

WATER RESOURCES COMMISSION
MEETING MINUTES
FEBRUARY 25, 1994

MEMBERS

Cliff Bentz
Hadley Akins
Mike Jewett
Anita Johnson
Roger Bachman

STAFF

Martha Pagel
Steve Sanders
Diane Reynolds
Cindy Smith
Becky Kreag
Bev Hayes
Weisha Mize
Reed Marbut
Steve Applegate
Rick Bastasch
Steve Brown
Tom Paul
Bob Main

OTHERS

Doug Myers
Jerry Schmidt
Jan Boettcher
Kip Lombard
Eric Mockridge
Barb Mockridge
Stephanie Burchfield
Susan Schneider
Tom O'Connor
Larry Trosi
Bob Hall
Karen Russell
Jeff Curtis
Glenn Barrett
Jim Myron
Earl Weirsma
Todd Heidgerken
Marc Thalacker
Rex Barber
Neil Bryant
Tom Walker
Julie Keil
Arie DeJong
Scott Ashcom
Bob Hoeffel

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, Commerce Building, 158 12th St. 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.

Cliff Bentz called the meeting to order.

A. CONSENT AGENDA

A.1 Commission MinutesA.2 Request for Adoption of Revised Rulemaking Notice Rule, OAR 690-01-00

On January 7, 1994, the Commission authorized a rulemaking hearing on the proposed amendment of OAR 690-01-000, the Commission's rule on notice of rulemaking hearings. The Commission was being asked to adopt the proposed amended rule OAR 690-01-000.

HB 2262 (1993 Session Laws Chapter 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. Amendment of the Commission's notice rule, OAR 690-01-000, was thus required. The Commission authorized a rulemaking hearing for this purpose.

Notice of proposed rulemaking hearing was mailed on January 11 and published in the Secretary of State's Bulletin on February 1. The rulemaking hearing was held February 8 and the written comment period closed February 9. No one attended the hearing. No written comments were received. The proposed amendments authorized by the Commission for hearing have not been modified.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission adopt amended OAR 690-01-000.

A motion was made by Mike Jewett and seconded by Hadley Akins to approve Items A.1 and A.2 of Consent Agenda Item A as submitted. The motion passed unanimously.

B. COMMISSION COMMENTS

Roger Bachman reported that an agreement has been made on the interest rate to be assessed to the money that is to be paid back to the Water Development Loan Fund. The Sand Hollow loan has been separated from the Class Action Law Suit so the procedure can continue with foreclosure. The Loan Fund continues to get interest payments from the Logan loan. The Memorandum of Understanding with the Department of Economic Development is still being worked on.

Anita Johnson reported that the January Governor's Watershed Enhancement Board Conference was a great success. Approximately 450 people attended. The Governor's Watershed Enhancement Board is now accepting applications for projects.

Cliff Bentz asked about appointments to the Commission. Martha Pagel said the Commission can offer names for consideration to the Governor's Office or through her.

Bentz reported that he attended a meeting in Idaho with Steve Sanders. A group of engineers from Bonneville Power Administration and Northwest Power Planning Council met to discuss legal impediments to obtaining two million acre-feet of water in the Snake River Basin.

C. DIRECTOR'S REPORT

1. Martha Pagel gave a follow-up report regarding the use of well funds to hire well inspectors. Kent Searles, Eastern Region Manager, was not able to come to agreement with Baker County. The Department is going to go back to the original concept to use the state position authority for hiring.
2. Tom Kline, Water Resources Department, reported on the Columbia Snake Strategy. At its January meeting, the Commission adopted a 5-point interim Columbia/Snake strategy. In adopting this strategy, the Commission added the lower Deschutes and Umatilla Rivers to an Internal Management Directive on the allocation of staff time reviewing applications for water rights within areas of concern. The other areas affected by the Internal Management Directive were mainstem Columbia and Snake Rivers, Hood River and tributaries above the West Fork, John Day River and tributaries above the North Fork, and Grande Ronde Basin. The January staff report should have listed the West Fork Hood River and tributaries, not the Hood River and tributaries above the West Fork.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended concurrence on the revised Internal Management Directive as a part of the interim Columbia/Snake strategy.

A motion was made by Roger Bachman and seconded by Mike Jewett to approve the Director's Recommendation. The motion passed unanimously.

3. The Burnt River Reservation Request is about ready to process. The Oregon Department of Agriculture may take the place of the Water Resources Department as the applicant agency. All the parties are agreeable to this modification.

Jan Boettcher, Oregon Water Resources Congress, commented. Mark 295, Tape 1.

4. Pagel gave an update on the hiring process for the administrator position for the Field Services & Enforcement Division of the Department. Forty-one applications were received. The Department has narrowed it down to 11 applicants. Tom Paul, Steve Applegate, Rick Bastasch and Martha Pagel are the interview team. They plan on narrowing it down to 5 or 6 applicants, at which point the team will seek Commission input.

5. Pagel noted that the April Commission meeting date in Roseburg has been changed to April 7 and 8, from the original April 14 and 15 dates.
6. The Department will move to new its building on March 19, 1994.
7. Lorna attended a Western States Water Council special conference in Boise, Idaho. This is a follow-up to the Parks City meetings that were held earlier.
8. Steve Sanders gave a legal update.

