

REVISED
WATER RESOURCES COMMISSION
MEETING
MARCH 12, 1993
MINUTES

Members

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

Others

Jan Boettcher
Karen Russell
Doug Heiken
Marjo Nelson
Luann Nelzen
John Mellott
Stephanie Burchfield
Doug Myers
Ralph Christensen
Todd Heidgerken
Audrey Simmons
Neal Hazel
Ralph Schook
Fred Kock

Staff Attending Entire Meeting

Martha Pagel
Steve Sanders
Diane Reynolds
Cindy Smith
Bev Hayes
John Borden
Rick Bastasch
Barry Norris
Becky Kreag
Ken Weese

In addition, staff report authors and other staff were present for particular agenda items.

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 called the meeting order.

A.1 APPROVAL OF COMMISSION MINUTES

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

A.2 REQUEST BY THE OREGON PARKS AND RECREATION DEPARTMENT FOR CONCURRENCE WITH LAND MANAGEMENT RULES ON THE UPPER CLACKAMAS AND MIDDLE DESCHUTES SCENIC WATERWAYS.

It was MOVED by Jim Howland and seconded by Mike Jewett to approve the request.

The motion passed unanimously.

A.3 REQUEST FOR CONCURRENCE IN APPOINTMENT OF CONSERVATION ADVISORY COMMITTEE

Ann Root reported that the Conservation Advisory Committee was organized in 1991 as an implementing strategy of the policy on Conservation and Efficient Water Use. The Commission approved the charter for the committee in February 1991. The charter requires Commission concurrence for appointments to the committee. The term of the committee members expired in December 1992 and staff presented recommendations for appointments of new members.

Root noted that there were changes in this staff report. A recommendation to amend the existing Charter Item 1 under membership was made. This change would expand committee membership to at least nine members as defined and adds "and other members as necessary to provide diverse and balanced representation." Staff also recommended adding an additional member, Gene Seibel, Tualatin Valley Water District, to the committee.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Water Resources Commission concur with the recommendations for the Conservation Advisory Committee membership. The Director and staff also recommended that the Commission approve the proposed amendments to the committee charter.

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

B. COMMISSION COMMENTS

Roger Bachman reported on the Water Development Loan Program. He stated that the plaintiff in the class action lawsuit prevailed and the argument is on what basis to settle. Because payments are going back to the borrowers, the judge has said we cannot collect regular payments. This means the foreclosure on the Sand Hollow Pipeline loan may need to be stopped. There is still talk of transferring the program to the Economic Development Department. It would cost about \$6 million to make the fund solvent.

Jim Howland discussed how other public involvement programs are organized.

Lorna Stickel reported she attended a "Park City" Workshop in California sponsored by the Western States Water Council.

C. DIRECTOR'S REPORT

Martha Pagel discussed the new agenda format. The intent is to make the agenda more readable and understandable for the public who participate in Commission meetings.

Pagel discussed the revised meeting schedule for 1993. Meetings will be held in Salem during the Legislative Session. The department will present the recommendations at a future Commission meeting regarding possible sites for Commission meetings during the summer and fall.

Pagel gave an oral summary of what happened at the March 11, 1993, Work Session.

Pagel discussed an informational item. A petition from WaterWatch requesting reconsideration of the director's determination to give an extension to the Port of Umatilla. It is the determination of staff and legal council that this is an issue before the director not the Commission. However, Pagel reported there may be follow up policy issues for the Commission's attention in the future.

INFORMATIONAL REPORT ON DEVELOPMENT AND USE OF THE WATER RESOURCES DEPARTMENT'S REVISED "INTERNAL MANAGEMENT DIRECTIVES FOR ESTABLISHING ENFORCEMENT PRIORITIES"

Steve Applegate reported on the development and use of the department's revised "Internal Management Directives for Establishing Enforcement Priorities." Limited staff resources precluded the department from initiating formal enforcement action against all illegal water uses. By listing factors to consider, the directive should tend to make enforcement activities more consistent and predictable throughout the department and across the state. An Enforcement Advisory Committee has significantly helped the director articulate a clear internal management directive for establishing priorities to make best use of the department's enforcement resources. A significant outcome is to signal all water users that, in harmony with existing law, the department does not condone illegal water use.

