

WATER RESOURCES COMMISSION MEETING
SALEM

JANUARY 22, 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
Greg Nelson
Rick Bastasch
Barry Norris
John Borden
Becky Kreag
Kent Searles
Rick Craiger
Steve Applegate
Reed Marbut
Fred Lissner
Steve Brown
Mike Zwart
Donn Miller
Laurie Beth English

Others:

Ves Garner
Charles Hazel
Karen Russell
Doug Heiken
Anne Perrault
Jim Myron
Greg McInnis
Doug Myers
Jan Boettcher
Richard Whitman
Scott Peters
Gene Clemens
Stephanie Burchfield
Kip Lombard
Marjo Nelson
Ed Welen
Peggy Hennessy
Al Mirati
Chuck Stadel
Todd Heidgerken
Ladd Henderson
Larry Jebousek
John Schultz
Don Potter
C.I. Vistica
Jim Carver
Julie Keil
Gary Hackett

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.

Chair Stickel announced that Agenda Item I was withdrawn from the meeting at the request of the applicant and rescheduled for a future meeting.

Chair Stickel announced that Agenda Item I was withdrawn from the meeting at the request of the applicant and rescheduled for a future meeting.

A.1 MINUTES OF THE NOVEMBER 19-20 MEETING

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

A.2 REQUEST TO ACCEPT AND AUTHORIZE A PUBLIC HEARING FOR LORELLA PUMP STORAGE HYDROELECTRIC PRELIMINARY PERMIT HE 531, INDEPENDENT HYDRO DEVELOPERS, INC.

The application for a preliminary permit for a major hydroelectric project was received October 4, 1991. Rick Craiger explained that a preliminary permit establishes a priority for evaluation of the hydroelectric potential of a project at a given location. It does not authorize construction. Study plans are reviewed and methodologies approved for the various resource impact evaluations that take place under a preliminary permit. The impact of feasibility studies is regulated by permit from the appropriate resource agencies. A preliminary permit is valid for two years with the ability to extend it for one additional year. At the conclusion of this process, a license application would be submitted for approval based upon the studies conducted.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that authorization for a public hearing be given to consider the preliminary permit application for a hydroelectric license for the Lorella Project, Independent Hydro Developers, Inc. - Applicant.

It was MOVED by Jim Howland and seconded by Hadley Akins to approve the Director's recommendation. The motion passed unanimously.

B. COMMISSION COMMENTS

Cliff Bentz asked if it would be possible for the Commission to receive a summary the following day of what had occurred during the Work Session. It was agreed that Martha would give an oral report to the Commission during the Director's report.

Roger Bachman commended Pam Homer and Rick Bastasch on the work that was done on the Biennial Water Management Program.

Lorna Stickel reported on the Western States Water Council Meeting in Las Vegas. The meeting included a report from city council people and the director of South Nevada Water Authority.

Stickel commented that she would like the Commission to have a report from the City of Portland on water supply planning.

Hadley Akins commented on a letter from Ed Brookshire, Hermiston City Manager expressing concerns about the aquifer storage project being investigated. Hadley stated that some meetings have been held in the area.

Jim Howland commented on the way water is allocated and how permits and certificates are conditioned. Howland feels that the optimum way to allocate water is to have reasonable instream water rights and limit the subsequent out-of-stream rights by rate and duty.

C. DIRECTOR'S REPORT

Martha Pagel reported briefly on the Biennial Water Management Program. She said that the document has been printed and that the department will be presenting the program to legislative committees.

Pagel mentioned letters sent to the Legislative Emergency Board on the water right backlog and drought funding.

Pagel brought to the attention of the Commission the proposed reorganization of the department. This reorganization plan was also presented to the House Natural Resources Committee.

Pagel reported on the 1993 Water Resources Commission meeting schedule. All agreed to proceed with the schedule as developed. The Commission will meet in Salem during the Legislative Session. Commissioners were asked to let the department know of areas in which they would like to meet after the session.

Pagel summarized the work session held the previous day.

D. DROUGHT UPDATE

Barry Norris gave a brief summary of drought conditions for the water year. Accumulated precipitation for the water year ranges from 100% to 122% of normal. Precipitation during December was 90% to 150% of normal.

Streamflow over much of the state was good in December, but the accumulated runoff is still well below normal. The worst area in the state for streamflow on January 1 was the Owyhee Basin, and the best was the south coast.

As of January 1, snow pack was 136% to 167% of average. As of this date, Oregon had the best snow pack in the west. By the middle of January our standing had dropped to 5th.

