

WATER RESOURCES COMMISSION

MEETING

SALEM

JULY 19, 1990

MINUTES

Commission members present:

Lorna Stickel, Chair
Cliff Bentz
Hadley Akins
Mike Jewett
Roger Bachman

Commission members absent:

Jim Howland
Jack Delay (resigned)

Water Resources Staff

Bill Young
Jan Shaw
Steve Sanders
John Borden
Roberta Jortner
Tom Paul
Donn Miller
Roelin Smith
Steve Applegate
Steve Brown
Doug Parrow
Mike Ladd
Barry Norris
Bill Ferber
Bud Bartels
Lorraine Stahr
Tom Kline
Becky Kreag
Pam Homer

Others

Gary Eisler
Dan Bradley
Jan Boettcher
Jack Hammond
Jim Myron
Kathleen Simpson Myron
Rep. Chuck Norris
Audrey Simmons
David Moon
Ed Weber
Karen Russell
Anne Perrault
Larry Trosi
Dan Wilson
Kay Burton
Doug Myers
Greg Robart

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, 3850 Portland Road, 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. Audiocassette recording tapes of the meeting are also on file in the Water Resources Department office.

A. MINUTES OF THE MAY 30 AND 31 WRC MEETING AND CONFERENCE CALLS

It was MOVED by Cliff Bentz, seconded by Mike Jewett, and passed unanimously to approve the minutes as submitted.

B. PUBLIC COMMENT

Gary Eisler said that he wanted to sell water from his spring to a water bottling company. He cited experts' testimony that the water from his springs is in the top 4% in purity in the country, comparable to that in Prince George, British Columbia. He asked how he could receive a prompt reply to his application for a water right and have his application administered under the existing rules and not under the proposed rules. The Department identified several courses of action.

Mike Jewett recommended that Eisler talk to WRC staff member Steve Applegate and asked the staff bring the matter back to the Commission at its next meeting.

C. COMMISSION COMMENTS

1. Mike Jewett said the allocation committee is forging ahead.

In connection with the meeting in Ashland, Jewett said that the City of Ashland wanted to schedule a trip for the Commission to explore conservation projects in the area. That tour will be tentatively schedule for Thursday morning, August 22.

Jewett told the Commission if anyone wanted to go to a play on Tuesday to let him know and he would help with purchasing tickets.

2. Roger Bachman reported that he had attended a meeting last week in Sandy, along with Rep. Mike Kopetski, concerning the problems in the upper Sandy Basin. Discussion centered, he said, on the need to cooperate and protect the fish. The local elected officials are looking forward to reporting to the Commission on their plan at the August meeting.
3. Lorna Stickel reviewed the recent meeting of the Western States Water Council in Montana. It was quieter than other meetings, she said, but there were some interesting discussions. She talked to the council members about public interest determination in Oregon. Much discussion there, said Stickel, revolved around the reauthorization of the Clean Water Act.

D. DIRECTOR'S REPORT

1. Program Review of State Government: The Director distributed this report and explained how this program of the Governor would identify priorities among state programs and make recommendations on agency organization and state financing. The retreat offers a limited opportunity for the Commission to identify priorities for the Governor and influence the work of the Commission. He described the various review groups which will start work next month. He said that the groups expect to finish their work by the end of the calendar year.

The Commission selected what it considered the three principal issues for discussion as a part of the retreat agenda.

2. Winchester Dam: Barry Norris, Dam Safety supervisor, reviewed the current status of the leaking Winchester Dam and the projected repair schedule.
3. Future Scenic Waterway Flow Assessment meeting schedule: The Director told the Commission that the staff is currently compiling information for the Upper Willamette Basin, Rogue Basin and Elk River scenic waterway flow assessments. Two types of public meetings have been scheduled to present information and receive comment: "Interagency" meetings were designed to brief other government organizations such as the Forest Service, BLM, and counties on purposes and possible impacts of the assessments. "Public open-house-style" meetings will be held in the evening to allow citizens to ask questions of and make comments to staff.
4. Willamette Basin Planning Process: The Water Resources Department held public hearings on the draft Willamette Basin rules and plan. Oral and written comments were submitted and are being evaluated and responses prepared for the Commission. That evaluation will answer questions, clarify issues, draft changes to the plan and rules, and/or discuss why certain aspects of the plan and rules should be adopted as currently drafted.

Because some of the issues may be difficult to resolve within the rule adoption schedule, the Department intends to return to the Commission at its August 22-23 meeting with a recommendation regarding whether adoption of the Willamette Basin rules and plan should be delayed.

5. Request for Preauthorization to Issue Refunding Bonds: The Department, in cooperation with the Oregon State Treasurer, has been evaluating the financial advantages of retiring existing high-interest-rate debt with the sale of new bonds yielding a lower interest rate. The Commission must authorize approval prior to issuance of such bonds.

The Director recommended that the Commission direct the staff to (1) proceed with the preparation of documentation for the bond issue; (2) approve a resolution authorizing the sale of refunding bonds not to exceed \$12 million; (3) delegate authority to the Director to sign the resolution; and (4) ask that the treasurer approve the request to proceed with the issuance of the refunding bonds.

It was MOVED by Roger Bachman and seconded by Cliff Bentz to adopt the Director's recommendation. The motion passed unanimously.

