

Water Resources Commission
Meeting
Salem, Oregon
April 19, 2012

WRC Present

John Jackson, Chair
Charlie Barlow, V. Chair
Mary Meloy
Ray Williams
John Roberts
Jeanne LeJeune
Carol Whipple

Staff Present

Phil Ward
Cindy Smith
Brenda Bateman
Doug Woodcock
Dwight French
Barry Norris
Tracy Loudon
Ivan Gall
Bill Fujii
Jonathan LaMarche
Alyssa Mucken

Others

Beth Patrino
Gil Riddell
Ed Henricks
Peggy Lynch
Malia R. Kupillas
Mark Landauer
Helen Moore
Robin Freeman
Les Perkins
Lorna Stickel
Kristina McNitt
Katie Schwab
Kimberley Priestly
Tod Heisler
Patrick Griffiths
Kami Kehoe
Chris Bahner
April Snell
Suzanne Butterfield
Dave Bielenberg

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 Jackson welcomed everyone to the meeting. Commissioners and staff introduced themselves to the audience.

A. Stream Gage Study

Jonathan LaMarche, South Central Region Hydrologist, provided an update on results from the gaging network evaluation, specifically on water distribution. He talked about the gages that are used and operated by the Department and its partners and how they are used to collect data for the Department to meet its goals. He discussed the reasons behind the need for the evaluation, and noted the last time the evaluation had been done was in 1970 by the USGS. He explained changes in science and water management needs since 1970, including recognition of instream flows as a beneficial use. Jonathan explained it would be best to create the optimum streamgaging network, while considering the resource constraints that we have today. This assessment was an important input to the Integrated Water Resources Strategy.

B. Groundwater Data Needs Report

Ivan Gall, Groundwater Manager, presented an evaluation of the Department's groundwater related informational needs. Groundwater data include geology, basin boundaries, both surface water and groundwater, and their conjunctive management. He explained, by using basin studies to define the hydrologic and aquifer systems, one result is having timely and effective regulation and distribution where needed. He also explained that the Department is frequently asked by county planners for assistance, determining how much development the resource can withstand. That available water question has a direct relationship to local economies and economic development. He tied these needs directly to the Integrated Water Resources Strategy; and noted a need for conducting additional

groundwater investigations, improving inter-agency natural resource data collection, improving water use measurement and reporting and improving access to built storage.

C. Request for Funding Feasibility Studies under the Water Conservation, Reuse and Storage Grant Program

Tracy Loudon, Administrative Services Administrator, presented staff recommendations to the Commission for adoption of a grant award package for the 2012 Water, Conservation, Reuse and Storage Grant Program.

He explained that the Department received 23 grant applications during the application time period of October 3 through December 15, 2011, with the total dollar amount requested \$2,295,774. All of the applications qualified for funding from the grant program, however, due to the limited funding available, the Commission would be unable to fully fund all the applications.

An Application Review Team (ART), which included Department staff and other state agency staff, reviewed the applications using criteria established in 2008. The ART met on February 9 to advise Grant Program staff and make recommendations. Staff utilized ART scores and recommendations to develop the Tier One funding recommendations and a Tier Two list for public comment.

The Department opened public comment on February 14 and accepted comments through March 15, 2012. The Department received 31 comments, focused on specific proposals as well as general observations. The comments were valuable to assess the proposed Tier One recommendations, to improve the grant agreement format, to develop the Tier Two process, and to improve the application processes in the future.

Letters of support for projects proposed for Tier One funding and Tier Two proposals were received. There were also a variety of concerns related to storage projects. The Polk County proposal received the greatest number of comments with 15 in opposition. The public comments were informative, but did not cause a change in the recommendation of Tier One and Tier Two funding.

Pending Commission approval and the scheduled bond sale; staff will work with applicants to develop a grant agreement that will include a statement of work, negotiated funding level, verification of matching requirements, and a termination date for grant expenditures. Based on the ART recommendations and public comment, the following applications were the staff recommendation to the Commission for awards.

