

WATER RESOURCES COMMISSION
MEETING
JUNE 18, 1993

MINUTES

MEMBERS

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

STAFF

Martha Pagel
Rick Bastasch
Diane Reynolds
Cindy Smith
Greg Nelson
Tom Kline
Mike Ladd
Becky Kreag
John Borden
Reed Marbut
Ken Weese
Amin Wahab
Doug Parrow
Tom Paul

OTHERS

Todd Heidgerken
Joni Low
Karen Russell
Anne Perrault
Terry Thatcher
Kimber Johnson
Doug Heiken
Scott Ashcom
Stephanie Burchfield
Jan Boettcher
Jerry Schmidt
Doug Myers

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.

The Commission held an Executive Session prior to the regularly scheduled meeting.

Chair Stickel called the meeting to order.

ITEM 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.

ITEM A.2 REQUEST FOR CONCURRENCE WITH MODIFIED LAND MANAGEMENT RULES FOR THE GRANDE RONDE AND WALLOWA RIVERS SCENIC WATERWAYS

The Parks and Recreation Commission adopted minor changes to the river classifications and land management rules for the Grande Ronde and Wallowa River Scenic Waterways. The report explained the changes and recommended that the Commission concur with them. Under the Scenic Waterway Act (ORS Chapter 390), concurrence from the Water Resources Commission is required on administrative rules relating to the management of lands within Scenic Waterways.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission concur with the rules relating to the management of lands within the Grande Ronde and Wallowa Rivers Scenic Waterways, as adopted by the Parks Commission.

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

ITEM A.3 CONSERVATION ADVISORY COMMITTEE REPLACEMENT MEMBER

At the March 1993 meeting, the Commission concurred with the appointment of new members to the Conservation Advisory Committee. One of those members declined to serve. The report requested Commission concurrence for a replacement for that member as required by the committee charter.

One of the appointed members, Steve Hottovy of the Oregon Association of Nurserymen, declined to serve on the committee. Mr. Hottovy was appointed to represent the commercial sector, but he declined the appointment to that position because the Association felt more closely aligned to agriculture than to commercial interests.

The recommended replacement member is Dan Kunde of Georgia Pacific's Toledo mill. Mr. Kunde is the environmental manager of the mill and was recommended through the American Forest and Paper Association.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Water Resources Commission concur with the recommendation of Dan Kunde for the Conservation Advisory Committee replacement member.

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

ITEM B COMMISSION COMMENTS

Roger Bachman reported on the Water Development Loan Fund and the class action law suit. The Brownsville property that was acquired through foreclosure has been sold. Negotiations to move the Loan Fund to Economic Development Department have not been concluded because of the time demands on staff during the legislative session.

Commissioner Bachman said that he has been working with the directors of the Wildlife Heritage Foundation to help establish a private source of funds to help put agreements together, such as the one relating to Middle Fork of the John Day.

Hadley Akins and Mike Jewett thanked Jim Howland for his years of service on the Commission.

Jim Howland presented a description of his water management dream for Oregon.

Lorna Stickel reported on her attendance at the 14th Annual Natural Resources Law Center Institute's Water Organizations and a Changing West.

ITEM C DIRECTOR'S REPORT

Martha Pagel gave a brief summary of the June 17, 1993 Work Session for the Commission.

Pagel discussed the Division 9 rules and related staff work since the last Commission meeting, noting that staff recommended a delay in further action on the proposed rules until remaining policy concerns could be fully addressed.

An update was given on the drought. The Strategic Water Management Group met to review recommendations from the Drought Council. It was recommended to the Governor to lift the drought declaration statewide, even though there were some continuing concerns about Klamath, Deschutes and Umatilla Counties.

A letter was sent to the director of the Bureau of Land Management inviting them to attend the August Commission meeting to discuss schedules for obtaining water rights on existing unpermitted reservoirs.

Pagel and the Commission discussed the application backlog workplan. The Department has committed to completing 2,500 technical reviews by the end of the year.

