

WATER RESOURCES Department
AUGUST 13, 1993
MEETING

MEMBERS

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

STAFF

Martha Pagel
Steve Sanders
Diane Reynolds
Cindy Smith
Marc Norton
Rob Carter
Bill Ferber
Steve Applegate
John Borden
Bev Hayes
Rick Bastasch
Tom Kline
Bob Rice

OTHERS

Marion Millard
David Michael
Jan Boettcher
Audrey Simmons
Karen Russell
Anne Perrault
Todd Heidgerken
Eric Mockridge
Barb Mockridge
Earl Wursma
Pam Wursma
Bill Smith
Ralph Christensen
John Johnson
Julie Keil
Martin Zimmerman
Margaret Hollenbach
Charles Master
David Moskowitz
Jill Zarnowitz
Cindi Kelly
Sandy DeJong

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.1 APPROVAL OF MINUTES

It was MOVED by Jim Howland and seconded by Mike Jewett to approve the minutes of the June 17 and 18 meeting as submitted. The motion passed unanimously.

A.2 REQUEST FOR CONCURRENCE WITH LAND MANAGEMENT RULES FOR THE ELK AND UPPER ROGUE RIVER SCENIC WATERWAYS

Under the Oregon 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 Waterway corridors. The Parks and Recreation Commission has adopted Scenic Waterway Management programs for the Elk River in Curry County and for the Upper Rogue River. The programs consist of classifications and land management rules.

· DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission concur with the rules relating to the management of the Elk and Upper Rogue Scenic Waterways as approved by the Parks and Recreation Commission.

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

B. COMMISSION COMMENTS

Anita Johnson reported on the Governor's Watershed Enhancement Board (GWEB) grants. There were 19 applications submitted this year as opposed to between 80 and 90 applications filed last year.

Roger Bachman reported on the Water Development Loan Program class action lawsuit. The Logan loan has submitted a new Chapter 11 and should be making payments in 1994. Discussions are continuing with the Economic Development Department (EDD) regarding the administration of the loan program by EDD.

Jim Howland had the opportunity to read Roger Bachman's goals for the retreat and stated they are good.

Lorna Stickel reported that she attended an American Water Resources Conference in Seattle. She also attended the Western Governors' Association conference in Washington DC and gave testimony on the Clean Water Act reauthorization. Stickel stated that a presentation by the Washington Department of Ecology on their water and growth management activities was given at the American Society of Civil Engineers Conference in Seattle. Stickel would like to have the same presentation offered at a future Commission meeting. Stickel also attended a meeting with staff regarding minimum perennial streamflows in the Willamette. Strategy is being developed.

C. DIRECTOR'S REPORT

Martha Pagel gave a summary of the August 12 Work Session, noting that the Commission toured the pilot projects of Arnold Irrigation District and North Unit Irrigation District on the morning of the twelfth. The Department has received official approval to move the Salem headquarters to the Commerce Building. The move is scheduled for sometime in January. Pagel reported that at a future work

session the Department planned on reporting to the Commission regarding Willamette issues.

Steve Sanders gave an update on litigation.

D. REQUEST FOR AUTHORIZATION TO CONDUCT RULEMAKING HEARINGS ON AMENDMENTS TO THE WATER AND MONITORING WELL CONSTRUCTION AND MAINTENANCE RULES AND RULES GOVERNING THE GROUNDWATER ADVISORY COMMITTEE, OAR CHAPTER 690, DIVISIONS 200 THROUGH 240.

Rob Carter and Steve Applegate reported on how new drilling technologies, recent legislation and Department staff and industry experiences have created a need to amend and reformat existing administrative rules governing the Groundwater Advisory Committee (GWAC) and well construction (OAR Chapter 690, Divisions 200 through 240, with the exception of 230). In association with GWAC and its Applied Research Subcommittee, the Department has written draft rules. Approved 1993 legislation affecting the rules has been incorporated in the draft rules. A range of factors have contributed to the need to review and update the Department's current water well, monitoring well and GWAC rules.

For example, in 1990, the Commission adopted rules governing the construction and maintenance of monitoring wells and other holes (OAR Chapter 690, Division 240). Prior to the inception of the monitoring well rules, all wells were regulated under the well construction rules (OAR Chapter 690, Divisions 200 through 235). Because no changes were made to the original well construction rules to reflect the adoption of the monitoring well rules, confusion as to which rule applies to a given well has resulted.

In 1991, the Legislature modified ORS 536.090, altering the make-up of GWAC. GWAC was expanded from five to nine members. The qualifications and terms of service were also modified. In 1993, the Legislature again made changes to ORS 536.090, giving GWAC greater authority to advise the Department concerning start card fund expenditures.