Table 1	
2011 – 2013 Tier One Grant Award Recommendations	
Entity	Recommendation
Central Oregon Irrigation District, Redmond	\$ 11,485
Deschutes River Conservancy, Bend	50,000
Dundee, City of	30,000
East Valley Water District	71,665
Fessler Nursery, Woodburn	11,405
Grande Ronde Model Watershed - Upper Grande Ronde La Grande	56,000
Hood River County	250,000
Jefferson County Soil and Water Conservation District	15,350
La Creole Orchards, Portland	6,200
Medford Water Commission	100,000
Sisters, City of	21,210
Talent Irrigation District - WISE	243,000
Tri City Water & Sanitary Authority, Myrtle Creek	16,500
Umatilla Basin Watershed Council, Pendleton	34,020
	\$916,835

The Commission grant award did not constitute a full funding commitment. Funding levels were dependent on the issuance of Lottery-backed bonds, scheduled for May 2012. Final awards may be adjusted for issues such as: proposed implementation beyond the scope of a feasibility study; limitations on administrative overhead; and unachieved match funding availability. Release of funds will not occur until a negotiated grant agreement is signed.

The Commission grant award was contingent on the issuance of Lottery-backed bonds, scheduled for May 2012, and successful negotiation of a grant agreement signed by both parties. Grant agreements are subject to scope of work changes, timeline adjustments, match funding validation, and expenditure restrictions which may affect the final award amount.

The Department anticipated that approximately \$200,000 would remain available for grants after Tier One awards. Grant program staff will work with applicants in Tier Two to apply for a second round of grants and identify a portion of the original grant application that may be funded.

Those that were recommended for Tier Two funding are subject to availability of funds and possible adjustments to the scope of the grant. They are listed below alphabetically.

Table 2 Tier Two Secondary Application Process Candidates
Clean Water Services, Hillsboro
Corvallis, City of
Grande Ronde Model Watershed - Lostine, La Grande
Lane Council of Governments
Lower Powder Irrigation District, Baker City
Polk County
Springfield/Eugene
Walla Walla Basin Watershed Council, Milton-Freewater
Water And Stream Health Committee (WASH)

Tier Two recommendations will be brought to the Commission’s August 2012 meeting. Since the timeframe for project completion would be shorter (due date still June 2013), the scope of work for these grants would likely involve more modest studies than originally proposed.

Staff presented three alternatives to the Commission; 1) Adopt the staff funding recommendations in Table 1: 2011-2013 Tier One Grant Award Recommendations; 2) Adopt modified funding recommendations; 3) Direct the Department to further evaluate the applications and return with a revised funding proposal.

Water Resources Commissioner John Roberts commented that he had been involved as one of the coordinators for the WISE Project, trying to move that ahead with a variety of agencies down in Southern Oregon. He noted his involvement was a time investment only.

Water Resources Commissioner Ray Williams noted his involvement as a Board Member of the Walla Walla Watershed Council, but also said he didn’t have an active role in preparing the project.

Dave Bielenberg of East Valley Water District, spoke in favor of Alternative 1 (adopt the staff recommendations for the 2011-2013 Tier One Grant Awards). He provided two additional letters of support from the Marion County Soil and Water Conservation District and the Oregon Dairy Farmers Association which were not included in the staff report. He also spoke in favor of the Fessler Nursery Aquifer Storage and Recovery Project.

April Snell, of Oregon Water Resources Congress, spoke in favor of Alternative 1.

Commission Chair, John Jackson asked if there would actually be money available for the Tier One and Tier Two process and asked if the candidates would have another opportunity for scoring.

Tracy Loudon said that the Department’s intent was to be confident of funding available before proceeding. He stated that the Department had already notified all of the individuals of the Tier One and Tier Two process, and noted that there would be a re-scoring process for Tier Two applications, because applicants would likely modify their original proposals.

Commissioner Charles Barlow moved to approve the 2011-2013 Tier One Grant Award Recommendations; seconded by Commissioner Mary Meloy. Voting for the motion: Commissioners

Jackson, Williams, Roberts, Whipple, Barlow and Meloy. Abstained from voting: Commissioner LeJeune.