6. Burnt River: Becky Kreag told the Commission about a proposed reservation on Burnt River where the Department was being asked to act as the agency that submitted the proposal. The Commission concurred that the Department could operate as the submittal agency.

E. PROPOSED ACTION ON RULE ON MANAGEMENT OF STORED WATER (OAR 690-250-150)

The Department's administrative rules currently provide that stored water released in excess of the needs of water rights calling on the source shall be considered natural flow [OAR 690-250-150 (4)]. Based on this rule, the Department currently does not regulate in the Willamette Basin to protect the stored water component instream.

During its April 19 meeting, the Commission authorized a hearing on amendment of OAR 690-250-150. The proposed amendment would provide for protection of uncontracted water released from storage as needed to meet the storage component of instream water rights. There are

storage components in 26 minimum streamflows in the Willamette Basin. There are no storage components in minimum streamflows in other basins.

A hearing was conducted on the proposed amendment on May 22. Testimony was provided during the hearing by 10 parties, all of whom were opposed to the amendment. Written testimony was received from 17 parties. Substantial opposition was revealed by those submitting testimony.

Director's Recommendation

The staff recommended that the Commission delay action on the proposed amendment and proceed with contested case hearings on the assumption that the rule would be amended after the minimum streamflows are converted with conditions and/or modified storage component flow levels.

Roger Bachman asked what the staff objection was to adopting the rule now. Doug Parrow, Conservation Program Manager, said that given the concerns expressed during the hearing, staff concluded that adoption of the rule should be postponed until after the contested case proceedings. This will provide the parties with additional opportunities to discuss the public interest of converting the flows and managing stored water for the benefit of instream flows. This could include identifying any impacts on their water use of regulation under a revised rule.

Assistant Attorney General Steve Sanders suggested that the Commission provide direction to staff regarding whether or not to assume that stored water would be managed to protect instream uses. Cliff Bentz asked if it would be sufficient to instruct the hearings officer to assume that the rule would be adopted and to take into account the effect that the rule would have on existing uses. Steve Sanders said that those instructions would be sufficient.

It was MOVED by Hadley Akins and seconded by Cliff Bentz to approve the Director's recommendation. Mike Jewett voted no. The motion passed.

F. REQUEST FOR APPROVAL OF THE MCKAY AND UMATILLA RIVER WATER MANAGEMENT PLAN

Historically, the Umatilla River has not been closely managed due to the lack of complaints from water users and a shortage of personnel to regulate the resource. As a result of recent complaints and the need to manage the exchange waters for the Umatilla Project, the Department must take an active role in managing the waters of the Umatilla River and McKay Creek.

The staff made three presentations to the Commission about water management problems on McKay Creek and the Umatilla River. The first report recommended that the Commission instruct staff to conduct a hearing. The hearing would determine the need for declaring the Umatilla River and McKay Creek a serious water management problem area pursuant to ORS 540.435. The Commission unanimously approved the recommendation.

The second presentation described the progress in preparation for a public hearing. The Commission unanimously agreed to try a different approach and instructed staff to hold a workshop rather than a public hearing. The aim was to give local water users and residents an opportunity to comment and propose alternate solutions to declaring a serious water management problem area.

The third presentation described progress under the alternative approach which has rapidly evolved into a water management plan.

At the direction of the Commission, staff held a public workshop in July 1990 to receive input from the users. The Department accepted the recommendation from the users to set up a task force. The task force purpose was to study the water management problems and help prepare a water management plan.

The task force has been meeting since October 1990 in preparing the water management plan. After completing the draft water management plan, staff held two public workshops to receive comments. Staff and the task force considered the comments and made several changes to the water management plan.

Director's Recommendation

The staff recommended Alternative 4, to approve the draft water management plan and instruct staff to carry out the plan. This will allow flexibility to modify the plan annually based on the staff's experience. It will also eliminate the need for determining whether a serious water management problem area should be declared at this time.

Anne Perrault, WaterWatch, said she appreciated the efforts of the Department in this matter. She had some concerns, though, and reviewed them for the Commission. One of their concerns was that the Department's plan should not condone the right to affect the rate of a water right and though that was done illegal.

Another concern was the plan did not specifically address situations such as the one where Westland Irrigation District is allegedly spreading some of their water and applying it to outside grounds.

It was MOVED by Roger Bachman and seconded by Mike Jewett to adopt the Director's recommendation.

Before the vote was taken, Rep. Chuck Norris asked for additional coordination on the boundaries of the area and the relation to the tribal reservation lands.

The Commission unanimously passed the motion.

G. DELEGATION OF AUTHORITY TO DIRECTOR TO SIGN ROUTINE HYDROELECTRIC DOCUMENTS WHERE PUBLIC INTEREST ISSUES HAVE PREVIOUSLY BEEN DECIDED BY THE COMMISSION

Applications for hydroelectric projects are referred to the Director after public interest issues have been settled by the Commission. It is the Director's responsibility to perform certain ministerial duties. These duties include making sure all fees have been paid and drafting a license that holds the applicant to all the general requirements of law and to special conditions that result from findings by the Commission.

In 1985, the Commission delegated to the Director authority to "administer provisions of ORS 543.410 to 543.560, relating generally to extensions of time for construction of permitted or licensed projects and to financing of projects..". It is not obvious if the delegation includes the authority to approve assignments or to sign licenses.

Director's Recommendation

The staff recommended that the Commission confirm the delegation of the following hydroelectric authorities to the Director: