

WATER RESOURCES COMMISSION MEETING
PORTLAND

NOVEMBER 19, 1992

Commission Members Present:

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

WRD:

Martha Pagel
Steve Sanders
Diane Reynolds
Cindy Smith
Reed Marbut
John Borden
Adam Sussman
Randy Selig
Bev Hayes
Weisha Mize
Amin Wahab
Jack Donahue
Barry Norris
Steve Applegate
Rick Bastasch
Kent Searles
Beth Patrino
Becky Kreag
Doug Parrow
Bill Ferber
Tom Kline

Others:

Jim Myron
Doug Myers
Jan Boettcher
Ed Weber
David Moon
Julie Keil
Jill Zarnowitz
Karen Russell
Anne Perrault
Larry Trosi
Susan Schneider
Kip Lombard
Doug Heiken
Kit Kamo
Ken Iverson
Jack Hammond
Ron Yockim
Clark Balfour
Stephanie Burchfield
John Freeman
Jeff Barry
Bob Rapp
Ladd Henderson

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 OCTOBER 15-16 MEETING

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

B. COMMISSION COMMENTS

Hadley Akins reported that on November 13 and 14 there was a tour of Northeastern Oregon's water uses sponsored by the Blue Mountain Potato Growers for women legislators and women interested in natural resource management. Anita Johnson added that she had attended the tour; it was very interesting and she especially enjoyed the Eastern Oregon hospitality.

Jim Howland spoke on the innovative water conservation measures being taken by the Madison Farms in Echo.

Lorna Stickel reported that she met with members of the Oregon Water Coalition in Sunriver a few weeks ago. Stickel also reminded those present that the Water Utility Council Symposium will be held in Eugene on December 7.

Cliff Bentz commented that on November 18 he spoke on the Endangered Species Act before the Oregon Cattlemen's Association convention in Portland. He was impressed with the interest in working with other interest groups to protect the species.

Commissioner Bentz asked Pagel if the Department is acting on Senator Hatfield's proposal that a group be formed to look at water use in the western states. Pagel responded that the bill did pass creating a commission to study water policy issues but no appointments have been made yet to her knowledge. She will check on the status and get a copy of the bill to the Commission.

Roger Bachman mentioned that he has talked with Paul Koberstein regarding the three-part series on water recently published in The Oregonian. Bachman is preparing a written response and will send the Commissioners a copy.

Bachman reported on the Water Development Loan Fund. The Attorney General's office hasn't decided whether to appeal the class action suit. Sand Hollow is still in foreclosure.

C. DIRECTOR'S REPORT

Martha Pagel reported on the direction the Department is taking regarding the growing concern of the condition of the groundwater resource in Central Oregon. Department staff have met with Deschutes, Jefferson and Crook County employees and are now pursuing a project with the United States Geological Survey.

Pagel gave an update on the Department budget which has been submitted for Executive Department review. The Governor will be announcing her proposed budget by December 1.

Pagel mentioned that copies of the October 12 letter from Governor Roberts announcing her decision to postpone the proposed merger of natural resource agencies was distributed to Commission members. Members also received copies of two Emergency Board requests

relating to telemetry equipment and the Water Development Loan Fund.

Pagel reported on recent speaking opportunities including the Oregon Cattlemen's Association, the Oregon Water Utilities Council, the League of Oregon Cities, and the Klamath Compact Commission.

D. REQUEST FOR REVIEW AND PRELIMINARY APPROVAL OF THE 1993-95 BIENNIAL WATER MANAGEMENT PROGRAM

Rick Bastasch distributed an updated version of the draft program, explaining that staff will continue to work with the Commission's subcommittee to complete and publish the document before the legislative session convenes.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission grant preliminary approval for the 1993-95 Biennial Water Management Program, especially those elements identified as WRD priorities, based on the preliminary draft provided. Final approval will be given by the subcommittee appointed at the October Commission meeting.

It was MOVED by Roger Bachman and seconded by Mike Jewett to grant preliminary approval. The motion was approved unanimously.