The Commission retreat is to be held September 7 and 8 at Silver Falls. An agenda will be discussed at the next meeting.

Pagel told the Commission that Jan Boettcher, Water Resources Congress, has offered a tour of the Arnold Irrigation District for the August meeting in Bend.

Jan Boettcher, OWRC commented. Mark 466, Tape 1.

ITEM D CONSIDERATION OF PETITION FOR RULEMAKING REGARDING MUNICIPAL WATER RESERVATION REQUESTS IN THE WILLAMETTE BASIN

Lorna Stickel excused herself from participating on this item due to the appearance of a conflict of interest.

Greg Nelson, Water Resources Department, presented recommendations on a request from the League of Oregon Cities.

The League of Oregon Cities has petitioned the Commission to recognize a water reservation request on behalf of municipalities in the Willamette Basin. The Director and staff previously determined that a reservation of water for municipal purposes undertaken as part of the Willamette Basin planning process did not meet the test of administrative rules to qualify as a reservation request. The Willamette Basin program contains a management objective that calls for equal consideration of future municipal and agricultural water supply needs. The petitioner is unsatisfied with the offer provided to future municipal water supply needs by the management objective.

On April 5, 1993, the Department received a rulemaking petition from the League of Oregon Cities. The petition requests that the Water Resources Commission either issue a declaratory ruling that interprets the Division 79 reservation rules to recognize a reservation request on behalf of municipalities in the Willamette Basin, or, in the alternative, amend the reservation rules to explicitly reflect a Willamette Basin municipal reservation request having a June 5, 1992, priority date.

OAR 137-01-070 requires the Commission to either deny a petition or initiate rulemaking within 30 days of receiving a petition. This required that the Commission act to deny the petition or initiate rulemaking on the petitioner's proposed rule language by May 5. The Director and staff placed the petition on the agenda for the April meeting to comply with OAR 137-01-070.

Rather than make a hurried recommendation to the Commission, the Director and staff desired to explore and review in more detail the role of reservations in water management and the specific issues raised by the petition. The Department asked the League of Oregon Cities to voluntarily withdraw the petition from consideration at the April meeting. The League of Oregon Cities agreed, given the Department's commitment to examine the many issues associated with reserving water for future

economic development.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission deny the petition for a declaratory ruling and deny the petition for rulemaking. Staff proposed a workplan for assessing pending reservation requests and identifying a desired future condition for reservations of water that will consider municipal water supply needs. Commission approval of a workplan and process may include initiation of rulemaking at a future date.

Terrance Thatcher and Joni Low, League of Oregon Cities, commented. Mark 132, Tape 2.

Karen Russell, WaterWatch, commented. Mark 326, Tape 2.

Kimber Johnson, EWEB, commented. Mark 362, Tape 2.

Charles Craig, Department of Agriculture, commented. Mark 430, Tape 2.

Terrance Thatcher, LOC, commented. Mark 630, Tape 2.

Following extensive discussion by the Commission, it was MOVED by Mike Jewett and seconded by Roger Bachman to approve the petition for rulemaking with no delay and deny it for declaratory relief. Motion passed 4 to 2. Cliff Bentz and Hadley Akins opposed. Lorna Stickel - excused.

ITEM 3 LEGISLATIVE UPDATE (CONTINUATION FROM WORK SESSION)

Bev Hayes continued the discussion on HB 3357 and HB 2771.

Regarding HB 2771, Lorna Stickel proposed that staff work with the parties to consider broadening the flexibility of allocating stored water by means other than contracting.

Karen Russell, WaterWatch, commented. Mark 229, Tape 3.

Jerry Schmidt, Realtors Association, commented. Mark 259, Tape 3.

Jan Boettcher, OWRC, commented. Mark 381, Tape 3.

Discussion on HB 3357 followed with comments noted as follows:

Jan Boettcher, OWRC, commented. Mark 131, Tape 4.

Anne Perrault, WaterWatch, commented. Mark 221, Tape 4.

Jan Boettcher, OWRC, commented. Mark 422, Tape 4.

