

**Water Resources Commission Meeting/Teleconference
Salem, Oregon
April 13, 2018**

WRC Present

Meg Reeves
Joe Moll
Bob Baumgartner
Mike Faught
Bruce Corn
Eric Quaempts
Kathy Kihara

WRD Staff Present

Tom Byler
Racquel Rancier
Cindy Smith
Doug Woodcock
Kris Byrd
Tom Paul
Ivan Gall
Mike Thoma
Brenda Bateman
Dani Watson
Michelle Angell
Matt Anderson

Others

Doug MacCourt
Robert Cooper
John Glusscock
Charles Wells
Mark Cobb
John DeVries
Roger Nicholson
Don Boyd
Randall Kizer
Kevin Newman
Daniel Scalas
Cindy Combs
Larry Maurer
Margert Keureally
Pamela Cole
Jim OConnor
Gerry OBrien
Jay Weiner (Phone)
Kathryn Walker

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 Reeves called the meeting to order, explained the process and purpose of the meeting, and had everyone participating introduce themselves.

A. Klamath Temporary Rulemaking

Ivan Gall, Field Services Division Administrator, briefed the Commission on the proposed Klamath drought emergency temporary rule.

Commissioner Baumgartner asked how the recommendation from the Klamath Tribes for livestock compares to the recommendations of the Department in the proposed rules. Gall said the Department is proposing more water, however, the Department's proposal aligns with what was submitted to the Circuit Court for the Klamath Adjudication, and with other decrees elsewhere in the State.

Baumgartner also asked about the number of stock watering wells, and what the need is. Racquel Rancier responded that some of the ranchers participating in the meeting may be able to address that during the public comment.

Commissioner Corn commended the amount of work being done since 2013, and the proposal seems very reasonable.

Commissioner Quaempts stated that the explanation has helped him understand the situation better.

Commissioner Kihara is concerned about not having measurement on human consumption. Gall explained that the only entity requesting the human consumption exemption is the City of Chiloquin, and they do measure their water use, and staff will be watching for compliance.

Commissioner Faught appreciated the comprehensive report, and that issues were well covered.

Public Comments

Doug McCourt, Rosette, LLP, Attorney for the Klamath Tribes, thanked the Department for working hard to align the proposed rules with the concerns of the Klamath Tribes. It is the Tribes intention to work together with the community to find solutions that work well for all of the stakeholders involved. He noted that the Tribes support the matrix, limitations, and reporting forms in the current rule; although it would be a better idea to have the end use reporting a mandatory requirement.

Jay Weiner, Rosette, LLP, Attorney for the Klamath Tribes, concurred that end use reporting should be mandatory for understanding of use. Weiner thinks it is important to have consequences for non-compliance, identified clearly in the rules as a major class one violation. The Tribes also think having a volumetric limitation is a good step in the right direction, but are concerned that the proposed rules do not include the narrative limitation of the 2015 rules. The 2018 proposed rules include a “notwithstanding OAR 690-019-0070” language that was not included in the 2015 rules, which would exclude the requirement of provisions for water conservation or curtailment plans for the Director’s approval.

Mark Cobb, Mayor, City of Chiloquin, asks that the Commission adopt the proposed rules. He said the proposed 180 days for a well to be installed is a very short timeline, and asked for a longer measure for the City of Chiloquin to keep domestic water use on. Shutting off domestic water in Chiloquin would leave fire hydrants dry, and schools without water.

Roger Nicholson, President, Fort Klamath Critical Habitat, spoke on behalf of Sprague River Water Users and their need for the stockwater preference. He appreciated the comments from the Klamath Tribes about appropriate amount of water for the number; but it needs to be at the place of use instead of the point of diversion.

Kevin Newman, Sprague River, commented that there is a lot of restoration being done along the river, and without the stockwater exemption, people will need to open gates and let the cattle drink from the creek.

Randall Kizer, President of the Landowner Entity, explained that the restoration areas are fragile, and if landowners have to utilize the creek as a primary watering source, it could turn on a downward trend.

