

WATER RESOURCES COMMISSION

MEETING

PORTLAND

JANUARY 31, 1992

MINUTES

Commission members present:

Lorna Stickel
Jim Howland
Hadley Akins
Mike Jewett
Roger Bachman
Anita Johnson
Cliff Bentz

Water Resources Staff:

Bill Young
Jan Shaw
Becky Kreag
Steve Sanders
Amin Wahab
Tom Paul
Fred Lissner
Greg Nelson
John Borden
Weisha Mize
Rick Bastasch
Jack Donahue
Al Cook
Carol Lewis
Steve Applegate
Bill Fujii
Sam Allison
Bob Rice
Tom Kline
Bev Hayes
Doug Parrow
Mike Ladd
Tony Justus

Others:

Karen Russell
Karl Anuta
Jim Myron
Jan Boettcher
Wm. Elliott
Doug Myers
Jon Lund
David Moon
Todd Heidgerken
Joy Clay
Sigrid Weidenweber
Shelby Crecraft
Troy D. Susan
Joe Bowersox
Eric Goranson
Larry Sprecher
Louise Bilheimer
Ed Weber
Larry Troisi
Jeff Douglas
Dan Dority
Tom O'Connor
Susan Schneider
Albert Mirati
Wayne Bowers
Jim Rapp
E.D. Hoppeil
Fred Bachofner
Linda Bunker
Gail McEwen
Alice Lay
Steve Brown
Don Eixenberger
Alan Jensen
Scott Ashcom
Audrey Simmons
Anne Perrault
Lisa Zavala
Janet Adkins
John Borge
Elaine Hallmark

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 DECEMBER 19-20 WRC MEETING.

It was MOVED by Hadley Akins, seconded by Jim Howland, and passed unanimously to approve the minutes as submitted.

B. TRIENNIAL REVIEW COMMENTS RECEIVED AND FOLLOW-UP ACTIVITY

The Attorney General's Model Rules require all agencies to review all their rules at least once every three years. The Notice and Request for Comments on the triennial review of all Commission Rules was sent to the public on October 17, 1991.

WaterWatch, staff and the Agricultural Stabilization and Conservation Service (ASCS) submitted comments. The comments from WaterWatch were directed at rule divisions already scheduled for revision or additions. Staff comments addressed limitations in Division 17. The ASCS letter contained no specific comments or suggestions.

Director's Recommendation

The staff recommended that the comments received from WaterWatch be considered by appropriate staff in conjunction with the currently-approved rule-writing schedule assignment.

Staff further recommended that the Commission direct revision of Division 17 consistent with the staff comments.

It was MOVED by Jim Howland, seconded by Roger Bachman, and passed unanimously to approve the Director's recommendation.

[Lorna Stickel arrived at the meeting at this point.]

C. PROPOSED ADOPTION OF THE NOVEMBER 4, 1991, EDITION OF THE ATTORNEY GENERAL'S MODEL AND UNIFORM RULES AND AMENDMENT OF OAR 690-01-005

The Attorney General (AG) revised the 1990 edition of the model rules, incorporating changes made necessary by the 1991 Legislative Assembly. The revised rules became effective on November 4, 1991.

The Commission is authorized to adopt the model rules by reference. On August 3, 1990, the Commission adopted the 1990 version of the Model Rules, and amended OAR 690-01-005 to reflect the adoption. With the AG's adoption of the new version of the Model Rules, the Commission also needed to adopt the new rules and amend OAR 690-01-005.

To adopt the model rules, the agency must file a certified copy and additional copy of the rule adopting the model rules by reference and the Commission's order of adoption with the Secretary of State. A rulemaking hearing is not required unless the model rules are amended or modified on adoption. Exclusions of rules do not constitute modification or amendment.

Director's Recommendation

The staff recommended that the Water Resources Commission adopt the Attorney General's 1991 edition of the model rules with the exception of 137-03-090 to 137-03-092.

The staff further recommended that the Commission amend OAR 690-01-005 to reflect this adoption, and further authorize filing with the Secretary of State.

It was MOVED by Anita Johnson and seconded by Cliff Bentz to approve the Director's recommendation. The motion was passed unanimously.

D. PUBLIC COMMENT.

Doug Myers, WaterWatch of Oregon, Inc., spoke about the Water Development Loan Fund and said he thought that the Commission was "uninformed" about the fund and had not "heard the facts." He went on to point out "errors" or apparent discrepancies in figures in recent publications, such as the Department's biennial report and a Secretary of State audit report.

Jim Myron, Oregon Trout, criticized the Bureau of Land Management's alleged illegal use of water. Oregon Trout was asking the Department to instruct the BLM to terminate all of their existing illegal water uses until they had obtained the required permits and to refrain from the construction of any additional facilities without first obtaining permits to do so.

The Department will bring this matter back before the Commission at a future work session.

