

**Water Resources Commission
Meeting
Hillsboro, Oregon
November 20, 2014**

WRC Present

John Roberts, Chair
Dennis Doherty, Vice-Chair
Bruce Corn
Carol Whipple
Bob Baumgartner
Dennis Doherty
Jeanne LeJeune

Staff Present

Tom Byler
Tom Paul
Cindy Smith
Racquel Rancier
Brenda Bateman
Tracy Louden
Dwight French
Brenda Bateman
Alyssa Mucken
Jake Constans
Renee Moulun

Others

Bill Gaffi
Lauren Smith
Kimberley Priestley
Amber McKinney
Tracy Rutten
John Jackson
Andrew Blech
Martha Pagel
Mark Jockers
Chris Taylor

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. Staff reports and PowerPoint presentations are available on the Department's website.

Chair Roberts opened the meeting and announced that the Commission would be going into Executive Session.

After Executive Session, Chair Roberts called the General Session to order, and asked the Commission and audience to introduce themselves. Chair Roberts explained that the Commission met in Executive Session to consult with legal counsel regarding the Commission's legal rights and duties on current litigation or litigation likely to be filed, and to consider information or records exempt from public inspection.

A. Welcome by Clean Water Services

Bill Gaffi, General Manager of Clean Water Services, thanked the Commission for coming to the Tualatin Basin and participating in the tour. He provided information about Clean Water Services' work.

Chair Roberts thanked Gaffi for the tour and use of the facilities.

B. Consideration of the Exceptions and Issuance of Final Order In the Matter of the Proposed Cancellation of the Water Right Certificate 3943.

Dwight French, Water Right Services Administrator, briefed the Commission on the exceptions filed in the proceedings regarding whether Water Right Certificate 3943 should be canceled. He requested the Commission make a decision on the issuance of the Final Order in the Cancellation of Water Right Certificate 3943.

Commissioner Williams made a motion that the Commission issue a Final Order that is consistent with the Proposed Order and declares that no portion of the water right evidenced in Certificate 3943 has been

forfeited due to non-use during the period of issue. He further moved that the Final Order deny the Exceptions filed by the Proponents. Seconded by Commissioner Doherty. Voting for the motion: Commissioners Roberts, Williams, Whipple, Corn, LeJeune, Doherty, and Baumgartner. Voting against the motion, none.

C. Place-Based Integrated Water Resources Strategy (IWRS) Planning Draft Guidelines

Alyssa Mucken, Program Coordinator for the Integrated Water Resources Strategy provided an overview of the revised place-based planning guidelines, which were developed based on feedback from the Commission, partner agencies, stakeholders, and the public. Mucken requested guidance on items relating to initiating the planning process, public participation, recognizing a place-based plan, and releasing the pilot guidelines.

Commissioner Doherty facilitated the Commission's discussion.

Commissioner Williams praised the Department's work on the place-based planning guidelines.

Commissioner Doherty noted that comments received on the draft guidelines indicate that there are issues that the Commission still needs to address.

Commissioner Whipple expressed that the Commission should encourage groups to actively plan for water needs, given the cost of water projects, the lack of water, and the need for managing a healthy water resource.

Tracy Rutten, League of Oregon Cities, stated that the water issues facing Oregon are complex, and the "go it alone" philosophy does not work. The place-based planning process will facilitate collaboration and implementation of SB 839 and other funding opportunities.

Lauren Smith, Oregon Water Resources Congress (OWRC), agreed with Rutten. OWRC sees place-based planning as part of a path for getting much needed water projects completed.

Kimberley Priestley, WaterWatch of Oregon, thanked the staff for involving the public and stakeholders. Priestley stressed that a balanced make-up of participants was important, and that those who care about water for all citizens should be included. Priestley commented that WaterWatch would appreciate future opportunities to comment on details of the guidelines.

D. Update on Senate Bill 839 Task Forces

Brenda Bateman, Technical Services Administrator, and Racquel Rancier, Senior Policy Coordinator, gave an update on the work of the Senate Bill 839 (2013) task forces.

Rancier noted that the Governance Task Force reviewed the language of Senate Bill 839 to determine if changes were necessary, and also discussed how decisions will be made to fund projects through the program. The task force also discussed how SB 839 fits with other funding programs, and the types of projects eligible to receive SB 839 funding. The task force is expected to finish its work in January 2015.

Bateman reported that the Seasonally Varying Flows Task Force is in the final stages of developing guidelines for determining what flows can be diverted for storage and which flows need to be left

instream. Bateman provided an overview of the methodology being developed by the group. The task force will hold one more meeting in December.

Rancier noted that the Governor's office has a placeholder legislative concept to address any task force recommendations for changes that require legislation. The rulemaking process is expected to start during the 2015 Legislative Session, and the rules are expected to be ready for consideration by the Commission in June.

Lauren Smith, OWRC, commended staff for their hard work to support the task forces, and is looking forward to their completion.

E. Overview of the West Coast Infrastructure Exchange

Chris Taylor, Executive Director of the West Coast Infrastructure Exchange (WCIX), gave an overview of the work of the WCIX. The WCIX is an organization created by the Governors of Washington, Oregon and California, and the Premier of British Columbia, to assist in the development of public infrastructure projects and identifying innovative financing options. Taylor discussed how partnerships with the private sector can be leveraged to provide access to expertise and capital for publicly-owned infrastructure.

F. Review of New State Scenic Waterway Reports

Dwight French, Water Right Services Division Administrator, provided an update on efforts to study new river sections for Scenic Waterway Designation. The Governor gave direction to the Parks and Recreation Department (OPRD) and Water Resources Department to recommend three new river stretches per biennium for Scenic Waterway designation. A task force was convened to look at eight, and OPRD narrowed that to three for further review and consideration. The three stretches are on the Chetco, Upper Molalla, and Upper Grand Ronde rivers. Public meetings were held in each region, which indicated that there was a lack of support for designating the Upper Grand Ronde.

OPRD has decided that three conditions, as outlined in the staff report, should be met before recommending a new scenic waterway. As a result, the timeline for recommending new scenic waterways has been pushed back to 2015, in order to allow for these actions to occur.

Water Resources Department staff will collect water right information on the two reaches still under consideration, and prepare reports for the Commission that include flow recommendations for each section.

Martha Pagel, Schwabe, Williamson & Wyatt, appreciated the information provided by staff, and the process that was outlined.

There being no further business, the meeting was adjourned.

Respectfully,

Lorri Cooper
Exec. Administrative
Support to the Director's Office

**Water Resources Commission
Meeting
Hood River, Oregon
November 21, 2014**

WRC Present

John Roberts, Chair
Ray Williams, Vice-Chair
Bruce Corn
Carol Whipple
Bob Baumgartner
Dennis Doherty
Jeanne LeJeune

Staff Present

Tom Byler
Tom Paul
Cindy Smith
Racquel Rancier
Brenda Bateman
Doug Woodcock
Tracy Louden
Ivan Gall
Dwight French
Jake Constans
Mike McCord
Keith Mills

Others

Lauren Smith
Kimberley Priestley
Mark Landauer
Amber McKinney
Angelo Spada
Greg Kupillas
Peter Mohr

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Chair Roberts called the meeting to order.

G. Approval of Minutes

The minutes of the August 21-22, 2014 meeting were offered to the Commission for consideration.

Item G of the August 22, 2014 minutes need to be corrected. The first comment should be attributed to Commissioner Baumgartner instead of Commissioner Doherty.

Commissioner Williams moved to approve the August 21-22, 2014 minutes as corrected. Seconded by Commissioner Corn. Voting for the motion: Commissioners Roberts, Williams, Whipple, Corn, LeJeune, Doherty, and Baumgartner. Voting against the motion, none.

The minutes of the September 25, 2014 Teleconference Meeting were offered to the Commission for consideration.

Commissioner Williams moved to approve the September 25, 2014 minutes as presented. Seconded by Commissioner Doherty. Voting for the motion: Commissioners Roberts, Williams, Whipple, Corn, LeJeune, Doherty, and Baumgartner. Voting against the motion, none.

H. Approval of 2015 Water Resources Commission Schedule

The proposed schedule for 2015 Commission Meetings was presented. Commissioner LeJeune will not be present at the March meeting. After discussion, the Commission verbally approved the dates and locations as presented, without formal motion or vote.

