

SALEM

MARCH 13, 1992

MINUTES

Commission Members Present:

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

Others:

Ken Robertson
Todd Heidgerken
Becky Hiers
Jerry Schmidt
Don Armstrong
Dave Dorran
Louise Bilheimer
Bill Gauvin
Vicki Craig
Ed Numrich
Larry Trosi
Teri Haraden
Larry Haraden
Jack Myers
M.P. McElwee
Margarette Nicholls
Stephanie Burchfield
Lisa Zavala
Mae Deen Thomas
Debi Lane
Bonnie Wheeler
Stan Bissman
Audrey Simmons
Tom Simmons
Shirley Bryant
Kristi Halvorson
Anne Voegtlin
Jan Boettcher
John Ross
Jim Myron
Frank Gunner
Joyce Mottola

Water Resources Staff:

Bill Young
Jan Shaw
Steve Sanders
Bruce Moyer
Steve Applegate
Steve Brown
Bud Bartels
Ken Weese
Rick Bastasch
Beth Patrino
Roelin Smith
John Borden
Tom Paul
Bill Fujii
Tom Kline
Bev Hayes
Marc Norton
Carol Lewis
Amin Wahab
Greg Nelson
Mike Ladd
Al Cook
Rick Craiger

Others (cont.)

Tom Schneider
William Monahan
Doug Myers
Wendy Retzlaff
Greg Retzlaff
Holly White
David Craig
John Mottola
Karen Russell
Bob Thacker
Polly Owen
Don Patrick
Lee Patrick
Marjo Nelson

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 JANUARY 30-31 WRC MEETING

It was MOVED by Jim Howland and seconded by Cliff Bentz to approve the minutes as submitted. The motion passed unanimously.

Items B and C, were considered as part of the consent agenda and were acted on with a single motion, reported below.

B. CONSIDERATION FOR APPROVAL OF APPLICATION R-66180 TO STORE WATER FROM AN UNNAMED INTERMITTENT STREAM, TRIBUTARY OF SOUTH FORK MALHEUR RIVER AND APPLICATION R-66466 TO STORE WATER FROM AN UNNAMED INTERMITTENT STREAM, TRIBUTARY OF LITTLE CRANE CREEK (SOUTH FORK MALHEUR RIVER), FOR WILDLIFE AND LIVESTOCK, BUREAU OF LAND MANAGEMENT, MALHEUR COUNTY.

On September 19, 1983, the United States Department of Interior, Bureau of Land Management (BLM), submitted Application R-66180, proposing to store 48.0 acre-feet (af) of water in Anhydrous Reservoir behind a 32.0-foot-high dam and use the stored water for wildlife and livestock.

On September 21, 1983, BLM submitted Application R-66466, proposing to store 51.3 af of water in Twin Reservoir behind a 22.0-foot-high dam and use the stored water for wildlife and livestock.

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 applications for dams with a height greater than 20.0 feet be referred to the Commission to make a public interest determination under Oregon Revised Statute (ORS) 537.170.

Director's Recommendation

The staff recommended Alternative 2, that the Commission find that the projects would not have a significant adverse effect on the public interest and authorize the Director to issue the permits with appropriate conditions.

C. CONSIDERATION FOR APPROVAL OF APPLICATION R-71491 TO STORE WATER FROM FIVE UNNAMED INTERMITTENT STREAMS, TRIBUTARIES OF UMPQUA RIVER, FOR WATERFOWL HABITAT, BUREAU OF LAND MANAGEMENT, DOUGLAS COUNTY.

On April 15, 1991, the United States Department of the Interior, Bureau of Land Management (BLM), submitted Application R-71491, proposing to store 44.9 acre-feet (af) of water in five reservoirs and use the stored water for waterfowl habitat. One of the reservoirs would store up to 20.2 af.

The question before the Commission was whether the issuance of the permit would impair or be detrimental to the public interest. An Umpqua Basin Program Administrative Rule (OAR 690-515) specifies that storage in structures impounding more than 3,000,000 gallons of water (9.2 acre-feet) shall be reviewed by the Commission prior to approval. During the review, the Commission may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.

Director's Recommendation

The staff recommended Alternative 2, that the Commission find that the proposed use of water for storage for waterfowl habitat 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 Cliff Bentz and seconded by Mike Jewett to approve the Director's recommendation in the above two items, Items B and C. The motion passed unanimously.

