

WATER RESOURCES COMMISSION MEETING

NORTH BEND

OCTOBER 4, 1991

MINUTES

Commission members present:

Lorna Stickel, Chair
Cliff Bentz, Vice-chair
Jim Howland
Hadley Akins
Mike Jewett
Roger Bachman
Anita Johnson

Water Resources Staff

Bill Young
Jan Shaw
Steve Sanders
Becky Kreag
John Borden
Rick Craiger
Rick Bastasch
Steve Applegate
Jan Koehler
Gary Ball
Ken Weese
Marc Norton
Fred Lissner
Steve Brown
Bill Fujii
Amin Wahab
Randy Moore
Greg Nelson
John Drolet

Others

John Kelsey
Debra Wallace
Tim Gannon
Sharon A. Thrall
Dick Long
Jan Boettcher
Francelia Miller
Phil Matson
Todd Heidgerken
David Moon
Larry Troisi
Loran C. Wiese
Terlyn Macduff
Karen Russell
Jim Brown
Del Vera
Audrey Simmons
Anne Perrault
Don King
Harold Thompson
Elsie Thompson
Jeff Lyon
Stephanie Burchfield
Jim Martin
Carol Whipple
Tom Dew
Timm Slater
Roger Gould

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.

Roger Bachman MOVED, seconded by Mike Jewett, to go into Executive Session, pursuant to ORS 192.660(1)(h), for consultation with legal counsel on current litigation

and on litigation which may be filed. The motion passed unanimously and the Commission adjourned into Executive Session.

When the Commission reconvened the general meeting, Mike Jewett MOVED to direct the Department staff to revise the process in Division 77 rules by which instream water rights are granted, with direction to revise the rules to establish criteria by which request for review will be processed and evaluated, and by which the instream requests will ultimately be granted, modified or denied, and to bring the entire matter back to the Commission for further action and appropriate rulemaking. Roger Bachman seconded the motion.

Assistant AG Steve Sanders added that this would be to rescind what has been viewed by some as an order of the Commission, dated April of this year. It directed the staff to proceed under the current rules so that the Commission was changing the direction to staff with respect to how these water rights will be granted and how requests for review will be processed. The motion passed unanimously.

The next three items (Items A, B, and C) were acted on in a single motion, reported below.

A. MINUTES OF THE AUGUST 22-23 WRC MEETING

B. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-70721 AND 70722 TO STORE AND USE WATER FROM RINCON, STONEHOUSE AND EAST CREEKS TRIBUTARIES OF THOUSAND CREEK, FOR SUPPLEMENTAL IRRIGATION OF 116.8 ACRES, HARNEY COUNTY

On September 28, 1990, John Bakos submitted Applications R-70721 and 70722, proposing to store 205.0 acre-feet (af) of water in a reservoir behind a 16.0-foot-high dam and to use the stored water for supplemental irrigation.

The question before the Commission was whether the issuance of permits would impair or be detrimental to the public interest. Administrative Rule 690-11-080 (2)(a)(C) specifies that dams impounding more than 100.0 af of water be referred to the Commission to make a public interest determination under Oregon Revised Statutes (ORS) 537.170.

Director's Recommendation

The staff recommended that the Commission find that the project would not have a significant adverse effect on the public interest and authorize the Director to issue the permit with appropriate conditions.

C. CONSIDERATION FOR APPROVAL OF APPLICATION R-71751 TO STORE WATER FROM BIG PINE HOLLOW, TRIBUTARY OF JOHN DAY RIVER, FOR RECREATION, WASCO COUNTY

On July 10, 1991, Shaniko Ranch submitted Application R-71751, proposing to store 32.0 af of water in a reservoir behind a 44.0-foot-high dam and use the stored water for recreation.

The question before the Commission was whether the issuance of the permit would impair or be detrimental to the public interest. Administrative Rule 690-11-080 (2)(a)(C) specifies that dams with a height greater than 20.0 feet or impounding more than 100.0 af of water be referred to the Commission to make a public interest determination under Oregon Revised Statutes (ORS) 537.170.

Director's Recommendation

The staff recommended that the Commission find that the project would not have a significant adverse effect on the public interest and authorize the Director to issue the permit with appropriate conditions.

It was MOVED by Jim Howland, and seconded by Cliff Bentz to approve the minutes and the Director's recommendations in Items B and C. The motion passed unanimously.