I. Commission Comments

Commissioner Corn reported on the impacts of having a third year of drought. One positive outcome is better conservation, which will have long-term benefits for that area.

Commissioner Whipple commented that the recent increased water levels in her area greatly benefit the forest industry. She also noted challenges associated with the Senate Bill 1010 biennial review, which she had participated in.

Commissioner Williams discussed the importance of financing the construction of water projects.

Commissioner LeJeune noted that northwestern Oregon has weathered the drought, and that water consumption is down in that region. She attended an Environmental Quality Commission (EQC) meeting in early November as the Water Resources Commission liaison. Part of the meeting was a joint meeting with the Board of Forestry. She felt that a similar meeting of the Commission and EQC would have value.

Commissioner Baumgartner discussed the previous day's tour with Clean Water Services. He commented on how Clean Water Services refers to themselves as a water resources utility, whereas a few years ago they would have introduced themselves as a wastewater and storm water utility – this is indicative of a change of thinking. He also talked about the importance of collaboration with other water entities to improve water quality and supply, and encouraged the Commission to support moving forward on place-based planning.

Commissioner Doherty thanked Cindy for the binder and tabs; it made his preparation for the meeting much easier. He noted that he thought Proposition 1 in California was an example of what is possible, and that the Commission should consider lessons learned from California's process. He also supports place-based planning and thanked staff for their work. Based on presentations at the Association of Oregon Counties Annual Conference, he was inspired to work collaboratively on all projects, small or large.

Chair Roberts reported that he and Steve Mason, the coordinator of the WISE project, took some of the county commissioner candidates in the Rogue Valley area on a tour. On September 18, Roberts was a hearings officer in Klamath Falls for the Division 22 Rules. He attended the EQC meeting on August 28 in Medford for Commissioner LeJeune, and has also been working on the merger of watershed councils in his area. He attended the Oregon Watershed Enhancement Board meeting in Grants Pass on October 28-29, 2014, where about \$9.5 million of grant funds were awarded. He reported that Rogue Valley water use is down about 15 percent this year. He found the West Coast Infrastructure Exchange discussion yesterday very useful.

Colleen Johnson, EQC liaison to the Commission, talked about the joint session of the EQC and Board of Forestry. Presentations during the joint session were on green infrastructure and storm water runoff. The majority of the meeting was on the Clear Air program.

J. Director's Report

Director Tom Byler briefed the Commission on his first few weeks as Director and responded to questions. He provided an update on several items, including regulation in the Klamath Basin and changes in the Oregon Legislature after the election.

K. Budget Update: 2015-17 Revenue Forecast

Tracy Louden, Administrative Services Division Administrator, provided information on the 2015-17 Revenue Forecast. In addition, he noted that the Governor's Recommended Budget is due to be released December 1. Since the forecast continues to increase, there have not been discussions of budget reductions. The amount that the Governor needs to balance to is \$17.6 billion.

Director Byler added that the three priorities of the Governor for natural resources are called the Clean Water Partnership, Working Farms and Forests, and the Integrated Water Resources Program. Tracy and Director Byler responded to comments and questions.

L. Approval of Appointments to the Groundwater Advisory Committee

Ivan Gall, Manager of the Groundwater Section, briefed the Commission on the background, makeup and function of the Groundwater Advisory Committee (GWAC). He asked the Commission to appoint Michael Campana, Scott Kruger, and John Stadeli to GWAC beginning December 1, 2014 through November 30, 2017.

Commissioner Williams made a motion to appoint the three nominees, seconded by Commissioner Doherty. Voting for the motion: Commissioners Roberts, Williams, LeJeune, Whipple, Corn, Doherty, and Baumgartner.

Commission members asked questions about the Moore case that was discussed at the last meeting. Tom Paul noted that information on the case was included in the Director's Report.

M. Dam Safety Program Overview

Brenda Bateman, Technical Services Administrator, and Keith Mills, Acting State Engineer and Dam Safety Program Manager, provided a summary of the Dam Safety Program, and an introduction to the rulemaking that is underway. The rules are expected to be before the Commission for consideration in early 2015.

