

WATER RESOURCES COMMISSION MEETING  
HERMISTON  
JULY 16-17, 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  
Steve Applegate  
Doug Parrow  
Becky Kreag  
Barry Norris  
John Borden  
Fred Lissner  
Ken Lite  
Amin Wahab  
Greg Nelson  
Mike Ladd  
Kent Searles  
Tony Justus  
Reed Marbut  
Mike Zwart  
Tom Kline  
Adam Sussman  
Larry Nunn

Others:

Tom Simmons  
Audrey Simmons  
Laura Schroeder  
Leland Mannor  
Gene Allen  
Barry Beyeler  
Larry Sandlin  
Steve Bloom  
Bill Porfily  
Leann Rea  
Chet Prior  
Jan Boettcher  
Robert Reuter  
Paul Taylor  
Jerald Rea  
Joe Flint  
Darrel Moncruf  
Patricia Moncruf  
Brian Stahl  
Robert Spike  
Bill Brewer  
Tom Able  
Karen Russell  
Sen. Scott Duff  
Rep. Chuck Norris  
Hugh Holte  
Frank Lovison  
Mayor Bill Brown  
Bill Cooley  
Frank Howe  
Jerry Bryan  
Norm Neil  
Joe Ramos  
Bruce Hall  
Gary West  
David Moon  
Don Mills  
Doug Heiken  
Fred Ziari  
Stephanie Burchfield  
Bill Reynolds  
Susan LeFever  
Todd Heidgerken  
Matt Cyrus

Gerald Maxwell  
Keith Cyrus  
John Freeman  
Joan Freeman  
Joe Hobson  
Glen Youngman  
Don Hansen  
Karl Anuta  
Joseph Burns  
Mac Campbell  
Mayor Frank Harkenrider  
Steve Mills  
Ed Glenn  
Joe Hink  
Bob Levy  
Anne Perrault  
Jax Kema  
Robert Brown  
Martin Davis  
John Prag  
Frank Gunner  
Clayton Brown  
Darrel Margrief  
David Castleberrow  
Kit Kamo  
Phil Hawman  
Nathan Crowther  
Susan Kaggett  
Kip Lombard  
Dick Ferranti  
Byron Grow  
Chuck Rourhman  
Lisa Mittelsdorf  
June Miller  
Steve Bogart

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.

On Thursday, July 16, in Lorna Stickel's absence, Commissioner Cliff Bentz chaired the meeting. Lorna Stickel chaired the meeting Friday, July 17.

#### A.1 MINUTES OF THE JUNE 4-5 MEETING

It was moved by Hadley Akins and seconded by Roger Bachman to approve the minutes as submitted. The motion passed unanimously.

#### A.2 REQUEST FOR CONCURRENCE ON RIVER MANAGEMENT PLANS FOR NESTUCCA AND MCKENZIE SCENIC WATERWAYS

Under the Scenic Waterway Act (ORS Chapter 390) the Commission's concurrence is required on administrative rules relating to the management of lands adjacent to scenic waterways. The Nestucca River/Walker Creek Scenic Waterway Management Plan was approved by the Parks and Recreation Commission on March 12, 1992. The McKenzie Scenic Waterway Plan was approved by the Parks and Recreation Commission on May 14, 1992. Because the McKenzie is both a state scenic waterway and a federal wild and scenic river, the plan was developed jointly by the Parks and Recreation Department and the U.S. Forest Service.

These management plans include administrative rules for managing lands adjacent to the respective streams. The rules classify the lands for a range of protection or development intensities based on specific features of the waterways. Department staff did not identify any conflicts between the rules and the Commission's policies or regulations.

#### DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission concur with the rules relating to the management of the Nestucca River/Walker Creek and McKenzie River Scenic Waterways as approved by the Parks and Recreation Commission.

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

#### B. COMMISSION COMMENTS

Roger Bachman reported on the Water Development Loan Fund. The Attorney General's office is proceeding with foreclosure actions against Sand Hollow Pipeline. A guaranteed title report has been ordered, an appraisal has been received which far exceeds the outstanding loan balance. Borrowers of another loan are in bankruptcy court and hope to pay all their debts.

