

WATER RESOURCES COMMISSION
JANUARY 7, 1994
MEETING
SALEM, OREGON

MEMBERS

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

STAFF ATTENDING ENTIRE MEETING

Martha Pagel
Steve Sanders
Diane Reynolds
Cindy Smith
Bev Hayes
Weisha Mize
Reed Marbut
Fred Lissner
Barry Norris
Tom Paul
Bill Fujii
Rick Bastasch
Donn Miller
Steve Brown
Becky Kreag
Tom Kline

OTHERS

Jan Boettcher
Todd Heidgerken
Ves Garner
Jim Myron
Doug Myers
Stephanie Burchfield
Karen Russell
David Moskowitz
Larry Trosi
Jerry Schmidt
Audrey Simmons
Angus Duncan

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. APPROVAL OF MINUTES

Jim Howland moved and Cliff Bentz seconded to approve the minutes as submitted. The motion passed unanimously.

B. COMMISSION COMMENTS

Anita Johnson reported that she spent a day with staff at Marvin Hegge's ranch near Sutherland and also spent part of a day with the Eugene Water and Electric Board discussing their long-range plans. Johnson felt both of these days were very productive.

Mike Jewett reported that he met with the Grants Pass Irrigation District (GPID) regarding its need to decide whether to take out or repair Savage Rapids Dam. To repair the dam would cost about 17 million dollars, whereas removal and installation of pumps would cost about 11 million dollars. The operating costs would be lower if the dam were removed, and many fewer fish would be lost. The board voted (3-0) to take the dam out. GPID's permit may be extended for another 5 years to allow time to remove the dam. The permit allows GPID to operate above the rate and duty in their certificated right. The Governor's Office is tentatively okay with this approach. GPID will be reporting to the Commission in April on this issue.

Lorna Stickel reported that work on the Portland Regional Water Supply planning effort continues. A water rights report has been prepared and submitted to a steering committee. A water availability, water quality and water treatment report are in progress. A boring was completed up in the Bull Run to a 550-foot depth in the abutment area. The team has decided to utilize the Stelatwo Program for developing an integrated resources planning model. Peter Swartz, Northwest Power Planning Council, a substitute on this project, and Dr. Richard Palmer, a professor at the University of Washington, are key people in this project which offers great promise for modeling the Willamette Basin.

Stickel stated that there continue to be contacts with the Corps of Engineers regarding their position about contracting of water.

Stickel reported that she attended Conserve '93 in Las Vegas. This was a very interesting conference. Two volumes of papers were presented on different aspects of water conservation, both agricultural and municipal.

Roger Bachman reported a minor change in the Water Development Loan Fund in that it is now receiving interest payments from the Logan Loan.

Bachman spoke at the annual meeting of the Central Oregon Water Users Association in Redmond. He thinks that many people still don't understand what the laws and rules really mean. He will be attending seminars put on by the Oregon Water Coalition along with other Commissioners.

Bachman expressed a sentiment that the Commission members' \$30 a day allowance for attending business related to the Department should be eliminated. Other Commissioners concurred.

Hadley Akins reported that he attended a tour of the developing Umatilla Basin Project. Phase I was completed and operational all summer with very few problems. Phase II, the pumping station physical construction, is 75 to 80 percent completed. Although pumps are not yet installed, a substantial amount of pipe is already laid out. The delivery of water to Cold Springs is expected some time next spring. The appropriation that is being worked on includes the Bureau of Reclamation's portion of the repairs to Cold Springs Dam.

C. DIRECTOR'S REPORT

Martha Pagel reviewed the Commission's proposed meeting schedule. In view of budget cutbacks, she recommended a trimmed-back travel schedule which includes the out-of-town meetings of Roseburg in April, Klamath Falls in June, La Grande in September and Medford in October.