N. Request for Adoption of Rules – OAR 690-340-0030, 690-340-0040, 690-310-0080, 690-382-0400, Revisions to Transaction Fees

Dwight French, Water Right Services Division Administrator, presented a request for adoption of changes to rules to adjust fees. In 2013, the Oregon Legislature passed House Bill 2259, which authorized fee increases. The rules would adjust fees to be consistent with the percent increase in fees authorized by the Legislature.

Commissioner LeJeune made a motion to adopt the proposed amendments to OAR 690-340-0030, 690-340-0040, 690-310-0080, and 690-382-0400 as proposed in Attachment 3. Seconded by Commissioner Williams. Voting for the motion: Commissioners Roberts, Williams, LeJeune, Whipple, Corn, Doherty, and Baumgartner.

O. Request for Adoption of Rules – OAR 690, Division 33, Upper Columbia Rules

Dwight French, Water Rights Services Division Administrator, provided an overview of the request for adoption of changes to the Division 33 Rules. The changes are necessary to achieve consistency with Oregon Department of Fish and Wildlife's (ODFW) Habitat Mitigation rules, as well as to make minor corrections and updates.

Commissioner Williams made a motion to adopt the proposed amended rule, OAR 690-033-0120, as proposed in Attachment 1. Seconded by Commissioner Corn. Voting for the motion: Commissioners Roberts, Williams, LeJeune, Whipple, Corn, Doherty, and Baumgartner.

P. Request for Adoption of Rules – OAR 690, Division 325, Assignment of a Water Right Permit and Request for Issuance of Replacement Permits (SB 200, 2013 Session)

Dwight French, Water Right Services Division Administrator, presented a request for adoption of rules to allow a permit to be split amongst two or more property owners.

French noted that the rules advisory committee (RAC) did not agree on certain components within the proposed final rule. WaterWatch, who participated as a RAC member, wanted the applicant to ascertain whether the most recent use under the entire permit had been used consistent with the terms and conditions of the permit. The Department and the majority of the other RAC members believed that the applicant should have to ascertain that the applicant's own most recent use of the permit had been used consistent with the terms and conditions of the permit. French provided an explanation of the Department's interpretation. French explained the reason for the two public comment periods.

Director Tom Byler pointed out a couple of clarifications to correct errors in the staff report. Specifically, on page 3, paragraph 1 and 2 make reference to OAR 690-325-0040(i), but should read OAR 690-325-0040(2)(h). In addition, on page 4, reference to Attachment 1 should be titled "Proposed Final Rules OAR 690-325."

Byler asked Renee Moulun, Assistant Attorney General, to comment on the proposed language in regards to ascertaining whether recent water use complied with the permit.

Moulun explained that she had read the statute, and researched the legislative history to determine the intent of the statute, and stated that she is confident the proposed rules support the intent of the statute. All of the information refers to information that is specific to the applicant's land and not to other water users that are a part of the permit. Based on legislative history, it was clear that what was intended was for the applicant to specify that they were using water consistently with the permit on the parcel of land for which they would like to have a separate split permit. Moulun believes that Attachment 1 articulates that intent as it is.

French noted that the applicant needs to ensure that the point of diversion meets the criteria of the permit. If the point of diversion is on the applicant's land, the neighbor's land, or on a third parties' land, the applicant will need to make sure the point of diversion that serves the applicant's own land is being exercised within the terms and conditions of the permit for the applicant's use.

Commissioner Baumgartner asked Moulun if she found that the language could not be reasonably read in the way that WaterWatch wants it to be read. Moulun responded that ORS 537.225(1)(a-d) specify information that an applicant is supposed to provide with their application to split a permit. Moulun is convinced that the intent of the legislature was the applicant be responsible for providing information specific to the parcel of land that would be split off from the larger permit. The statutory language is not entirely clear, it could be clearer, but Moulun contended that if the legislature intended for the applicant to provide information about water use on the neighbor's land, then they would have said so very clearly, because that is quite a duty and burden. The legislative history is very clear that there was no intent on placing that burden on the applicant. The combination of the text and the context of the specific information that the applicant would provide from the legislative history gave Moulun the confidence to advise the Department that they were proceeding lawfully.