D. Integrated Water Resources Strategy (IWRs) Discussion

Brenda Bateman, Senior Policy Coordinator, and Alyssa Mucken, IWRs Policy Coordinator, presented the newest developments in Oregon's Integrated Water Resources Strategy and lead a work session discussion.

During this agenda item, Commission members received a briefing from the Integrated Water Resources Strategy (IWRs) Project Team, and had an opportunity to discuss next steps related to document content, adoption, and implementation. At the conclusion of this informational item, staff recommended that the Commission reserve time for final public comments on the IWRs.

Background:

On March 8, 2012, the IWRs Policy Advisory Group (PAG) held its last meeting to assist in the development of Oregon's first Integrated Water Resources Strategy. Governor Kitzhaber spent a few minutes visiting with the advisory group members, thanking them for their hard work, thoughtful approach, and volunteer hours spent on the development of Oregon's first Integrated Water Resources Strategy. The Governor committed his support to implementing the Strategy, "bringing the resources of the administration to actually make this happen."

The Policy Advisory Group had reached a "thumbs up" consensus on the remaining Recommended Actions in the Strategy. The group also noted additions or changes it wanted to see made, as part of the approval process.

PAG Members spent significant time discussing the scale, institutional composition, and implementation of "place-based planning." The group generally agreed that it would be beneficial for communities to engage in a water resource planning process that would inform Integrated Water Resources Strategy development at the state level. The purpose would be for communities to better understand and meet their water resource needs, both instream and out-of-stream. The role of the state would be to ensure that planning comports with state and federal regulations, to provide a template of questions to guide the planning process, and to develop incentives that would benefit those communities who participate.

The Policy Advisory Group advised against marking Recommended Actions with keys, because they are all important. Instead, they suggested that the Project Team clearly call out those Recommended Actions planned to move forward during the implementation phase (2012-17), particularly those requiring legislative action during the 2013-15 biennium.

The meeting wrapped up with members noting that they have valued their experience with the PAG over the past two years, and indicating their willingness to help advocate for and implement the IWRs in subsequent years and months.

Boards & Commissions:

Chair John Jackson and WRD staff had visited with a number of boards and commissions. These visits were designed to request letters of endorsement of the IWRs, sent from the state's boards and commissions to their peers in the Water Resources Commission. Although the authorizing language

of HB 3369 (2009) requires the WRC to “notify” the Environmental Quality Commission, Fish and Wildlife Commission, and Board of Agriculture of adoption of the Strategy, this request moves a step further. The Water Resources Commission and Policy Advisory Group strongly encouraged staff to reach out to additional boards and commissions and to specifically seek high-level letter of endorsement of the IWRS, so that these letters can inform the adoption process, scheduled for August 2, 2012. Staff reported on these visits and resulting letters of endorsement.

Public Input:

During the course of developing Oregon’s first Integrated Water Resources Strategy, the Project Team has brought seven rounds of public comment to the Water Resources Commission. Through this process, the Department heard from many individuals and organizations who are not part of the Department’s traditional stakeholder group, it had been informative and valuable to receive their input.

The final round of public comment focused on the December 2011 Discussion Draft, and comments were received from December 22, 2011 through March 15, 2012.

At the close of the public comment on March 15, the IWRS Project Team had received comments from 46 individuals and organizations. As in the past, comments represented a wide range of interests and perspectives. Twenty of the 46 comments came from individuals. Twenty-six comments came from organizations: 19 from membership associations, four from public entities (city, county, and tribal governments), and three from private agricultural businesses. Generally supportive of the public process and time invested in the Strategy, commenters offered a number of specific suggestions regarding tone, background text, and recommended actions.

The final version of the IWRS will have “Recommended Actions” distributed throughout the text, instead of confined to the end of each chapter. This enables the text to come to a logical conclusion, sooner, offering a Recommended Action immediately after describing specific needs and challenges.

The Water Resources Commission is scheduled to consider the Integrated Water Resources Strategy for adoption during its August 2, 2012 meeting.

Implementation begins immediately, thereafter, with staff developing budget and legislative requests for the Governor’s Office to consider in preparation for the 2013 Legislative Session.