Fred Lissner reported on the Deschutes Groundwater Study. In May 1993, the Department entered into a contract with the US Geological Survey (USGS) to begin a study of the Deschutes Basin. The state is having a rough time maintaining funding on this projected three-and-a-half year study. \$236,220 is needed this year. Director Pagel wrote to the USGS explaining the state's difficulty in getting the funding and requesting that activities that would incur expenses to the Department be terminated. The Deschutes County Commission, City of Bend Commission and the local legislative delegation are trying to come up with funding. The Department has 2 FTI involved in the study. The Department has been able to raise about half of what is needed in grants from the Department of Environmental Quality, Strategic Reserve Fund, Environmental Protection Agency and the USGS, but has still come up with a shortfall of between \$100,000 and \$120,000. Local people are concerned that if the state funding does not go through, their funding source will back out, and the project will fall apart. The people in the Deschutes Basin want a final resolution to funding and a final project design by February 3, 1994.

Pagel gave an update on Parrett Mountain. The Department proceeded with rulemaking to extend the current rules, and a hearing will be held on January 21, 1994. Commissioner Bachman has agreed to participate in the hearing.

Pagel gave a status report on the Ochoco Reservoir and action by the Bureau of Reclamation regarding the repair of the dam structure. Crook County submitted a letter to the Governor requesting assistance for a federal disaster declaration. This has put irrigators in a difficult spot. The Department is working with people involved to try to help out with this situation.

Pagel gave a budget reduction update. The Department's target amount is about \$200,000; staff continue to work with the Governor's Office and the Department of Administrative Services to develop a plan on how to achieve this.

Pagel reported to the Commission on her public outreach involvement. She spoke at the Oregon Farm Bureau annual meeting in Springfield, and the Oregon Sheep Growers Association annual meeting in Florence. She met with some representatives of the Oregon Water Trust, which may lead to an informational session before the Commission. She met with Douglas County Planning, which also may lead to an informational session. Pagel met with one of the Board members of the Department of Agriculture regarding his interest in getting natural resources boards and commissions together. On January 13, she will speak on the Watershed Health Program at the meeting of the Oregon Association of Clean Water Agencies. She has been asked to speak later this month before the Grants Pass Rotary Club regarding the Grants Pass Irrigation District and Savage Rapids Dam. On January 10, she will meet with representatives from the Wasco County area to discuss the Buck Hollow project.

Lorna Stickel asked about the December 14 letter from Arnold Irrigation District (AID) withdrawing their application for allocation of conserved water. Hadley Akins expressed concern that the conservation program is not working. The Commission asked for a presentation by AID at the meeting in Klamath Falls.

Jan Boettcher, Oregon Water Resources Congress, commented. Tape 2, Mark 85.

D. UPDATE ON WATER RIGHT APPLICATION PROCESSING BACKLOG

Reed Marbut and Steve Brown, Water Resources Department, gave an oral update on the water right backlog. The Department met its goal of 2,500 technical reviews on December 30, 1993. A more detailed report will be presented at the next meeting.

E. UPDATE ON WATERSHED HEALTH PROGRAM

Becky Kreag, Water Resources Department, gave an oral update on the Watershed Health Program activities. The 1993 Legislature approved a major Watershed Health initiative that allocates \$10 million from the Lottery Fund for interagency work and restoration projects in the Grande Ronde and South Coast/Rogue areas. This unique program is of keen interest throughout the state and among legislators and decision-makers. Water Resources Department was assigned the lead in administering the program. Mary Lou Soscia is the newly-hired manager for the program.

The Strategic Water Management Group (SWMG) approved an interim project selection and funding criteria for Watershed Health in the South Coast and Grande Ronde areas. Any of the councils or people in the South Coast area who have watershed enhancement projects are encouraged to apply for Governor's Watershed Enhancement Board grants. The field team and core team will work with the applicants to determine funding priorities.

SWMG will consider some of the early action projects and the appointment of a state watershed advisory committee to provide advice and oversight on some of the programmatic elements of the Watershed Health Program.

SWMG has set a schedule to meet every other month starting in February.

On February 9 & 10, Watershed Health Program representatives will speak before the Emergency Board and the Legislative Audits Committee.

A public involvement strategy is being developed for the program. Oregon Department of Fish and Wildlife and Northwest Power Planning Council have a person working on this.

DIRECTOR'S RECOMMENDATION

This was an informational report only. No Commission action was required.

