

WATER RESOURCES COMMISSION  
NOVEMBER 19, 1993  
MEETING  
MINUTES

MEMBERS

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

STAFF

Martha Pagel  
Steve Sanders  
Diane Reynolds  
Cindy Smith  
Becky Kreag  
Bob Main  
Beth Patrino  
Rick Bastasch  
Barry Norris  
Mike Ladd  
Steve Applegate  
Reed Marbut  
Tony Justus  
Doug Parrow  
Marc Norton  
Jack Donahue  
Randy Selig  
Rob Carter

OTHERS

Larry Trosi  
Jerry Schmidt  
Karen Russell  
Kimberly Priestly  
Stephanie Burchfield  
Jan Boettcher  
Mike Ryan  
Jim Bryant  
Todd Heidgerken  
Rosa Thomas-Wiley  
Phillip Graf  
Phil Matson  
Terry Drever-Gee  
J.M. Schmidt  
C.R. Eidson  
Bill Stanley  
Doug Myers  
Glenn Barrett  
Linda Barrett  
Brian Stahl  
Gerald George  
Bruce Estes  
Stanley Wallulis  
Brooks Koenig  
Michael Walker  
Ken Cerotsky

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. APPROVAL OF THE MINUTES

Mike Jewett moved and Hadley Akins seconded the motion to approve the minutes. The motion passed unanimously.

B. COMMISSION COMMENTS

Hadley Akins reported that the Hermiston City Council passed a five million dollar bond issue, with an equal dollar match contributed by three food processors and a co-generation plant, for construction of a system to provide a municipal and industrial water supply from the Columbia. Akins said the Board of Commissioners and Soil Conservation District recently met to discuss formation of the Umatilla Basin Council. The week of November 22 is to be a scoping meeting of the four irrigation districts, the Bureau of Reclamation and other local entities to decide if the districts will follow through with their local boundary expansion application. The Umatilla Basin second phase construction project is well under way; the office of Budget and Management has included next year's funding in the Bureau's budget.

Mike Jewett announced that he would be meeting with Al Cook and the Grants Pass Irrigation District Board of Directors. Jewett asked that the Commission and Department consider Medford for their October, 1994, meeting. Director Pagel said staff would discuss the request and would welcome any other meeting location suggestions for 1994.

Jim Howland commented that after listening to testimony by Marvin Hegge and staff at the last meeting he would hope that the watermasters could be given more flexibility through rulemaking and training.

Lorna Stickel reported that the Portland Regional Water Supply Plan has been underway for over six months; a presentation was recently given to the Strategic Water Management Group. The Environmental Task Force, composed of representatives from government agencies and environmental groups, met recently and will be reviewing the environmental methodology for evaluating source options. The City of Portland submitted comments on President Clinton's forest management plan in light of metro population projections and future water supply.

Cliff Bentz reported that Martha Pagel had recently visited the Ontario area and met with the Malheur County Wheat League and OSU Extension Service. Her visit was much appreciated. Bentz commented that a local county water committee put together a video which was shown at the Oregon Water Resources Congress (OWRC) meeting this week. It is an excellent video on water conservation and agriculture's needs. Bentz commended Steve Sanders for his presentation on some very difficult legal issues at the OWRC meeting.

Roger Bachman said that he too spoke at the OWRC meeting and enjoyed it. He and Bob Main will be speaking at the meeting of the Central Oregon Water Users Association Monday. Bachman reported on the status of the Water Development Loan Fund (WDLF) and pending litigation. Transfer of the WDLF to the Dept. of Economic Development is tentatively scheduled for January 1994.

C. DIRECTOR'S REPORT

Martha Pagel gave a summary of what happened at the November 18, 1993, Work Session.

Backlog Update: The Department has mailed approximately 1,100 to 1,150 technical reviews. Another 600 are completed internally and undergoing final review. A large number of the 600 are for instream water rights. This is a high priority of the Department.

Budget Cutbacks: The Governor is seeking \$200 million over the course of the biennium from the state agency budgets--\$50 million for general funds and the balance from other and federal funds. The Governor cannot require cutbacks on programs that have statutory mandates, so cuts will most likely be to the administrative services of state government.

Negotiation Meeting: Pagel attended the 7th Water Right Negotiating Session for the Confederated Tribes of the Warm Springs Reservation at Kah-Nee-Ta October 28 and 29.