The Commission gave positive feedback to all the staff that have worked so hard on the Strategy.

Suzanne Butterfield, Deschutes Water Alliance, spoke regarding her support and the support of the Deschutes Water Alliance for the Integrated Water Resources Strategy.

Tod Heisler, Executive Director of the Deschutes River Conservancy, commented in support of the Integrated Water Resources Strategy.

Patrick Griffiths, Water Resources Manager for City of Bend, spoke in support of the Integrated Water Resources Strategy.

All three speakers urged the Commission to use the Deschutes Basin as a pilot project for place-based planning, during the implementation phase.

Peggy Lynch, League of Women Voters of Oregon, expressed her support for the development and implementation of the Integrated Water Resources Strategy.

Kimberley Preistley, Waterwatch of Oregon, provided suggestions regarding the introduction and conclusion portions of the Integrated Water Resources Strategy.

Lorna Stickel, Portland Water Bureau, expressed her support for the Integrated Water Resources Strategy.

Commissioner Mary Meloy congratulated Brenda Bateman and Alyssa Mucken on a job well done and told them that the process exceeded her expectations.

There being no further business, the meeting was adjourned.

Respectfully,

Brandi Elmer
Executive Assistant

Water Resources Commission
Meeting
Salem, Oregon
April 20, 2012

WRC Present

John Jackson, Chair
Charlie Barlow, V. Chair
Carol Whipple
Ray Williams
John Roberts
Jeanne LeJeune
Mary Meloy

Staff Present

Phil Ward
Cindy Smith
Brenda Bateman
Jesse Ratcliffe
Doug Woodcock
Ivan Gall

Tracy Loudon
Juno Pandian
Dwight French
Barry Norris
Ruben Ochoa

Others

Cortney Duke
Helen Moore
Kimberley Priestly
Ed Henricks
Peggy Lynch
April Snell
Mark Landauer
Gil Riddell
Paul Harcombe

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 Jackson welcomed everyone to the meeting.

E. Approval of Minutes

The minutes of the January 26 and January 27, 2012 meeting were offered to the Commission for consideration.

Commissioner Roberts moved to approve the January 26 and 27, 2012 minutes as submitted; seconded by Commissioner Barlow. Voting for the motion: Commissioners Jackson, Williams, Roberts, LeJeune, Whipple, Meloy and Barlow. Voting against the motion: none.

F. Commission Comments

Commissioner LeJeune reported that she continued to work on concepts related to funding as well as her involvement as a liaison to the Integrated Water Resources Strategy Policy Advisory Group. One item of note was about the difficulty small communities have monitoring water quality and quantity.

Commissioner Whipple talked about heavy rains on the West side and the ongoing head-gate notices requiring water measurement at significant points of diversion.

Commissioner Barlow reported that most of his discussions were centered around the Integrated Water Resources Strategy; he talked about farmers planting and looking forward to a pretty good water season this year.

Commissioner Meloy continued to be engaged in the Deschutes Basin and continued to work with the Deschutes Water Alliance in collaborative decision-making and education.

Commissioner Roberts reported that as part of the Revenue Subcommittee he continued to work on development of revenue concepts with emphasis on equity. The other major item of note was the WISE Project, (Water for Irrigation, Streams and Economy). He talked about Oregon Solutions being involved in the WISE Project, as a facilitator and said that they had done a great job.

Commissioner Williams reported that he has been busy with spring planting, and letting Jeanne and John do much of the work on the Revenue Subcommittee, although he had participated some in the work of the Subcommittee.

Chair Jackson reported that he had been meeting with the various boards and commissions regarding the Integrated Water Resources Strategy, and talked about getting a positive response on the request for the letter of endorsement. These letters note that the IWRS is headed in the right direction.

G. Director's Report

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

Dwight French, Water Rights Administrator, described the timeline for protests filed regarding a Oregon Department of Fish and Wildlife Transfer and possible Exchange with the City of Cascade Locks.

Director Ward noted that Governor Kitzhaber had put together his Oregon Solutions team to take a look at addressing some of the water needs in the Columbia River Basin area. He also noted that he was in Boardman with the Governor when he met with the community on that issue and it was very well received.