F. REQUEST FOR APPROVAL OF NOMINEES TO THE GROUNDWATER ADVISORY COMMITTEE (GWAC)

Donn Miller, Water Resources Department, requested approval of nominees to the Groundwater Advisory Committee. The Groundwater Advisory Committee is a nine-member group which advises the Water Resources Commission on groundwater matters. The committee currently contains two vacancies and three other members serving beyond their expired terms. Staff sought to obtain Commission approval of a

nominee to fill one of those vacancies and to reappoint one of the beyond-term members.

The 1977 Legislative Assembly created a five-member Groundwater Advisory Committee (GWAC). In 1991 a statutory change expanded GWAC to nine members. The purpose of GWAC continues to be that of advising the Water Resources Commission (formerly the Director) on all matters relating to developing, securing, using and protecting groundwater, and the licensing of well constructors.

Since the creation of the Water Resources Commission in 1985, GWAC appointments have been delegated by rule to the Director. However, the recent amendments to Division 235 rules restored the requirement of direct Commission appointments to the committee.

When GWAC membership was expanded to nine members in 1991, the Director maintained diverse representation by selecting members from the following areas: water well and monitoring well industry (3 members), hydrogeologist (2 members), local government (1 member), public health (1 member), environmental (1 member), groundwater user (1 member). The only required representation is for three members of the water well and monitoring well industry. The added categories are not required under the statute or rules but continue to serve as a useful guide to assure broad representation.

The committee currently contains two vacancies, and three other members serving beyond their expired terms. Only one of the beyond-term members wishes to be reappointed. That member's reappointment to the hydrogeologist category and the filling of the groundwater user vacancy are addressed in the staff report. Staff continue to pursue candidates for the remaining environmental and well industry membership categories (currently beyond-term members) and the local government vacancy.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Water Resources Commission approve the nomination of Ralph Christensen, consulting hydrogeologist, and Alan Parks, rancher from Fort Rock Basin, to the Groundwater Advisory Committee.

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

G. REQUEST FOR APPROVAL OF INTERIM STRATEGY FOR THE COLUMBIA/SNAKE RIVERS AND AUTHORIZATION TO INITIATE RULEMAKING ON WEAK FISH STOCK PROTECTION STANDARDS

Tom Kline and Bill Fujii, Water Resources Department, requested approval for the Columbia/Snake Rivers strategy and authorization for rulemaking. Shortly after the listing of four Snake River salmon runs under the Endangered Species Act in 1991 and 1992, the Northwest Power Planning Council (NWPPC) called upon state water management agencies to limit new appropriations to protect anadromous fish runs. The listing and the Council's action raised a number of questions about the impacts of new appropriations on fish species. The recently-released Peer Review Draft of the Salmon Recovery Plan identifies both regional actions and decisions which may be necessary to reverse the decline of anadromous fish runs. The issue before the Commission was whether to approve interim actions and authorize initiation of rulemaking prior to approval of a final Recovery Plan. Staff verbally recognized other planning efforts such as the NWPPC as important. The Department will make efforts to be consistent with these plans.

In 1991 and 1992, Snake River salmon were listed under the Endangered Species Act. The NWPPC proposed regional actions to aid fish recovery. Subsequently, the Washington Department of Ecology adopted emergency rules withdrawing the unappropriated waters of the mainstems of the Columbia and Snake Rivers from further appropriation until June 1994. The Idaho Department of Water Resources placed a moratorium on processing new permit applications within the Clearwater and Salmon River Basins. Those limitations remain in effect.

On July 17, 1992, the Commission directed staff to delay processing most new water use permit applications in the Columbia Basin pending development of a strategy to respond to the listing. The proposed strategy was first reviewed by the Commission in June 1993. Six public workshops were held in August 1993 to obtain public views on the proposal and discuss possible water management options.

The draft Salmon Recovery Plan, released for peer review in October 1993, suggests that both tributary and mainstem actions will be necessary for the recovery of listed Snake River fish runs.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission approve Alternative 3 and authorize the initiation of rulemaking to establish permitting standards for protection of weak fish stocks.

Angus Duncan, NWPPC, commented. Tape 3, Mark 231.

Jim Myron, Oregon Trout, commented. Tape 4, Mark 90.

