

WATER RESOURCES COMMISSION
MEETING
APRIL 30, 1993
MINUTES

Members

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

Staff Attending Entire Meeting

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

Others

Jan Boettcher
Joe Bowersox
David Moon
Audrey Simmons
Neil Woller
C.I. Vistica
Anne Perrault
Karen Russell
Tom Schneider
Ed Weber
Stephanie Burchfield
John Schmitz
Doug Myers
Stacy Fagg
Jenilee Merhle
Al Mirati
Richard Whitman
Kip Lombard
Jeff Curtis

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 to order.

A. MINUTES

Roger Bachman stated that page 5 of the March 12, 1993, minutes should reflect the stipulated conditions set by the Commission. It was agreed that the March 12 minutes will be offered for approval at the June 18 meeting.

It was MOVED by Jim Howland and seconded by Mike Jewett to approved the teleconference minutes of February 22 and March 8, and the March 11 Work Session minutes.

B. COMMISSION COMMENTS

Cliff Bentz asked questions of staff regarding the Sandy River and the wells in Sublimity.

Hadley Akins said he attended a Northwest Power Planning Council meeting and noted that the people who testified concerning HB 2215 did an impressive job.

Roger Bachman reported that the House Appropriations Subcommittee agreed to help restore the Water Development Loan Fund. Regarding the Class Action Lawsuit, lawyers are in the process of figuring out a way to pay back the borrowers. The first stage of transferring the management of the fund to Economic Development has begun. This transfer would be administrative rather than statutory.

Lorna Stickel reported that she and Steve Sanders attended a Western States Water Council meeting in Washington D.C. They also met with staff of the Oregon congressional delegation to discuss the Army Corps of Engineers Willamette basin projects and the feasibility study.

C. DIRECTOR'S REPORT

Martha Pagel summarized the previous day's work session.

Pagel noted that the Department denied the petition that was filed by WaterWatch challenging the grant of an extension on a permit to the Port of Umatilla.

The Commission meeting schedule and location for the rest of the year is to be June 18 - Salem; August 12 & 13 - Bend; September 30 & Oct 1 - Hood River; November 18 & 19 - Florence. Pagel asked the Commission members to advise her if they thought future meetings should be held in locations other than those offered.

A Commission retreat is being planned to review legislation, Department mission and goals, and basin planning. September 7 and 8 are the target dates, and the retreat will be held at Silver Falls Conference Center.

Pagel announced that the Department's 1993-95 budget was passed out of the House Appropriations Committee and on to the House floor.

On April 28, the Department held a Legislative Forum in Salem. Groups were invited to discuss legislative issues and brainstorm.

Reed Marbut, Steve Brown and Rick Bastasch gave an update on the Department's water right backlog. The Department has asked for volunteers within the agency to help with the backlog. Marbut explained the different stages for the issuing of permits. He gave a number breakdown of the nature of the backlog, which currently totals approximately 4,000 applications. The backlog is the Department's top priority.

D. DROUGHT UPDATE

Barry Norris gave a water conditions update. Norris compared the water condition on April 1 with the conditions on March 1. Precipitation during March and the first half of April was well above normal. Total accumulated precipitation for the water year was improved and is now above normal. During March much of the snowpack melted, and the statewide accumulated decreased from a range of 101% - 192% to approximately 100% of normal. During the first half of April, there was an increase of 10% to 30%.

Reservoir storage in the major irrigation reservoirs increased from 42% of normal to 92% of normal on April 1. During February, streamflow was about 45% of normal, and in March the statewide streamflow was 200% of normal. Both of these increases resulted from the melting snowpack.

The National Weather Service forecast for the next 90 days is for warmer temperatures and less-than-normal precipitation.

The Drought Council recommended to the Strategic Water Management Group that the statewide drought be lifted. There are 18 individual counties that also have county drought declarations. The Drought Council has asked each of the counties to provide more information about local conditions so the Council can make recommendations on each of these individual declarations at their next meeting on May 25.

E. REQUEST FOR ADOPTION OF OAR CHAPTER 690, DIVISION 51, REVISIONS FOR HYDROELECTRIC PROJECT REVIEW

Rick Craiger, Water Resources Department, and Meg Reeves, Department of Justice, requested the adoption of OAR Chapter 690, Division 51. The purpose of Senate Bill 240, passed by the 1991 Legislature and now codified in ORS Chapters 537 and 543, was to (1) establish a process that would parallel the Federal Energy Regulatory Commission (FERC) licensing process and (2) create an application fee schedule that would fund a coordinated state review process.

