



State of Oregon Department of Environmental Quality

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Approved as presented
Approved with amendments

Minutes: Oregon Environmental Quality Commission special meeting

Aug. 27, 2018

Portland (DEQ office) and by phone

Monday, Aug. 27, 2018. 11:30 a.m. to 12:30 p.m.

Commissioner George convened the meeting at 11:39 a.m. She, connected by phone, asked Commissioner Baraso to preside for the meeting.

- Present: Commissioners Addington, Baraso, George (by phone) and Mosby

A. Action item: LRAPA Title 15 approval

Ali Mirzakhaili, DEQ Air Quality Division administrator, introduced the item. Merlyn Hough, Director of the Lane Regional Air Protection Agency, presented by phone about the LRAPA amendments and the proposed EQC approval. Director Hough explained that the request for commission action is in response to a change in EPA policy that now requires all LRAPA revisions go to the commission. Prior EPA practice required EQC approval only for specific LRAPA rules.

Action: Approve the revisions to LRAPA's Title 15 rules as seen in attachment A of the report for this item.

Move: Commissioner Addington

Second: Commissioner Mosby

The commission unanimously approved the action

B. Action item: Certification of DEQ Agency Request Budget 2019-21

Nancy Bennett, Policy and External Affairs Manager, introduced the item and provided background on the previous informational presentations to the commission about the DEQ budget. Mark Brown, Financial Services Manager, presented a summary of the budget information and processes DEQ used to develop, and validate, the information in its 2019-21 Agency Request Budget submittal.

The commissioners asked clarifying and informational questions about budget elements and the information presented. Director Whitman and Gary Vrooman, the commission's legal counsel, provided contextual and clarifying information in addition to the staff responses to the commissioners.

Action: Certify DEQ's 2019-21 Agency Request Budget and authorize Commissioner George to sign the certification form, as seen in attachment A of the report for this item, on behalf of the commission.

Move: Commissioner Mosby

Second: Commissioner Baraso

The commission approved the action with three in favor and one abstention

- In favor: Commissioners Baraso, George and Mosby
- Abstain: Commissioner Addington

Commissioner Baraso adjourned the meeting at 12:14 p.m.



State of Oregon Department of Environmental Quality

Minutes: Oregon Environmental Quality Commission meeting

400th regular meeting

Sept. 13-14, 2018

Klamath Falls

Thursday, Sept. 13, 2018. 8 a.m. to 5 p.m.; evening town hall 5:30 to 7 p.m.

- Meeting venue: Oregon Institute of Technology, Mt. Scott Meeting Room
- Town hall venue: North Ridge Estates (3560 Old Fort Road)

Commissioner George convened the meeting at 8:05 a.m.

- Present: Commissioner Kathleen George, Commissioner Greg Addington, Commissioner Sam Baraso, Commissioner Molly Kile and Commissioner Wade Mosby

Item A: Tour prep

Director Whitman provided an introduction for the morning. A panel of co-presenters from DEQ, the Klamath Tribes and Oregon Department of Agriculture presented information about the Klamath Basin and its water quality history and present state.

Mike Hiatt, DEQ Klamath Basin coordinator, presented introductory slides about water quality in the Upper Klamath Lake and an overview of the agricultural practices on the farm properties on the commission tour. Stephanie Page, ODA Director of Natural Resources Program Area, described the work of ODA and project partners to develop solutions for water quality improvements in the Klamath Falls area. Tricia Walker-Hill, owner of a property that the commission would tour, provided additional detail about solutions implemented at some agricultural properties around Upper Klamath Lake.

Stan Swerdloff, Klamath Tribes Water Management, discussed the work of the Klamath Tribes to monitor and analyze the basin's water quality for the past 25 years and current efforts to improve water quality in Upper Klamath Lake.

Commissioners asked informational and clarifying questions throughout the presentation. Director Whitman provided additional information about the larger Klamath Basin and relationships among states, Tribes and other governments working on water quality issues.

At approximately 9 a.m., the commissioners left for a field visit and tour of farm properties in Klamath Falls. The tour lasted approximately three hours and was held off-site.

Item B: Tour debrief

The commission reconvened at approximately 11:50 a.m. to discuss the morning tour and related water quality concerns in the Klamath Falls area. Director Whitman invited Stephanie Page, ODA, to the presenters' table to reflect on the tour. Director Whitman and Page discussed the ongoing partnership between agencies and among other project partners.

Director Whitman noted the critical importance of the area's water quality for the Klamath Tribes and the survival of suckers, a traditional food of the Klamath Tribes, in the basin. He stressed the importance of the involvement of the State of Oregon in the Klamath Basin with many state agencies working directly with landowners, Tribal nations and other entities.