DIRECTOR'S RECOMMENDATION

This report was for the Commission's information and discussion. No action was requested.

Pagel discussed a letter received from Ralph Christensen dated March 11, 1993, regarding the elimination of the Groundwater Advisory Committee.

Ralph Christensen, commented. (Tape 2, Mark 94)

Jim Howland commended the Groundwater Advisory Committee.

Pagel gave a Ways & Means update saying the hearings on the department's budget went well.

Bev Hayes gave a legislative update. Hayes discussed the status of a number of Senate Bills and House Bills that were of interest to the department and Commission and were heard the week of March 8, 1993 (SB 48, 92, 451, HB 2340, 2109, 2341, 2580 and 2848).

Hayes reported on the hearing schedule for the week following the Commission meeting and the status of Senate Bills and House Bills of interest (SB 129, 440, 441, HB 2399, 2772, 2970, 3273, and 3234).

Jan Boettcher, Water Resources Congress, commented. (Tape 3, Mark 31)

D. DROUGHT UPDATE

Barry Norris gave a water conditions update. The North Coast at Astoria had the second driest February in 143 years of record. Since January 1992, Astoria has only experienced two months of above normal precipitation. Precipitation at the Astoria station is 65% of normal for the water year.

February was close to normal for the South Coast. For the water year, it was 83% of normal.

For the Willamette Valley, Portland, precipitation measured the lowest in February since 1940. For the water year, precipitation was 60% of normal. In Salem, February precipitation was below normal. For the past 10 years, the water year has been below normal. In Pendleton, February precipitation was 41% of normal. For the water year, precipitation was 86% of normal. In Klamath, February precipitation was 113% of normal. For the water year, precipitation was 188% of normal.

Norris said that the snow pack is about 140% of average. Statewide streamflows are 55% of normal. Statewide precipitation is 45-50% of normal. Norris reported that the statewide drought declaration is still in effect. The 90 day forecast is for warmer and drier than normal.

E. CONSIDERATION OF EXCEPTIONS TO PROPOSED ORDER IN CIVIL PENALTY MATTER CP 92-11, VIOLATION OF ORS 537.130, STORAGE OF WATER WITHOUT PERMIT

Weisha Mize reported on a civil penalty matter regarding Luann and Gerald Nelzen. The Nelzens were charged with violation of ORS 537.130, storage of water without benefit of a state water right. The unpermitted reservoir was discovered by the District 16 Watermaster during his regulation of water use to satisfy the instream water rights, evidenced by Certificate No. 59463, on the Mollala River near Canby, Oregon.

Notice of violation of ORS 537.130, Intent to Assess Civil Penalties in the amount of \$3,000, and Opportunity to Request Hearing was served by certified mail on the Nelzens

on September 8, 1992.

A request for a contested case hearing was received from the Nelzens on September 11, 1992. A contested case hearing was held commencing on October 7, 1992. A proposed order was issued and served on the Nelzens and Boyd Ringo, Mrs. Nelzen's father and owner of the affected property, on January 7, 1993. Exceptions to portions of the proposed order were filed by Luann Nelzen on January 14, 1993. Pursuant to OAR 690-02-170(20(b)(I), in cases involving civil penalty matters the Commission is to consider the record, the proposed order, the exceptions and any supporting argument, and then issue a final order. The Commission need not allow oral argument.

Luann Nelzen, commented. (Tape 3, Mark 489)

The Commission considered the exceptions, staff recommendations and the oral presentation by Luann Nelzen.

DIRECTOR'S RECOMMENDATION

The director and staff recommended that the Commission deny the exceptions, direct modification of the order by the addition of two Findings of Fact pertaining to beaver dams and public and fire suppression use of the unpermitted reservoir and a Conclusion of Law holding that beaver dams do not excuse failure to comply with ORS 537.130, and issue the Final Order as amended.

It was MOVED by Cliff Bentz and seconded by Mike Jewett to approve the recommendation to assess a civil penalty of \$1,000 for the unauthorized storage of water of Little Cedar Creek. The motion passed 5 to 1, Lorna Stickel opposed.

