

WATER POLICY REVIEW BOARD

February 26, 1985

Pendleton

MINUTES

Board members present:

Joe Richards, Chairman
Jack Hoffbuhr, Vice-Chairman
Lorna Stickel
Gail Achterman
Ralf Hakanson
William Cramer
Kess Cannon

Staff members present:

Bill Young, Director
Darrell Learn
Tom Kline
Becky Kraag
Dave Jarrett
Jan Shaw
Larry Nunn

The staff reports presented at this meeting, which contain the Director's recommendations mentioned in these minutes, are on file in the Office of the Director of the Water Resources Department, Mill Creek Office Park, 555 13th Street, NE, Salem, Oregon. Written information submitted at this meeting is hereby made a part of this record and is on file at the above address.

The meeting was called to order by Chairman Joe Richards.

A. MINUTES OF THE JANUARY 24, 1985, WATER POLICY REVIEW BOARD MEETING.

It was MOVED by Ralf Hakanson, seconded by Gail Achterman, and passed unanimously that the minutes be approved.

PUBLIC COMMENTS:

No one chose to appear.

B. REQUEST FOR APPROVAL OF INITIAL REPORT FOR A PUBLIC HEARING ON THE UPPER WILLAMETTE MINIMUM STREAMFLOWS:

Becky Kraag, Policy and Planning Division, described in general the staff's report on the Upper Willamette Minimum streamflow recommendations. The recommended minimum streamflows on the five streams are in the upper part of the Willamette River basin. Three of the streams are tributaries of Middle Fork Willamette River. Proposed minimum flows would be located at the mouths of Lost Creek, Little Fall Creek, and Hills Creek, in Lane County. The request covering the largest drainage area is the Willamette River from above the confluence with the McKenzie River to the confluence of Coast Fork and Middle Fork. Nearly all of this subbasin lies within Lane County. The fifth request is for a tributary to the Marys River, named Greasy Creek, located in Benton County.

It was MOVED by Gail Achterman, seconded by Jack Hoffbuhr, and passed unanimously to approve the initial report for public hearing on the Upper Willamette Basin and to instruct the staff to add two items to the handouts at the hearing; specifically, the addition of pollution abatement as a beneficial use to the Willamette Basin Plan and that the Board will also institute negotiations with the Corps of Engineers to assure storage releases to meet with the minimum streamflows.

C. REQUEST FOR APPROVAL OF PERMIT APPLICATION 65222, SANTIAM WATER CONTROL DISTRICT HYDROELECTRIC PROJECT ON THE STAYTON POWER CANAL:

Permit Application 65222, submitted by the Santiam Water Control District, proposes a hydroelectric facility, in excess of 100 theoretical horsepower, on the Stayton Power Canal within the city limits of Stayton, Oregon.

A public hearing was held on the matter on December 17, 1984. The Oregon Department of Fish and Wildlife was granted party status in the proceedings.

The proposed project would be the third operational hydroelectric facility within the Stayton city limits on a canal constructed in the 1860's for the purpose of power generation. The two projects currently operating belong to Pacific Power and Light Company and the Stayton Feed and Seed Company.

Public testimony at the hearing was limited to the issue of land-use approval, to which the city has agreed. The Department of Fish and Wildlife indicated the project may have fishery benefits if the appropriate protective measures are taken.

No objections to the project were voiced at the hearing and no evidence in the record suggests that the project would impair or be detrimental to the public interest.

The staff recommended that the Water Policy Review Board enter a proposed order approving Permit Application 65222 for further consideration under ORS chapter 537.

It was MOVED by Gail Achterman, seconded by Ralf Hakenson, and passed unanimously to approve the staff recommendation.

D. REQUEST FOR APPROVAL OF PROPOSED MINIMUM FLOWS IN THE MALHEUR LAKE BASIN:

The staff recommended adoption of three minimum perennial streamflows in the Alvord subbasin of the Malheur Lake Basin. The recommendation includes the flow requested for Willow Creek under SB 225 and a lower, more appropriate rate of flow on Trout Creek. It was recommended that the originally requested minimum flow location for Whitehorse Creek be rejected as being of lesser importance than existing agricultural use but that a minimum flow be established at a location approximately three miles upstream.

At the start of discussions of these recommended flows, the Board decided to consider each basin on a stream-by-stream basis and vote on each individually.

1. Whitehorse Creek

It was MOVED by Gail Achterman and seconded by Bill Cramer to reject the requested flow after the Board found the establishment of the minimum flow to be of lesser importance than agricultural use of those waters. Kess Cannon voted no. The motion passed.