Pendleton Trip: Pagel met with the Confederated Tribes of the Umatilla Reservation. She heard feedback on current difficulties and concerns with the Umatilla Project. The Department has been working with the Bureau of Reclamation to put together a committee for better communication.

Ontario Trip: November 9 Pagel visited the Ontario area. She toured the area, saw many examples of conservation, and spoke at an agricultural issues forum.

Watershed Health Update: Becky Kreag, WRD, reported that a presentation was made to the Strategic Water Management Group (SWMG) on November 2, 1993. SWMG recommended a special meeting in December. Mary Lou Soscia will be the new Program Manager for Watershed Health. She is currently an EPA employee.

REPORT ON ACTIVITIES RELATING TO IMPLEMENTATION OF HB 3456,  
AND REQUEST FOR CONCURRENCE WITH PROPOSED EXPENDITURES  
FROM WELL START CARD FEES.

Steve Applegate and Barry Norris, WRD, reported on activities relating to HB 3456. The 1993 Legislature enacted HB 3456, which mandates certain programs and procedures relating to well construction.

Among the provisions of the new law is a requirement that the Ground Water Advisory Committee (GWAC) review proposed expenditures for new programs from funds accumulated by the Department from well start card fees. After the review by GWAC, staff are required to gain concurrence from the Commission.

The start card fund is dedicated for support of the well construction inspection program. The 1993 Legislature approved legislation that includes a requirement that the Department and the GWAC review proposed expenditures for new program activities from the fund, and then obtain concurrence from the Commission. The item that might be considered a new program activity is a recommendation to leave 1½ FTE for inspection activities vacant in order to fund contracts with county governments to perform the well inspection services.

Another part of the legislation approved by the 1993 Legislature provides for the one-time expenditure of funds from the start card fund for development of a well log data base. This is a new program activity. As a budget is developed with proposed expenditures, staff will be back before the Commission with requests for concurrence.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission concur with staff's proposal to contract with county governments to provide for well inspection services.

Mike Jewett moved and Roger Bachman seconded the motion to approve the staff recommendation. The motion passed unanimously.

Steve Sanders gave an update on litigation. Tape 1, Mark 430.

D. REQUEST FOR ADOPTION OF AMENDMENTS TO OAR CHAPTER 690, DIVISION 11, SECTION 010 (DEFINITIONS - APPLICATIONS AND PERMITS)

Beth Patrino and Reed Marbut requested adoption of definitions for Division 11 rules. At its meeting on October 1, 1993, the Commission deferred action on the adoption of a new definition of "municipal corporation" and proposed amendments to the definitions of "placer mining" and "power development water use" in OAR Chapter 690, Division 11, pending the outcome of a public hearing held on October 21, 1993. Staff requested adoption of the proposed definitions of "municipal corporation" and "power development water use" and suggested deferral of the proposed amendment to the definition of "placer mining."

At its July 17, 1992, meeting the Commission received a staff report on issues related to municipal and quasi-municipal water use permits and related statutory municipal preferences. The subsequent discussion revealed a number of problems with the current water use definitions employed by the Department, including different definitions of the same term 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 water use definitions in OAR Chapter 690, Division 11, and the existing basin program classifications. The working group developed a set of proposed rules to better coordinate the use of terms in the Department's permitting and planning activities. On April 30, 1993, the Commission directed staff to form an external working group to review and comment on the staff proposal prior to holding a rulemaking hearing. On June 18, 1993, the Commission authorized the Department to hold a rulemaking hearing which occurred on August 19, 1993.

At its meeting on October 1, 1993, the Commission adopted a set of new definitions in OAR Chapter 690, Division 500 (basin program classifications) and amended existing definitions and added definitions in OAR Chapter 690, Division 11 (applications and permitting). The Commission approved the Department's recommendation to defer action on the definition of "placer mining" to provide individuals who were unaware of the August 19, 1993, public hearing an opportunity to review and comment on the proposed amendment. In response to concerns and questions that were raised related to the definitions of "municipal corporation" and

"power development," the Commission also deferred action on these definitions and authorized the Department to hold a special public hearing on October 21, 1993, to accept additional comment on the three definitions.

**DIRECTOR'S RECOMMENDATION**

The Director and staff recommended that the Commission approve Alternative 1: (1) adopt the proposed definitions of "municipal corporation" and "power development water use" as shown in the staff report, (2) defer action on the proposed amendment to the definition of "placer mining," (3) authorize the Department to enter into a joint rulemaking process with the Division of State Lands, and (4) reschedule final action on this definition for the Commission meeting in February, 1994.