H. Revenue Subcommittee Update

The Water Resources Revenue Subcommittee Chair, John Roberts, asked the Commission for consensus to continue work to develop revenue concepts that are equitable for water users around the state. The full Commission agreed that the subcommittee should continue on with their work.

I. Legislative Wrap-Up and Next Steps

Brenda Bateman, Senior Policy Coordinator provided a wrap-up of the 2012 Legislative Session and provided a preview of the upcoming 2013 Legislative Session. The Commission was asked to approve the proposed legislative requests for further development.

Potential Legislative Concepts for 2013:

- A. Update Water Right Certificates.** Today, there are no statutory provisions that allow the name on a water right certificate to be changed, even if the holder of the certificate has passed away or sold off interests. There are about 85,000 water rights in Oregon today. The state needs the ability to respond to holders of water rights who are asking to modify the names on these certificates, especially in light of recent court cases, favoring the name written on a water right certificate over other factors. Such a change would facilitate other process efficiencies, such as communicating with water right holders, mapping water rights, updating the water right database, and improving compliance with measurement and reporting conditions. Such a

change will likely involve a fee, to pay for the required staff time.

- B. Secure Authority for WRD to Serve as a Water Contractor.** This would allow WRD to contract with instream and out-of-stream interests, providing water secured through an agreement with other states or the federal government.
- C. Secure Stable Funding for Water Resource Management.** The state's core science, fieldwork, and planning responsibilities related to water are underfunded and have been for years. Core responsibilities include water allocation, distribution, monitoring and protection, data collection/processing, permitting, enforcement, and technical assistance for Oregon communities. Develop additional sources of funding to mitigate the loss of General Fund. Options proposed by the Water Resources Commission include an annual water right management fee and an annual exempt use well fee.
- D. Make WRD's Split Season Leasing Program Permanent** (sunsets in 2014). Split Season Leasing allows water right holders to use water beneficially for a portion of the year, and lease (up to) the unused portion of the right for the remainder of the year, providing that the uses do not occur at the same time. This program, authorized under ORS 536.348, Section 3, is part of the Water Resources Department's broader portfolio of instream leasing programs. Note: WRD will undertake a review of this program with participants and stakeholders this spring as set forth in program rules.
- E. Extend Water Right Transactions Fee Schedule** (sunsets in 2013; reverts to 2003 levels.) The Department's entire fee schedule for water-right transactions is incorporated in this sunseting statute.
- F. Split a Permit into Multiple Ownerships.** As properties are split up and sold, the water right appurtenant to the land is also affected. It is not unusual to have one or more property owners ready to "prove up" on their portion of a water right, while the other owners are not yet ready or willing. Increasingly, banks favor loaning money for property with certificated water rights, instead of permitted water rights. Allow property owners to certificate their portion of the original water right permit as they become eligible. Amend the permit amendment process. This would not release any of the well owners from obligations that existed under the original permit. This concept applies to irrigation and agricultural permits.

April Snell, of Oregon Water Resources Congress, expressed her opposition to the proposed Water Rights Management Fee.

Kimberley Priestly, Waterwatch of Oregon, expressed her concerns over new contracting, if they do not afford full environmental protections.

The Commission was asked for approval to move these concepts forward and continue to develop them further.

Commissioner Meloy moved to approve the 2013 proposed legislative concepts for further development; seconded by Commissioner Roberts, voting for the motion: Commissioners Barlow, LeJeune, Jackson, Williams, Meloy, Roberts and Whipple. Voting against the motion: none.

J. Budget Update: 2011-13 Biennium and 2013-15 Budget Preparation

Tracy Loudon, Administrative Services Administrator, gave an update to the Commission on the current financial situation in the 2011-13 Biennium and the implications of the most recent Revenue Forecast for the Department.

He discussed the development of the 2013-15 budget for the Agency Request Budget and Governor's Budget and how it is being structured differently for this upcoming biennium. The Governor is focusing on outcomes grouped in five program areas: Education, Healthy People, Economy & Jobs, Healthy Environment, and Safety. Budget requests focus on prioritizing investments within these five areas and delivering services that can deliver clear and sustainable outcomes. This effort includes identifying how government can work more efficiently with the goal of delivering shared outcomes across agency lines both in administrative and program areas.

