

MINUTES

McKenzie Watershed Council
Eugene Water & Electric Board Training Room

January 13, 2004
5:30 p.m.

PRESENT: Mike McDowell (Weyerhaeuser), Facilitator; Diane Albino (Mohawk Watershed Partnership), John Simpson, (Eugene Water & Electric Board), Faye Stewart (Lane County), John Lilly (Division of State Lands), Douglas Brooke (Hynix Semiconductor), Bob Bumstead (McKenzie Flyfishers), Kurt Cox (McKenzie Schools), Mary Allison (McKenzie River Ranger District), Pat Gripp (McKenzie Residents Association); Gene Highfill (McKenzie River Guides Association), Galen Phipps (McKenzie River Trust), Douglass Moser (At-large Stakeholder), Ralph Perkins (East Lane Soil & Water Conservation District), Rick Hayes (for Erik Petersen) (Army Corps of Engineers), Charlene Phipps (McKenzie Residents Association), Michael Kerrick (At-Large Stakeholder), Jerry Richeson (for Emily Rice) (Bureau of Land Management), Mary Allison (McKenzie River Ranger District), John Woodrow (Springfield City Council), Jeff Ziller (Oregon Department of Fish and Wildlife), Council Partners.

Megan Finnessy, Juan Welsh, Kate Ferschweiler, staff

Chuck Davis, Springfield Utility Board; Chuck Gottfried, Steve Beadry Barnes, City of Springfield; Steve Newcomb, Eugene Water & Electric Board; Kent Howe, Bill Sage, Celia Barry, Todd Winter, Lane County; Dana Field, Lori Warner-Dickason, Division of State Lands; Teena Monical, Army Corps of Engineers, Jared Weybright, Mohawk Watershed Partnership; Kelly Reis, Oregon Department of Fish and Wildlife.

Guests: Richard Hunsaker, Carol Ach, Craig Patterson, Lori Warner, David Hill.

1. REVIEW AGENDA AND INTRODUCTIONS

Mr. McDowell welcomed Council Partners to the meeting of the McKenzie Watershed Council (MWC) to order, and invited introductions. Partners and guests introduced themselves.

Mr. McDowell noted a card of thanks for former member Betty Taylor was circulating.

2. FURTHER DISCUSSION AND APPROVAL OF DECISIONS MADE AT LAST MEETING

Mr. McDowell asked Partners if they had any objections to the Council's December 2004 decisions. The following changes were noted.

Mr. Brooke offered some minor corrections to the December 9, 2004, minutes, asking that paragraph 7 on page 3 be revised to read “. . .and a very small percentage went to specialized land fills.” He also asked that paragraph 8 on page 3 be struck in its entirety as the remarks it reflected represented speculation on his part. Mr. Brooke asked that the word “the facility” in paragraph 9 on the same page be changed to

“operations.” Partners had no objections to the corrections proposed by Mr. Brooke.

Members indicated acceptance of the amended December minutes showing consensus level 3.

3. SHORT ANNOUNCEMENTS/PUBLIC COMMENT

Ms. Finnessy thanked Mr. Stewart, the new representative from Lane County, for attending the meeting.

Ms. Finnessy reported that the Army Corps of Engineers’ Cougar Dam temperature control project was 90 percent complete. The ACOE expected a minimum pool by February 1. The turbine rebuild was currently somewhat behind schedule. It was anticipated that temperature control would begin in April. ACOE continued to work on the post-authorization change report to reallocate the Blue River project funding to the Cougar project to underwrite the cost of trap and haul facilities. She anticipated a draft by March and a final report by September. Ms. Finnessy noted that ACOE was soliciting comments for post-construction monitoring. She was drafting a letter on behalf of the Council and invited input.

Ms. Finnessy reported that the Northwest Power Conservation Council had approved the Willamette Subbasin Plan. She also reported that the Oregon Watershed Enhancement Board had funded a Willamette Basin restoration priority project that would involve all basin coordinators.

Responding to a question from Ms. Gripp, Ms. Finnessy confirmed that the Blue River project was a “no go” now because the ACOE overspent the Cougar funding.

Ms. Allison noted several recent letters to the editor regarding logging practices in the McKenzie River Ranger District and indicated she was in the process of responding to them. She anticipated that the District would experience considerable logging in the next few months as companies executed sales contracts before they expired. She said none of the sales involved included old growth.