Mike Jewett moved and Jim Howland seconded the motion to approve the definitions of "municipal corporation" (including changing "and" to "or") and "power development." The motion passed unanimously.

Beth Patrino proposed deferring any action on the definition of placer mining.

Terry Drever-Gee, Oregon Independent Miners, commented. Mark 173, Tape 2.

Jay M. Schmidt, Willamette Valley Miners Association, commented.  
Mark 190, Tape 2.

Chuck Eidson, Willamette Valley Miners, commented. Mark 207, Tape 2.

Karen Russell, WaterWatch, commented. Mark 216, Tape 2.

Jim Howland moved and Hadley Akins seconded the motion to approve the staff recommendation to defer action and to conduct joint rulemaking hearings with the Division of State Lands. The motion passed 5-1. Roger Bachman voted no.

E. **REQUEST FOR AUTHORIZATION TO HOLD HEARINGS ON PERMANENT RULES REFLECTING CHANGES IN THE AUTHORIZING STATUTES OF CHAPTER 690, DIVISION 13 (HB 3111, 1989)**

Bob Main briefed the Commission on HB 3111. Senate Bill 129 from the 1993 Legislative Session extended the deadline for irrigation district remapping petitions (HB 3111 program). Other changes to ORS 541.325 to 541.333 were also brought about by SB 129. Existing OAR Chapter 690, Division 13, rules need to be amended to the extent they do not now comport with the existing laws.

House Bill 3111, creating an irrigation district remapping program, was adopted in 1989 (Chapter 1000, Oregon Laws 1989), and was codified at ORS 541.325-541.333. This bill established a process for irrigation districts to petition the Water Resources Department for changes in their water right certificates that would reflect current usage, without expanding their rights. The original deadline for filing petitions was July 1, 1992. Implementing rules were adopted in OAR Chapter 690, Division 13.

In 1991, the Legislature extended the filing deadline to July 1, 1993. In 1993 a bill was adopted (SB 129) that extended the filing deadline to July 1, 1994, and further amended the statutes to ensure that the additional time allowed could not be used to expand the rights of the petitioner. SB 129 was sponsored and promoted by the Oregon Water Resources Congress and the final version was supported by the Department and Commission.

The Division 13 rules should be amended to eliminate any conflicts with the authorizing statutes, as amended by SB 129.

On November 15, WaterWatch of Oregon filed a petition to incorporate a different revision of the rules.

#### **DIRECTOR'S RECOMMENDATION**

The staff recommended that the Commission deny the petition, appoint a Commission subcommittee to help staff modify the rules, and determine what is to go into the draft of proposed rulemaking and have final rules by the February meeting.

Martha Pagel recommended having a subcommittee of the Commission to help evaluate the Water Resources Department's draft proposal and the WaterWatch proposal.

Karen Russell and Reed Benson, WaterWatch, commented. Mark 770, Tape 2.

Kip Lombard, Oregon Water Resources Congress, commented. Mark 1, Tape 3.

Bruce Estes, commented. Mark 346, Tape 3.

Karen Russell and Reed Benson, WaterWatch, commented. Mark 477, Tape 3.

Jim Howland moved and Hadley Akins seconded the motion to deny the WaterWatch petition and appoint the subcommittee to work with staff to modify rules to go to hearing. The motion passed unanimously.

The Commission subcommittee consists of Cliff Bentz, Lorna Stickel and Roger Bachman.

F. REQUEST FOR APPROVAL OF A PROCESS FOR COMPLETING DEVELOPMENT OF WATER MANAGEMENT PLANNING RULES

Doug Parrow requested approval of a process for completing development of water management planning rules. The Statewide Policy on Conservation and Efficient Water Use was adopted by the Commission in December 1990. The policy calls for development of rules prescribing schedules and standards for preparation of water management plans by major water suppliers and users. Staff developed proposals responding to many of the concerns which were expressed during previous hearings and workshops. However, several issues remain which require additional work. The Commission was offered process alternatives for completing the rulemaking.

During development of the conservation policy, the water management planning approach was selected to prompt systematic evaluations of water use and water systems operations to determine where water is being lost and what measures are feasible to reduce the losses. Under this approach, water suppliers and users are required to prepare and submit the plans to the Department.