2. Willow Creek

It was MOVED by Gail Achterman and seconded by Lorna Stickel to adopt the requested flow and approve the staff recommendations. Bill Cramer, Ralf Hakanson, and Jack Hoffbuhr voted no. The motion passed.

3. Trout Creek

It was MOVED by Gail Achterman and seconded by Lorna Stickel to adopt the staff recommendation which was considered a more appropriate rate of flow of 5 cfs on this creek. Bill Cramer, Ralf Hakanson, and Jack Hoffbuhr voted no. The motion passed.

E. REQUEST FOR APPROVAL OF PROPOSED MINIMUM FLOWS IN THE MALHEUR RIVER BASIN:

The stream appears to be fully appropriated during much of the year and opportunities to augment flows during summer to achieve the desired level appear limited. Future irrigation is already limited by land suitability and prior claims to water. Establishing a minimum flow will not affect existing use but will identify flow levels to benefit aquatic life.

Adoption of the proposed minimum flow could provide a degree of protection for aquatic life on the Middle Fork Malheur River which does not now exist. Storage, riparian zone improvements, or other measures will be necessary to achieve the proposed minimum flows during the late summer months.

The staff recommended adoption of the requested minimum perennial streamflow on the Malheur River. Suggested findings and modifications to the basin program were submitted to the Board for consideration. Suggested exemptions from the minimum flow include domestic and livestock use and storage releases.

1. Malheur River

It was MOVED by Lorna Stickel and seconded by Gail Achterman to adopt the requested flows and approve the staff recommendations on the Middle Fork Malheur River. Bill Cramer, Ralf Hakanson, and Jack Hoffbuhr voted no. The motion passed.

F. REQUEST FOR APPROVAL OF PROPOSED MINIMUM FLOWS IN GOOSE AND SUMMER LAKES BASIN:

The staff recommended adoption of the five minimum perennial streamflows requested under SB 225 in Goose and Summer Lakes Basin. Since there is no water use program for the basin, a recommended order to establish the flows was submitted for Board consideration. Recommended exemptions from the minimum flow include human consumption and livestock use and storage releases.

1. Honey and Deep Creeks

It was MOVED by Gail Achterman, seconded by Ralf Hakanson, and passed unanimously to reject the proposed flows after the Board found the establishment of the minimum flows to be of lesser importance than agricultural use of those waters.

2. Thomas Creek

It was MOVED by Ralf Hakanson, seconded by Lorna Stickel, and passed unanimously to reject the requested flows after the Board found the establishment of the minimum flows to be of lesser importance than agricultural use of those waters. The Board voted to initiate procedures for the withdrawal or classification of the waters of Thomas Creek.

3. Chewaucan

It was MOVED by Ralf Hakanson, seconded by Kess Cannon, and passed unanimously to reject the proposed flows on the basis that the establishment of the minimum flows were of lesser importance than agricultural use of those waters. The staff was further instructed to refer to the Board any potential applications for storage on the Chewaucan. (Gail Achterman abstained on the basis of a potential conflict of interest.)

4. Dairy Creek

It was MOVED by Ralf Hakanson and seconded by Jack Hoffbuhr to reject the proposed flows on the basis that the establishment of the minimum flows were of lesser importance than agricultural use of those waters. Kess Cannon and Lorna Stickel voted no. The motion passed.

G. REQUEST FOR APPROVAL OF PROPOSED MINIMUM FLOWS IN THE HOOD BASIN:

The staff recommended modification of the water use program for the Hood Basin to include adoption of the minimum perennial flows on the East Fork Hood River at the mouth; Middle Fork Hood River at the mouth; Neal Creek at the mouth; Fifteenmile Creek at Rice and maintained to the mouth; and Mill Creek at the mouth as requested in the SB 225. The staff recommended rejection of the proposed minimum flow on the Hood River mainstem from Powerdale Dam to the mouth and adoption of an alternative flow.

1. Hood River

It was MOVED by Gail Achterman, seconded by Lorna Stickel, and passed unanimously to adopt the staff recommendation by rejecting the requested flow and adopting an alternative flow exempting irrigation from Dead Point and Green Point Creeks.

2. East Fork Hood River

It was MOVED by Gail Achterman, seconded by Lorna Stickel, and passed unanimously to adopt the requested flows and approve the staff recommendations.