In December 1991, a Rulemaking Task Force began considering changes to the Division 51 rules in response to Senate Bill 240. The objective at that time was to recommend revisions that brought state application content and review stages into closer alignment with the federal hydroelectric licensing process.

In March 1992, staff recommended to the Commission that authority be given to the Director to accept, process and issue hydroelectric Preliminary Permits. The Commission took no action and requested a flow chart of the licensing process and a review of authority previously delegated.

The draft rules were initially presented to the Commission in August 1992 with the request for authorization to begin formal rulemaking. As a result of comments, the Commission instructed the staff to address additional issues that had been raised. These issues were outside of the

Senate Bill 240 and delegation revisions being proposed. As a result, the Rulemaking Task Force considered several changes to the Division 51 rules that clarify or improve many of the existing provisions.

As a part of the rule development process, and in responding to a Commission request, a report was presented to the Commission in October 1992 to approve, in concept, delegation of authority to the Director of all application process steps with the exception of dispute resolution, determination of the need for additional studies and appeals of the Director's proposed orders. The Commission approved this request and authorized a public hearing on the rule revisions.

Additional issues were raised at the January 25, 1993 public hearing. A copy of all correspondence received prior to or at the hearing was reviewed by the Rulemaking Task Force. A final draft was prepared following the Rulemaking Task Force meeting that occurred immediately after the public hearing. Because additional changes were made in the draft rules, the comment period was extended for 30 days. Several comments were received at the end of the comment period. The specific issues raised by letters received at the end of the comment period were considered by the Rulemaking Task Force on March 24, 1993.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission approve the proposed revisions to Chapter 690, Division 51, of the Oregon Administrative Rules as proposed in the draft document.

Mike Jewett expressed concern regarding the language in 690-51-090(1).

Meg Reeves suggested new language to read as follows: "Under ORS 543.300(7), the Commission may waive any or all procedural requirements but not substantive standards for a minor License or Permit. The term of a License and annual fees cannot be waived. The Commission's waiver authority is delegated to the Director."

It was MOVED by Jim Howland and seconded by Mike Jewett to accept the new language and adopt the Division 51 rules. The motion passed unanimously.

F. PROPOSED ADOPTION OF AMENDMENTS TO OREGON ADMINISTRATIVE RULES, CHAPTER 690, DIVISION 9, RELATING TO GROUNDWATER INTERFERENCE WITH SURFACE WATER

Mike Zwart requested the adoption of amendments to OAR, Chapter 690, Division 9. At its July 17, 1992 meeting, the Commission reviewed the Department's use of Division 9 rules relating to groundwater interference with surface water. Staff subdivided groundwater - surface water interference into long-term and short-term interference. Staff indicated that they viewed the intent of existing Division 9 rules as addressing only short-term interference.

In effect, the current rules require a determination as to whether wells interfere, or would

interfere, with surface water within a relatively short time. Substantial interference is referred to in the existing rules, but it is defined elsewhere in the Division 8 rules. That definition comes into consideration after the determination of short-term interference is made. For substantial interference with surface water to occur, two conditions must be met. The first is that a pumping well must be responsible for reduced surface water quantity (i.e., interference) and the second is that a senior surface water right cannot be satisfied as a result of the substantial interference.

At that time, staff also identified a limitation to the existing rules in that they do not provide the ability to regulate for short-term substantial interference caused by the use of wells greater than one mile from surface water, except through declaration of a critical groundwater area.

After consideration of several alternatives, the Commission authorized staff to proceed with amending the Division 9 rules. The Commission also placed emphasis on a modification that would ensure that all short-term interference with surface water could be regulated without critical groundwater area designation. Also, until such modifications were adopted, the Commission directed that greater scrutiny be applied to groundwater applications to ensure that appropriate conditions be applied to any permits which have the potential to result in short-term interference caused by wells more than a mile from surface water bodies.

Staff developed the draft language and prepared the necessary notice and Statement of Need to hold the rulemaking hearing. Notice was published in the November, 1992 issue of the Secretary of State's Bulletin. Approximately 740 persons or organizations were mailed copies of the notice. Staff held a hearing on November 17, 1992 to take testimony as to whether the proposed amendments should be adopted by the Commission. The hearing was attended by about a dozen people, nine of whom signed the attendance record. Two persons provided oral testimony. Written testimony was also received from eleven persons or organizations.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended Alternative one, which is to adopt the amendments to Division 9 rules as proposed.