The water management planning approach was selected because of the wide variations in the characteristics and capabilities of water suppliers and users. Given the lack of experience and information on appropriate water management practices, accommodating these wide variations in development of specific efficiency standards would have been extremely difficult and complex. However, in the long run, after experience is obtained through the water management planning process, staff expect to propose adoption of efficiency standards for various water uses and water system operations.

In 1991, staff began working with a Conservation Advisory Committee to prepare administrative rules to implement the policy. Public hearings were held on draft rules in September 1992. During the hearings process, 113 people provided oral testimony. In addition, written comments were submitted by 150 people. The comments reflected widespread concerns about the content of the proposed rules and the process by which the rules were developed.

In November 1992, staff presented alternatives to the Commission on revising the draft rules. The Commission agreed to a process for revising the draft rules which included enlisting volunteer entities to prepare pilot plans to test-run the proposed rules and a continuation of work with the Conservation Advisory Committee. In



August 1993, staff held a series of six workshops to discuss issues before the Commission, including preparation of water management planning rules.

Based on the comments from the hearings and workshops, staff prepared discussion papers listing the major concerns and identifying possible revisions in the draft rules. Because work on the pilot plans had not been completed, the discussion papers focused on methods for resolving concerns relating to definitions and to the plan approval process. The discussion papers were reviewed and discussed by the Conservation Advisory Committee on October 14.

#### DIRECTOR'S RECOMMENDATION

Staff recommended that they work with the Commission subcommittee, proceed with the Conservation Advisory Committee meeting scheduled for December 1, continue developing a draft to go to hearing, and rely on the subcommittee to guide the staff on timing for the hearings.

The Commission subcommittee consists of Roger Bachman, Cliff Bentz and Mike Jewett.

Linda Barrett, Barrett Livestock, commented. Mark 314, Tape 4.

Karen Russell, WaterWatch, commented. Mark 681, Tape 4.

Ladd Henderson, Santiam Water Control District, commented. Mark 837, Tape 4.

Mike Jewett moved and Jim Howland seconded the motion to approve the staff recommendation. The motion passed unanimously.

#### G. PUBLIC COMMENT

There was no public comment.

#### H. REQUEST FOR ADOPTION OF AMENDMENTS TO WATER SUPPLY AND MONITORING WELL CONSTRUCTION AND MAINTENANCE RULES AND RULES GOVERNING THE GROUND WATER ADVISORY COMMITTEE, OAR CHAPTER 690, DIVISIONS 200 THROUGH 240

Steve Applegate, Rob Carter and Marc Norton, WRD, briefed the Commission on the proposed adoption of Divisions 200 through 240. In August 1993, the Commission authorized staff to conduct rulemaking hearings concerning proposed revisions to the rules governing the Ground Water Advisory Committee (GWAC) and well

construction (OAR Chapter 690, Divisions 200 through 240, with the exception of 230). Hearings were held in Salem and Bend, September 13 and 14, to solicit public comment on the draft rules. Written and oral testimony were collected and considered. Staff incorporated much of this testimony into the final draft and requested Commission approval of the final draft rules.

Several actions contributed to the need to review and update the Department's current water supply well, monitoring well and GWAC rules:

- 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.
- Modifications, including reformatting, were also made to the draft rules to correct typographical errors, to improve clarity and to facilitate field inspections.
- Changes were made to the entire set of rules to reflect the fact that specific rules now exist for both monitoring and water wells. The rules were reworded to indicate whether each citation is specific to one class of wells or pertinent to all regulated wells. These changes will allow the separate rules to better complement one another.

The rule revision process sought input from a wide range of individuals impacted by the rules. Staff involvement included individuals from the Department's Well Construction Program and the Groundwater/Hydrology Section. In addition, input was provided by field staff engaged in well inspection.

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 was comprised of members of the regulated community, representatives of the Department of Environmental Quality (DEQ) and other affected individuals. Both committee and subcommittee members have actively participated in the rule revision process.

At its August 13 meeting, the Commission authorized the Department to hold rulemaking hearings on the proposed modifications to the rules. Two hearings were scheduled, one in Salem and one in Bend. In preparation, staff mailed over 1,000

hearing notices to interested parties, including all licensed well constructors. Thirty-three individuals attended the two hearings, of which twelve testified on the proposed revisions. Additionally, twelve individuals submitted written testimony during the comment period. The majority of the comments focused on proposed modifications to the water supply well rules. Oral and written testimony was analyzed by staff and a final draft was prepared.

#### DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission adopt the proposed rule as proposed.

Steve Applegate suggested a change on Page 6 of Attachment 1 for the definition of "permanent abandonment." He indicated that the underlined "or a portion of a well" should be struck out.

Brooks Koenig, DEQ, commented. Mark 370, Tape 5.

Mike Jewett moved and Jim Howland seconded the motion to approve the Director's recommendation with the staff amendment. The motion passed unanimously.

#### I. PROPOSED ADOPTION OF AMENDMENT TO RESERVATION RULES (OAR 690, DIVISION 79) TO ESTABLISH A PRIORITY DATE FOR A MUNICIPAL RESERVATION OF WATER IN THE WILLAMETTE BASIN

Lorna Stickel excused herself from this issue due to conflict of interest.

Doug Parrow briefed the Commission on the proposed adoption of Division 79. The League of Oregon Cities petitioned the Water Resources Commission to grant a Willamette Basin municipal reservation request a June 5, 1992 priority date. This would give the municipal reservation request referenced in the basin plan and the pending agricultural reservation request parity if completed in accordance with the Division 79 administrative rules governing the establishment of reservations of water for future economic development. The Commission initiated rulemaking as requested by the petitioner, and a rulemaking hearing was held. The Commission was asked to decide whether to adopt, modify or reject the petitioner's proposed rule.

When the Commission adopted an updated Willamette Basin program in January 1992, the program included quantities of water to be reserved for both agricultural and municipal purposes. The quantity of water identified to be reserved for future municipal purposes was developed by staff, at the direction of the Commission, as part of the basin planning effort. The Oregon Department of Agriculture prepared

and submitted a reservation request for agricultural purposes. Under the reservation rules then in place, the establishment of reservations for the quantities and purposes identified in the basin program would be dependent upon the subsequent outcome of a contested case hearing and public interest determination.

After adoption of the Willamette Basin rules in January 1992, the Department amended the administrative rules governing reservations of water. On June 5, 1992, the Commission adopted new reservation rules. The new Division 79 rules simplified the reservation process by eliminating the requirement that basin rulemaking accompany contested case proceedings. The new rules allowed establishment of reservations solely by order of the Commission following a contested case hearing. These rules also made all pending reservation requests subject to the amended rules and established the adoption date as the priority date for any pending requests.

Following adoption of the Willamette Basin rules, the legitimacy of the municipal reservation in the basin program was challenged on procedural grounds. The municipal reservation provisions of the basin rules were incorporated into the final program following public hearings in response to concerns expressed by municipal water suppliers. Those provisions had not been subject to hearings. The Attorney General recommended rescission of the reservations and reconsideration under the new Division 79 rules. Because of the legal challenge and subsequent amendment of the reservation rules, the Commission initiated rulemaking to amend the Willamette Basin program to rescind the reservation provisions in the basin rules.

The Commission adopted a revised Willamette Basin program in August 1992 which deleted all reference to reservations except for a management objective. The management objective called for consideration of reservations within the context of planned, future uses that are consistent with the public interest. The management objective also described the standard of review and concept of parity to be applied to reservations when allocating water to meet future municipal and agricultural water supply needs.

During revision of the reservation rules, the Director and staff concluded that the municipal reservation of water for municipal purposes undertaken as a planning effort did not meet the criteria of the Division 79 rules to qualify as a valid reservation request. Municipal water suppliers have argued that this would make any future reservations for municipal purposes junior in priority to an agricultural reservation. They also suggested that this appears contrary to the management objective of parity adopted by the Commission. This prompted the League of Oregon Cities to file the rulemaking petition on behalf of its members.

The Commission considered the League's petition at its June 18, 1993, meeting. The Commission agreed to conduct a hearing to obtain comments on amendment of the reservation rules. The proposed amendment would provide for equal priority dates for agricultural and municipal reservations in the Willamette Basin to meet the management objective of parity.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission adopt the proposed rule as proposed.

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

J. OTHER BUSINESS

Martha Pagel presented a written staff report which had been prepared prior to the meeting requesting that the Commission delegate authority to the Director to initiate rulemaking proceedings. In her oral presentation, Director Pagel asked that the item be considered as an informational briefing only. She reported that the issue would be returned to the Commission for action at a later time.

Karen Russell, WaterWatch, commented. Mark 485, Tape 5.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Cindy Smith  
Commission Assistant