Storage in many locations is 25% to 50% of what was available this time last year. Storage has steadily increased this water year. Available storage is improving, but is still only about 1/3 of normal available storage.

Recovery is considered to be short term. Drought problems are expected around the state next summer.

The 90 day forecast is that it will be dryer than normal and warmer than normal. Lorna Stickel asked what caused the weather to be wetter and colder than normal. Norris said that it has to do with the change in the El Nino and the change in the jet stream.

The Drought Council is scheduled to meet on January 26 and discuss recommendations to make to SWMG regarding the drought declaration. The Water Availability Committee will meet on February 12 to discuss the statistical conditions around the state.

Norris gave a brief summary on memorandums of agreement for two programs submitted by the Bureau of Reclamation in December. These agreements are being reviewed by the Bureau.

E. CONSIDERATION OF APPOINTMENTS TO THE GROUND WATER ADVISORY COMMITTEE

Donn Miller introduced the members of the Ground Water Advisory Committee (GWAC) and offered a brief history of how the committee originated. Each holds a four-year term which expires on November 30.

Ralph Christensen, Chair of the Ground Water Advisory Committee, offered information to the Commission on the committee, its members, and the assistance that it could give the Commission on a variety of groundwater matters.

Staff gave three alternatives for the Commission to consider:

1. Concur with the Director's plan to reappoint three GWAC members (Gene Clemens, Bill Peterson, and Chuck Stadel) to four-year terms.
2. Advise on the appointment of some other slate of members to GWAC.
3. Suggest that the Director use other categories of representation on GWAC and request staff to forward the names of candidates for concurrence.

Chair Stickel stated that she would like to see a GWAC member present at future Commission meetings.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that Water Resources Commission follow Alternative 1 and concur with the Director's plan to reappoint the slate of members to four-year terms on the Ground Water Advisory Committee.

It was MOVED by Mike Jewett and seconded by Roger Bachman to move forward with Alternative 1. The motion passed unanimously.

F. PROPOSED ADOPTION OF OREGON ADMINISTRATIVE RULES, CHAPTER 690, DIVISION 21, "WATER MANAGEMENT WITHIN DISTRICTS" (HB 2191, 1991 LEGISLATIVE SESSION); REPEAL OF DIVISION 16, "USE OF WATER ON ALTERNATE ACREAGE"; AND REVISIONS TO DIVISION 13, "PETITIONS TO CHANGE DEPARTMENT RECORDS WITHIN DISTRICTS"

Steve Applegate gave a summary of the proposed rule changes. During the 1991 Legislative Session, HB 2191 passed and was adopted to improve the abilities of districts to manage water and water rights within their boundaries.

The Commission's adopted rulemaking schedule directed staff to work with an advisory committee to develop the draft rules, and delegated to staff the approval of the draft rules for hearing. The proposed final versions of the rules were attached to this staff report.

The Commission took testimony from Kip Lombard (Oregon Water Resources Congress) and Anne Perrault (WaterWatch of Oregon) regarding proposed changes in the draft rules since the May 7, 1992, public hearing. Lombard expressed concern over the deletion of language "Subject to district approval..." in proposed rule 690-21-100(1) (a) and (b).

The Commission asked staff to further review the issue of ownership of water rights within districts, and report back to them at a future meeting.

Steve Sanders, Legal Counsel, suggested an amendment to add to both (a) and (b), as follows - "The user may be able to file a request..."

It was MOVED by Roger Bachman and seconded by Cliff Bentz to approve the language. The motion passed unanimously.

Commissioner Bentz suggested an amendment to 690-21-060(3) as follows "... either the land removed or the alternate acreage in the original petition in the current irrigation season."

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission adopt the proposed Division 21 rules, repeal the existing Division 16 rules and approve the proposed amendments of Division 13 rules as shown in Attachment 1.

It was MOVED by Cliff Bentz and seconded by Mike Jewett to amend the rules. The motion passed unanimously.

It was MOVED by Mike Jewett and seconded by Cliff Bentz to adopt the Director's recommended action. The motion passed unanimously.

G. DISCUSSION OF SUBCOMMITTEE RECOMMENDATIONS 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 at the beginning of this discussion declaring a conflict of interest.

Weisha Mize gave a brief summary regarding approval of the final order. Application 69433 was originally filed by the Malheur Basin Water Users Association (MBWUA) on October 23, 1987, for use of a total of 130.2 cubic feet per second (cfs) for supplemental irrigation and alkali abatement on 5,127 acres in Harney County.