Ralph Christensen, GWAC, commented. Tape 3, Mark 617.

David Moon, Water for Life commented. Tape 4, Mark 290.

Karen Russell, WaterWatch, commented. Tape 5, Mark 4.

The Commission expressed concern regarding the language used in the rules.

Martha Pagel recommended that the Department bring the issue up again at the next meeting so staff can make language changes as needed.

It was MOVED by Cliff Bentz and seconded by Roger Bachman to table this agenda item until the next meeting. The motion passed unanimously.

G. UPDATE ON COLUMBIA AND SNAKE RIVER MANAGEMENT ISSUES AND STRATEGIES

Tom Kline reported on staff activities involving the proposed Columbia/Snake Strategy since the last Commission meeting. As suggested by the Commission, the proposal was discussed with interest group representatives at a meeting on April 21, 1993. Issues raised in the discussion involved policy aspects, administrative elements and equity issues. Additionally, staff felt the meeting was helpful in identifying issues and questions likely to be raised during public review.

A series of public workshops are planned on the proposal this summer. Final recommendation to the Commission is expected in the fall.

Karen Russell, WaterWatch, commented. Tape 5, Mark 232.

H. PUBLIC COMMENT

Karen Russell, WaterWatch, commented. Tape 5, Mark 255.

I. REQUEST FOR APPROVAL OF A WORKPLAN FOR RESOLUTION OF BASIN PROGRAM ISSUES

Doug Parrow and Amin Wahab had presented a report on the basin program revision process to the Commission at its March 11, 1993, Work Session in Salem. At that meeting, the Director and staff proposed a delay in initiating basin program revision to allow time to re-evaluate the revision process and water supply issues. Also, the delay was requested to allow time to re-examine the purpose, structure and function of basin programs and their relationship to other Department activities and Commission policies. Specifically, an evaluation of the basin planning process is needed to ensure that the resulting programs better reflect current water availability and Commission authority and to provide flexibility and consistency in application, definitions and form.

The staff report outlines a work plan and timeline to resolve several of these issues and concerns before proceeding with revising basin programs. Specifically, the staff report outlines a workplan and timeline for developing and implementing a public involvement strategy, preparing and evaluating alternatives for basin planning and discussing the alternatives at the Commission retreat. The staff report also describes strategies and timelines for developing a water availability information program, addressing pending petitions and revising Division 11 definitions.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended the Commission approve the workplan and strategies as outlined.

Jim Howland suggested that staff consider putting the basic information on display with staff

available to answer questions.

Parrow stated that maps to display water availability are already being done. He agreed that Commissioner Howland's idea would be considered for public meetings.

Cliff Bentz suggested there is a possibility of conflict of interest. Bentz wondered whether the Department would go to the legislature this session concerning this issue, and Pagel answered this question in the affirmative.

Karen Russell, WaterWatch, commented. Tape 5, Mark 477.

J. INFORMATIONAL REPORT ON Department DATA RESOURCES

Bob Devyldere gave a slide presentation on the Department's data resources. The Department began computerization of its paper records in 1984 on a 64k Altos personal computer. Although not pursued aggressively or placed as a high priority, the Department understood that to perform water management and resource assessment it would need to have its records in a digital format for easier retrieval and analysis. Since then there has been steady increase in deployment of information technologies within the Department.

In July of 1991, the Department had three central multi-user computers, and a personal computer on almost every desk. There was little file-sharing capability and very little printer sharing among personal computers. The Department also had a few large central databases. Many employees were attempting to create their own individual data bases on their desktop machines because the central system software was so cumbersome and difficult to use. Efforts at expanding the use of the Geographic Information System (GIS) were severely limited by the amount of computing capacity available. The Department was using the central system at maximum capacity, and access by external users/customers was severely limited.

At the beginning of the 1991-93 biennium, the agency budgeted approximately \$230,000 to update and enhance the central computer services. Also, in an effort to centralize information resource management, Director Pagel included the Information Services group as part of the Technical Services Division. The Department has already seen positive results from working with the technical staff that make extensive use of computer systems. Particularly as the Department tries to implement new hardware and software, this structure will be very advantageous. The budgeted money and reorganization are attempting to address several areas that had been identified as needing improvement.

