

WATER RESOURCES COMMISSION

WORK SESSION

SALEM

JUNE 4, 1992

MINUTES

Commission members present:

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

Others:

Steve Brown
Audrey Simmons
Karen Russell
Ladd Henderson
Marjo Nelson
Jan Boettcher
David Moon
Joe Hobson
Kip Lombard
Ed Weber
Dan Halttunen
Doug Myers
Terence Thatcher
Steve Houston

Water Resources staff:

Martha Pagel
Jan Shaw
Diane Reynolds
Becky Kreag
Randy Selig
Ken Weese
Roelin Smith
Bev Hayes
Steve Brown
Reed Marbut
John Borden
Tom Paul
Meg Reeves
Doug Parrow
Greg Nelson
Amin Wahab
Bob Rice
Lorraine Stahr
Mike Mattick
Mike Ladd

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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.

1. **PROPOSED ADOPTION OF RULE ON MANAGEMENT OF STORED WATER (OAR 690-250-150) AND STRATEGY FOR CONVERSION OF WILLAMETTE BASIN MINIMUM STREAMFLOWS.**

During the April 1992 meeting, the Commission discussed amendment of OAR 690-250-150, which defines any water released from storage which exceeds that needed to supply water rights with contracts as "natural flow." The proposed amendment would allow management of uncontracted water released from storage as needed to meet converted instream water rights.

Each of the remaining minimum streamflows in the Willamette Basin contains a quantity of water to be supplied by natural flow and an additional quantity of water to be supplied by storage. The priority date of these minimum streamflows is June 22, 1964. The natural-flow component of each of the minimum streamflows duplicates the flows in already-converted instream water rights. The priority date of the converted instream water rights is May 24, 1962.

The combination of adoption of the proposed amendment and conversion of the remaining minimum streamflows in the Willamette Basin could affect existing water rights. Therefore, the Commission authorized contested case proceedings on conversion of the minimum streamflows to determine if the minimum streamflows should be modified or conditioned. Because the potential effects on water rights of conversion will depend on the way in which the Department manages uncontracted water released from storage, a decision on amendment of the rule is needed prior to resumption of the contested case proceedings.

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During the April meeting, the Commission received testimony from 21 parties interested in the amendment and the Willamette Basin minimum streamflows conversion. At that time, the Commission directed staff to evaluate three alternatives for addressing the issues raised by the minimum streamflow conversion process. These alternatives are (1) no amendment of the rule; (2) amendment of the rule in a manner which protects pre-1964 water rights; and (3) amendment of the rule as originally proposed. In addition, staff included in its report additional discussion of the alternative recommended by the Department in April.

Commission members also expressed concern regarding the use of stored water under natural flow rights. During the recent review of Willamette Basin classifications, agency staff evaluated the availability of water against the combined natural flow and storage components. Water was not available for new appropriations from many of the streams during the months of August and September when the current use of uncontracted water is greatest. The current classification is based on the water availability analysis. However, new irrigation uses on the mainstem Willamette River will be allowed only if the water is contracted for from the Corps reservoirs. Irrigation is allowed on tributaries when water is available 80 percent of the time.

Director's Recommendation:

The Department recommended that the Commission adopt Alternative 4 and amend OAR 690-250-150 as recommended in the April staff report. In addition, the Department recommended that the Commission proceed with the contested case hearings on conversion of all remaining minimum streamflows in the Willamette Basin for the purpose of determining the quantities of stored water needed and clarifying the conditions under which the Department would protect the stored water for instream uses.

ADDENDUM TO WORK SESSION #1:

After the above report was prepared, the Assistant Attorney General advised the Department that the current rule on management of stored water provides for the protection of the stored water components on converted instream water rights. The relevant language in the current rule is, "Use of legally stored water is governed by the water rights, if any, which call on that source of water."

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The Department previously interpreted the rule as providing for protection of water rights with contracts for stored water. Based on the advice of the Assistant Attorney General, converted instream water rights with stored water components would be considered to be water rights which call on the upstream reservoirs as the source of water. Minimum streamflows are not water rights, and the Department would not regulate for the stored water components until after conversion.

This interpretation of the stored water rule modified the effects of the alternatives discussed in the original staff report, above.

Terry Thatcher, Deputy City Attorney for the City of Portland, thought there needed to be a comprehensive process for compiling results. Thatcher also said that the state must coordinate with the Corps of Engineers on seasonal regulation of water in at least two troubled basins in Oregon. We must, he said, reduce the possibility of water wars which he warned were almost inevitable.

Joe Hobson, Oregon Farm Bureau Federation, suggested that the contested case hearing process needed definite standards and criteria. He went on to recommend that the staff's approach was a good one but suggested a few minor language changes in the proposed rules.

David Moon, Lane County Farm Bureau and Water for Life, thought there was a way to avoid water battles and said that people were fighting over a situation where there still is water available for everyone. Water users, Moon said, think that this changing of water law is a fearful thing with tremendous impacts. Moon said he thought that the interpretation made by the Department was a strained one. He went on to say that the rule should be left as it was. He recommended converting the right and subverting it to existing users. Moon said he favored the Department's Alternative 2.

Kip Lombard, Santiam Water Control District, Oregon Water Resources Congress, and NORPAC, generally agreed with the others' comments. He cautioned against throwing a considerable burden on the hearings officers without direction and standards. Lombard said that other issues would arise in the contested case hearing process.

Steve Brown, representing Cottage Grove and Creswell, asked the Commission not to forget those users who have pre-1964 water rights. He supported leaving the rule the way it was.

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Steve Houston, representing irrigators on the Coast Fork, advised the Commission to be conscious of the post-1964 users. He asked the Commission not to pass rules which leave those users unprotected.

It was MOVED by Jim Howland and seconded by Hadley Akins to adopt Alternative 4, as specified in the addendum to the staff report. Mike Jewett voted no. The motion passed 6-1.

The Department will schedule public informational meetings to be held later this year to discuss instream flow needs basinwide and the cumulative effects of conversion. The meetings also will provide a forum for identifying issues to be addressed during the contested case proceedings. The Department will not resume the contested case proceedings until after the public meetings have been held and the Commission has an opportunity to provide direction to the hearings officer on issues to be addressed.

2. **1993-95 AGENCY-REQUESTED BUDGET.**

The Department is in the process of developing the 1993-95 agency-requested budget. To assist with this effort, at its April 23 work session, the Commission appointed a subcommittee comprised of Roger Bachman, Jim Howland and Cliff Bentz to work with the staff in identifying and addressing Department priorities. At the same work session, the Commission directed the Department to invite interest group representatives to a meeting to discuss the priorities and level of reductions that are being considered for the 1993-95 budget, and to report back at the May Commission meeting.

Director's Recommendation:

Based on input from the Commission's budget subcommittee, comments from the interest group meeting, and staff analysis of policy issues facing the Department, the Director recommended approval by the Commission of the revised budget reduction and add-back priorities shown in an attachment to the staff report, as well as approval to proceed with development of the decision packages described in the staff report.

The Commission took no formal action on this item but generally approved the Department's direction.

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There being no further business, the work session was adjourned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jan Shaw". The signature is written in black ink and is positioned above the printed name and title.

Jan Shaw
Commission Assistant