Protests were filed against the MBWUA's application by WaterWatch of Oregon, Inc. (WW), Oregon Trout and the Oregon Department of Fish and Wildlife (ODFW). The protests asserted that approval of application 69433 would not be in the public interest.

Application 69433 was amended on July 1, 1991, to request a total of 163.2 cfs from the Malheur River and Griffin, Otis, Cottonwood and Spring Creeks for use on 6,454.9 acres.

Applications 70325 and 70349-70352 were filed by ODFW on April 27, 1990, for use of water instream for fish life in three reaches of the Malheur and on Lake and Big Creeks, tributary to the Malheur. Protests against ODFW's applications were filed by the MBWUA.

A contested case hearing consolidating consideration of the MBWUA's application and ODFW's five instream water right applications was held on September 17 and 18, 1991, in Burns, Oregon. A proposed order on these applications was issued April 8, 1992. Exceptions to the proposed order were filed by ODFW, WaterWatch of Oregon, Inc., the MBWUA and Oxbow Ranch. Pursuant to OAR 690-02-170 (previously 690-01-041), the Commission considered the exceptions and issued the final order.

Due to the size of the record and the complexity of the policy issues presented in the exceptions, the Commission at its July 17, 1992, meeting appointed Mike Jewett, Anita Johnson and Jim Howland to a subcommittee to review the record and the exceptions.

The matter came before the Commission at its November 19, 1992, meeting in Portland. The Commission tabled further consideration and action on both MBWUA's and ODFW's applications until the January 22, 1993, meeting. In the interim, the Association was to take a formal vote to determine whether or not to withdraw all or part of its application, and the draft final order was to be clarified on the issue of measuring devices.

The draft final order was clarified as directed. The Association informed the Department that it voted unanimously not to withdraw its application, but asked that action on all the applications be delayed.

DIRECTOR'S RECOMMENDATION

The subcommittee recommended that the Commission adopt the determinations and recommendations of the subcommittee on the exceptions and issue the final order as drafted. The final order responds to the exceptions of the parties, rejects the alkali abatement portion of Application 69433, approves the increase in rate portion of Application 69433, and approves the five instream water right applications.

It was MOVED by Roger Bachman and seconded by Mike Jewett to approve the Director's recommendation. The motion passed 5-1; Howland voted against.

H. INFORMATIONAL REPORT ON THE NORTHWEST ENVIRONMENTAL DEFENSE CENTER AND WATERWATCH OF OREGON PETITION FOR RECONSIDERATION OF ISSUANCE OF PERMIT G-11594 TO FLORENCE RESORT COMMUNITY.

Reed Marbut and Steve Brown gave a brief summary of this petition for reconsideration filed by the Northwest Environmental Defense Center (NEDC) and WaterWatch of Oregon.

The petition alleged that:

1. The permit fails to ensure that the groundwater aquifer under the golf course will not be contaminated by irrigation of the course;
2. The Commission failed to make findings that the use of the water would not contaminate the aquifer; and
3. The Director included a provision in the permit that the Commission had directed be removed.

The petition was not filed within 60 days of the Commission order to issue the permit; however, the petition was filed within 60 days of the date the permit was issued by the Director. On advice of counsel, the Director instructed staff to treat the petition as though it requested reconsideration of the Director's issuance of the permit.

The Director rejected Allegation 1. The Director described the degree of protection established by the various permit conditions, including the requirement for a management plan. Allegation 2: a finding of public interest was added to the staff report. Allegation 3: the language was deleted from the permit and more precise language concerning the management plan and the monitoring and reporting requirements was inserted in the permit.

Karen Russell, of WaterWatch and Don Potter, of NEDC, argued that the Commission should do more to ensure that water use under a permit would not cause groundwater contamination. Tape 4, Mark 355.

Ralph Christensen, John Schultz and Ken Lanfear reported that they support the proposal and agree the permit should have language change. Tape 5, Mark 90.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended the Commission adopt Alternative 2 and deny the petition, but consider the need to reclassify Neal Creek in connection with the basin program review process.

was MOVED by Roger Bachman and seconded by Mike Jewett to approve the Director's recommendation. The motion passed unanimously.

PUBLIC COMMENT

oug Heiken, WaterWatch, spoke on certification of water rights and extension of time to perfect water rights. Tape 6, Mark 254.

ip Lombard, Oregon Water Resources Congress, spoke on certification of water rights and extension of time to perfect water rights. Tape 6, Mark 499.