Page described the engagement of owners and management entities in the Klamath Basin, and an increased level of interest from these groups in working with ODA for improved water and agricultural outcomes. Tracey Liskey, Board of Agriculture member, provided additional comments on his role over the past eight years on that board and its support for voluntary and collaborative efforts by agricultural entities to improve water quality.

Commissioners asked clarifying and informational questions, expressed their appreciation for the discussion and morning's tour and noted their ongoing interest in these topics.

Working lunch and executive session

Commissioner George recessed the commission for a working lunch and executive session from 12:20 to 1:40 p.m. The executive session was held under the authority of ORS 192.660(2)(h).

Item C, Action item: Water Quality fees proposal

Justin Green, Water Quality Division administrator, introduced the item and noted that Adam Coutu, Water Quality budget analyst, connected by phone for questions. Green described the types of permits subject to the proposed fee increases and amendments DEQ is presenting for commission action. Christine Svetkovich, Northwest Region Water Quality manager, described the content of the proposed fee increases and rule amendments for the Water Quality Permitting Program.

Commissioner Baraso stated that he is an employee of Multnomah County and is disclosing that information due to the potential perceived conflict of interest since the county is regulated by the proposed rules.

Commissioners asked clarifying and informational questions regarding the outreach, including stakeholder meetings, and outcomes associated with the proposed rules. Director Whitman provided additional clarification for some questions. Commissioner Mosby recommended that future rule revisions for MS4 should include a third tier or additional higher fee option for the counties with the largest populations.

Action: Adopt the proposed rule amendments, as seen on pages 33 through 65 of the staff report for this item, as part of Chapter 340 of the Oregon Administrative Rules Divisions 45 and 71.

Move: Commissioner Baraso

Second: Commissioner Kile

- *The commission approved the action with three in support, one in opposition and one abstention*
 - Yes: Commissioners George, Kile and Mosby
 - No: Commissioner Addington
 - Abstain: Commissioner Baraso

Item D, Action item: Ozone and interstate pollution transport rules

Ali Mirzakhali, Air Quality Division administrator, introduced the item and described the need for the proposed action. Karen Williams, Air Quality Division planner, described the federal requirements for updated ozone and interstate transport plans, and the content of the proposed actions. Williams discussed the public notice and comment period and presented the agency recommendations for commission action. Commissioners asked clarifying questions about the proposed actions and general questions about the program.

Action: Approve the two reports shown in attachments A and B of the staff report for this item; approve incorporating those two reports into the Oregon Clean Air Act State Implementation Plan; revise OAR 340-200-0040 as seen on page 20 of the staff report for this item; and direct DEQ to submit the SIP revision and plans to U.S. EPA for approval.

Move: Commissioner Kile

Second: Commissioner Mosby

- *The commission approved the action unanimously*

Note: Item E was removed from the agenda prior to the meeting.

Item F, Informational item: Cleaner Air Oregon Program updates

Leah Feldon, DEQ Deputy Director, introduced the item. She presented a brief summary of the program's work to-date and noted her co-presenters. Ali Mirzakhali, Air Quality Division administrator, provided an additional overview of the program and proposed next steps.

Gabriela Goldfarb, Oregon Health Authority Public Health manager, described an outline of the discussion. Susanna Wegner, OHA Public Health toxicologist, presented the agency analysis related to the unique vulnerabilities of children to air toxics, how risk assessments may incorporate these factors, and the specific factors and assumptions included in the proposed Cleaner Air Oregon rules.

Commissioners asked clarifying questions about the designation of risk and risk assessment in the proposed Cleaner Air Oregon program rules. OHA and DEQ staff replied to the questions and provided additional contextual or detailed information.

Keith Johnson, special assistant to the DEQ Director for Cleaner Air Oregon, described the risk management inputs used in the development of the proposed Cleaner Air Oregon rules. He also presented an overview of the various protectiveness factors proposed within Cleaner Air Oregon.

Deputy Director Feldon provided a summary of the presentation and thanked the commissioners for their interest and continued focus on the importance of the Cleaner Air Oregon program. Commissioners provided their feedback on the presentation and asked informational questions about the process and content for the proposed Cleaner Air Oregon program and its potential for success in controlling harmful air toxics in Oregon. They provided their requests for DEQ's next steps related to the proposed program. Director Whitman provided additional information about how the agency may implement, and measure the success, the Cleaner Air Oregon program. Deputy Director Feldon thanked the DEQ and OHA staff involved in this analysis, and the project more broadly.