Commissioner Baumgartner asked if Dwight French could clarify why it was perceived that the rule would inadvertently allow for new water use not allowed under the old conditions. French replied that he could not do that because he did not agree with the concern. During the permitting stage, there is a timeframe for the permit holders to develop their use consistent with the terms and conditions of the permit. If they need more time to develop their use, or cure deficiencies, then they need to request an extension of time. The Department was careful in developing the bill to make sure that this was not an opportunity for a permit in jeopardy of cancellation to be revived.

Commissioner Baumgartner read a portion of WaterWatch's public comment, and asked when the appropriate time to discuss that would have been. Moulun replied that the appropriate time would have been at the rulemaking hearing. Baumgartner was concerned about honoring commitments made during the legislative session, and wanted to know what commitments were made and between what parties. Moulun was not aware of any compromise in the legislative record.

Dwight French read the portion of the proposed rules to confirm the intent of the RAC to not enlarge the water right or change the use.

Commissioner Whipple commented that this rulemaking has too many "tweaks" to feel comfortable, and thought the rulemaking brought to the Commission should be in better condition.

Commissioner Baumgartner asked to be on the record that he personally prefers option 3, but would not make a motion as such.

Commissioner Whipple made a motion to adopt the final proposed rules, OAR 690, Division 325 contained in Attachment 1. Seconded by Commissioner LeJeune. Voting for the motion: Commissioners Roberts, Whipple, LeJeune, and Williams. Voting against the motion: Commissioners Baumgartner, Doherty and Corn. Motion passes.

Q. Request for Adoption of Rules – OAR Chapter 690, Division 200, 219, 215 and 240, Well Construction

Brenda Bateman, Technical Services Administrator, and Kris Byrd, Manager of Well Construction and Compliance, presented a request for adoption of rules relating to well construction. The changes to these rules are housekeeping in nature, clarifying requirements in construction.

Commissioner Corn made a motion to adopt the final proposed rules in Attachment 1. Seconded by Commissioner Williams. Voting for the motion: Commissioners Roberts, Williams, LeJeune, Whipple, Corn, Doherty, and Baumgartner.

Public Comments on Agenda Items N-Q

The Commission provided an opportunity for the public to comment on the preceding rule adoptions for agenda items N-Q.

Greg Kupillas Pacific Hydro-Geology, Inc. was a member of the rules advisory committee for the Division 325 rules (Agenda Item P), and supported the adoption of those rules. He noted that if the changes proposed by WaterWatch were adopted, there would be difficulties down the road. He also commented on the well construction rules (Agenda Item Q), stating that the Well Drillers Association is concerned that the Department does not have adequate staffing to have the ability to inspect all well logs, not only for completeness, but also to ensure standards are being met.

Kimberley Priestley, WaterWatch of Oregon, expressed that WaterWatch's concern with Agenda Item P, was that water rights that should have been canceled would have been given new life. She addressed statements given by others.

Peter Mohr, Jordan Ramis, spoke in favor of adopting the Division 325 rules (Agenda Item P) rules.

Angelos Spada, Spada Farms, thanked the Commission for adopting the rules in Item P, and discussed why the ability to split a permit was important.

R. Informational Report on District 18 and 2013 Field Regulation and Enforcement Activities

Mike McCord, Northwest Region Manager, provided a report on 2013 field regulations and enforcement activities, and responded to Commission questions.

Jake Constans, District 18 Watermaster, provided a presentation on District 18 field activities, and responded to questions from the Commission.

S. Public Comment

No public comment.

T. Other Business

Commissioner Doherty discussed a draft consideration of place-based planning to identify a pilot program. The Commission discussed the necessity of the Commission to endorse and support the Department in implementing place-based planning.

The Commission expressed appreciation on the development of the guidelines.

Commissioner Doherty made a motion to endorse the general guidelines for place-based planning as presented, and supports the implementation of a pilot program to be directed by the Department. Seconded by Commissioner LeJeune. Voting for the Motion: Commissioners Roberts, Whipple, LeJeune, Williams, Doherty and Corn. Motion passes. There being no further business, the meeting was adjourned.

Respectfully submitted,

Lorri Cooper
Exec. Administrative
Support to the Director's Office