Additional changes to existing rules and new rules are proposed by the monitoring and water well construction industries, GWAC, the Department of Environmental Quality (DEQ), other agencies and Department staff.

In accordance with statutory guidance, GWAC was consulted for assistance in evaluating the current rules and proposing changes. In turn, GWAC assigned the initial tasks to its Applied Research Subcommittee. The subcommittee members have actively participated in the rule revision process. Due to the length and technical complexity of the rules, Department staff met with the subcommittee 11 times over the past 6 months to discuss proposed rule changes. Members of both GWAC and

its subcommittee will remain involved in the rule revision process until the Commission takes final action.

At its meeting on July 15, GWAC reviewed the proposed changes and offered additional comments. The proposed rule amendments address changes in statute, as well as questions and concerns of the monitoring and water well industry, GWAC and the Department. The amendments also attempt to correct typographical errors and provide organizational clarity. New rules are proposed to incorporate well alteration technologies, temporary monitoring wells and artesian monitoring wells. Existing rules would be changed to modify the start card submittal requirements to better facilitate on-site inspections by Department personnel.

The Department recommended taking the existing draft monitoring well rules to hearing and later addressing the recommendations from GWAC and DEQ. In doing so, the Department would coordinate with GWAC, DEQ and others to develop new rule language regulating geotechnical holes, including piezometers and observation wells in the near future. The Department recognizes the concerns of GWAC and DEQ and hopes to continue discussions on methods to better regulate monitoring wells.

The Department proposes to conduct public hearings in two locations statewide concerning the proposed rule revisions. Comments will be solicited during the hearing process and considered. Following the hearing process, the Department will forward the draft rules to the Commission for recommended adoption at its November meeting.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission authorize the Department to conduct rulemaking hearings on the proposed amendments to the well construction and maintenance rules, the monitoring well construction and maintenance rules and GWAC rules.

Lorna Stickel asked if it is true that a GWAC member must be a member of the United States. Steve Sanders explained that it is not a requirement.

Ralph Christensen, chair of GWAC, commented. Tape 2, Mark 218.

John Johnson, Johnson Well Drilling, Applied Research Subcommittee. Tape 2, Mark 304.

David Michael, OR Department of Forestry, commented. Tape 2, Mark 628.

It was MOVED by Cliff Bentz and seconded by Mike Jewett to approve the staff recommendation. The motion passed unanimously.

E. APPROVAL OF DEPARTMENT PROPOSAL FOR COMPLIANCE WITH WATER USE REPORTING RULES [OAR 690-85-010(6)] FOR INSTREAM WATER RIGHTS (ISWR).

Bill Ferber reported that at the March Commission meeting, the Department presented "Informational Report: OWRD Plan to Meet Water Use Reporting Requirements for Instream Water Rights." That report outlined why the Department was required to submit water use data for ISWRs and what the Department was required to submit to comply with the Water Use Reporting (WUR) rules.

As discussed in that report, the Water Resources Department and the Oregon Department of Fish and Wildlife (ODFW) rated the existing 542 ISWR sites for the value that monitoring could provide and the percent of time each right might be satisfied. At this time, the Department can meet the accuracy requirements of the WUR rules for 114 of the ISWRs. This waiver request concerns itself with the remaining 428 ISWRs for which the Department is not able to submit reports within the requirements of the WUR rules and with yet-to-be-issued ISWRs that would not have continuous recording gage stations within their defined reaches.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended the Commission approve a waiver of compliance from the accuracy requirement of the Water Use Reporting rules [OAR 690-85-010(6)] for any existing and future Instream Water Rights that do not have a recording stream gage station within the defined reach. The Director also recommended the Commission direct staff to submit an annual progress report on efforts to bring all instream water right reporting into compliance with the Water Use Reporting rules. To achieve this, staff should be directed to work with ODFW staff to prioritize ISWRs to be brought into compliance with WUR rules.

Jill Zarnowitz, ODFW, commented. Tape 4, Mark 105.

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

E.1. REQUEST FOR WATER USE REPORTING WAIVER BY THE CITY OF PRAIRIE CITY

Bill Ferber reported on a request for a Water Use Reporting waiver by the city of Prairie City. Public bodies holding water rights are legally required to report their use annually to the Department. Among other standards, the WUR rules require measurements be taken at each point of diversion authorized in a water right unless the Commission waives this requirement. Prairie City requested a waiver of the requirement. By rule, waivers must be based on economic hardship and the value of the data to water management.