It was MOVED by Mike Jewett and seconded by Cliff Bentz to suspend execution of the assessed civil penalty with stipulated conditions. The conditions are as follows:

1. That Boyd Ringo and Gerald and Luann Nelzen take all necessary steps and make reasonable progress in securing a permit to store water under Application No. R72620 and for use of stored water under Application 72621;
2. That no damage accrue to the instream water rights on the Mollala River and Milk Creek as evidenced by Certificates 59463 and 59456, respectively, as a result of continued storage of the waters of Little Cedar Creek in the reservoir involved in this proceeding;
3. That Boyd Ringo and Gerald and Luann Nelzen take all steps necessary to comply with any written directions given by the Watermaster regarding regulation of the reservoir in question, including but not limited to passing live incoming flow, release of stored water or lowering of the reservoir level to offset evaporation losses to provide flows in satisfaction of the instream water rights,

and any other actions necessary to protect existing water rights. The Watermaster will not provide instructions regarding the method in which the Watermaster's directions are to be accomplished.

The motion passed unanimously.

F. UPDATE ON COLUMBIA AND SNAKE RIVER MANAGEMENT ISSUES

Tom Kline indicated that staff are continuing to work with other state natural resource agencies to develop a coordinated strategy for the Columbia and Snake Rivers. The proposal will have four major components addressing: 1) issuance of permits, 2) the reservation application, 3) public information, and 4) coordination with other Columbia Basin activities. Staff hope to present the proposal at the Commission's next meeting.

Karen Russell, WaterWatch, commented. (Tape 5, Mark 139)

The Commission suggested that staff meet with public interest groups in developing the Columbia/Snake strategy.

G. PUBLIC COMMENT

Neal Hazel, Ralph School and Fred Kock spoke on the Carlton Lake Restoration. (Tape 5, Mark 6'

H. INFORMATION REPORT ON WATER RESOURCES DEPARTMENT PLAN TO MEET WATER USE REPORTING REQUIREMENTS FOR INSTREAM WATER RIGHTS

Bill Ferber reported that the 1987 Legislature enacted ORS 537.099, requiring any governmental entity holding a water right to report its water use on an annual basis. A governmental entity, as defined by ORS 537.099, is any state or federal agency, local government, irrigation district formed under ORS 545 or water control district formed under ORS 553. The Water Resources Department is required to report on instream water rights (ISWR's).

In 1988, the Water Resources Commission adopted ORS 690-85, "Annual Reports and Serious Water Management Problem Areas." These rules establish procedures and requirements for the annual reporting of water use. They did not set any measuring or reporting standards. In an effort to set standards for water measuring, the Commission adopted amendments in 1991 that established pre-approved measurement methods. A process was also defined to allow the use of alternate measurement methods.

Included in the amendments is an accuracy standard that requires the reported monthly volume of water to be within 15% accuracy. This standard must be met by all reports submitted after October 1, 1992. Because there are instances where the accuracy standard can not be met, or the data submitted will not materially aid water management, two alternatives are offered in the rules. The first allows the granting of a time extension for complying with

the 15% accuracy requirement. The second allows waiving compliance with the 15% accuracy requirement and/or any of the requirements for measuring and computing water use.

The Commission suggested the department develop a strategy to make water use reporting more economically feasible but still get the job done.

DIRECTOR'S RECOMMENDATION

This was an informational report only, and was presented to brief the Commission on the status of water use reporting for instream water rights.

I. OTHER BUSINESS

Commissioner Bentz excused himself from the room due to a conflict of interest regarding the following issue.

REQUEST FOR RECONSIDERATION OF FINAL ORDER DENYING PORTION OF APPLICATION 69433 FOR ALKALI ABATEMENT, MALHEUR BASIN WATER USERS ASSOCIATION (MBWUA)

Weisha Mize, Water Resources Department, stated that a petition was filed by the Malheur Basin Water Users Association (MBWUA) for reconsideration of the Commission's final order on Application 69433. The petition was received February 19, 1993. The MBWUA asks that two portions of the final order be amended and that the Commission reconsider any portions of the final order denying its application for the right to divert additional water during the spring when the water is available.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission modify page 22 of the final order as described and deny the MBWUA's petition for reconsideration on the remaining points.

It was MOVED by Mike Jewett and seconded by Hadley Akins to accept the staff recommendations as submitted. The motion passed unanimously.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Cindy Smith
Commission Assistant

3-12.min