E. DROUGHT UPDATE

Barry Norris reported that October was one of very few wet months in the last several years. Precipitation for the month was about 120 percent of average statewide. The exception was along the coast where precipitation was about 80 percent of average. Stream flows during October began to increase around the state as the result of wet conditions. The exception was along the coast where stream flows remained low, 17 percent to 24 percent of normal.

Norris reported that it is still too early to predict how the water year will look next summer. The Drought Council will have better information in January and February.

Norris said the Corps of Engineers is working with a contractor to develop a water availability index for groundwater and will report on this at the October Drought Council meeting. The next phase in development of the index would be a test program in the Umatilla Basin.

The Bureau of Reclamation has offered the Department drought relief funds in the amount of \$65,000 for planning and \$350,000 for purchase of surface water monitoring equipment and telemetry. Staff are working with the Bureau to develop a plan for use of the funds.

Doug Parrow and Jack Donahue presented this informational item and answered questions by the Commissioners. They reported good response to compliance with the order requiring four state agencies, the 36 counties and 43 municipal water suppliers to submit water curtailment plans. The Oregon Department of Fish and Wildlife took an aggressive approach to plan preparation and implemented plans on their own initiative. Staff are preparing draft legislation to resolve the inconsistency between existing statutory standards for conservation and curtailment plans with accepted practices among municipal water suppliers. Curtailment plans are most useful in aiding municipal water suppliers to supply essential uses; future curtailment planning requirements should be focused on communities likely to face water shortages. Most districts rely on informal water allocation procedures rather than formal drought curtailment plans or contingency policies.

Anita Johnson suggested that the Department send a press release or background report to the news media about the curtailment plans. She said that many editorials had been very critical of the order to prepare the plans.

Kip Lombard, Oregon Water Resources Congress, said that he would look at the responses of the irrigation districts to the question of whether they had a curtailment plan or procedure. He said that most districts have within their rules provisions for allocation and rotation in the event of water shortages and that the districts may not have thought of those rules when responding to the questionnaire. Lombard said he would report the results of his review to the Commission.

G. DISCUSSION OF SUBCOMMITTEE RECOMMENDATION ON EXCEPTIONS AND REQUEST FOR APPROVAL OF FINAL ORDER ON APPLICATION 69433 OF THE MALHEUR BASIN WATER USERS ASSOCIATION AND ODFW'S INSTREAM WATER RIGHT APPLICATIONS 70325 AND 70349-70352 ON THE MALHEUR RIVER AND BIG AND LAKE CREEKS

Commissioner Bentz excused himself due to a conflict of interest.

Immediately prior to the Commission taking up this agenda item, the Commission was informed that the Association had withdrawn its application. Staff also indicated to the Commission that the Final Order, if not read in its entirety or in conjunction with the staff report, could be read as requiring measuring devices on all Association diversions, when the requirement for installation of measuring devices under the Order in fact intended to apply only to those diversions which would be taking water under the increase in rate portion of application 69433, which was proposed for approval.

The Commission asked Ken Bentz, president of the Malheur Basin Water Users Association, whether the Association had understood the Final Order as meaning all Association diversions would be required to install measuring devices and whether that had been the reason

for the withdrawal. Mr. Bentz was further asked to clarify if the entire application had been withdrawn and whether the withdrawal had been approved by the Association.

On being informed that the entire application had been withdrawn, that all the members but one had agreed to the withdrawal when polled by telephone, and that the understanding that measuring devices were being required on all diversions was one reason for the withdrawal, the Commission determined to table the entire matter and take it up at the January 22, 1993, Commission meeting in Salem. The Commission wished to give the Association an opportunity to consider that the proposed Order would require measuring devices only on the diversions for the six water rights receiving the increase in rate, and to have an opportunity to hold a formal meeting and confirm the withdrawal by majority vote, if that remained their determination. Mr. Bentz indicated that he was comfortable with this action.