The areas identified as being high priority for improvement are:

- Increase our capability to share and analyze data throughout the Department including field offices
- Increase our capability to share information and communicate with other government agencies
- Decrease the time and investment needed to accommodate new legislation and program

requirements

- Provide an increased level of self-help, public access to the Department
- Increase staff productivity and reduce response time for projects

DIRECTOR'S RECOMMENDATION

This was an informational report only and requires no action by the Commission; however, Commission comments or guidance concerning information resource activities would be welcomed.

Tom Schneider, OR Groundwater Association, commented. Tape 6, Mark 299.

K. UPDATE ON THE PROPOSED DESCHUTES BASIN GROUNDWATER STUDY

Fred Lissner, Water Resources Department, gave an oral presentation concerning the Deschutes Basin Groundwater Study. In the summer of 1992, the Commission directed staff to enlist local government support in the Deschutes Basin for a study of the basin's groundwater resources. The purpose of the study was to give the Commission sufficient data and analysis to guide its decisions about the further issuance of groundwater rights.

Lissner described the progress to date on developing a cooperative partnership to study the groundwater resources of the Deschutes Basin. The U.S. Geological Survey (USGS), with input from local governments and state natural resource agencies, has developed a study proposal. Both the state Department of Geology and Mineral Industries and Water Resources Department have committed personnel to the study. The USGS will conduct the study with the federal government paying half the costs. The Confederated Tribes of the Warm Springs, Deschutes County, and the Cities of Bend, Sisters and Redmond have committed to one quarter of the project costs with the Governor's Strategic Reserve Fund tentatively supplying the remaining quarter.

The study will describe the aquifers of the basin, identify where recharge and discharge occur, identify how much water is in storage and describe and quantify the groundwater/surface water inter-connection. The study is to begin in May, 1993, with completion scheduled for 1997.

Martha Pagel commended Lissner for his work in pulling this information together.

Cliff Bentz commended staff on their efforts.

L. LEGISLATIVE UPDATE

Bev Hayes discussed the Department's current legislation. Hayes reported that HB 3357, HB 3358, and HB 3234 were to be up for hearing. HB 2580 has already had a hearing.

Kip Lombard and Jan Boettcher, Oregon Water Resources Congress, commented. Tape 7, Mark 133.

Jeff Curtis and Karen Russell, WaterWatch, commented. Tape 8, Mark 148.

Richard Whitman, Sunriver Utility, commented. Tape 8, Mark 323.

Reed Marbut reviewed recommended new language in HB 3234.

Richard Whitman, Sunriver Utility, commented. Tape 9, Mark 73.

The Commission expressed concerns regarding language in HB 3234.

Hayes discussed amendments to HB 3203 and asked the Commission for direction. After discussion, Lorna Stickel suggested that a subcommittee be formed to resolve the issues.

Hayes discussed HB 3512 that transfers all hydroelectric authority to the Commission.

M. CONSIDERATION OF MOTION FOR DENIAL OF AUTOMATIC STAY ON APPEAL OF FINAL ORDER IN THE MATTER OF MBWUA APPLICATION 69433 AND FIVE INSTREAM APPLICATIONS BY ODFW

Cliff Bentz excused himself from the meeting due to a conflict of interest concerning this issue.

Weisha Mize discussed the motion for denial of automatic stay on appeal in the matter of the Malheur Basin Water Users Association (MBWUA). At its January 27, 1993 meeting, the Commission issued a Final Order denying the portion of the MBWUA's application 69433 for alkali abatement, approving that portion of the MBWUA's application for an increase in rate of diversion and approving five instream water right applications filed by ODFW for the Malheur River and Big and Lake Creeks.

On March 24, 1993, Roy Kilpatrick, attorney for Oxbow Ranch, an intervenor party in the contested case proceeding, filed a petition for judicial review of the Final Order.

Pursuant to ORS 536.075(5), filing of a petition for judicial review of a Final Order of the Commission or Director imposes an automatic stay on enforcement of the Final Order. However, ORS 536.075(5) further provides that if the Commission determines that substantial public harm will result if the order is stayed, the Commission may lift the stay. The lifting of the stay must be in writing and state specifically that substantial public harm will result if the stay is not lifted.

ODFW has now filed a motion requesting that the Commission list the automatic stay on the determination that substantial public harm will result if the Final Order is stayed.


DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission find that based on the findings and opinion language of the Final Order, substantial public harm would occur if the Final Order were stayed and issue an order lifting the stay.

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

There being no further business, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cindy Smith". The signature is written in black ink and is positioned above the printed name and title.

Cindy Smith
Commission Assistant