Regarding HB 3357, relating to issuance of final certificates for water rights, Pagel recommended that the Department cautiously support the bill and that the Commission direct the Department to work on the language of concern in Section B and clarify Section J.

It was MOVED by Cliff Bentz to support HB 3357, have the Department further negotiate the issues of setting up a threshold test of reliance, and have Department staff clarify Sections B and J. The motion was seconded by Mike Jewett. The motion passed unanimously.

ITEM E AUTHORIZATION TO BEGIN PUBLIC INVOLVEMENT ON A PROPOSED INTERIM STRATEGY FOR THE COLUMBIA AND SNAKE RIVERS

Tom Kline, Water Resources Department, briefed the Commission on a proposed interim strategy for the Columbia and Snake Rivers.

In November 1991, Snake River Sockeye salmon were declared endangered by the National Marine Fisheries Service. Five months later, Snake River Spring, Summer and Fall Chinook were added to the list of creatures nearing extinction. In its Phase I, II and III rule amendments, the Northwest Power Planning Council identified regional actions to aid recovery of the Snake River runs. The Council called on water management agencies in Oregon, Washington, Idaho and Montana to take actions to protect the salmon. The National Marine Fisheries Service is still working to develop a formal recovery plan for the listed species. Public review of the draft plan is expected to begin in August.

On July 17, 1992, the Commission directed staff not to process most new water use permit applications in the Columbia Basin. Staff were also directed to begin development of a policy limiting new appropriations. Both Washington and Idaho acted to limit issuance of new permits after the listing.

The original proposal involved modifying all basin programs above Bonneville Dam to restrict the allowed water uses. Hearings on the proposal were scheduled in late 1992 and subsequently cancelled because of public concerns.

Work on the current proposal began in November following the Commission work session on the Columbia. Since then, staff have met several times with state agencies and once with interest group representatives. Staff reported on progress in the discussions at the January, March and April Commission meetings. These reports

included a general description of the proposed strategy. The recommended strategy differs significantly from the 1992 proposal and substantially from the strategy discussed at the last Commission meeting. Changes were based on comments by interest groups, advice of legal counsel and information provided by state agencies.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission authorize the staff to conduct a series of public workshops on a proposed water management plan in response to the listing of Snake River salmon runs. The meetings will be held this summer with final Commission action expected in the fall. Until a new strategy is approved, applications in the Columbia Basin above Bonneville Dam will be processed in accordance with the July 17, 1992 Commission action.

Jim Howland noted that in Directive 1 & 2, the date for the issuance of permits should read "delayed until at least December 31, 1994."

Karen Russell, WaterWatch, commented. Mark 68, Tape 5.

Jan Boettcher, OWRC, commented. Mark 152, Tape 5.

Stephanie Burchfield, ODFW, commented. Mark 210, Tape 5.

Stickel asked staff to include in the final recommendation to the Commission more information regarding the existing constraints and policies in the tributaries' subbasins.

It was MOVED by Mike Jewett and seconded by Anita Johnson to adopt the staff recommendation. The motion passed unanimously.

ITEM G PUBLIC COMMENT

Jan Boettcher, OWRC, commented. Mark 345, Tape 5.

ITEM F PROGRESS REPORT ON UMATILLA ENFORCEMENT SCHEDULE AND REQUEST FOR DELEGATION TO DIRECTOR TO MODIFY TIMELINES IN THE SCHEDULE

Mike Ladd, Water Resources Department, gave a status report on the Umatilla Enforcement Schedule.

Teel Irrigation District (TID), Hermiston Irrigation District (HID), and Stanfield Irrigation District (SID) filed petitions for reconsideration on their proposed draft certificates. Additionally, TID and HID filed petitions for review and complaint for

injunction against WRD in the Umatilla County Circuit Court. As a result of these and other factors outside the Department's control, some timelines for the Enforcement Objectives and Timelines (schedule) for the Umatilla River will not be met. The staff report provided an update for the Commission and proposed to delegate to the Director the ability to modify timelines as needed for the remainder of the schedule.