D. REQUEST FOR ACTION TO RESCIND INITIATION OF RULEMAKING TO AMEND THE SOUTH COAST BASIN PROGRAM

On November 17, 1989, the Commission initiated rulemaking based on a petition to amend the South Coast Basin Program. The Coos County Urban Renewal Agency (CCURA) and the Coos Bay-North Bend Water Board (CB-NBWB) petitioned the Commission to reclassify Tenmile Lake for municipal use. The petitioners proposed to construct a water control structure at the outlet of the lake and use the lake as a source for municipal and industrial water.

The construction of the control structure, diversion facility and water conveyance system was deemed to require a federal Section 404, fill and removal permit. This prompted the need for an Environmental Impact Statement (EIS). On June 11, 1990, the U.S. Army Corps of Engineers opened the EIS scoping process for the project. The Department was asked by the Governor's Office to coordinate state review of the proposed project and provide the Corps of Engineers' input on the scope of work for the EIS.

In May of 1991, the Corps distributed the EIS scope of work for the proposed Tenmile Water Supply Project. Shortly thereafter, the CCURA withdrew its application for a Section 404 permit and effectively terminated further work on the project.

Director's Recommendation

The staff recommended that the Commission rescind approval for rulemaking on the petition to amend the South Coast Basin Program.

Tim Gannon, mayor of Lakeside, spoke on behalf of his constituents in favor of the Department's recommendation in this matter.

It was MOVED by Cliff Bentz, seconded by Mike Jewett, and passed unanimously to approve the Director's recommendation.

E. PUBLIC COMMENT

Anne Perrault, WaterWatch of Oregon, Inc., said that WaterWatch wished to emphasize its support for the Bureau of Reclamation's Umatilla Basin project but said it had strayed from its original purpose as a fishery restoration project and it has now become a vehicle

for enhancing irrigation. WaterWatch believes that the project should be put back on course, funded fully and implemented promptly.

Debra Wallace, Tenmile Lakes STEP Association, objected to final consideration for a water right permit which would allow the Coos Bay-North Bend Water Board to take water from Tenmile Creek. She claimed that there was inadequate streamflow in the creek to protect coho salmon, steelhead and cutthroat trout and their spawning beds.

F. COMMISSION COMMENTS

1. Roger Bachman said he had conducted the second of two hearings on the closure to further appropriation of Whitehorse and Willow Creeks in Harney County.
2. Mike Jewett welcomed the Commission's newest member, Anita Johnson, to the Commission.
3. Lorna Stickel reported that she and Roger Bachman were guided on a productive tour of the Whitehorse and Willow Creek area while they were there for the recent hearing.

Stickel said that she was travelling to Park City, Utah, next week for the second meeting of the Western Governor's Association/Western States Water Council workshop on western water resources management. Topics will include public interest issues being incorporated into water management. FERC and representatives from the western states intend to pursue discussions of FERC's relationship with the states in their licensing process.

4. Jim Howland said that he appreciated the tour of the cranberry farms conducted by the Oregon Cranberry Farmers' Alliance for the Commission and Department staff.
5. Hadley Akins said he had comments to make about the Umatilla Basin project but said he would wait for the Director's report to bring them up.
6. Cliff Bentz asked for more discussion on the Northwest Power Planning Council's (NPPC) recent proposed amendments to its Columbia River Basin Fish and Wildlife Program.

G. DIRECTOR'S REPORT

1. Threatened Fish Stocks

Jim Martin, Fish Division chief, Oregon Fish and Wildlife Department (ODFW), described the status of fish, focusing on sensitive, threatened, and endangered fish stocks in Oregon's waterways. He urged the Commission to help ODFW take steps to prevent listings of sensitive species because the state has more flexibility than after listings.

Tom Kline, Resource Management Division, asked for Commission comments on the NPPC's proposed Phase II amendments to its Fish and Wildlife Program. The proposed program constitutes a major step toward a comprehensive regional salmon and steelhead recovery plan, claims the NPPC. One proposal was to place a moratorium on new water rights from the Columbia Basin. Another regarded instream flow needs in the Snake and Lower Columbia Rivers.

The Commission recommended comments be submitted to the effect that the program is too broad and its scope should be narrowed.

2. Effect of Water Rights Policies and Processes on Watershed Enhancement Projects

Carol Whipple, vice-chair, GWEB, and member, EQC, expressed concern about several water right permitting problems delaying implementation of GWEB projects. Whipple asked the Commission to explore options, such as exemptions, policy revisions or special process scheduling which may help to alleviate the problems associated with water rights requirements for watershed enhancement projects.

Mike Jewett asked that Lorraine Stahr, GWEB program coordinator, bring to the next Commission meeting the Department's proposed solutions to the problems as outlined by Whipple.