This item was taken out of order

Item M, Informational item: Director's report

Director Whitman provided verbal and written updates on agency projects and activities of interest to the commission. These updates included information about:

- The status of the agency's procurement process to obtain and implement an Environmental Data Management System as a major IT update across all agency functions
- The Water Quality Permitting Program improvement project and projected success to meet the project's targets for 2018.
- Harmful algal blooms in waterbodies across the state
- Many mercury reduction efforts in the Water Quality Program
- Jordan Cove project information and status
 - Mary Camarata, Regional Solutions Team member, provided additional detail on this item
- Amendments proposed for the Oregon Smoke Management Plan
- Oregon's Electric Vehicle Rebate Program
- Key projects and recent events in DEQ's Eastern, Northwest and Western regions

Commissioners asked clarifying and informational questions about some of the items presented by Director Whitman.

Commissioner George recessed the commission meeting at approximately 4:50 p.m. until 9 a.m., on Friday, Sept. 14, 2018.

Commissioner George explained that the commission would hold an evening town hall-style session from 5:30 to 7 p.m. at the project office for North Ridge Estates, at 3650 Old Fort Road. At the evening session, DEQ staff presented a short summary of the North Ridge Estates cleanup project and the commissioners then held an open town hall-style opportunity for questions and discussion. The session was not recorded and was not a formal public comment opportunity.

Friday, Sept. 14, 2018. 9 a.m. to 2 p.m.

- Meeting venue: Oregon Institute of Technology, Mt. Scott Meeting Room

Commissioner George reconvened the meeting at 9:07 a.m.

- Present: Commissioner Kathleen George, Commissioner Greg Addington, Commissioner Sam Baraso, Commissioner Molly Kile and Commissioner Wade Mosby

Item H, Action item: Minutes

The commissioners reviewed the proposed draft minutes from the July 11-13, 2018, EQC meeting.

Action: Approve the July 11-13, 2018, EQC regular meeting minutes as presented

Move: Commissioner Mosby

Second: Commissioner Addington

- *The commission unanimously approved the July 11-13, 2018, EQC regular meeting minutes as presented*

Item I, Action item: Commission officers

The commissioners discussed the office roles of chair and vice-chair, as previously discussed at the July meeting. Commissioner George stated her interest in serving as chair, Commissioner Baraso noted his interest in serving as vice-chair, and the other commissioners voiced their support for the commissioners serving in these roles.

Action 1: Elect Commissioner Kathleen George as EQC chair

Move: Commissioner Baraso

Second: Commissioner Addington

- *The commission approved the action with four in support and one abstaining (George)*

Action 2: Elect Commissioner Sam Baraso as EQC vice-chair

Move: Commissioner Addington

Second: Commissioner Kile

- *The commission approved the action with four in support and one abstaining (Baraso)*

Director Whitman provided additional remarks related to the commission action and confirmed that DEQ will set up a series of meetings with the chair and vice-chair between regular meeting dates, as requested by the commissioners. Chair George asked for a longer-term schedule of potential

commission actions to help with planning for commissioners and staff. Commissioner Kile reflected on the town hall events, and ways the commission and staff can plan those to better connect with communities and individuals. Commissioner Mosby emphasized the external role of the commission, including the chair's role as the voice for policy at DEQ. Commissioners discussed their planning for 2019, including proposed dates and opportunities to engage better with communities.

Item J, Informational item: Commissioner reports

Commissioners provided verbal updates of their recent activities.

- Commissioner Mosby thanked the agency, or agencies, that provided free drinking water to several homes in the Sweet Home area where well water contamination was discovered earlier this year. Since that time, the homes have petitioned to connect to city water systems, rather than continue use of wells for drinking water.
- Commissioner Mosby noted that a large site outside of the city of Klamath Falls has been ready for redevelopment but companies have expressed concern about locating there due to a lack of clarity related to Cleaner Air Oregon. He stated the importance of clarity on that, and other, regulatory action, to allow economic development.
- Commissioner Kile recently attended an onboarding for OWEB, with her first meeting October 14-15 in Gold Beach. She will be meeting with DEQ staff before that meeting to get information on agency priorities and coordination with OWEB activities.
 - Director Whitman noted that Gene Foster, and other Water Quality Division staff, can meet with Commissioner Kile for that prep.
- Commissioner Kile attended an environmental epidemiology conference at which wildfires, and the health effects of those wildfires, was a major topic of discussion and how data can be shared to develop an understanding of health related to wildfires and smoke.
 - Director Whitman asked Ali Mirzakhilili, Air Quality Division administrator, to connect with Commissioner Kile to access the data for wildfires, and Gabriela Goldfarb at OHA will be a good contact for health questions.
- Commissioner Addington thanked DEQ staff for their time to provide initial onboarding sessions.
- Commissioner Addington attended the Klamath Falls public hearing for the Smoke Management Plan updates, and noted his appreciation for the Forestry and DEQ staff who attended despite a low turnout for the hearing. He affirmed his interest in the Smoke Management Plan.
- Chair George noted her appreciation for a recent meeting and discussion opportunity with ODA Director Alexis Taylor.
- Chair George attended the recent Oregon Coastal Caucus meeting, which included significant discussion on Oregon's ability to thrive in a changing climate, especially increased wildfires.