Ms. Allison said that the District was in the process of completing the Santiam Highway Salvage. The District received an extension for the owl closure until July 2005 in order to finish up the Bullet sale.

Ms. Phipps noted that she worked at the University of Oregon and had recently observed some student demonstrations and information sessions regarding what were termed 12 sales of old growth trees along the McKenzie River. She asked if the District had information about the sales it could share with the council. Ms. Allison said that there was nothing on the district’s Web site, but she was trying to get it added. She invited any one with questions to call her.

Mr. Ziller reported that the American Fisheries Society was meeting in Corvallis the following month.

Mr. Ziller said that he was putting together a project to estimate the number of rainbow and cutthroat trout in the basin using new microchip technology to learn more about the wild populations of fish.

Mr. Hayes announced two upcoming community workshops in Springfield and Eugene on January 19 and January 20 regarding the Metropolitan Waterways Study. The focus of the two workshops would be on Cedar Creek and the Amazon Creek basin. He noted that to date ACOE and the two cities were cost-sharing partners in the study

Mr. Hayes reported on conditions at Fern Ridge Dam, noting that community meetings were being held to reach out to different users of the facility. Sediment has for some time been eroding from the dam’s

earthen embankment. Recent analyses showed an imminent threat to the integrity of the structure, including the potential of total failure of the dam. Hence the decision by ACOE to suspend the dam's normal year-round operations until it is repaired. He anticipated that while repairs were made, ACOE would operate the pool at levels similar to the levels experienced in winter, and he acknowledged the huge impact that would have on recreation and farm uses, as well as substantial loss of its flood control capability. The Oregon Congressional delegation was working to secure funding to fix the dam. Mr. Hayes offered that ACOE could make a detailed presentation to the Council on the issue.

Mr. Simpson reported that Dorothy Anderson had retired from the Board and he had been elected to fill her seat. He would also replace her as Eugene Water & Electric Board's (EWEB) representative to the Council. Patrick Lanning would be his alternate.

Mr. Simpson reported that in February, EWEB would conduct an eight-hour lake raise project at McKenzie Lake to determine how much water could be diverted to the Leaburg Canal. Lake-facing property owners would be notified prior to the exercise.

Mr. Simpson noted a fatal two-car accident earlier that day involving a truck carrying two EWEB employees, neither of who was seriously injured.

Mr. Simpson reported that the EWEB commissioners would be holding a meeting at the Vida Community Center on February 1.

Mr. Simpson said that EWEB was moving forward with due diligence on the possibility of selling its current headquarters site. He said that there were many questions remaining to be answered. He noted his own personal preference to split operations and maintain the existing headquarters.

Mr. Perkins invited Council Partners to attend the upcoming East Lane Soil and Water Conservation District's annual meeting at the EWEB cafeteria, at which Leroy Petersen, former Council Partner, would be honored for his contributions to the district.

Mr. Cox said that a group of his students and a staff member were heading up a greenhouse project with the assistance of the Lane Business Partnership.

Mr. Phipps reported that the McKenzie River Trust was planning a tree planting event on Big Island that would take place on February 5. He invited Partners to attend. He reported that the Trust had selected Joe Moll as its executive director. And that he would begin work in February.

Ms. Ferschweiler called the Council's attention to the annual natural resource scholarship offered by the Council to graduating seniors or recent alumni interested in the natural resources field, and said that the application was on the Web site.

Mr. Welsh reported on various project activities, including four culvert replacements such as the Simmonds Creek project, and reed canary and blackberry removal. He also noted an upcoming meeting of the Projects Committee on February 3. He anticipated that the Committee would develop a new landowner agreement for the Council's review.

Mr. Welsh offered to conduct Council Partners on a project tour in June.

Responding to a question from Mr. Ziller about the culvert inventory, Mr. Welsh noted the work was still being conducted.

4. PUBLIC & OPEN SPACE MASTER PLAN UPDATE

Planner Celia Barry and Parks Division Manager Todd Winter of Lane County joined the Council and provided background on the Public & Open Space update. Council partners were provided with a brochure entitled “How is Lane County Parks Funded?” Ms. Barry noted that Lane County parks received no property tax dollars.

