

MEETING

SALEM

JUNE 5, 1992

MINUTES

Commission members present:

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

WRD:

Martha Pagel  
Jan Shaw  
Diane Reynolds  
Steve Sanders  
Bruce Moyer  
Weisha Mize  
Steve Applegate  
Bill Fujii  
Doug Parrow  
Meg Reeves  
Becky Kreag  
Barry Norris  
John Borden  
Fred Lissner  
Tom Paul  
Rick Craiger  
Ken Lite  
Mike Mattick  
Amin Wahab  
Donn Miller  
Greg Nelson  
Mike Ladd  
Bob Main  
Bud Bartels  
Tom Kline  
Kelly Rise  
Rick Bastasch  
Bob Rice

Others:

Jim Ruggeri  
Eugene K. Richardson  
Matt Cyrus  
Kenneth E. Lane  
Tom and Audrey Simmons  
Karen Russell  
Jeff Lyon  
David Moon  
Keith Cyrus  
Jan Boettcher  
Tim Hardin  
Lenore Dickinson  
Les Helgeson  
Kip Lombard  
Marjo Nelson  
Melinda S. Eden  
Jeff Barry  
David Childs  
Joe Hobson  
Don Horsley  
Helen Horsely  
Scott Miller  
Grant Smith  
S.C. Masten  
Pam Wiersma  
Frank H. Hammerich  
Erwin Ritter  
Brad Bennett  
William M. Kennedy  
Doug Myers  
David Ireland  
Hal Balin  
Ed Weber

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.

The first two items, Items A and B, were considered in a single motion, reported below.

- A. MINUTES OF THE APRIL 23-24 MEETING
- B. DELEGATION OF AUTHORITY TO THE DIRECTOR TO REIMBURSE MEMBERS OF THE GROUNDWATER ADVISORY COMMITTEE (GWAC) FOR TRAVEL EXPENSES INCURRED.

Prior to the 1991 legislative session, members of the Groundwater Advisory Committee (GWAC) were precluded by statute from receiving compensation or expenses for serving on GWAC. Legislation was introduced and enacted during the 1991 legislative session which allowed the Water Resources Commission to authorize reimbursement of GWAC members for travel expenses. The authority to pay such claims is found in ORS 536.090(3). The payment of such claims falls under the normal administrative duties of the Director.

Prior delegation-of-authority actions by the Commission do not include specific authority to administratively handle the reimbursement of travel expenses to GWAC members. The Department believes that such a routine and repetitive task should be delegated to the Director as an administrative responsibility. The delegation of retroactive authority is necessary to facilitate the payment of expense claims incurred by members of GWAC prior to the date of delegation. The delegation is authorized by ORS 536.025(2).

#### DIRECTOR'S RECOMMENDATION

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

The Water Resources Commission hereby delegates the following powers and authorities to the Director of the Water Resources Department:

1. Authority, at the discretion of the Director, to reimburse members of the Groundwater Advisory Committee for travel expenses incurred.
2. The Commission hereby ratifies any exercise by the Director since July 1, 1991, of these powers and authorities. Actions by the Director pursuant to this delegation and ratification would have the same force and effect as if they were taken by the Commission.

It was MOVED by Jim Howland and seconded by Mike Jewett to approve the minutes as submitted (Item A) and the Director's recommendation in Item B. The motion passed unanimously.

C. CONSIDERATION OF EXCEPTIONS TO PROPOSED ORDER IN THE MATTER OF THE CONVERSION OF TWO MINIMUM STREAMFLOWS IN THE SILETZ RIVER, FILED BY CONFEDERATED TRIBES OF SILETZ INDIANS, AND RECOMMENDATIONS FOR FINAL ORDER

At the Commission's direction following a request by the City of Toledo, the Department held a contested case hearing on the matter of the conversion to instream water rights of two minimum streamflows in the Siletz River on October 25, 1991 in Newport. A proposed order was issued on January 3, 1992. The Seal Rock Water District (SRWD) filed exceptions which primarily were in the form of new, extra-record evidence. Subsequently, the SRWD moved to reopen the hearing record.

The hearing was reopened on March 18 for the purpose of taking additional testimony and evidence on the question of impacts, if any, on SRWD residents and/or property owners who stood to be affected by the condition limiting active hookups in the SRWD to those in existence as of January 3, 1992. A revised Proposed Order was issued on April 15, 1992, allowing SRWD a conditional use of up to 0.71 cfs of its junior right without regulation at times when the instream water rights are not satisfied for up to 7 years or until a regional water supply authority was created, of which the SRWD would be a member.

Exceptions to the Revised Proposed Order were filed by the Confederated Tribes of the Siletz Indians on April 30. The Tribes' sole exception to the Proposed Order is that the effect of allowing SRWD a conditional use of up to 0.71 cfs of its junior right without regulation at times when the instream water rights are not satisfied violates the Agreement entered into between the State of Oregon, the Tribes and United States. The Agreement was made part of the settlement and consent decree approved by the US District Court for the District of Oregon and entered on May 2, 1980 and constitutes "the exclusive and final determination of all tribal rights to hunt, fish or trap that the Siletz Tribe or its members possess."

The Commission considered the exception and determined that allowing a temporary subordination of the instream water rights to use by the SRWD of up to 0.71 cfs for domestic use does not violate the Agreement.

DIRECTOR'S RECOMMENDATION

Staff recommended that the Commission direct that Condition 2 of the Proposed Order be amended as follows: "The District, by May 31, 1992, adopts the standby water use curtailment

procedures as submitted in its Post-Hearing Memorandum and attached hereto and made a part of this Order," and adopt the Proposed Order as amended as the Final Order of the Commission.