CONSIDERATION FOR APPROVAL AND ADOPTION OF PRELIMINARY PERMIT AND ORDER FOR CASCADE RANCH HYDROELECTRIC PRELIMINARY PERMIT HE 535, MICHAEL KEISER

ick Craiger gave a brief summary regarding the approval and adoption of the preliminary permit. The application for preliminary permit for a major hydroelectric license was received January 6, 1992. A preliminary permit establishes a priority for evaluation of the hydroelectric potential of a project at a given location. It does not authorize construction. Study plans are reviewed and methodologies approved for the various resource impact evaluations that take place under a preliminary permit. The impacts of feasibility studies are regulated by permit from the appropriate resource agencies. A preliminary permit is valid for two years with the ability to extend it for one additional year. At the conclusion of this process, a license application would be submitted for approval based upon the studies conducted.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission adopt the Order and authorize the Director to approve the preliminary permit.

was MOVED by Mike Jewett and seconded by Hadley Akins to approve the Director's recommendation. The motion passed unanimously.

CONSIDERATION FOR APPROVAL AND ADOPTION OF PRELIMINARY PERMIT AND ORDER FOR CLACKAMAS CREEKS PRELIMINARY PERMIT HE 536, PORTLAND GENERAL ELECTRIC

ick Craiger gave a brief summary regarding the approval and adoption of the preliminary permit. The application for preliminary permit for major hydroelectric license was received January 15, 1992. A preliminary permit establishes a priority for evaluation of the hydroelectric potential of a project at a given location. It does not authorize construction. Study plans are

Representative Chuck Norris, Chair of the House Water Policy Subcommittee, reported that several water bills are being brought forward during this legislative session. He wished the Commission luck. Tape 5, Mark 255.

DIRECTOR'S RECOMMENDATION

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

K. CONSIDERATION OF PETITION TO AMEND THE WILLAMETTE BASIN PROGRAM TO RECLASSIFY NEAL CREEK TO INCLUDE FISH CULTURE

Commissioner Bentz excused himself at the beginning of this discussion declaring a conflict of interest.

Greg Nelson gave a brief summary regarding the petition to amend the Willamette Basin. On October 30, 1992, the department received a rulemaking petition from Ron Bentz seeking to amend the Willamette Basin program. The petition seeks a reclassification of Bermeister Creek (Neal Creek), a tributary of Thomas Creek, to allow the use of water for out-of-stream fish culture purposes.

The Willamette Basin program, adopted January 31, 1992, limits the use of Thomas Creek and tributaries. OAR 690-502-110(1)(b)(B)(v) classifies Thomas Creek and tributaries only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses. This year-round restrictive water use classification was developed, and adopted, based upon an analysis of water availability.

The Willamette Basin rules specify that water-use applications received by the department after April 18, 1991, are to be processed in accordance with the provisions adopted in January 1992. The petitioner applied for a permit to use water for fish culture purposes in May 1991, and was advised of the effect of the proposed Willamette Basin program revisions. After adoption of the basin program, the department proposed rejection of the application because fish culture is not a classified use of Neal Creek.

OAR 137-01-070 requires the Water Resources Commission to either deny a petition or initiate rulemaking within 30 days of receiving a complete petition. The petitioner waived the 30-day requirement so that the Commission could review the petition at its January meeting. The petition satisfies the general requirements of the Oregon Administrative Procedures Act. The Commission was asked to act to deny the petition or initiate rulemaking on the petitioner's proposed rule language.

Ron Bentz, tree farm and fish hatchery owner in Linn County, spoke on behalf of the petition. Tape 5, Mark 515.

reviewed and methodologies approved for the various resource impact evaluations that take place under a preliminary permit. The impacts of feasibility studies are regulated by permit from the appropriate resource agencies. A preliminary permit is valid for two years with the ability to extend it for one additional year. At the conclusion of this process, a license application would be submitted for approval based upon the studies conducted.

A public hearing on the preliminary permit was held August 4, 1992. All agency and public comments were incorporated by reference into the preliminary permit and will be addressed in the license application.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission adopt the order and authorize the Director to approve the preliminary permit.

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

N. OTHER BUSINESS

Director Pagel reported that starting February 1 at 8:30 a.m., during the Legislative Session, the department will be holding conference calls with the Commission and staff regarding legislation. Due to the holiday in February, no conference call will be held on the 15th. Starting February 22, the conference calls will be held approximately every two weeks. A notice of the conference call meeting schedule will be mailed.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Cindy S. Smith
Commission Assistant

wrc.min