D. PUBLIC COMMENT

William Monahan, representing Manke Lumber Company, Inc., owners of 360 acres in the Parrett Mountain area, asked to speak now on the Parrett Mountain matter and to be appointed as a party on the panel which was scheduled to speak to the Commission later in the meeting. He was advised that the appropriate time for comments on that matter would be during consideration of that item later in the meeting and that he could not be added to the panel at this late date. The Commission told him that they would feel free to ask questions of him during that discussion.

E. COMMISSION COMMENTS

1. Cliff Bentz said he had heard from many people in Eastern Oregon who are affected by the drought and are drilling wells to replace surface water for irrigation. It seems that the Department's backlog or process does not allow them to secure a permit quickly enough to use during the current irrigation season.

2. Roger Bachman answered comments introduced at the Commission's January 31 meeting by Doug Myers regarding the Water Development Loan Fund. Bachman said he intended to file a final written report on this matter as the Commission's last word on the subject. That report should be ready by the next Commission meeting in April.

Doug Myers responded to some of Bachman's comments.

Chair Stickel said the Commission needed to resolve what role it should play in the management of the loan fund program; however, Stickel recommended moving forward from here without rehashing details of the past. The Director offered to continue to keep the Commission informed of the day-to-day activities of the loan fund.

Chair Stickel asked to have the Henderson matter included in the Department's report.

3. Jim Howland announced that this was probably Director Bill Young's last Commission meeting. Howland praised his performance and said he had done a marvelous job in his years with the Department.

F. DIRECTOR'S REPORT:

1. Hearings: Hearings on Division 11 and 77 rules will be held on March 26. Chair Stickel or Roger Bachman will act as hearings officer.

2. Performance measures: The Director submitted to the Commission the latest draft of the Department's performance measures, which will be used by both the Executive Department and the Legislature in the development of the 1993-95 budget. Performance measures are a method to evaluate the efficiency and effectiveness of state government.

The Director asked the Commission to review and submit comments on the draft measures.

3. Rulemaking schedule: The Director distributed a revised rulemaking schedule and asked the Commission to call with any questions or recommendations.

4. Statewide policies on allocation and storage: The Department will hold four hearings which will provide greater opportunity for comments. The hearings are scheduled as follows:

April 23	Salem	Jim Howland
April 27	Baker City	Cliff Bentz
April 28	Bend	Roger Bachman
April 29	Grants Pass	Mike Jewett

Written comments will be accepted through May 15.

These policies are slated for adoption at the July Commission meeting.

5. Position reductions: The Director talked about the Governor's recent decision to reduce the total number of positions in state government in a phase-down manner, starting almost immediately. For the initial portion of the phase-down, 290 positions in natural resource agencies, of which 30 were allocated for the Water Resources Department to abolish. Fifteen positions at the Department were ultimately identified for abolishment, only some of which are current vacancies.

The Director asked how the Commission wanted to be kept involved in the budget process. He said that our base budget will be at 80% of the current budget. By August 1, the agency must submit its request to the Executive Department. While it will take about 30 days to get the document together, the Commission could get a look at the first cut at priorities at its next meeting.

Martha Pagel made more specific comments about the final budget document which is expected to be back before them by June.

6. Request from Baker County: Baker County has requested the Department to withdraw Pine Creek from further appropriation except for stock, domestic and storage. It seems to be an effort to forestall setting instream water rights which have already been filed.

The form of the request did not meet standards under the Administrative Procedures Act for petitions to initiate rulemaking. Chair Stickel said that the evaluation process for the instream water rights was an appropriate forum for protesting instream water rights.

7. Executive session: In reviewing the executive session held by the Commission during its work session the day before, it was MOVED by Cliff Bentz and seconded by Roger Bachman to direct the staff to publish public notice in the Secretary of State's Bulletin and schedule a hearing to consider appropriate changes to the Butter Creek critical groundwater area rules, which are OAR Chapter 690, Division 507, which could be adopted as early as the Commission's April 24 meeting. The new rules should provide whether or on what schedule restrictions on pumping should be phased in.