Item K: Meeting with Klamath Tribal Council

Chair George opened this item and thanked the members of the Klamath Tribal Council for allowing the meeting on the Klamath Tribal lands and for meeting with the commission as representatives of Oregon's government. Commissioners and Tribal Council members introduced themselves. DEQ Director Whitman introduced several DEQ staff in the audience.

Chairman Gentry welcomed the commission and DEQ to the homelands of the Klamath Tribal people. He provided background on the history of the people of the Klamath Tribes and their homelands, and how that informs the work and actions of the Klamath Tribal Council. He noted that many state laws are insufficient to meet the needs of the Klamath Tribal people, and the State of Oregon and commission have a moral obligation to meet the needs and concerns of the tribes.

Chair George noted the concerns of the Klamath Tribal Council, and opened the opportunity for commissioners to ask questions or provide comments. The commission and Tribal Council members discussed topics of shared interest, such as water resources and water quality, agriculture in the Klamath Basin, economic opportunities for Klamath Tribal members and habitat protection and restoration.

Director Whitman invited Mary Camarata, Regional Solutions Team member, to present an update on the agency process and status for the proposed Pacific Connector Pipeline and Jordan Cove LNG facilities. Director Whitman provided additional information related to the proposed project and facilities. He noted that DEQ is not the lead agency for the majority of the permits and other project elements, and offered an invitation for a specific meeting with the Klamath Tribes on any elements. He clarified that he, as DEQ Director, makes the permit decisions and EQC does not have any actions associated with the proposed projects and facilities.

Chairman Gentry restated the importance of the moral obligation, in addition to the legal obligations, of the State of Oregon and its agencies and entities, especially in dealing with the sites of past villages, cultural resources and human remains. He noted that the laws and processes for protection are inadequate to ensure that human remains are not disturbed, and the proposed Pacific Connector and Jordan Cove projects are very likely to disturb human remains. Chairman Gentry also noted that the proposed projects and facilities will damage the local and global climate, and the permitting process is inadequate to protect against those damages.

Stan Swerdloff, Klamath Tribes Water Management, discussed the Klamath Tribes' water quality monitoring program, now over 25 years old. Swerdloff discussed the Tribes' collection, monitoring and analysis work in the Klamath area. Recently, the federal Bureau of Reclamation sent the Klamath Tribes a notice that they are removing funding for the water quality work. He noted that the Klamath Tribes are pursuing alternate funding, and do have the support of Senators Merkley and Wyden.

Swerdloff discussed the need for salmon reintroduction after the removal of dams on the Klamath River, which will involve the state. He noted that Keno Dam is scheduled to remain, despite ongoing and severe water quality issues with the areas upstream of the dam at two reservoirs.

Mike Hiatt, DEQ Klamath Basin Coordinator, was invited by Swerdloff and Director Whitman to provide the DEQ information about Klamath area water quality efforts, especially in the Keno reach. Hiatt noted that initial assumptions about the progress of the TMDL are now inaccurate, and the area has not improved in the ways necessary to support healthy water quality and the reintroduction of salmon.

Swerdloff discussed the water quality damage done in Upper Klamath Lake, and the harmful algal blooms and other dangerous conditions present due to excessive nutrient loading starting about 25 or 30 years ago. He noted that timeline coincides with the decline of the native sucker species in the lake. He explained that a warmer March and April leads to larger and more severe blooms, which leads to greater mortality for fish in the summer months. That pattern was demonstrated this year with a colder March and April and lower fish kills observed in Upper Klamath Lake.

Director Whitman asked Hiatt and Swerdloff to discuss the relationship between the water quality in the Upper Klamath Lake and systems in California and other areas in the basin and watershed. Hiatt discussed the state's work to minimize loading of nutrients in the upper portion of the watershed, an approach favored by the state and tribes to limit harmful effects lower in the watershed.

Commissioner Kile asked about the tracking of parasites on the gills of juvenile suckers and Swerdloff discussed the ongoing degradation of environmental conditions leading to greater stress on and mortality of suckers.