The Water Resources Department programs are distributed in five divisions, which have been assigned to statewide program areas:

1. **Field Services:** *Economy and Jobs* – The protection of senior water rights ensures that water supplies will be available for Oregon's economic health. This program consists primarily of Watermasters who regulate and distribute water based upon the water rights of record; inspect the construction and maintenance of wells for the protection of the groundwater resource and the public; inspect the construction and maintenance of dams for the protection of public safety and environment; and collect hydrologic data which, is made available to staff and the public for a variety of purposes.
2. **Water Rights:** *Economy and Jobs* – the establishment of new water rights or transfer of existing water rights is primarily for the economic benefit of the applicant. Under Oregon law, almost all water users, including agricultural enterprises, cities, state and federal agencies, must apply for and receive a water right before initiating their water use. This program evaluates applications for new or transfer water rights to determine that they meet standards set by statute and rule.
3. **Administration / Water Development Loan Fund:** *Economy and Jobs* – the administrative functions ensure an efficient allocation and expenditure of resources to employees, vendors, and other state agencies. This program area also provides grants for feasibility studies and loans for water development projects that have significant economic impact for Oregon.
4. **Director's Office:** *Healthy Environment* – the implementation of water policy promotes responsible water management and addresses Oregon's water supply needs through restoration and maintenance of a healthy environment. This program implements Oregon Water Law, houses the Department's environmental justice program, responds to public records and public information requests, and interfaces with Oregon's tribes and develops the Integrated Water Resources Strategy.
5. **Technical Services:** *Healthy Environment* – Our scientific corps, comprised of surface water hydrologists, groundwater hydrogeologists, and information system specialists, collect and process the data necessary to make science-based water resource management decisions. This program includes surface and groundwater investigations, stream gaging, groundwater data collection, dam safety, geographic information systems, data entry, information systems management, well construction standards, well constructor licensing, and regulatory compliance.

Each of the programs listed above will have an opportunity to give a verbal presentation to the Program Funding Team that is responsible for its program area.

Likely Budget Appearance:

	Healthy Environment	Economy & Jobs
Field Services		\$8.8M
Water Rights		\$1.9M
Administration		\$3.0M
Technical Services	\$4.5M	
Director's Office	\$2.4M	
Water Development Loan Fund		xx

Total GF \$20.6 Million

Peggy Lynch, League of Women Voters of Oregon, commented on the League's support of the Permit Fee schedule. She spoke in support of the General Fund.

The Commission was asked for approval to move the Department's budget forward and continue to develop them further.

Commissioner Williams moved to endorse the 2013-15 budget packages and continue to develop them further; seconded by Commissioner LeJeune, voting for the motion; Commissioner Williams, LeJeune, Barlow, Jackson, Roberts, Meloy and Whipple. Voting against the motion: none.

K. Request for an Exception to the Willamette Basin Program under Application G-17486 Pursuant to ORS 536.295

Dwight French, Water Rights Services Administrator, presented a request from Paul Harcombe for the Department to consider a water right application to request a use not included in the Basin Program.

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. Paul Harcombe has requested an exception to the Willamette Basin Program based on one or more criteria provided in statute.

Commission approval of a request for an exception to a basin program allows the Department to consider an application to appropriate water for a purpose not classified as allowable by the subject basin program. An exception does not guarantee that a water right will be issued, or if it were issued, how it would be conditioned. In approving a basin-program exception, the Commission allows the Department to consider the application, notwithstanding the classification. All other aspects of the application review process remain the same. If the Commission does not grant the request, the application will continue to be processed but will likely be denied because the proposed use is not a classified use in the basin program.

The Department found that the applicant had made a persuasive case that the proposed project would indeed provide a public benefit (riparian and watershed enhancement) as required under ORS 536.295(1)(f). Use of the well is not inconsistent with any policy of the basin program, and in

particular is consistent with that allowing irrigation “for the longest period possible between March 1 and October 31 provided sufficient water is available” (OAR 690-502-0020(1)(f)).

