

WATER RESOURCES COMMISSION
WORK SESSION
SALEM

JANUARY 21, 1993

Commission Members Present:

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

WRD:

Martha Pagel
Diane Reynolds
Cindy Smith
Steve Sanders
Weisha Mize
Bev Hayes
Tom Kline
Rick Bastasch
Ann Root
John Borden
Becky Kreag
Kent Searles
Jake Szramek
Steve Applegate
Reed Marbut
Bill Ferber

Others:

Ves Garner
Joe Stevens
Karen Russell
Doug Heiken
Anne Perrault
Jim Myron
David Moon
Doug Myers
Jan Boettcher
Richard Whitman
Scott Peters
Jean Cameron
Stephanie Burchfield
Kip Lombard
Alan Willis
Tom Simmons
Audrey Simmons
Al Mirati
Laura Schroeder
Robert Levy

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. FOLLOW-UP REPORT ON COLUMBIA AND SNAKE RIVER MANAGEMENT ISSUES

Tom Kline brought to the Commission's attention that since the November meeting, the Washington Department of Ecology has adopted permanent rules withdrawing the mainstems of the Columbia and Snake Rivers from further appropriation until June 30, 1994. This action was taken on December 2, 1992. The Washington rules do not apply to exempt groundwater uses, nonconsumptive uses, temporary uses or applications for reserved water in Grande Coulee Reservoir.

Idaho continues its moratorium on processing permits in the Salmon and Clearwater Basins. These are the two Snake River tributaries that contain threatened and endangered species.

The department is working with the water agencies in Washington, Idaho and Montana on a number of Columbia River issues. One study is evaluating nonstructural options in the Snake Basin to contribute to flow augmentation from the Northwest Power Planning Council's (NWPPC) Phase II amendments. The Bonneville Power Administration was charged with providing funding and will be releasing a request for proposals to do the study in about a month. The overall objective is to try to find one million acre-feet in the upper Snake Basin.

The department also continues to work with Idaho and Washington on a regional assessment of water availability. The focus is to look at the Columbia and Snake River tributaries from Bonneville Dam to Hells Canyon Dam in Oregon. The need for this assessment also came out of the Phase II amendments of NWPPC.

The deadline for submitting work to the NWPPC on the above two studies is the end of 1993.

Chair Stickel asked for copies of the work plan on these issues.

Commissioner Bachman asked for opportunities for public involvement in developing the new Columbia River strategy.

Staff noted that there would be opportunities for public comment at the March Commission meeting as well as at the planned public workshops. Staff also stated that the department is processing applications received before July 17, 1992, within the constraints of the backlog.

Commissioner Bachman asked if basin reclassification should be listed as a proposed action.

Staff noted that the department is planning an overall review of all the basins in the state and their basin programs based on water availability. The schedule for completing this will not be timely to respond to the issue of threatened and endangered species.

Director Pagel noted that the department anticipates bringing before the Commission a draft rulemaking proposal on withdrawal or closure activity.

DIRECTOR'S RECOMMENDATION

This was an informational report for discussion and no Commission action was required.

2. BRIEFING AND DISCUSSION OF CONSERVATION AND MARKETING LEGISLATIVE PROPOSALS

Staff noted that on page 5, last sentence, of the staff report, the word WRC should be deleted.

Staff brought forward to the Commission, conservation and marketing legislative proposals.

Staff brought to the Commission's attention that Anne Squier, Governor's Office, added language to HB 2155 regarding "waste." Director Pagel briefed the Commission regarding this change in language.

The Commission had some concerns regarding the meaning of "instream benefit."

The Commission had much discussion concerning the analysis of water use as the basis of the amount of water to be considered for conservation. Some members of the Commission felt use should be actually measured, others agreed with the formula concept based upon the paper right.

Commissioner Akins asked why the department's legislative concept on water marketing was not approved by the Governor. In response, Director Pagel said that due to the fiscal impact, as well as the complexity of the policy issues that would be involved, the Governor's staff was not ready to sign off on the concept. Director Pagel suggested talking to Anne Squier regarding the proposal.

A panel consisting of David Moon, Water for Life; Karen Russell and Anne Perrault, WaterWatch; and Jan Boettcher, Oregon Water Resources Congress, addressed the Commission to describe their views on the proposals.

Roger Bachman excused himself from the meeting during the panel discussion.

Lorna Stickel addressed questions that were raised during the discussion:

1. What is the basis for calculating conserved water - on the face value of the water right or the amount of water actually used?
Direction - face value seemed to be the most likely approach with some exclusions for water that was already abandoned.
2. Should availability only go to the holder of certificated water rights as opposed to permits?
Direction - Certificated Rights.
3. Formula for allocation of conserved water - should it be fixed or flexible?
Direction - Commission directed the department to use fixed but to negotiate with interest groups about the formula.
4. Should mitigation be used as an offset if there were claims of injury to other users?
Direction - Interest in using mitigation.
5. Should there be a threshold?
Direction - There should not be a threshold.
6. Changing Crops.
Direction - Changing crops should be provided for.
7. Was groundwater intended to be included in the program?
Direction - Need for more staff analysis.

DIRECTOR'S RECOMMENDATION

Staff requested Commission concurrence on the proposed continuation of efforts to develop amendments to the conservation statute through discussions with the interest groups and Senate Water Policy Committee.

3. REPORT ON THE WATER RIGHT CERTIFICATE ISSUANCE PROCESS

Staff described the history of the final proof and water right certification process. The state engineer and, more recently, the Commission, have required that the final water use development must always remain within the permit rate, duty and total acreage; however, the actual location of the development could deviate from the permit description within reason.

Staff described the following policy considerations as set out in the staff report:

1. Should (or may) land outside the area described in the permit be included in the water right certificate?
2. Should (or may) the department provide notice of certification and opportunity for comment?
3. Should (or may) the Commission undertake a public interest evaluation of water use at the time of certification?

Staff indicated that the Commission should consider the potential fiscal impacts of a change in the final proof or certification process. It was indicated that there could be a substantial fiscal impact, particularly if the Commission applied changes to the process retroactively.

Director Pagel indicated that she may wish to reconsider the past policy and practices and intends to investigate the legal aspects of the final proof/certification program.

The Commission discussed the certification program. Steve Sanders, Legal Counsel, described some of the legal standards of the certification process. The Commission indicated that certification of land outside the permit was a reasonable practice; addition of notice and comment seemed like an appropriate step, so long as all parties were aware of the legal limits on participation; and that introduction of a public interest evaluation during certification was not possible without a change in the law. However, the Commission indicated that re-evaluation of the water application practices at the time of certification could prove beneficial. Unreasonably wasteful practices should be discouraged.

DIRECTOR'S RECOMMENDATION

No action was requested or required.

Chair Stickel announced that an Executive Session would follow directly after the Work Session.

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

Respectfully submitted,



Cindy S. Smith
Commission Assistant