3. Middle Fork Hood River

It was MOVED by Lorna Stickel and seconded by Jack Hoffbuhr to reject the proposed flows on the basis that the establishment of the minimum flows were of lesser importance than agricultural use of those waters. Gail Achterman, Kess Cannon, and Joe Richards voted no. The motion passed.

4. Neal Creek

It was MOVED by Gail Achterman, seconded by Kess Cannon, and passed unanimously to adopt the requested flows and approve the staff recommendations.

5. Fifteenmile Creek

It was MOVED by Jack Hoffbuhr and seconded by Gail Achterman to adopt the requested flows and approve the staff recommendations with an exemption for future storage. Bill Cramer voted no. The motion passed.

6. Mill Creek

It was MOVED by Lorna Stickel and seconded by Kess Cannon to adopt the requested flow and approve the staff recommendations with an exemption for future storage. Bill Cramer, Ralf Hakanson, and Jack Hoffbuhr voted no. The motion passed.

H. DIRECTOR'S REPORT

The Director reported to the Board that the Oregon Environmental Council had recently requested a hearing in a matter in which the Board had authorized the staff to proceed to rulemaking to change the word "shall" to the word "may" in OAR 690-74-080. This would allow more flexibility and avoid impairing the state's ability to participate in FERC proceedings. It was MOVED by Ralf Hakanson, seconded by Gail Achterman, and passed unanimously that the staff be asked to conduct the requested hearing and create a record for the Board's review.

BEFORE THE WATER POLICY REVIEW BOARD
OF THE
STATE OF OREGON

In the Matter of Establishing
Minimum Perennial Streamflows
in the Malheur Lake Basin

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Malheur Lake Basin

The Water Policy Review Board, under the provisions of ORS 536.235 and 536.325, considered requested minimum perennial streamflows in the application submitted on November 3, 1983, on Trout Creek and Willow Creek in the Alvord subbasin of the Malheur Lake Basin.

A public hearing on proposed minimum flows was held in Burns, Oregon, on September 25, 1984. All other state agencies had an opportunity to be heard at the hearing. After considering the Water Resources Department staff recommendation and the provisions of ORS 536.220, 536.300(1) and 536.310, the following findings are made:

1. The Oregon Department of Fish and Wildlife requested minimum perennial streamflows of 10 cubic feet per second (cfs) on Trout Creek at the streamflow gage and 3 cfs on Willow Creek at Whitehorse Road.
2. Trout Creek contains wild trout and Alvord chub which have a limited range and are uniquely suited to severe desert stream conditions.
3. Willow Creek contains a pure, unique strain of cutthroat trout which survives in the limited habitat of Willow Creek and Whitehorse Creek.
4. The basins of the two streams are predominantly rangeland with narrow canyon valleys.
5. There is some existing irrigation from Trout Creek upstream from the requested minimum flows and a limited amount of potentially irrigable land.
6. Aquatic life is at least as important as other potential uses in the upstream reaches of Trout Creek and Willow Creek.
7. The flow of 10 cfs requested for Trout Creek exceeds the flow level needed to support aquatic life based on Oregon Department of Fish and Wildlife observations of stream habitat and flow conditions.
8. A flow level of 5 cfs in Trout Creek better reflects observed conditions and is considered to be a more appropriate flow rate for Trout Creek.
9. Under present streamflow conditions, flows will frequently drop below minimum levels between August and October in each stream.

10. Rehabilitation of riparian areas or storage development could result in maintaining minimum flow levels during most years in the future.

The Water Policy Review Board, therefore, in accordance with ORS 536.325 orders that:

- A. A flow of 5 cfs is more appropriate for the support of aquatic life in Trout Creek.
- B. The following minimum streamflows located in the Alvord subbasin of the Malhuer Lake Basin are hereby adopted or established:

Trout Creek at USGS gage 10406500 in Section 25, T. 39S, R. 36E.

Oct-Sep
5 cfs

Priority Date 11/3/83

Willow Creek at Whitehorse Road

Oct-Sep
3 cfs

Priority Date 11/3/83

Dated February 26, 1985

WATER POLICY REVIEW BOARD



William H. Young, Director
WATER RESOURCES DEPARTMENT

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TAPE TRANSCRIPTS

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Achterman: And so they support the staff recommendation of 5. And now I get to my more difficult questions and perhaps, well really I want and the questions are all related to the same thing is what makes the staff believe the ODF&W conclusion that more incentive would exist for riparian habitat improvement in the three mile reach between the propose minimum flow point and the point that the Whitehorse Ranch recommended for the minimum flow point if you set the minimum stream flows and if you do not set the minimum stream flows. I will first reveal my prejudices. ODF&W does not have any money or very little money to do riparian habitat improvements. The record seems to indicate that this ranch has exhibited a real commitment to riparian habitat improvement and maybe my notion of human nature and your notion of human nature and ODF&W's notion are different, but it would seem to me the given who spent the money in the past, to do riparian habitat improvement we should accept the rancher's recommendation and not the ODF&W's where that point ought to be. I mean who is going to have more incentive to spend the money.