It was MOVED by Mike Jewett and seconded by Hadley Akins to table consideration of this item until the next meeting, including the instream water rights. The motion passed 4-2 with Commissioners Johnson and Stickel voting no.

H. BRIEFING AND DISCUSSION ON DRAFT 1993 LEGISLATIVE PROPOSALS

Conservation and Use of Conserved Water. Doug Parrow presented a slide show providing background information on the Department's conservation incentive program. He and Bev Hayes described the conservation proposal submitted to the Commission for introduction to the 1993 Legislature. The proposal would delete reference to "irretrievably lost" and allow the applicant to submit any proposal that met minimum standards. These standards would be that there would not be injury to other users or that injury would be mitigated and the proposal would provide significant instream benefits as determined in consultation with the Department of Fish and Wildlife.

Testimony on the conservation proposal was offered by the following:

Kip Lombard and Jan Boettcher, representing Oregon Water Resources Congress (tape 4, mark 254).

David Moon, representing Water for Life (tape 4, mark 350 -- tape 5, mark 33).

Anne Perrault and Karen Russell, representing WaterWatch (tape 5, mark 35-176).

The Commission agreed that staff could submit this proposal and asked staff to provide an analysis at the next meeting.

Drought Legislation (LC 983). Chair Stickel said she thought the Commission should not assume liability of a possible "taking" if a city asks for preference during a drought and a senior water user is shut off. Steve Sanders said he thought no legislation would fix a potential taking; however, it might be possible to offer some shield from liability.

Stickel said she thought the draft presented does provide more safeguards against potential damage to waterways during a drought.

Testimony on the drought emergency legislative proposal was offered by the following:

Anne Perrault, representing WaterWatch, (tape 6, mark 201).

Kip Lombard, representing Oregon Water Resources Congress (tape 6, mark 243).

David Moon, representing Water for Life (tape 6, mark 474).

It was MOVED by Cliff Bentz and seconded by Jim Howland to include stock watering in the preference provisions. The motion passed.

Watershed Management (LC 957). Beth Patrino updated the Commission on the critical elements in this proposal. Pagel stated that this legislation is necessary to provide a process for directing state agency participation. The proposal directs agencies to participate and requires designation of a lead agency when local councils are formed. The Strategic Water Management Group has the role of ensuring local committees have broad representation and that their efforts are consistent with statewide goals. Patrino explained that the list for assessing high priority watersheds is just a starting point; the actual assessment will need to go farther.

Water Marketing (LC 956). Reed Marbut provided a brief description of this proposal. The marketing task force wanted to preserve as much of the current statutes as possible and so confined their study to the transfer portion of the statutes. The group did not reach consensus on all of the provisions in the proposed bill.

Lorna Stickel said she was not in favor of water marketing unless it was linked to the conservation statutes -- could only market conserved water.

Jim Howland encouraged the Department to get as much agreement as possible and move ahead with it.

Anita Johnson said it might be feasible to blend the concepts of conservation and marketing.

Martha Pagel said the Department could provide at the next meeting an analysis of the benefits or liabilities of considering the conservation and marketing concepts as a single package. The Commission agreed that for the time being the two proposals could

be submitted separately and requested a follow-up at the next meeting.

Testimony on the water leasing legislative proposal was offered by the following:

David Moon, representing Water for Life; Karen Russell representing WaterWatch; and Jan Boettcher representing Oregon Water Resources Congress (tape 7, mark 467 -- tape 8, mark 257).

John Freeman (tape 8, mark 261-284).

Ponds (LC 951, 951-2). Staff briefly explained new development on the legislation for the permitting of ponds and watershed projects.

Cliff Bentz expressed some concern about the requirement that the pond be off-channel. He felt that the definition of off-channel would determine whether the new law would be worthwhile. He suggested lowering the size requirements to three acre feet and taking out the language requiring they be off-channel.

The Commission directed the staff to submit all legislative proposals to the Legislature but to continue to work with interest groups to resolve conflicts.

I. PUBLIC COMMENT

-- Ken Iverson spoke on the processing of water right applications (tape 5, mark 187).