Bachman also reported that three hearings were held in Newberg on July 15, regarding the reservations on the Willamette Basin Program, the special well construction for Parrett Mountain, and groundwater withdrawal for Parrett Mountain. The meetings were very productive and well attended by the public.

Anita Johnson reported on the Governor's Watershed Enhancement Board meeting. The Board funded nine projects out of forty-two applications for a total of approximately \$185,000. The projects ranged from \$2,000 to \$49,000 and covered the counties of Wheeler, Washington, Union, Douglas, Multnomah, Yamhill, Wasco, Sherman and Clackamas. All monies have been exhausted but there is another granting period ahead.

Hadley Akins thanked the Commission for traveling to Hermiston and expressed regret that there wasn't more participation in the tours offered.

Cliff Bentz expressed appreciation for the tours -- they were very helpful for those who were able to participate. Bentz also asked if it might be possible to receive copies of the minutes soon after each Commission meeting.

#### C. DIRECTOR'S REPORT

1. **Emergency Board Requests:** Director Pagel reported that the Legislative Emergency Board approved two requests for additional funding. One request was related to the drought and gives the Department money to hire 9.5 temporary positions to assist with processing emergency drought permits and public information. The Department also received a limited amount of funding for additional telemetry equipment to put on streams enabling receipt of data by phone. The original request for equipment funding had been for \$100,000; \$38,000 was authorized with the direction that it be used as a pilot to test if it really does help with field efficiency. The Department will report back to the Legislature on the results.

The other request for Emergency Board funding related to the Department's backlog and concerns about the time it takes to process regular water right permit applications. At the time the staff put together the Emergency Board request, the backlog was at 2,700 applications; it has since grown. The Department received funding for six full-time limited duration positions or up to 12 part-time positions. Staff are considering a swing shift to make better use of the existing equipment and office space.

2. **Backlog Issue:** The Department is using two approaches to deal with the backlog issue. One is short-term and focuses on possible revisions to our processing forms and procedures -- the Emergency Board funding will give us more staff to assist with the processing. The long-term strategy includes planning, budget and possible legislative changes that would affect what requires a permit and how permits are processed.

To help make the process more effective and responsive, staff are considering grouping permits so that the fairly straightforward ones meeting Department standards could move along quickly. Permits may also be grouped by basin to get a better sense of the

cumulative effect of the permitting process. Another grouping could be permits that have particular needs such as time dependent, real estate transactions, and economic development projects.

Staff will be sending out a letter to applicants explaining what steps are being taken to help correct the backlog.

3. Enforcement: This issue had been deferred from the June 5 Commission meeting. The Department received from WaterWatch and Rest the West a Petition for Reconsideration of what was described as a Commission rule relating to enforcement. The Department did not intend for the statement of an enforcement priority policy to be a rule but rather a consideration of how the Department sets priorities for dealing with enforcement with a limited budget.

Director Pagel recommended pulling together a group of interested parties, user group representatives, instream interests, and other agencies who are affected by the Department's enforcement program to develop some recommendations for criteria on how to establish priorities and what our enforcement program will look like in the future. The Department will report the group's recommendations to the Commission in the fall.

Karen Russell, WaterWatch, expressed support for the Director's proposal.

It was MOVED by Anita Johnson and seconded by Roger Bachman to approve the Director's proposal for review of the Department's enforcement process and priorities.

4. Request for appointment of a Commission subcommittee: The Director requested appointment of a Commission subcommittee of three to work with the hearing referee to review and make recommendations for final Commission action on exceptions to the proposed order on the Malheur Basin Water Users Association Application.

Mike Jewett, Anita Johnson and Jim Howland volunteered for this subcommittee -- Mike Jewett will serve as chair. They plan to report back to the Commission in October.

Steve Sanders cautioned the subcommittee not to gather independent information, and to consider only the evidence already in the record.