The Department postponed action on these waiver requests awaiting the potential passage of Senate Bill 91 by the 1993 Legislature. This bill would have allowed the Commission to exempt a user or class of uses from the reporting requirements of the WUR rules. Senate Bill 91 did not pass.

In their waiver request, Prairie City officials noted that the city is financially strapped. The City estimates that compliance with the WUR rules would involve an initial cost for equipment and installation of up to 25 percent of its annual budget. They also said that operational and maintenance costs will place a perpetual financial hardship on the community.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended the Commission approve a waiver of compliance from the requirement to periodically measure the flow at each point of diversion [OAR 690-85-015(3)(b)] for Prairie City's water right Permit S-25315, Certificate 39641.

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

E.2. CONSIDERATION OF REQUESTS FOR WATER USE REPORTING WAIVERS FOR BEAVER DRAINAGE DISTRICT AND THE LINN COUNTY PARKS AND RECREATION DEPARTMENT

Bill Ferber reported on the WUR rules which require public entities holding water rights or permits to report water use within 15 percent accuracy. The rules also allow a reporting entity to request the Commission to waive compliance with this accuracy requirement [OAR 690-85-010(3)].

Officials from Beaver Drainage District and the Linn County Parks and Recreation Department submitted waiver requests in accordance with this allowance.

The Department postponed action on these waiver requests awaiting the potential passage of Senate Bill 91 by the 1993 Legislature. This bill would have allowed the Commission to exempt a user or class of uses from the reporting requirements of the WUR rules. Senate Bill 91 did not pass.

Both reporting entities indicated that economic hardship would result if they were required to meet the accuracy requirement.

According to the engineer of Beaver Drainage District, "It would be very difficult if at all possible to accurately measure the low velocity, variable, low head flows." The engineer believes that if it were in fact possible to report flow within the 15 percent accuracy requirement, the costs for maintenance would require a 10 percent increase in the District's budget.

Linn County Parks and Recreation Department officials stated in their waiver requests that they are experiencing the effects of Ballot Measure 5 and other fiscal constraints and do not have funds available to install measuring devices.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended the Commission grant waivers of compliance from the 15 percent accuracy requirement of the Water Use Reporting rules for Beaver Drainage District's Permit S-44086 and Linn County Parks and Recreation Department's Permit S-30371, Certificate 37448 and Permit R-4569, Certificate 37447.

Insofar as the intent of the water use reporting rules is to monitor local conditions for early detection of serious water management problems, the Department also recommended that the Commission retain the right to rescind these waivers of the 15 percent accuracy requirement should the Department find that local conditions have changed to the extent that economic hardships no longer exist and the data likely to be collected would aid water management efforts.

Donald Rice, Beaver Drainage District, commented. Tape 3, Mark 88.

Karen Russell, NW Environmental Defense Center, commented. Tape 3, Mark 227.

Roger Bachman declared a potential conflict with the issue but was still able to vote.

Donald Burlson, Director of Linn Co Parks, commented. Tape 3, Mark 362.

Mike Jewett asked staff to draft specific findings as to why the waiver meets requirements and return to the next meeting with these findings.

It was MOVED by Mike Jewett and seconded by Jim Howland to approve the staff recommendation with additional language to be brought forward at the next meeting. That language being to change the "and" to "or" in the waiver; have a periodic review every one to two years; require an interim plan or proposal. After Commission discussion, Mike Jewett withdrew his motion.

It was MOVED by Mike Jewett and seconded by Jim Howland to approve the waiver with amendments:

Beaver Drainage District: Bring forward during consent agenda at upcoming Commission meeting a more specific findings as to why this waiver meets the standards in the rules, have a periodic review every two years, and change "and" to "or" in the waiver.

Linn County Parks and Recreation: Have a periodic review every two years, change

"and" to "or" in the waiver, and come forward with a plan related to resolving the issues of measurement.

The motion passed unanimously.

F. REQUEST FOR APPROVAL OF MODIFIED COMPLIANCE SCHEDULE REGARDING APPLICATIONS FOR BUREAU OF LAND MANAGEMENT LIVESTOCK PONDS

Steve Applegate reported on the request for approval of modified compliance schedule. In March 1992, the US Bureau of Land Management (BLM) agreed to a compliance schedule for submitting information and water use applications for approximately 1,600 existing unpermitted reservoirs. Due to a number of unforeseen factors, the BLM has been unable to adhere to this agreement.

At its March 13, 1992 meeting, the Commission considered several alternatives on the issue of unpermitted livestock watering ponds on BLM lands. BLM estimated at that time that there were approximately 1,600 such ponds throughout Oregon, with about 1,200 of those in BLM's Vale District.