David Moskowitz, Oregon Trout, commented. Tape 4, Mark 100.

Karen Russell, WaterWatch, commented. Tape 4, Mark 120.

Stephanie Burchfield, ODFW, commented. Tape 4, Mark 450.

Jan Boettcher, OWRC, commented. Tape 4, Mark 506.

Cliff Bentz moved and Hadley Akins seconded to adopt the staff recommendation while also recommending that a subcommittee of the Commission be developed to help with this issue.

Roger Bachman stated that he would like to add the Deschutes to the directive.

Cliff Bentz moved and Mike Jewett seconded the amended recommendation to add the Umatilla and the Deschutes below Pelton Dam, and all tributaries below Pelton Dam, along with the addition of a subcommittee of Commissioners. The motion passed unanimously.

The subcommittee of Commission members consists of Lorna Stickel, Roger Bachman and Hadley Akins.

H. PROPOSED ADOPTION OF UPDATED ATTORNEY GENERAL'S UNIFORM AND MODEL RULES OF PROCEDURE, AMENDMENT OF OAR 690-01-005 AND REQUEST FOR RULEMAKING HEARING AUTHORIZATION FOR AMENDMENT OF OAR 690-01-000

Weisha Mize, Water Resources Department, proposed adoption of the updated Attorney General's uniform and model rules of procedure. On January 1, 1992, the Commission adopted the 1991 version of the Attorney General's (AG) Uniform and Model Rules and amended OAR 690-01-005 to reflect that adoption. With the AG's adoption of the new version of the Uniform and Model Rules, the Commission is being asked to adopt the new rules and amend OAR 690-01-005 to reflect the adoption.

Where no modification is proposed, the Commission is authorized to adopt the Model Rules by reference, and a rulemaking hearing is not required. Exclusions of entire rules do not constitute modification or amendment. To adopt the Model Rules,

the agency must file with the Secretary of State a certified copy and additional copy of the rule adopting the Model Rules by reference and the Commission's order of adoption.

Under ORS 183.390 and 183.410, the AG must establish Uniform Rules governing petitions for rulemaking (OAR 137-01-070) and declaratory rulings (OAR Ch. 137 Div. 2). In this specific instance, the Commission is not allowed to change or omit the Uniform Rules. The AG has adopted amendments to OAR 137-02-040. Uniform Rules must be used as written by all agencies subject to the rulemaking provisions of the Administrative Procedures Act, ORS 183.310 to 183.410. Uniform Rules are effective without further rulemaking and may not be modified by the agency.

HB 2262 (1993 Session Laws Ch. 729) modified the notice times established in ORS 183.335(1), the statute on which the Commission's rulemaking notice rule is based. The statutory changes were effective November 4, 1993. The Commission's notice rule, OAR 690-01-000, should be amended to be consistent with the new statutory provisions. Amendment of OAR 690-01-000 requires a rulemaking hearing.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Water Resources Commission approve the order adopting the Attorney General's November 4, 1993, edition of the Model Rules with the exception of OAR 137-03-090 to 137-03-092 and amending OAR 690-01-005 to reflect this adoption.

It was further recommended that the Commission authorize rulemaking for the purpose of amending OAR 690-01-000 as recommended to reflect statutory time and notice requirements for notice of rulemaking.

Mike Jewett moved and Cliff Bentz seconded to go with the staff recommendation. The motion passed unanimously.

I. PUBLIC COMMENT

Doug Myers, WaterWatch, commented. Tape 5, Mark 296.

J. CONSIDERATION OF EXCEPTIONS TO CIVIL PENALTY PROPOSED ORDER, CASE CP 93-4, JON ASLAKSON

Weisha Mize, Water Resources Department, reported on the consideration of exceptions to civil penalty regarding Jon Aslakson, Case CP 93-4.

Jon Aslakson filed exceptions to the Proposed Order finding him in violation of four of the Commission's well construction and maintenance rules, assessing \$200 in civil penalties and requiring him to repair his two wells which are improperly maintained. The Commission was asked to consider the exceptions and staff discussion and recommendations and direct staff to issue a Final Order consistent with the Commission's determination.