Commissioner LeJeune moved the Commission to approve the request for a basin-program exception because the use will provide a public benefit such as riparian or watershed improvement; and because the use is consistent with the general policies of the Willamette Basin Program, seconded by Commissioner Meloy. Voting for the motion; Commissioner LeJeune, Meloy, Jackson, Barlow, Whipple, Roberts, and Williams. Voting against the motion: none.

L. Final Order – Proposed Cancellation – Gloria Jones

Jesse Ratcliffe, with the Oregon Department of Justice, explained that in both this agenda item and the next item, there have been exceptions filed with relation to Final Orders and the Commission has the authority to make the final determination. Jesse asked for confirmation from each of the Commissioners that they have not had any communication with the parties’ since August 2011. Each of the Commissioners answered “no contact.”

Juno Pandian, Enforcement Manager, presented a request for consideration of exceptions to a partial cancellation of a water right. The Commission was asked to consider exceptions and issuance of the Final Order in the Cancellation of Water Right Certificates 41522 and 59059.

Background:

Ms. Jones requested an administrative hearing and the Department referred the matter to the Office of Administrative Hearings (OAH) on January 21, 2011.

The hearing was held on June 14, 2011, at OAH’s offices in Salem, Oregon. Greg R. Miller, Douglas C. Wellet, Albert G. Satterla, and David R. Crane (Proponents) represented themselves. Gloria Jones (Protestant) appeared and testified on her own behalf. The record closed at the conclusion of the hearing on June 14, 2011.

The issues for hearing were (1) Whether a portion of the water right evidenced by Certificate 41522 has been forfeited by failure to make beneficial use of the water for a period of five or more consecutive years during the 2001 through 2006 irrigation seasons; and (2) Whether the portion of the water right owned by Gloria Jones and evidenced by Certificate 59059 has been forfeited by failure to make beneficial use of the water for a period of five or more consecutive years during the 2001 through 2006 irrigation seasons.

On August 3, 2011, a Proposed Order was issued in which Administrative Law Judge (ALJ) Han found that the Protestants’ water rights have not been forfeited and that 2.3 acres owned by Mr. Heiden had been forfeited due to non use. On September 1, 2011, Mr. Wellett (Proponent) filed exceptions to the Proposed Order with OWRD. The Protestant did not file a response to Proponent’s exceptions.

Proponent Douglas Wellet filed exceptions to the ALJ’s Proposed Order on September 1, 2011. The exceptions and the Department’s responses to those exceptions were made a part of the Final Order. Generally, Mr. Wellet’s exceptions take issue with procedural matters. The Proposed Order was not amended to reflect the exceptions filed by Mr. Wellet.

The Proposed Order provides that written exceptions may be filed within specified time periods. The Proposed Order provides the opportunity required by ORS 183.460 and OAR 137-003-0645(5) for the Proponents and the Protestants to make written arguments concerning the Proposed Order for the Commission's consideration. The Proposed Order does not allow for oral argument to the Commission.

The Department asked the Commission to Issue a Final Order that: 1) was consistent with the ALJ's Proposed Order, 2) confirmed the Department's responses to the exceptions and 3) declared that the Water Rights of Gloria Jones, evidenced by Water Right Certificate 41522 and 59059, had not been forfeited due to non-use during the period in issue.

Commissioner LeJeune made a motion to Issue a Final Order, referenced as Attachment 3, which is consistent with the Administrative Law Judge's Proposed Order. Seconded by Commissioner Meloy. Voting for the motion, Commissioners LeJeune, Meloy, Jackson, Barlow, Whipple, Williams, and Roberts. Voting against the motion: none.

M. Final Order – Partial Cancellation – Hart Lake

Jesse Ratcliffe, with the Oregon Department of Justice, explained that there was a letter received by Director Ward, for submittal to the Commissioners, from Cortney Duke, of Schroeder Law Office regarding the Final Order for Partial Cancellation. Jesse explained that the Commissioners had not received the letter. Jesse gave his opinion to the Water Resources Department and Commission, that neither the letter that was submitted nor public comment should be taken or considered at this time by the Commission on this matter. Jesse further asked the Commission if they had received any communications from the parties' involved in this cancellation matter. Each of the Commissioners answered "no communications."