The Commission and BLM agreed at that time that Department regulation against these developments would be a relatively low priority, provided that:

- A) No confirmed injury complaints were received from other right holders or from ODFW;
- B) BLM maintained a schedule of filing 400 applications per year for four years; and
- C) BLM provided maps to the Department and to ODFW showing sufficient detail to locate unpermitted developments.

The referenced maps were intended to allow watermasters, ODFW and others to identify developments which were most likely to be harmful to other water right holders or to fish and wildlife values.

BLM's letter of April 28, 1993, explains the status of their efforts as of the date of the letter. Further progress has been made since that time. Field inspections conducted by BLM staff have determined that the actual number of projects needing permits appears to be closer to 800, rather than 1,600. Many projects had permits, some were never built and legislation may have reduced the number that are subject to the permit requirement.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission:

- A) Accept BLM's revised filing schedule of 400 applications per federal

fiscal year beginning with 10-1-92 through 9-30-93, and to be completed by 10-1-95; and

- B) Continue to allow Department staff to assign a relatively low regulation priority to unpermitted BLM ponds pending review of BLM's location maps by ODFW, the public and the watermaster for injury potential.

David Moskowitz, Oregon Trout, commented. Tape 4, Mark 244.

Karen Russell, WaterWatch, commented. Tape 4, Mark 278.

It was MOVED by Jim Howland and seconded by Mike Jewett to approve the Director's recommendation to include a statement of intent to amend the agreement to note that if the Department would receive injury complaints they would take action on any confirmed injury complaints regardless of the source. The Department requests that any complaints received include necessary information to verify the complaints. The motion passed unanimously.

G. PUBLIC COMMENT

Anne Perrault, WaterWatch, commented. Tape 4, Mark 565.

Martha Pagel suggested coming back to a future Commission meeting to discuss issues raised by WaterWatch.

David Moskowitz, Oregon Trout, commented. Tape 5, Mark 234.

Bill Kloos, WaterWatch, commented. Tape 5, Mark 245.

Marion Millard, Redmond, commented. Tape 5, Mark 455.

Jan Boettcher, OR Water Resources Congress, commented. Tape 5, Mark 522.

H. OREGON DEPARTMENT OF FISH AND WILDLIFE COASTAL SALMON BRIEFING

Jill Zarnowitz, ODFW, gave the Commission a follow-up report regarding the Governor's Coastal Salmon Summit in December 1992, which included a slide presentation and a packet of materials regarding the coastal salmon initiative.

I. INFORMATIONAL REPORT ON WATERSHED MANAGEMENT ACTIVITIES AND THE WATERSHED HEALTH PROPOSAL

Bob Rice reported on the Governor's Watershed Health/Salmon Recovery Proposal and SB 1112. They were prepared to guide the restoration of the health of Oregon's watersheds and fisheries in the South Coast/Rogue and Grande Ronde Basins.

For many years Oregon has promoted coordinated resource management planning. Since 1987, when GWEB was formed to assist local groups in protecting and restoring watersheds, the state has been increasingly active in promoting a watershed-based management approach.

In 1990, a pilot stream restoration program was begun in the John Day Basin. The Department placed a coordinator in the basin to work with a local basin council and the field offices of several agencies. A statewide riparian policy was adopted by the Commission in the same year. The Department's 1991-1993 budget provided funding to expand the stream restoration program to the Grande Ronde Basin. Adding to this momentum, last year the Strategic Water Management Group (SWMG) designed a strategy that built on the experience of earlier efforts and laid out a process for watershed protection and restoration based on a partnership between public and private interests.

The Coastal Salmon Restoration Initiative, organized by the Governor and Senator Bill Bradbury in early 1993, reaffirmed the need for a watershed approach. The Governor's Forest and Natural Resource Planning Team recently developed an ecosystem-based strategy for managing Oregon's forests. Passage of HB 2215 would encourage testing of the SWMG watershed management strategy. SB 1112 would establish the framework and provide funding to conduct tests of the Governor's watershed health proposal.

The nine sponsoring agencies (Water Resources, Agriculture, Energy, Environmental Quality, Fish & Wildlife, Forestry, Geology & Mineral Industries, Land Conservation & Development and State Lands), with WRD as the lead agency, targeted the South Coast/Rogue and Grande Ronde Basins. Both areas are now facing significant watershed problems and listings of threatened or endangered anadromous fish species as well as other species.

DIRECTOR'S RECOMMENDATION

This was an informational report, no Commission action was required.

David Moskowitz, Oregon Trout, commented. Tape 6, Mark 293.

Martha Pagel thanked Oregon Trout for their help in getting the funding for watershed health.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Cindy Smith
Commission Assistant