It was MOVED by Roger Bachman and seconded by Jim Howland to approve creation of this subcommittee as in Alternative A of the Director's report. Cliff Bentz declared a conflict of interest and did not vote. The motion passed 5-0.

5. Western States Water Council: Director Pagel reported that she accompanied Chair Stickel and Steve Sanders to the July meeting of the Western States Water Council in Salt Lake City, Utah. Two new subcommittees were formed -- one dealing with the drought, and the other with the endangered species listings. The State of Oregon volunteered to serve on both of these committees.

#### D. PUBLIC COMMENT

There were no members of the public wishing to comment.

#### E.1 INFORMATIONAL REPORT: OVERVIEW OF DROUGHT-RELATED ACTIVITIES OF THE DEPARTMENT OF WATER RESOURCES AND ANALYSIS OF EMERGENCY WATER SHORTAGE POWERS OF THE DEPARTMENT AND COMMISSION

At its meeting on June 5, 1992, the Commission directed staff to work with the Attorney General's office regarding implementation of various statutes providing for drought-related emergency permits and transfers of water. At that same meeting the Commission also directed staff to prepare a report addressing the Commission's authority to require preparation of drought-related conservation and curtailment plans.

The statutes provide:

- The Governor may declare that a severe drought exists or is likely to exist when continuing conditions result in a lack of water resources.
- The Commission, after a Governor's drought declaration, may take certain actions affecting water rights that would: allow emergency water use permits without a formal hearing; allow temporary water exchanges without notice; allow temporary changes in use, place of use or point of diversion without certain notice and waiting requirements; grant preference of use to rights for human consumption or livestock watering.
- The Commission, after a Governor's drought declaration, may allow well construction without filing a notice of construction (start card).
- The Commission, a local government or public corporation, after a Governor's drought declaration, may purchase an option or enter into an agreement for use of an existing water right for any beneficial use during the drought period.
- The Commission, upon its own finding that a severe or continuing drought is likely to occur and regardless of whether the Governor has issued a drought declaration, may require water conservation or curtailment plans from local governments or other state agencies.

Until recently the Department has had little experience in applying the statutes listed above. This year, however, the Department has received notices of five out-of-stream and four instream options or agreements pursuant to these statutes. Department staff are working with legal counsel on a case-by-case basis to identify options for assuring compliance with the law while at the same time providing as much flexibility as possible to address the underlying intent of the law.

The Department has submitted a legislative concept form to allow for development of a bill to address concerns about the existing law, including whether water users should be able to acquire more water to irrigate more acres during times of severe shortage than would be available to them under normal circumstances. The Commission may also want to reexamine the level of public interest review that should be conducted before granting emergency uses.

#### DIRECTOR'S RECOMMENDATION

The Director and staff recommended creation of a task force to evaluate the implementation and effect of the current drought provisions and recommend a more detailed legislative plan for the Commission's approval. The task force would include representatives of current water users, instream interests, and other agencies, as well as legal counsel and department staff involved in permitting, field regulation and planning functions.

Roger Bachman suggested the Department form the task force. The other Commissioners agreed. No action was required.

Barry Norris reported on the drought conditions throughout the state. Rain came in a short period during the latter part of June, but because it came in the form of intense, short duration rain storms, most of it ran off. Temperatures have been very warm, averaging two to five degrees above normal resulting in more water usage and evaporation. Reservoirs in Oregon are only 31 percent of normal. June streamflows were only 26 percent of normal -- many low flow records have been shattered. Fire danger is high. There have been many losses -- crops, herd size reductions, fish, and service industries including tourism. Some cities such as Salem have voluntary water rationing; Portland has mandatory rationing with fines.

Randy Selig has been appointed the Department's drought coordinator for six months. She will review drought rules, and identify projects to mitigate.

Bev Hayes reported on the public awareness strategy of the natural resources state agencies. The Department of Environmental Quality and their advertising firm are working on public service announcements to be aired on radio and television. The Governor will declare August "Water Awareness Month." The Water Resources