The purpose of this motion was to revisit and clarify the rules adopted by the Commission on December 20, 1991, on this subject. This motion reflected the Commission's understanding that proposed OAR 690-507-670 (9), which refers to a proposed recharge project, was not adopted at the December 20, 1991, meeting and that the

staff will file a corrected set of rules reflecting that that provision was not adopted.

The motion passed unanimously.

The hearing will be scheduled during the week of April 13 in Pendleton, and Anita Johnson volunteered to act as hearings officer. The notice will be filed today so that this matter can come before the Commission at its April meeting.

I. CONSIDERATION FOR APPROVAL OF NEGOTIATED PERMIT AND ORDER FOR APPLICATION 71293 AND T-6621E, BUREAU OF RECLAMATION UMATILLA BASIN PROJECT, PHASE II, UMATILLA COUNTY.

On February 14, 1991, the Bureau of Reclamation (BOR) submitted Application 71293 which is intended to cover the Phase II elements of the Umatilla Basin Project. The proposal calls for the use of up to 240 cfs from the Columbia River to be exchanged with waters that would otherwise be diverted from the Umatilla River. These diversions are under various irrigation water rights for Hermiston and Stanfield Irrigation Districts. The Umatilla River water will be left in the river to provide improved passage for anadromous fish.

At its November 15, 1991 meeting, the Commission considered staff recommendations on several applications proposing use of water from the Columbia River in the Hermiston area. Further action on most of the applications was delayed until at least July 1992. The Commission also decided, however, to allow the concerned parties to undertake negotiations on the issues surrounding the BOR exchange project applications.

The Commission at its December 20, 1991, meeting, initiated a contested case process for the purpose of formally identifying the parties to the negotiation process already underway. Linda Lee of the Oregon State Employment Division agreed to act as hearings officer for the contested case.

Negotiations among the parties were successful before it became necessary to conclude the contested case. The parties agreed upon language for the draft exchange permit and order and for several memoranda of agreement. The protestants withdrew their protests, and all parties signed a stipulated agreement proposed by the hearings officer. This resulted in an order in a contested case without an adversarial proceeding.

Director's Recommendation

The staff recommended Alternative 1, that the Commission find that the proposed use of water for the exchange project would not have a significant adverse effect on the public interest,

accept the stipulated order of agreement for the contested case, and authorize the Director to issue the permit and exchange order with conditions.

ADDENDUM

SUPPLEMENT AND RECOMMENDED MINOR MODIFICATIONS TO AGENDA ITEM I.

The staff report on Agenda Item I was prepared and distributed prior to receipt of the Hearings Referee's Order in this contested case matter. The Referee's Proposed Order has now been issued and has been distributed to the Commission via this supplement. Revision of the recommended alternative is necessary to include adoption of the Referee's Proposed Order.

The Referee's Proposed Order finds that, with the submission of the Stipulation of the Parties, the objectives to Applications 71293 and T6621E have been withdrawn, the parties support issuance of a permit and exchange order which include the agreed-on conditions, and that the parties waive the time for filing exceptions to the Commission. The Referee further finds that the applications are for beneficial uses not detrimental to the public interest, and refers them to the Commission for final approval.

Based on the Referee's Proposed Order and advice from the Assistant Attorney General, staff recommended a minor change to recommended Alternative 1.

Staff continued to recommend Alternative 1, as amended.

It was MOVED by Jim Howland and seconded by Mike Jewett to approve the Director's recommendation, as amended, and including approved additions to the order. A signed copy of the order will be distributed to the parties. The motion passed unanimously.

J. REQUEST FOR APPROVAL OF ENFORCEMENT PROCESS ON BUREAU OF LAND MANAGEMENT STOCKWATERING FACILITIES

The Bureau of Land Management (BLM) has about 1,600 stockwatering facilities which have no water rights. In addition, they have about 3,500 permitted facilities. Many of these facilities are located on intermittent streams in remote areas of Eastern Oregon. Most of these facilities have dams that are less than 10 feet in height and store less than 9.2 acre feet of water. The BLM has indicated that about 330 facilities exceed the 10-foot height or 9.2 acre-foot parameter. All facilities, regardless of size, need to have state water rights or be drained or removed. Those 330 facilities exceeding the height and acre-foot parameters also will require engineering plans and specifications approved by the Water Resources Department.