Ms. Barry reviewed the public outreach process associated with the update. Mr. Winter encouraged Council Partners to participate in the update, and to sign up for the mailing list. He noted the division’s Web site, LaneCountyParks.org, on which more information could be found.

Ms. Barry provided an overview of the Lane County parks system. She invited development ideas for landbanked sites.

Council partners thanked Ms. Barry and Mr. Winters for the information provided.

5. LANE COUNTY RIPARIAN PROTECTION ORDINANCE/OREGON REMOVAL-FILL PROGRAM

Kent Howe and Bill Sage of Lane County Land Management Division joined the Council to discuss the Lane County riparian protection ordinance. Mr. Howe noted Lane County’s role in the formation of the McKenzie Watershed Council and expressed happiness that it was doing so well.

Mr. Howe provided some brief history of the ordinance, which was initially adopted in 1992. He said the old ordinance had a 25 percent removal standard that was not well-defined. The ordinance retained the principle that one could not alter more than 75 percent of a site.

Mr. Howe distributed copies of Lane County’s code as it related to riparian protection to Council Partners. He also distributed copies of Lane County’s stream riparian standards. Mr. Howe acknowledged the ambiguity of the current ordinance but said that its development and adoption had been somewhat controversial. With the passage of Ballot Measure 37, he anticipated there would be significant policy considerations for the elected officials in making any changes to the ordinance now if the regulations had the potential to affect property values.

Mr. Sage provided an overview of Lane County’s stream riparian standards. He used three examples to illustrate the impact of the standards on a frontage of 200 linear feet or less, a frontage of more than 200 linear feet but less than 400 feet, and a frontage of 400 linear feet or greater. Council Partners asked questions clarifying the information presented.

Mr. Sage briefly noted exceptions to the code, which included riparian enhancement projects approved by the local Soil and Water Conservation District in consultation with the Oregon Department of Fish and Wildlife. He said that Lane County signed off on those projects with the understanding the appropriate consultation concurred.

Mr. Sage emphasized the importance of the MWC and Soil and Water Conservation District to educating residents about the importance of riparian areas and their functions before violations of the code could occur.

Ms. Warner Dickason of the Division of State Lands (DSL) joined the Council to discuss the State's removal/fill program. She first reported that the Land Board was seeking nominations for awards for projects demonstrating stewardships in watersheds, and invited partners to consult the division's Web site for more information. The award categories were State Land Property Lessee, Stream Project of the Year, and Wetland Project of the Year. The latter two awards must be in association with a DSL permit. She indicated she would also leave information about the awards with the Council.

Ms. Warner Dickason provided a PowerPoint presentation on the State removal/fill program. She discussed the types of projects that must secure permits and the types of waterways regulated by the DSL. She said that fill, removal, and alteration in a regulated waterway required a permit. Ms. Warner Dickason also briefly noted program exemptions, which included maintenance exemptions for structures located in a waterway.

Responding to a question from Mr. Welsh, Ms. Warner Dickason said that DSL determined that a culvert replacement project was exempt if the replacement culvert occupied the same footprint, even if the culvert itself was bigger.

Responding to a question from Mr. Highfill, Ms. Warner Dickason said that in an emergency situation, the DSL lets people know what fill was appropriate, how much fill should be used, and where it should be placed. Mr. Highfill asked if that occurred without viewing the property. Ms. Warner Dickason said that in most cases the agency sent a representative to the property to view the situation. The property owner must come to the agency to get a real permit. The agency makes the property owner aware that if they cannot secure a permit, they may have to remove the fill placed in the emergency.

Mr. Brooke asked about the overlap between the State and federal permitting programs. Ms. Monical clarified that there was a joint application form but the federal and State governments operated separate regulatory programs. She acknowledged the large overlap in jurisdictional boundaries.

Responding to a question from Mr. Phipps, Ms. Warner Dickason said the State had no riparian regulations similar to Lane County. Vegetation was not regulated by the DSL. She confirmed that a property owner would need to secure a permit from the DSL for rip rap placed in the river below the high water mark. There was a public process associated with the permit, and the agency required the permittee to mitigate any adverse impact from the fill or removal. She confirmed, in response to a follow-up question from Mr. Phipps, that neighbors had an opportunity to comment on an application.