The schedule was presented to the Commission on November 15, 1991. The report was in response to a petition by WaterWatch of Oregon to amend the Umatilla Basin Program (rule). Staff held a public informational meeting in Pendleton to take additional comments and reported the results to the Commission at its December 20, 1991 meeting. The Commission approved the schedule at that meeting. Modification of the timelines in the schedule occurred at the October 15, 1992 WRC meeting. The Commission approved additional time for the Department to issue the proposed certificates to HID and TID and for the Commission to review the final certificates.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission delegate to the Director the ability to modify the timelines for the remainder of the schedule and agree to allow staff to present updates to the Commission on the status of the schedule, as determined necessary by the Director.

Anne Ferrault, WaterWatch, commented. Mark 50, Tape 6.

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

ITEM H REQUEST FOR AUTHORIZATION TO CONDUCT RULEMAKING HEARINGS ON PROPOSED OAR CHAPTER 690, DIVISION 500 (BASIN PROGRAM DEFINITIONS) AND AMENDMENTS TO OAR 690-11-010 (DEFINITIONS--APPLICATIONS AND PERMITS)

Beth Patrino, Water Resources Department, requested authorization to conduct rulemaking hearings on proposed Division 500 and amendments to OAR 690-11-010.

Different definitions for specific beneficial uses of water have developed over the years. As a result, the same terms have been used in permitting and basin planning activities with different meanings, causing confusion for both the public and Department staff. Staff request authorization to conduct public hearings on proposed rules to improve and better coordinate water use definitions.

At its July 17, 1992 meeting, the Commission heard a staff report on issues

related to municipal and quasi-municipal water use permits and the application of statutory municipal preferences to such permits. The subsequent discussion revealed a number of problems related to the current water use definitions employed by the Department, including differences in the definitions of the same terms in various divisions of the agency's administrative rules. At the direction of the Commission, the Department formed an internal working group in the fall of 1992 to begin reviewing definitions in OAR Chapter 690, Division 11 and the basin program water use classifications. The working group has developed a set of proposed rules that would better coordinate the use of terms in agency permitting and planning activities. At its meeting on April 30, 1993, the Commission directed staff to convene an external working group to review and comment on the proposal prior to holding a rulemaking hearing.

DIRECTOR'S RECOMMENDATION

The Director and Staff recommended that the Commission authorize the Department to take the following actions: (1) provide notice to the Secretary of State; (2) meet with an external working group to review the proposed rules; (3) make appropriate revisions to the draft rules for public hearing on the basis of comments from the external working group; and (4) hold a public hearing on the proposed rules. The Commission may also want to appoint a subcommittee to work with staff in revising the proposed amendments prior to the public hearing.

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

ITEM I INFORMATIONAL REPORT ON THE STATUS OF WATER MANAGEMENT PLANNING RULE REVISION

Doug Parrow, Water Resources Department, gave a summary on the status of the rule revision.

In December 1990, the Commission adopted a Statewide Policy on Conservation and Efficient Water Use. One of the implementing strategies for the policy is the development of standards and schedules for the preparation of water management plans by major water users and suppliers. Last November, staff presented a report to the Commission which described the process of developing administrative rules to implement the policy and summarized the results of hearings on the rules. This report is a follow-up to the November meeting and describes the progress which has been made on amending the rules and the proposed plan for redrafting and rule adoption.

The Conservation Advisory Committee and the Department considered several

options for ensuring that water is used efficiently and without waste when the conservation policy was being developed. Options such as statewide efficiency standards for various types of water uses were rejected as being too rigid to allow for variations of individual operations. The water management planning approach was chosen because staff, in consultation with the Conservation Advisory Committee, concluded that it provided a flexible mechanism for allowing water users to evaluate their water systems and determine what measures were feasible to improve water use efficiency.