-- Jack Hammond and Clark Balfour spoke on behalf of municipal water interests regarding the priority system for processing backlog applications; they submitted written testimony (tape 5, mark 369).

J. INFORMATIONAL REPORT ON STATUS OF WATER MANAGEMENT PLANNING RULE DEVELOPMENT

Doug Parrow; Dan Bradley, City of Salem; and Kip Lombard, Oregon Water Resources Congress presented this item.

Dan Bradley said the municipal subcommittee had representation from a variety of municipal suppliers. However, the small suppliers were not well represented on the subcommittee in spite of a number of attempts to solicit participation from them. The subcommittee met monthly between September 1991 and August 1992. Bradley said that the biggest problem with the rules was the appeals process. He said that hearings and opportunities for comments should be at the local level. The subcommittee also did not reach consensus on the minimum size of supplier to be required to prepare a plan, and the allowable level of losses from the distribution system.

Kip Lombard, Oregon Water Resources Congress, said that there had been some misunderstandings among the agricultural subcommittee

members and staff, but that all participants were prepared to resume work on the rules. He said that individual water users had been under-represented on the subcommittee. Lombard said that the irrigation districts are ready to start planning on a voluntary basis.

Commissioner Jewett said that he hoped that some of the Conservation Advisory Committee members would be reappointed to the committee. Parrow said that staff expected that some of the members would be willing to continue on the committee.

Testimony on this item was presented by the following:

David Moon, representing Water for Life (tape 9, mark 154).

Anne Perrault, representing WaterWatch (tape 9, mark 177).

Chair Stickel said that she had concerns about how water management plans would be implemented in concert with the land use program and public facilities plans. She also said that she would be uncomfortable if the Commission was perceived as backing away from the rule development for another year or two. She asked staff to report back to the Commission with a process which will allow hearings on a revised set of rules as quickly as possible.

Commissioner Bentz suggested that a series of statewide workshops be held on the rules to provide more opportunity for individuals to participate in revision of the draft rules.

K. INFORMATIONAL REPORT ON STATEWIDE WATER RIGHT APPLICATION BACKLOG INCLUDING FOLLOW-UP ON PROCESSING OF APPLICATIONS WITHIN THE COLUMBIA AND SNAKE RIVERS AND THEIR TRIBUTARIES ABOVE BONNEVILLE DAM

As requested by the Commission at its October meeting, Reed Marbut presented a technical report for implementation of the water availability portion of the water allocation policy. He explained there would often be multiple water availability analyses for each application, especially where the proposed point of diversion is in an upper basin area where water withdrawal would affect both upstream and downstream reaches. The water allocation policy will permit over-appropriation only where public interest in the use is high and the use can be conditioned to protect instream flows.

The Department's water availability methodology is under regular evaluation and improvement. As new and improved methods are validated the process will be updated; however, the methodology will always be based upon a formula wherein net consumptive uses and instream water right requirements will be subtracted from natural flow.

The combined contested case process was discussed at length. Mr. Marbut commented that the staff report set out a flexible approach to permit combined contested cases where appropriate and single

cases where more efficient or effective. The combined contested cases would group only applications received on or before July 17, 1992, for the Columbia River and tributaries above Bonneville Dam and on or before October 16, 1992, for the rest of the state.

Testimony was offered by the following:

Karen Russell and Jim Myron, representing WaterWatch (tape 9, mark 416-574).

David Moon, representing Water for Life (tape 9, mark 579-657).

John Freeman (tape 10, mark 10-18).

This being an information item, no action was required.

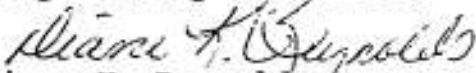
L. Other Business

The proposed 1993 meeting schedule was briefly discussed. A revised final schedule will be presented for approval at the January meeting.

Jeff Barry, representing CH2M Hill, presented a report on aquifer storage.

There being no further business, the meeting was adjourned.

Respectfully submitted,


Diane K. Reynolds
Commission Assistant