Mr. Lilly distributed and reviewed a document outlining the DSL agency bills for the 2005 Legislation. They included House Bill (HB) 2130, establishing a removal-fill permit increase, HB 2082, which authorized final approval for assumption of the Section 404 Program, and Senate Bill (SB) 170, which clarified removal-fill statutory provisions.

Mr. McDowell called for a brief break.

Ms. Fields of the DSL provided background information on a recent emergency fill request made by a property owner on the McKenzie River. She said the property owner had until May 1 to get a better design and submit a permit application. The agency had let him know that it may require removal or modification of the work done. She indicated that the ACOE was working with the DSL on the issue and she anticipated that the two agencies would review the design work the following week.

Mr. Highfill questioned who was responsible for a revetment if it washed away and affected another

property owner's land. Ms. Fields indicated that the applicant was responsible for the revetment. The DSL did not do the design work for the property owner and had no liability. Mr. Lilly noted that no civil engineering stamp was required on the plans. Mr. Ziller asked if the DSL could require that. Mr. Lilly said probably; however, that would increase the permit cost and the time of issuance. He acknowledged the potential problem of dueling experts and emphasized that the agency issued legally defensible permits.

Mr. Stewart asked for more information about Matthews situation, which arose in 2004 when the Matthews' house had been threatened by erosion of the river banks. Ms. Monical said that the Matthews could have sought an emergency permit and placed fill but they did not seek authorization from the regulatory agencies.

Ms. Gripp asked who was responsible when the placement of a revetment created a situation where erosion of the riverbank threatened a neighboring house. Ms. Fields said that it was hard to prove responsibility in such cases. People had different perceptions about the cause of such situations. In some cases, property owners contacted the DSL, and in some cases they took their neighbors to court.

6. BUILDING IN THE FLOODPLAIN

Ms. Finnessy called the Council Partners' attention to a letter received from George Grier, former Council Partner, who wrote to encourage the Council to take a leadership role in resolving what he termed the problem of continued residential construction in McKenzie River floodplain. Mr. Grier asked the Council to ask the County to impose a moratorium on such construction while changes to the riparian ordinance were made. Alternatively, the Council could ask the County to require a deed covenant be recorded against the property holding the County harmless and agreeing not to petition any agency for bank stabilization, emergency fill, or watercourse alteration.

Ms. Finnessy noted the relationship between the topic and the Council's Human Habitat Action Plan and recalled that at the October 2004 retreat, the Council agreed to revisit the plan. She suggested that the Council could do that review in light of the questions posed by Mr. Grier in his correspondence.

Council Partners discussed how to proceed with the topic. While many Partners shared the concerns expressed by Mr. Grier, they were also concerned about the scope of the issue, the relationship of Ballot Measure 37 to the issue, and the difficulty of changing codes.

Mr. Bumstead recalled the obstacles the Council faced when it previously attempted to address the issue. Mr. Ziller, who had also been a Partner at that time, agreed. He suggested that the Council may make more headway in addressing the concerns expressed by Mr. Grier through education. If the Council heard of a development proposal before it occurred, it had an opportunity to work with the landowner to site the house appropriately.

Mr. Woodrow suggested that it might be less difficult to modify the code if the Council proposed adding only a requirement for an engineering report for floodplain development.

Ms. Finnessy indicated she would schedule the topic as a discussion item on the May 2005 agenda. She thanked all the speakers.

7. ADMINISTRATIVE UPDATE

Ms. Finnessy called the Council Partners' attention to the closeout spreadsheet for fiscal year 2004 and invited questions. Responding to a question from Mr. McDowell, Ms. Finnessy confirmed that the Council could carryover some costs.

Ms. Finnessy reported that the Council staff had submitted several grants and should have information about them soon.

Ms. Finnessy noted the Council's receipt of a donation from David and Joann Sherwood through Castle Rock Real Estate.

Ms. Finnessy said that the application for nonprofit status had been submitted to the Internal Revenue Service and she anticipated that it could take six months for the application to be processed.

Ms. Finnessy reported that Education, Finance and Projects Committees had been formed and she would be contacting Partners soon about committee assignments and to arrange meeting dates. She was very excited that the Projects Committee had been formed and would be meeting soon.

The meeting adjourned at 8:05 p.m.

(Recorded by Kimberly Young)