In 1991, staff began working with the Conservation Advisory Committee to develop administrative rules for water management planning standards and schedules. The committee divided itself into two subcommittees—one to address agricultural entities and the other to address municipal entities. Last summer, staff, after extensive work with the subcommittees, recommended that the draft rules were ready for public hearings, and Commissioner Akins authorized hearings on the rules. Hearings were held in September. The draft water management planning rules met with considerable opposition at the hearings. Results of the hearings were presented to the Commission at its November meeting.

At the November meeting, staff proposed a process for reevaluating the water management planning approach. Staff presented three alternatives for continued work on the water management planning approach. The alternatives were:

1. Revise the draft rules, hold additional hearings and request Commission action in mid-1993.
2. Enlist volunteer entities to test-run the water management planning process (pilot plans) and propose adoption of revised rules at a later date.
3. Reevaluate the water management planning approach and consider other approaches for increasing water-use efficiency.

At the November meeting, staff proposed to meet with different advisory groups to evaluate the alternatives for implementing the conservation policy. Since December was the conclusion of the two-year term of membership provided for the Conservation Advisory Committee, staff expected that the turnover in membership would provide an opportunity to involve new groups in the discussion of implementation of the conservation policy. At its March meeting, the Commission approved new members for the committee. The committee met April 1 and May 20. At both meetings, staff provided briefings on the status of redrafting the water management rules.

DIRECTOR'S RECOMMENDATION

This was a status report only, and no Commission action was required.

Absent Commission direction to the contrary, staff will continue to work with interest groups to conduct the pilot plans and redraft the water management planning rules. Staff expect to present a report to the Commission at the October meeting requesting hearings on the redrafted rules.

Roger Bachman complimented staff on a well written report.

Karen Russell, WaterWatch, commented. Mark 582, Tape 6.

Jan Boettcher, OWRC, commented. Mark 1, Tape 7.

ITEM 1 COMMISSION DIRECTIVES AND ACTION ON APPLICABILITY OF PROPOSED/NEW WILLAMETTE BASIN PROGRAM IN PROCESSING OF APPLICATIONS SUBMITTED PRIOR TO PROGRAM ADOPTION

Doug Parrow and Amin Wahab, Water Resources Department, gave a summary of the proposed new Willamette Basin program.

Recently, members of the public have forwarded questions, concerns and comments to the Commission about applying the Willamette Basin program standards when evaluating permit applications submitted prior to January 31, 1992, when the Commission adopted the new basin program. Between March 1991 and January 1992, the Commission provided various directives on the date(s) the proposed/new basin program applied to pending permit applications. At its conference call meeting on Monday, June 7, 1993, the Commission asked staff to review and summarize the Commission directives about the dates for processing pending surface and groundwater applications in the Willamette Basin.

The Commission first discussed the issue of pending surface and groundwater permit applications in the Willamette Basin at its work session on March 7, 1991.

In order to prevent an onslaught of permit applications before adoption of the proposed Willamette Basin program, the Commission discussed whether to establish a moratorium on accepting applications and/or issuing permits. After much debate, the Commission directed staff to take the following action on pending applications:

1. Continue processing surface water applications deemed complete under current rules; and
2. Hold applications for groundwater uses in the proposed groundwater-limited areas until adoption of the new basin program.

At the April 18, 1991 Work Session, the Commission directed staff to use April 18, 1991 as the cut-off date for processing pending surface water applications and to process those groundwater applications submitted before April 18, 1991 in the South Salem Hills, Eola Hills, Parrett Mountain, and Chehalem Mountain groundwater-limited areas subject to rules in effect at the time the applications were made.

At the October 3, 1991 Work Session, the Commission reaffirmed its position on processing surface water applications submitted after April 18, 1991 under the proposed rules upon adoption and approved the staff recommendation that pending groundwater applications received prior to October 4, 1991 be processed under the existing classifications and that the applicable proposed resource protection conditions be included in the permits.

DIRECTOR'S RECOMMENDATION

This was an informational report, and no Commission action was requested. The Commission may wish to consider authorization of formal rulemaking to change the effective date of the Willamette Basin program as to pending applications which were filed prior to adoption of the program.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Cindy Smith
Commission Assistant