4. Groundwater Advisory Committee.

Recent legislation changed the membership of GWAC from five to nine members and authorized reimbursement of out-of-pocket expenses. The Director proposed recommendations for new member categories for addition to the committee. They would include members from the environmental community, local government and the public health sector.

5. Petition for Rulemaking to Amend the Umatilla Basin Program.

WaterWatch of Oregon, Inc., recently filed with the Department a petition to amend the Umatilla Basin Program. The purpose of the amendment was to encourage restoration to the mainstem Umatilla River of waters needed to meet instream water rights, rebuild the fishery, and provide for other instream uses. The proposed rule would direct the Department to accomplish this objective by making enforcement of water laws a priority on the mainstem Umatilla and by terminating certain water diversions. WaterWatch claims that the Umatilla suffers from overappropriation and inadequate enforcement.

Becky Kreag said that staff had quickly reviewed the petition since a response was required in 30 days unless WaterWatch agreed to postpone action. Staff recommended that the petition be denied.

Hadley Akins stressed that the Department needed to resolve these problems with the irrigation districts or go to court for a clear-cut solution. He further requested that final proof surveys in the Umatilla Basin be completed as soon as possible.

Anne Perrault, WaterWatch, said that the flows in the Umatilla River are a high priority. She said that the Bureau of Reclamation's hydrologic model does not reflect the reality of the situation there. WaterWatch was asking that water loss be observed and asked the Commission to instruct the Department to act against the "illegal" water use in the basin. She asked the Commission to postpone action until the next meeting.

Anita Johnson MOVED to direct the Department to prepare a report for the next Commission meeting responding to both WaterWatch's petition and the enforcement claims. The motion was seconded by Roger Bachman. Hadley Akins abstained. The motion passed.

H. PROPOSED ADOPTION OF AMENDMENTS TO THE BUTTER CREEK CRITICAL GROUNDWATER AREA IN MORROW AND UMATILLA COUNTIES (OAR 690, DIVISION 507)

Administrative actions by the Department to curtail pumpage in the Butter Creek Critical Groundwater Area (C.G.A.) have continued for twenty years. Testimony received at the May 9, 1990, rulemaking hearing on the draft rules asserted that water users in the Echo Junction Subarea affected users in the West Subarea. The Department ran an aquifer test in March 1991 to determine whether the boundary separated the water users. Analysis of the data shows that the well of Frank Mader, a water user in the Echo Junction Subarea closest to the boundary, does not impact water users in the West Subarea. In addition, the analysis showed that irrigation wells to the east of the pumped well were not affected.

Under the current order and rules, Mader's ability to pump well T.2N./R.27E.-7aab would be gradually cut back over the next four years. In the sixth year, no water would be allocated to the water right connected to the well. The results of the aquifer test indicate that this well is in a separate subarea. Regulation of the Mader well in favor of senior users in the Echo Junction Subarea would not reduce the impact to the groundwater resource in that subarea.

New data indicate that an additional boundary is needed to properly distribute water in the Butter Creek C.G.A. The new boundary would create the Fourmile Canyon Subarea. The new area would have a sustainable annual yield of 1300 acre feet. Allowing the sustainable annual yield for the remaining Echo Junction Subarea water users to stay at 2700 acre feet until 1995 will reduce the impact on plans that have been made based on the original sustainable annual yield.

Director's Recommendation

The staff recommended that the Commission adopt the proposed modifications to the rules that amend the Umatilla Basin Program to create the Fourmile Canyon Subarea with a sustainable annual yield of 1300 acre feet.

It was **MOVED** by Jim Howland and seconded by Hadley Akins to approve the staff recommendation. Howland then added to the motion a proposal to phase in pumping reductions in the modified Echo Junction Subarea, but Akins declined to second that. At the vote, Lorna Stickel, Mike Jewett, Roger Bachman, and Anita Johnson voted no. The motion failed.

It was **MOVED** by Roger Bachman and seconded by Mike Jewett to approve Alternative 2. Lorna Stickel, Cliff Bentz, Hadley Akins, Roger Bachman, and Anita Johnson voted no. The motion failed.

The Department offered to bring back before the Commission at its next meeting a proposal to set the sustainable annual yield in the modified Echo Junction Subarea below 2700 af and to phase in pumping reductions down to that level. The Commission agreed.

I. PROPOSED AMENDMENT OF THE ROBERTS CREEK (TRIBUTARY TO THE SOUTH UMPQUA RIVER) ORDER OF WITHDRAWAL AND THE UMPQUA BASIN PROGRAM

On May 22, 1959, the State Water Resources Board, a predecessor of the Commission, withdrew the unappropriated waters of Roberts Creek, a tributary to the South Umpqua