This enforcement action was initiated based on the alleged well maintenance violations by Respondent Jon D. Aslakson, relating to the improper maintenance of two hand-dug wells on the Aslakson property in Josephine County.

Pursuant to ORS 537.535, OAR 690-200-030 and 690-215-005, a landowner has the responsibility to maintain any well located on the landowner's property in a manner consistent with the minimum well construction and maintenance standards and in such a manner that the wells do not constitute a health threat or hazard. Pursuant to OAR 690-200-050(42), wells lacking adequate surface seals and watertight covers may be considered a health hazard.

Physical inspection of the wells by the Southwest Region Well Inspector on October 22, 1992, showed that the Aslakson wells did not comply with OAR 690-210-400 in that they lacked adequate surface seals and that they further did not comply with OAR 690-215-050 in that they lacked adequate watertight covers.

Correspondence and several meetings between SW Region staff and the respondent failed to result in the repair or abandonment of the wells as the watermaster directed. Subsequently, a notice of intent to assess civil penalties and to require repair or abandonment of the wells consistent with Oregon's Minimum Well Construction and Maintenance Standards and notice of opportunity to request hearing was served on Jon Aslakson on June 7, 1993.

A request for hearing was received on June 22, 1993 and the hearing was held on September 22, 1993. As part of the Referee's review of the hearing record, an unofficial transcription of the testimony was prepared. The Proposed Order was issued on October 19, 1993. Mr. Aslakson expressed his intent to file exceptions on November 8 and submitted exceptions on November 26, 1993.

DIRECTOR'S RECOMMENDATION

Staff recommended that the Commission deny the exceptions and issue the Final Order without change.

Jon Aslakson, commented. Mark 452, Tape 5.

Roger Bachman moved and Anita Johnson seconded to deny the petition and go forward with the Proposed Order. The motion passed unanimously.

K. REQUEST FOR APPROVAL TO USE START CARD FEES FOR WELL LOG DATA ENTRY AND TO STAFF PROJECT COMMITTEES

Barry Norris, Water Resources Department, requested approval to use Start Card fees for well log data entry and to staff project committees.

The 1993 Legislature enacted a law that allows the Department to develop a computerized well log data base, upon unanimous approval of a project development committee with concurrence by the Groundwater Advisory Committee (GWAC) and Water Resources Commission. The project would be funded by surplus start card fees. This report provides background on the legislation and requests Commission concurrence for initial expenditures.

In the 1993 legislative session, the Oregon Groundwater Association sponsored HB 3456, relating to various aspects of the Department's well construction program. Part of this new law provides for the development of a computerized well log data base. The project is to be funded from well start card fees.

During the session, Department staff worked with the bill sponsors to resolve a series of concerns that were expressed in legislative hearings. A key issue related to the Department's projected fiscal impact for implementation of the new imaging program.

When the measure was first introduced, Department staff submitted a fiscal impact statement of about \$750,000 for the 1993-95 biennium. This amount included rough estimates for equipment, software and staffing needs. Both the Oregon Groundwater Association and Association of Oregon Realtors expressed concerns about the apparent high cost of the program. Further discussions with these interest groups revealed that many of the concerns stemmed from uncertainty as to the final scope of the project. In its final form, HB 3456 included compromise language that allows the imaging project to proceed if certain conditions are met.

The law provides for the establishment of a "Project Development Committee."

This committee is charged with control of funding and direction. Every decision made by the committee must be unanimous. Once the committee has agreed to spend funds on all or any portion of the project, its recommendation must be sent to GWAC for approval. After GWAC approval, the proposal must be submitted to the Commission for concurrence. If the Commission grants approval, the proposal is

taken to the Legislative Emergency Board for final approval and spending authorization.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission authorize the Department to seek Legislative Emergency Board approval for funding and position authority for two positions to support the well log data base project. Funds for the positions will come from well log start card fees. The amount of funds is \$54,275. Both positions will be limited duration and would be funded through December 31, 1994.

Cliff Bentz moved and Jim Howland seconded the motion to approve the Director's recommendation. The motion passed unanimously.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Cindy Smith
Commission Assistant