Juno Pandian, Enforcement Manager presented a request for consideration of exceptions to a proposed cancellation of a water right.

Background:

On August 26, 2009, Warren and Jesse Laird (Proponents) each filed Affidavits of Non-Use of Water Right. On October 15, 2009, Oregon Water Resources Department (OWRD) issued three Notices of Proposed Partial Cancellation of Water Rights evidenced by Water Right Certificates 9451, 22209, and 45409. The Water Right Certificates are held by the United States Bureau of Land Management (BLM or Protestant). The water rights are for irrigation and livestock near Hart Lake in Lake County.

On January 26, 2010, OWRD issued a Notice of Hearing and Prehearing Conference. On March 15, 2010, a prehearing conference was held with Senior Administrative Law Judge (ALJ) Joe L. Allen presiding. Bradley Grenham, Attorney for the United States Department of the Interior, appeared on behalf of BLM. Attorneys Laura Schroeder and Cortney Duke, appeared on behalf of the Proponents. On April 20, 2010, the parties and the ALJ met in Lakeview, Oregon and conducted a site visit. At this time, the ALJ and the parties observed points of diversion (PODs) 8, 9 and 10 along the northern bank of Hart Lake.

The issues for hearing were (1) Whether a portion of the water right evidenced by Certificate 9451 has been forfeited by failure to make beneficial use of the water for a period of five or more consecutive years during the period March 2001 through August 2009; (2) Whether a portion of the water right evidenced by Certificate 22209 has been forfeited by failure to make beneficial use of the water for a

period of five or more consecutive years during the period March 2001 through August 2009; and (3) Whether a portion of the water right evidenced by Certificate 45409 has been forfeited by failure to make beneficial use of the water for a period of five or more consecutive years during the period March 2001 through August 2009.

Administrative Law Judge (ALJ) Allen issued a Proposed Order on March 31, 2011 finding that (1) The BLM has not failed to beneficially use water on the contested acres for a period of five or more years during the period in issue; and that (2) No portion of the water rights evidenced by Certificates 9451, 22209, and 45409 has been forfeited due to non-use during the period in issue.

The Department recommended that the Commission Issue a Final Order that is consistent with the Department's subsequent Amended Corrected Proposed Order confirming the Department's responses to the exceptions and declaring that no portion of the water rights evidenced in Certificates 9451, 22209, and 45409 have been forfeited due to non-use during the period in issue.

Commissioner Williams made a motion to Issue a Final Order that is consistent with the Department's Amended Corrected Proposed Order, seconded by Commissioner Whipple. Voting for the motion; Commissioners Williams, Whipple, Meloy, LeJeune, Jackson, Barlow and Roberts. Voting against the motion: none.

N. Leasing Program Activity Report – 2011

Dwight French, Water Rights Services Administrator, presented an update on the Department's Water Right Leasing Program Activity for 2011.

The instream leasing program provides a voluntary means to aid the restoration and protection of streamflows. This arrangement provides benefits both to water right holders and to instream values by providing water users with options that protect their water rights while leasing water for instream benefits. The ability to convert an existing water right to instream use temporarily under an instream lease is part of the Instream Water Right Act adopted in 1987.

The first instream leases were submitted to the Department in 1994. Over the years, the instream leasing program has grown and evolved. In 1994, there were six instream leases approved by the Department. In the last five years, the Department has averaged 335 active leases per year.

The leasing program is an integral part of the Department's streamflow restoration efforts and interest in the program continues to grow. In 2011, a total of 443.8 CFS were leased instream. The Department has identified two instances where actual injury occurred after a lease had been approved and in both of these cases the leases were recinded. Staff has acted to prevent enlargement from occurring in the first place. Staff is conducting a review of the split-season leasing program and will be developing a legislative concept to remove the sunset date.

O. Public Comment

No public comment.

P. Other Issues

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Brandi Elmer
Executive Support