Discussion

Commissioner Baumgartner asked Ivan about the narrative that was not in the 2018 rule. Gall answered that it was inadvertently dropped, and that all water use in Oregon is already restricted to beneficial use without waste.

Commissioner Corn asked about the feasibility of trucking water. Roger Nicholson responded that he doesn’t think it would be economic to truck water. Corn asked if it is feasible in the future to have wells in remote areas. Nicholson reported, that in good faith, Fort Klamath did not ask for the preference,

believing they did not need it at this time, but other areas do, to give them an opportunity to catch up on stockwater wells. He believes areas like Modoc Point and Sprague River need the preference, but the flow needs to be such that it actually provides value.

Commissioner Quaempts was encouraged that the rules continue to improve, and sees this as a short-term solution to an issue that needs more work.

Commissioner Faught asked for clarification on reporting and use. Gall explained the process for voluntary compliance and enforcement. Faught would like to see discussions for long-term solutions, when it is not a regulation time.

Commissioner Corn expressed concern about the long distance conveyance. He asked how many people were in that situation, and could there be Watermaster monitoring to get through the season, or would that be unmanageable. Gall responded that in 2015 there were 43 people who reported that type of use.

Roger Nicholson responded that the number is quite small, and commended the local Watermaster for her skill and reasonableness for discretion of regulation.

Jay Weiner thinks the narrative should be in conjunction with the volume. His concerns with the rules are the inefficient, long-distance diversions.

Chair Reeves asked for the Department's opinion on place of use versus point of diversion for the measurement of the water. What are the options for the person who have cattle that are distant? Gall responded with options and the challenges of each option, including improving efficiency by enclosing a portion of the delivery system, stockwater wells, trucking water in, or reducing the size of or relocating the herd.

Tom Paul pointed out that Oregon Statute lists certain uses do not require a water right. The Department would like to work with users to avoid backward steps in the riparian restoration efforts.

Chair Reeves asked about the different levels of violations. Kris Byrd responded that they would still be Class 1, but it would be determined on a case-by-case basis if the violation was major, moderate or minor.

Chair Reeves said that the Commission needs to determine if the language of the rule should include the provision about the amount appropriate for use, in addition to volumetric amount as an upper limit, or as an alternative to the volumetric amount. The other question would be if an enforcement mechanism should be added to the rule.

Klamath County Commissioner, Donnie Boyd, was concerned about the economic impact of the inability to irrigate, and the need to take care of the residents of Chiloquin. Putting a penalty into the order is an insult since it is already in the water law.

Commissioner Faught was comfortable with the Department's explanation and doesn't want to make the proposed rule more complicated by adding more language when it is in law.

Commissioner Corn asked if better access to streams in remote areas would solve some of the problems.

Roger Nicholson answered that for some the only access for stockwater has been through irrigation water. The thousands of dollars invested in riparian restoration could be lost if access were opened to stock. His suggestion would be limits at the point of use instead of point of diversion, and allow the local Watermaster discretion to regulate.

Commissioner Corn asked if the amount of cattle in the area would have to be reduced because of the inability to irrigate pasture. Nicholson responded that they have been reduced, and it is an issue of survival for some family farms.

Commissioner Kihara doesn't think that enforcement language needs to be added to the proposed rule. In the longer term, she asked about drought mitigation plans and water conservation plans that can be applied to the rule. Gall responded that the City of Chiloquin is the only entity discussed today that has a Water Management Conservation Plan approved by the Department on file.

Commissioner Moll asked if there was a precedent for discretion in the field staff to work within a water budget based on distance from the diversion. Gall answered there is not specific information available on just stockwater. He understands that the allotted amount is adequate for those near the point of diversion, but insufficient for those a long distance away. Watermasters do have a fair amount of discretion, but it is constrained by terms and conditions of the water uses and associated authorizations. It would also be a strain on staff time to measure at place of use rather than point of diversion.

Moll asked if there is a precedent for having a target range, that the staff person could add or subtract a percentage based on individual need. Gall is not aware of a diversion rate value for a use. The Department does adjust for seasonal rates. Moll hoped that field staff could have discretion to appropriately take care of the situation.

