WRD proposes revisions to ORS 543.014 hydropower licensing requirements, to exempt small, pilot wave energy projects. Because these statutes were originally written for river-based hydroelectric projects, however, they do not work particularly well in an ocean setting and, in practice, present insurmountable barriers to the construction of pilot wave energy projects.
- Increase Start Card Fees: Modify 537.762 (5) to increase start card fees from \$125 to \$225 for paper filing. A separate fee of \$200 for electronic filing will be addressed through rule-making.
- Establishing Fees for Data Entry Related to Geotechnical Holes: Add ORS 537.767 to assess a new fee on the administrative Processing of Geotechnical Holes (test holes for mining and other industries).

Roger Bachman, Oregon Trout, expressed concerns regarding the proposed legislative concepts.

The Commission expressed support to the Department’s proposed legislative concepts.

F. Request for Adoption of Rules to Establish Special Area Well Construction Standards for the Eola Hills Ground Water Limited Area and in the Petes Mountain Area, OAR Chapter 690, Division 200 (Well Construction and Maintenance), Division 210 (Well Construction Standards) and Division 215 (Maintenance, Repair and Deepening of Water Supply Wells)

Jerry Rodgers, Technical Services Administrator, briefed the Commission on a request for adoption of the rules to establish Special Area Well Construction Standards for the Eola Hills Ground Water Limited Area and in the Petes Mountain Area, OAR Chapter 690, Division 200, Division 210 and Division 215.

The Commission directed the Department to investigate concerns voiced by landowners in the Eola Hills Ground Water Limited Area and the Petes Mountain Area. In the Eola Hills area it was found that well development may be having a negative impact on water resources. Investigations conducted by the Department could not substantiate claims that ground water levels are declining. However, the Department was able to determine that commingling of Columbia River Basalt aquifers provided the potential for interference with senior surface

water users. The Department found it difficult to gather water level data because of well construction and pump installation practices.

In the Petes Mountain Area, proposals for additional land development elevated concerns regarding current and long-term impacts on the area's ground water supply. The concerns resulted in numerous contacts with Department staff regarding the need for additional data collection to better understand the sustainability of the resource. The primary area of concern is a residential development on top of Columbia River Basalt with ground water levels in some wells more than 700 feet below land surface. A combination of well construction and pump installation practices make it very difficult for the Department or others to collect water level data in this area.

Under the Commission's authority to adopt rules to ensure the safe development of the ground water resource, the Department initiated rulemaking to make it possible to obtain accurate water level data in the Eola Hills Ground Water Limited Area and Petes Mountain Area. For both areas, the proposed rules require: 1) the installation of a minimum 3/4-inch dedicated measuring tube in all water supply wells at the time of pump installation, pump repair, and/or pump replacement to provide an unobstructed conduit for lowering devices that measure water levels, and 2) the diameter of the casing be a minimum of 6 inches. The proposed rules would require that newly deepened and new water supply wells developed in Columbia River Basalt aquifers in the Eola Hills Ground Water Limited Area be cased and sealed to within 100 feet of the bottom of the well.

Commissioner Jackson thanked staff for their efforts on this issue.

Commissioner Jackson moved that the Commission adopt the final proposed rules as submitted; seconded by Commissioner Rasmussen. Voting for the motion: Commissioners Thorndike, Jackson, Barlow, Meloy, Williams and Rasmussen. Voting against the motion: None.

G. Request for Approval of a Final Order Denying the Oregon Ground Water Association Petition Requesting Commission Adoption of a Proposed Rule Related to Well Alterations

Jerry Rodgers, Technical Services Administrator, and Ruben Ochoa, Water Policy Analyst, briefed the Commission on a request for approval of a final order denying the Oregon Ground Water Association (OGWA) petition requesting Commission adoption of a proposed rule related to well alterations.

On March 3, 2008, the OGWA submitted a petition for rulemaking to the Commission. The petition asserted that the Commission had recently altered its historical practice and expressed a policy on well alterations by requiring that entire wells be brought up to current standards when altered or repaired in any manner. The petition stated, in part, that previously "The expressed policy and practice was that the obligation and liability of the contractor was only for the work currently performed, i.e. the alteration must be performed in accordance with the current standards." The petition requested that the Commission engage in rulemaking to

clarify that a well contractor is only responsible to meet well construction standards for specific work performed on existing wells.

According to Oregon statute [ORS 183.390(1)] and administrative rule [OAR 137-001-0070 (4)(c)], the agency must, within 90 days of the submission of the petition, either deny the petition in writing or initiate rulemaking proceedings.

Jerry Schmidt, Oregon Ground Water Association, expressed his concerns regarding the denial of the petition.

Paul Christensen, Christensen Well Drilling, expressed his concerns regarding the denial of the petition.

Floyd Sippel, Sippel Well Drilling, expressed his concerns regarding the denial of the petition.

Commissioner Rasmussen moved that the Commission deny the Oregon Ground Water Association petition, but directed staff to initiate related rulemaking with the goal of completion by the end of 2008; seconded by Commissioner Jackson. Voting for the motion: Commissioners Thorndike, Jackson, Barlow, Meloy, Williams and Rasmussen. Voting against the motion: None.

H. Request for Adoption of Rules Necessary to Administer the Planning Studies Grant Program established under Senate Bill 1069 (Chapter 13, 2008 Laws), OAR Chapter 690, Division 600

Ruben Ochoa, Water Policy Analyst, briefed the Commission on the adoption of rules necessary to administer the planning studies grant program established under Senate Bill 1069.