Cramer: May I comment in line with that Gail?

Achterman: Sure they might as well answer all of the questions

Cramer: Sure you might as well and they can _____

Achterman: Make the same point.

Cramer: Just a comment that the land exchange occurred with BLM's blessing. Who is one of the ones who is going to do the riparian habitat. And they traded the land away

_____ and downstream part so they could control the upper _____ and we might have some incentive to do the upper but they would not have any incentive to do any riparian habitat on the lower end.

. . .

Achterman: I guess, you know, for the benefit of the other board members, my personal view is I agree with that. I mean I agree there is obviously the record indicates that there is potential for riparian habitat improvement in that reach. My objective as a board member is to try and figure out a course of action that we can take that is most likely to insure that the riparian habitat improvement takes place and I don't think that the staff recommendation achieves that objective because I think that the only one that is going to have the dollars to do the riparian habitat improvement in the near future is the ranch owner and therefore, I can not support the staff recommendation on the point on point (inaudible). I think we need to accept the ranch's recommendation on that point.

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Stickle: Mr. Chairman, I think that of the flows in Harney County, that this was the one I had the most trouble with also.

Achterman: With the Whitehorse?

Stickle: The Whitehorse Creek. The location of the point and I support a movement of the point with three miles further to the edge of the BLM land. I do not really understand the objection to this flow at that point because the ranch seemed to support the flow at that

point. By my understanding it is almost totally public land from that point up. The public land manager does not object, I do not believe, to the flow. I do not think there is any uses above that point that need to be protected. It achieves the objectives of the ranch to be able to make the use of water below that point, which I think does justify moving the point for the purposes of other uses of greater benefit. I agree with Gail's assertion that the incentive is going be much greater to make improvements in this stretch of stream. So I guess my point is, my view is that I would support the original motion.

. . .

Stickle: Well my justification for why it is of lesser importance at that point is that the primary need in that stretch of the river is riparian habitat improvement and that the record indicates that the riparian habitat improvement is most likely to take place if we move the point.

. . .

Achterman: I want to make it motion to reject the minimum flow on Whitehorse for two reasons and then if we every get into a lawsuit the court can decide what reason it likes better. That between the confluence and the point recommended by the staff, agriculture is of more importance than fish value and, fish values are more likely to be enhanced if the point of moved because the ranch is more likely than anyone else to engage in riparian habitat improvements. The motion is to reject on those two grounds and adopt the alternative minimum stream flow moving the measuring point to the confluence of Little Whitehorse and Whitehorse.

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Richards: We will call the role. Achterman - aye; Cannon - aye; Cramer - No; Hakansen - No; Hoffbuhr - No; Stickle - Yes; Chairman Richard - No.

Richards: The motion fails, and the reason it fails is that we just made a declaration on that stream that some use has more importance than aquatic life, said in right within the motion, we declared that stream, that agriculture has more importance. So we concluded.

Achterman: In that reach.

Richards: I said that stream ... that particular stream.

Achterman: Well I only declared it in the reach between where we rejected the point where we moved it to.

Richards: I am telling you what the statute says, Gail. I truly don't think we can make that kind of change in statute. Once our counsel says that to reject that, we have to include that it is of a lesser importance.

Achterman: Then I move that we reject the whole flow.

Cramer: Second it.

Richards: Who seconded it? Is there a discussion?

Man: Now. Mr. Chairman, let's clear up to as why we are rejecting the whole thing. We are rejecting it because what, it is too much.

Achterman: No.

Man: Or rejecting it because

Achterman: No. If agriculture is a higher and better use in this one stretch, which I believe it is, and most importantly I believe that is the only way we are going to get riparian habitat improvement, and if the legislature has tied our hands to the point to where we can not make a rational decision, then we might as well make a irrational decision.

. . .

Richards: If you are ready for the questions, we will call the role. Achterman - Aye; Cannon - No; Cramer - Aye; Hakansen - Aye; Hoffbuhr - Aye; Stickle - Aye; Chairman Richards - Aye. Motion carried.