[Assistant Attorney General Steve Sanders declared a personal conflict of interest and Assistant AG Meg Reeves took his place at the meeting table.]

It was MOVED by Cliff Bentz and seconded by Jim Howland to approve the Director's recommendation. Mike Jewett and Roger Bachman voted no. The motion passed 5-2.

[Steve Sanders took his place again at the table].

#### D. PUBLIC COMMENT

Jeff Lyon spoke on behalf of the J. R. Simplot Company, Hermiston, and requested the Commission to rule on the adoption of certain policies to cover existing rights within the critical groundwater area and to establish their coexistence with other rights. It was suggested by the Commission that they contact staff to discuss alternatives.

Karen Russell, WaterWatch of Oregon, Inc., thought that the rule did not allow the Department to grant KMB a water right for a municipal and a quasi-municipal use. KMB does not fall into the municipal or quasi-municipal use, said Russell, because it is not incorporated and its purpose was not developed to operate a water system. The Commission should hold off until a standard is developed by which to make these kinds of decisions.

[Mike Jewett declared a conflict of interest in the discussion of water use by municipal and quasi-municipal entities and withdrew.]

Matt Cyrus, partner, KMB Enterprises, claimed that the development should be considered a subset of a quasi-municipal entity. He asked for a decision today so that they would encounter no further delays.

It was MOVED by Anita Johnson and seconded by Roger Bachman to accept the petition for reconsideration. Commissioner Johnson further directed Department staff to bring alternative proposals back to the next Commission meeting.

Chair Stickel instructed the Department to examine the questions under the "quasi-municipal" rule including an examination of basin plans where quasi-municipal is specifically called out. Chair Stickel also directed the Department to examine whether the quasi-municipal definition is a distinction between types of uses or of what the entity is which holds the right and how this plays into the Mt. Hood contested case matter.

Anita Johnson MOVED to amend her previous motion to accept the request for reconsideration of Application G-12419, including the quasi-municipal definition. Roger Bachman seconded the motion, and it passed unanimously. The Department was directed to return with this matter to the next Commission meeting.

It was further MOVED by Roger Bachman, seconded by Lorna Stickel, that the two other KMB permits also be reconsidered at the next meeting. Jim Howland voted no. The motion passed 6-1.

Phil Fell, League of Oregon Cities, said that there were new and substantial changes contained in the latest draft rules for which opportunity to comment was not provided. He asked that the Commission consider several of his points before taking action on the rules.

Tom Simmons, WaterWatch, said that, although the drought statute was intended to promote conservation and equitable curtailment of water uses in dry times, the statute allows more water to be used in times of drought than in other times. In fact, it allows water use to be expanded, leading to exhaustion of water supplies sooner than would be the case without a drought declaration.

Bill Kloos and Anne Perrault, commented on the drought statute and its implementation in the Umatilla Basin and claimed that these statutes paradoxically worsen the drought. They claimed that (1) a drought declaration allows taking more water from a river; (2) WRD incorrectly read the drought statute to benefit irrigation districts; and (3) districts may increase water use prior to and without WRD and WRC review.

#### E. COMMISSION COMMENTS

Hadley Akins reported that the Umatilla Basin has had water distributed to the fishery, supplied at no charge. But the river was dry now, he said, and shortly the reservoir would be dry, as well.

Roger Bachman described two threats he saw to the solvency of the Water Development Loan Fund.

Chair Lorna Stickel reported that she had attended the last in a series of three-day meetings with the Western Governors' Association and Western States Water Council on how the West can do a better job of water management and on how states need to make the prior-appropriation system more flexible by using better problem-solving techniques. There is hope, she said, that some of the federal issues will be better incorporated into planning at the state level.



Stickel attended another meeting recently in Washington, D. C., to talk with EPA about how states can form better partnerships for water use efficiency.

Mike Jewett said he thought it was time for the Commission to begin meeting in other cities around the state, and the other members agreed. The Department has decided on a tentative meeting schedule outside of the Willamette Valley (see below).

Jim Howland reminded the group that this was Director Martha Pagel's first meeting and said he was delighted to have her on board.

F. DIRECTOR'S REPORT

1. New Director: New Director Martha Pagel reported that she was happy to have joined the Department on May 14 and was busy meeting with the agency's regional managers and staff. She has also completed several field trips, meeting with local residents in other communities and surveying the drought areas. She also attended a meeting in Boise to discuss the salmon recovery plan.

2. Meetings: The Department has tentatively scheduled this summer's WRC meetings for other regions of Oregon. The meetings will be held in July in Hermiston, in August in Grants Pass, and in October in Baker City.

3. Emergency Board: The Director reported that the Department's letters to the Emergency Board would be distributed soon to the Commission members.

4. Water Development Loan Fund: The Director reported that she and some Department staff had met with the Treasurer and the Economic Development Department on transferring the loan program to that agency. She promised to keep the Commission up to date.

5. CONSIDERATION OF THE STAY ON THE WITHDRAWAL OF BASALT GROUNDWATER FROM FURTHER APPROPRIATION AT NORTHERN PARRETT MTN., WASHINGTON AND CLACKAMAS COUNTIES

At the March 13, 1992, Water Resources Commission meeting, the Commission took action on a proposal to withdraw groundwater on Parrett Mountain from further appropriation. The Commission concluded that existing use has resulted in some of the observed water level declines in wells. Further, it saw the necessity to withdraw basalt groundwater in a three-square-mile area (Northern Parrett Mountain) for two years to further certain state water resources policies. That period would allow a Commission-directed groundwater study to develop more detailed technical information on the area, potentially leading to a permanent withdrawal. The withdrawal took the form of an "order in other than a contested