Senate Bill 1069, enacted into law by the Oregon Legislature in 2008, became effective on March 5, 2008. SB 1069 directs the Department to establish a grant program to pay the qualifying costs of planning studies performed to evaluate the feasibility of developing a water conservation, reuse or storage project.

SB 1069 also directs the Department to adopt rules necessary to administer the grant program and requires that these rules include provisions that: (1) establish reporting requirements for grants awarded under the Act, (2) provide for public comment before the award of grants and payment of direct services under the Act, and (3) implement the priorities required by the Act. In addition to SB 1069, the 2008 Oregon Legislature passed Senate Bill 5556, in part, to appropriate \$1,750,000 to the Department for administration and funding of the SB 1069 project planning studies.

A rules advisory committee (RAC) was established to review the proposed rules. On May 1, 2008, notice of public rulemaking was published in the Oregon Bulletin. The proposed rules were presented to the Ground Water Advisory Committee (GWAC) on May 2, 2008. In addition to the opportunity to provide written comment from May 1 – May 22, the Department

conducted a public hearing in Salem on May 22, 2008. The last day to comment was May 22, 2008.

Kimberley Priestley, WaterWatch of Oregon, expressed concern regarding the proposed rules requesting that they spell out more specific criteria for applications.

Commissioner Barlow moved that the Commission adopt the final proposed rules as submitted; seconded by Commissioner Meloy. Voting for the motion: Commissioners Thorndike, Jackson, Barlow, Meloy, Williams and Rasmussen. Voting against the motion: None.

I. Impoundment Storing more than 3,000,000 gallons – Rogue Basin Application R-86873, Rogue River Estates

Dwight French, Water Rights and Adjudication Administrator, briefed the Commission on the Impoundment Storing more than 3,000,000 gallons – Rogue Basin Application R-86873, Rogue River Estates.

Under the Rogue Basin Program (Upper Rogue Basin, OAR 690-515-0000(3)(a), the Commission shall review all applications proposing to impound more than 3,000,000 gallons of water, equivalent to 9.2 acre feet (AF), prior to approval and the issuance of a permit. During the review, the Commission may establish additional minimum flows on the natural flow of the proposed stream source to support aquatic life or to minimize pollution.

Application R-86873, in the name of Rogue River Estates, within the Upper Rogue Basin, proposed the storage of 60.0 acre-feet. The Department asked the Oregon Department of Fish and Wildlife (ODFW) and the Department of Environmental Quality (DEQ), whether they recommend any additional minimum flows to support aquatic life or minimize pollution in regards to the proposed impoundments for these two pending applications.

The Department determined that DEQ and ODFW had not recommended any additional minimum flows in order to support aquatic life or minimize pollution. However, ODFW did recommend a shorter storage season (January 1 through March 31), and a maximum instantaneous rate (1.0 CFS) of appropriation.

The Department found that with the incorporation of ODFW recommendations, along with standard permit conditions, Application R-86873 may continue to be processed without the need for additional minimum flows to support aquatic life or minimize pollution.

Commissioner Rasmussen moved that the Commission direct the Water Rights Section to continue processing Application R-86873 without additional minimum flows; seconded by Commissioner Jackson. Voting for the motion: Commissioners Thorndike, Jackson, Barlow, Meloy, Williams and Rasmussen. Voting against the motion: None.

J. Deschutes Basin Ground Water Mitigation Program Follow Up

Debbie Colbert, Field Services Administrator, and Dwight French, Water Rights and Adjudication Administrator, gave an update on the Deschutes Basin Allocation Cap (Division 505) and on the legislative report required under HB 3494 (2005 Oregon Laws).

At the February 29, 2008, Commission meeting, the Department presented the results of its Five-Year Evaluation of the Deschutes Ground Water Mitigation Rules. By rule, the mitigation program allows only an additional 200 cubic feet per second (cfs) “cap” of new ground water use unless the Commission adjusts the rules based on its evaluation of the program.

At the time of the February meeting, pending applications for new ground water permits exceeded the 200 cfs cap. Based on the Department’s recommendation, the Commission chose not to initiate rulemaking to adjust the cap. Instead, the Commission directed staff to report back on activity related to the cap as part of its broader HB 3494 review of the program. The Commission also directed staff to review pending applications to ensure that appropriate and documented needs were provided.

Since the February meeting, the Department has been reviewing the pending ground water applications for completeness of information and documentation of the requested quantity of water. As a result of these efforts, one application was withdrawn, which freed up five cfs of water under the allocation cap. The Department will continue to review and process the remaining applications and may request more information where needed. Resolving these applications may free up even more water under the allocation cap. The Department is also moving forward with the HB 3494 stakeholder effort.

Patrick Griffiths, City of Bend, spoke in support of the review of the pending applications.

Commissioner Meloy commented that the five cfs that has been freed up is an improvement, but there needs to be more. As priorities change in the basin, there needs to be an ongoing effort to identify other opportunities within the queue.

K. Public Comment

Susan Hammond, Hammond Ranches, spoke in support of what the Department is doing with regards to planning for the future of water in Oregon.

Jay Chamberlin, Owyhee Irrigation District, briefed the Commission regarding ongoing federal legislation, 2008 Farm Bill, that could affect the growers in the basin.

Tim Smith, Chair, Ground Water Advisory Committee, spoke in opposition to the start card fee increase.

Willie Tiffany, League of Oregon Cities, expressed his thanks to Commissioner Thorndike for his service to the State of Oregon and as Chair of the Water Resources Commission.

L. Other Issues

No other issues were brought forward.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Cindy Smith
Commission Assistant