Karl Anuta, representing the Friends of Parrett Mountain, spoke about the withdrawal of groundwater in the Parrett Mountain area which his group believed should have been addressed in the proposed Willamette Basin plan. Because of a suspected threat to the groundwater supply in that area, Anuta recommended immediate withdrawal of the aquifer from further development.

F. DIRECTOR'S REPORT.

1. Petition seeking rule amendments on water reservation: The Oregon Department of Agriculture submitted a petition seeking to amend the Department's rules governing reservations of water for future economic development. Their hope was that the amendment would simplify the process for Commission action on reservation requests. Agriculture has had a reservation request pending with the Commission since February 1990.

Tom Kline told the Commission that the Department recommended accepting the petition and authorizing the staff to conduct a rulemaking hearing.

It was MOVED by Roger, seconded by Jim Howland, and passed unanimously to accept the petition and to initiate rulemaking.

2. Application from Canby Utility Board (CUB): The Commission reviewed at its December meeting the staff report and Department recommendation for Canby's application to use up to 12.4 cubic feet per

second of water from the Willamette River for municipal use.

At that time, the Commission deferred action on the issue until a future meeting, and the Department was asked to return with further analysis of water availability and additional data and justification as to what should be required from municipal applicants as part of their applications.

The Commission also requested the CUB to provide more information to staff that would further justify their request. The applicants will bring additional information for consideration at a later Commission meeting.

The agency intends to bring this matter to a future work session with the Commission for discussion of specific requirements for submittals by municipal applicants to justify new water uses.

3. Equitable streamflow management concept: Rep. Chuck Norris has proposed to pursue the matter of streamflow restoration (as proposed in Senate Bill 1163), which was one of the most controversial water-related issues in the 1991 Legislature. To begin, he proposed to refer to the subject as "equitable streamflow management," which conveys the principle of fairness, he thought.

His proposal included the following:

1. Compliance and conservation based on incentives as much as on enforcement.
2. Greater influence by, and authority for, local entities.
3. Non-judicial complaint process (would not prohibit ultimate resolution in court).

Rep. Norris said in his letter that he intended to hold an initial public hearing on the concept at the first House Water Policy Committee meeting on February 3, 1992. His hope was that the first draft of a proposed bill would follow shortly.

The Director asked the Commission for their comments and added the Department's observations. Bev Hayes characterized the agency's restoration plan, which would include many of the elements in Norris' concept. Hayes examined each of the points made in Norris' proposal and offered the recommendations of the staff.

4. Performance measures: The Director described the innovative method by which state government intends to evaluate itself and the job it is doing for Oregon's citizens. Performance measurement in state government, said the Director, will help accomplish the following:

1. Build performance-based budgets.
2. Justify program budgets to the Legislature and the public.
3. Preserve state programs and jobs by showing necessity and effectiveness of state agencies.
4. Provide regular feedback to employees and the public on how state government is doing.
5. Improve government's image and build credibility with the public.

The Director went on to say that the Department expected to bring to the next Commission meeting its first cut at Water Resources Department performance measures.

5. Mission statement, goals and objectives: The Commission considered and approved a new definition of "public trust" to be included in its goals and objectives. The new language is as follows:

"Public trust is the informed stewardship of our water resources on behalf of the people of the state in whom ownership of the resource rests. The public trust is a philosophical guide to interpreting and applying the laws managing water."

It was MOVED by Cliff Bentz and seconded by Roger Bachman to adopt the form of the mission statement reviewed at the previous day's work session, including the amended definition of "public trust," above, and adding back use of the term in the mission statement. The motion passed unanimously.

E. COMMISSION COMMENTS

1. Chair Lorna Stickel recommended that the staff form a small group, made up of interested Commission members, Department staff, the Assistant Attorney General, a financial advisor (such as an outside economic advisor and/or a representative from the Treasurer's Office), and Martha Pagel. The group should meet at least once before the next Commission meeting to (1) consider claims made by WaterWatch of Oregon, Inc., during the Public Comment period, relating to the Water Development Loan Fund Program, and to (2) determine what responsibility or authority the Commission holds in this area.

Hadley Akins asked to serve as one of the Commission's representatives on this work group; Roger Bachman and Mike Jewett also volunteered. Jim Howland offered to act as substitute.

2. Anita Johnson reported that she had attended the recent GWEB conference, which dealt in part with delays in permitting for water projects. She said the audience did not understand that this situation is in the process of improvement.

3. Cliff Bentz attended the GWEB conference, as well, where he spoke on instream water rights. He distributed to the Commission the questions he was asked by the audience.

Bentz complimented Rick Bastasch and Bill Fujii on the way they had conducted the Ontario hearing on Diack flows.

4. Jim Howland expressed concern about the Department's practice of conditioning water rights by limiting the allowed period of use. Howland thought that the agency should rely on restricting water use by quantity, instead.

5. Roger Bachman said that he would talk about water at a February 12 Columbia Forum. He will distribute the text of his speech to the Commission members.