Commissioner Quaempts asked for clarification about narrative that had been removed. Chair Reeves shared the proposed change that staff provided in 0062(4)(a). "Water diverted for stock is limited to the amount appropriate for the specific number of stock it serves, not to exceed..."

Commissioner Baumgartner would like to add that language. Commissioner Corn asked about a language change to accommodate long distance diversions. Gall responded that his preference would be to increase the diversion rate at the point of diversion at the discretion of the Watermaster.

Rancier noted the challenge of the inefficiency of some ditches and canals and determining what amount would be reasonable, given the length of the canal, and not knowing how much would evaporate as well how much would leak.

Tom Paul recognizes the challenge and the concern that any additional water is a direct impact on senior water right holders. This being a drought year provides tools to make accommodations to meet the need.

Dani Watson wondered if wording could be added stating the Department would limit the point of diversion to the number of head, but allow the Watermaster to evaluate and determine it on an individual basis.

Commissioner Faught asked if the Commission is trying to address problems that were not an issue in 2015. Chair Reeves understanding is this rule is different than the 2015 rule by adding a volumetric amount that can be diverted for stock preference, measuring at the point of diversion.

Commissioner Baumgartner suggests that the amount of water measured at the point of diversion is greater than the need per head of cattle. He thinks that should offset some of the losses between the point of diversion and the point of use. He is struggling with the question of how big of an issue this is; and can it be addressed now, or does it need to be revisited and the rule modified.

Watson responded that the cattlemen don't think it is a very big issue. The Wood River is one of the major ditch conveyances and they have not asked for the preference. There are probably a maximum of 5-10 people this might affect. Those in this situation most likely have already found a solution for getting water to their livestock. Modoc Point Irrigation Ditch would be the exception.

Chair Reeves asked what people have done in the past when all of the stock water was shut off. Watson answered that they moved cattle and trucked water.

Rancier asked representatives from Modoc Point Irrigation what cfs would need to be diverted to satisfy the livestock need. Cindy Coombs, Modoc Point Irrigation District, answered there are about 60 families. She noted the conservation measures they have taken to date. Pumps would need to run from the Williamson River for about a day. Watson answered the rate of 3 cfs would probably suffice, once the ditch was charged.

Commissioner Faught asked if the language could include a hardship clause that would allow people to petition the Watermaster to meet the need. Chair Reeves thinks of the rule as a hardship rule, and is concerned about additional exceptions. She is not sure the Commission has the information necessary to adequately address these additional needs. Would an alternative be to adopt the rule today and with further information, consider modifying it in the future?

Director Byler requested a 5 minute recess. Meeting was recessed.

Chair Reeves apologized for the delay but expressed how it indicates the seriousness of the issue to the senior water right holders and stockwater people. The Commission will adopt a version of this rule immediately, and the Department will begin drafting a modification that will allow the Director to make modifications in particular hardship cases.

A proposed change would require water use reporting be mandated rather than requested by the Department.

Ivan Gall suggested language for 0062(6) to read “Water right holders exercising the preference shall provide the information in subsection 4(d) to the Department no later than December 1, 2018.” The information in 4(d) is the number of days stockwater is diverted, the diversion rate, and how many stock are served.

Commissioner Corn asked if the hardship in individual cases would be considered at a later date, and when that date would be. Rancier responded that the Department needs to find a solution as quickly as possible, and will bring it before the Commission as soon as it can be convened again.

Commissioner Faught made a motion to adopt the modified proposed temporary rules in Attachment 6 to adopt temporary administrative rules under OAR 690-022-0060 to OAR 690-022-0063 with the modifications recommended under 0062(4) and (6) and to suspend OAR 690-022-020 to OAR 690-022-030. Seconded by Commissioner Corn. Voting in favor: Commissioners Baumgartner, Corn, Quaempts, Moll, Kihara, Faught, and Reeves. Voting against: none.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Lorri Cooper
Executive Administrative Support to the Director’s Office