Director Whitman asked for input on what DEQ could do, in addition to its current work for water quality. Chairman Gentry noted the importance of enforcement of TMDLs in effect, and funding support for implementation, even in the absence of a settlement agreement for the Klamath Basin water concerns. Swerdloff described a need for more funding, and specifically for ODA to have a staffer resourced to Klamath County. He noted a need for a water quality plan that includes all needs and concerns for Klamath Lake, and the need for collaboration among state agencies, federal and tribal governments and local entities for the development and implementation of the plan.

Director Whitman provided some clarifying information about DEQ's authorities and ODA's commitment to participating in solutions for the Klamath Basin. He explained that DEQ and ODA have collaboratively entered a request for funding to support work in the Klamath Basin. Director Whitman stated that the local Soil and Water Conservation Districts are critical partners for local implementation, and the partnership with the Klamath area SWCD has not been as involved as needed for the region.

Chair George noted Chairman Gentry's prior comments about climate change and explained the commissions' request to receive a comprehensive presentation from staff on climate change at the agency and within state policy context. Director Whitman explained that EQC will be asked to take action in early 2019 on potential changes to the use of prescribed fire as part of the proposed Smoke Management Plan updates, and that is a part of climate change and climate strategy. He recommended that DEQ bring a discussion of climate to the January 2019 EQC meeting.

Vice-chair Baraso asked about the estimated cost to implement the Klamath Basin settlement conditions. Chairman Gentry, with additional detail from Director Whitman, noted that the estimate was about \$300 million.

Commissioner Addington noted his past personal involvement in the Klamath Basin water issues, and explained that the issues at and near Keno Dam must be addressed as part of the larger strategy of dam removal and water quality improvements throughout the basin as a package deal.

Tribal Council members and commissioners offered their closing thoughts and thanks for the discussion, and noted the critical need to protect the waters of the Klamath Basin for the environment, public health, people and wildlife to thrive.

Working lunch and executive session

Chair George recessed the commission for a working lunch and executive session from approximately noon to 1 p.m. The executive session was held under ORS 192.600(2)(i).

Item L: Public forum

Chair George reconvened the meeting at 1:05 p.m. and opened public forum. Vice-chair Baraso and Commissioner Addington were not present for this item.

Nine people signed up to present comment in person. No people presented comment by phone.

1. Randy Shaw, Coldwell Banker realty, asked that the Klamath NPDES permit be expedited for an update, as the permit has been expired for over 17 years.

2. Andrew Stork, Klamath County Economic Development, noted that the expired NPDES permit makes it difficult for investment and other large economic development activities in the Klamath Falls area. He asked for a status update on the expired permits.

- Director Whitman replied that the agency has an initial issuance plan to make all four expired NPDES permits in Klamath Falls current in 2019.

3. Wanda Baker presented comments and concern about potential negative water quality effects from the proposed Jordan Cove project. She asked the commission to ask the state to seriously consider not allowing the project because of these kinds of impacts.

4. Chuck Wells presented comments about the proposed Jordan Cove project, including the potential costs to the state and emergency preparedness and response capabilities. He submitted a letter to the commission supporting his comments.

5. Michael Fitzgerald presented comments opposed to the proposed Jordan Cove project and expressed his concerns about the potential environmental harms and procedural issues associated with the proposed project. He submitted a copy of his comments to the commission.

6. Deb Evans presented comments and concerns about the proposed Pacific Connector pipeline. She noted environmental, economic and human health issues associated with the proposed project. She asked the commission to direct DEQ to use their authority to protect the waters of the state and stop the proposed project.

7. Diane Eastman Shockey, League of Women Voters Klamath County member, thanked the commission's time and presented comments reiterating the opposition to the proposed Jordan Cove project from several chapters of the League of Women Voters. She asked the commission for its support of DEQ to make science-based reviews and decisions on the proposed project.

- Commissioner Mosby asked a question about the source of gas for the Jordan Cove Project. Mary Camarata, Regional Solutions Team member, replied that the gas for the proposed Jordan Cove project is a mix from sources in Canada and Colorado.

8. Sarah Silverman presented comments opposing the proposed Jordan Cove project. She noted DEQ's mission and explained that the proposed Jordan Cove project would directly undermine that mission.

9. Maya Jarrad asked a clarifying question about the possible public process in response to possible changes by the applicant.

- Director Whitman responded to the question, noting that DEQ's role is limited to decisions to certify, or not, two federal actions. He explained that significant changes to the project can result in the restart of a project clock, but DEQ does not know if or when that might happen.

After accepting all comments, Chair George closed the public comment opportunity and public forum at 1:35 p.m.

Chair George adjourned the commission meeting at 1:35 p.m.