D. UPDATE ON WATERSHED HEALTH PROGRAM

Becky Kreag, Resource Management Division Administrator, gave an update on the Watershed Health Program. The Watershed Health teams and their personnel have been very active with the local watershed councils. The field teams have been working with local groups and landowners in identifying potential projects. A limited number of projects have been funded, including tree planting in the South Coast and fish screening approval in the Illinois Basin. Mary Lou Soscia, the program manager, and Director Pagel went to a meeting in Seattle on ecosystems and watershed management with Vice-President Al Gore. Mary Lou also planned to attend a special Western Governors' Association meeting on watersheds in Boise, Idaho. The Strategic Water Management Group approved a forum group which will meet periodically to provide input on the program management and general criteria for funding and monitoring projects. The first meeting for this forum will be March 11, 1994.

DIRECTOR'S RECOMMENDATION

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

E. REQUEST FOR AUTHORIZATION TO CONDUCT RULEMAKING HEARINGS ON PROPOSED AMENDMENTS TO DIVISION 11 TO IMPLEMENT HB 2107 & HB 2153

Beth Patrino, WRD, requested authorization to conduct rulemaking hearings.

HB 2107 and HB 2153 (1993 Legislative Session) require the Commission to adopt rules to implement certain provisions of these new laws. Staff have been working with a Rules Advisory Committee comprised of interest group representatives and state and federal agency staff to prepare proposed rules for the purpose of seeking comment at public hearings. Staff requested authorization to conduct rulemaking hearings on the proposed amendments to implement these two bills.

HB 2107 establishes an expedited process for obtaining a water right permit for projects that

provide wetland, stream or riparian area or stormwater management benefits. HB 2153 expands the types of use; source and length of use for which a limited license may be obtained; exempts certain water uses from water right requirements; and establishes an amnesty period during which owners of existing ponds may apply for a water right and continue water use while a decision on the permit is pending. Because HB 2107 and HB 2153 share some important concepts and both require amendment of OAR Chapter 690, Division 11, the Department has proceeded with a joint rulemaking process for these bills.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission authorize public hearings on the proposed rules.

A motion was made by Mike Jewett and seconded by Anita Johnson to approve the Director's Recommendation. The motion passed unanimously.

F. REQUEST FOR AUTHORIZATION TO CONDUCT RULEMAKING HEARINGS ON PROPOSED AMENDMENTS TO OAR CHAPTER 690, DIVISION 11 TO IMPLEMENT HB 2970 (WATER USE FOR PUBLIC ROAD AND HIGHWAY MAINTENANCE AND CONSTRUCTION)

Reed Marbut, Water Right Administrator, requested authorization to conduct rulemaking hearings.

House Bill 2970 (1993 Legislative Session) established a program for public agencies with jurisdiction over roads or highways to register water use for road and highway construction or maintenance. Subsection 2(6) of the bill authorizes the Commission to establish administrative rules to implement the legislation.

Historically, water for road maintenance and construction was supplied through municipal water systems or was withdrawn under a water right or limited license. In remote locations, agricultural water users often supplied local governments with water for road maintenance and construction. All of these methods are cumbersome and expensive. The overall demand for road maintenance and construction water is modest. However, the cost associated with withdrawal and transportation of road construction water can be significant.

The road water use registration concept was initially suggested by a group of local government public works administrators. Department staff facilitated development of the specific language of HB 2970. The legislative work-group consisted of representatives from the Association of Oregon Counties, the League of Oregon Cities, the Oregon Department of Transportation, the Federal Bureau of Land Management and Department staff.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended the Commission authorize staff to hold public hearings on the proposed rules.

A motion was made by Mike Jewett and seconded by Hadley Akins to approve the Director's Recommendation. The motion passed unanimously.

G. STATUS REPORT ON PROPOSED AMENDMENT TO RULE DEFINITION OF PLACER MINING (OAR 690-11-010[26])

Steve Applegate, Field Services and Enforcement Manager, presented this report on proposed amendment to rule definition of placer mining.

In the mid-1980's, the Commission's predecessor adopted, consistent with advice from a January 12, 1982, Attorney General's opinion, a definition of "Placer Mining." The definition exempted small (4" or under) floating suction dredges from the prohibition of placer mining within State Scenic Waterways under ORS 390.835(1).

In 1993, the Commission, to maintain consistency with a new policy of the State Land Board, directed staff to consider amending the definition to eliminate the exception for "recreational" placer mining. The Department held two public hearings on the proposed amendment, then joined with the Division of State Lands (DSL) in six additional hearings around the state in December 1993 on their proposed rules governing Fill and Removal permitting activities within scenic waterways.

In an attempt to avoid future litigation on this issue, the Department and DSL on January 20th jointly requested that the Attorney General's office review the 1982 opinion. A formal response to this request was attached to the staff report and is expected to provide the framework for both agencies' analyses of the issue and recommendations to their respective policy bodies.

Additional time is needed to consider the AG's advice and to further analyze the testimony from the hearings in light of the advice. Accordingly, staff expect to present a recommendation for action to the Commission at its April 8, 1994, meeting.

DIRECTOR'S RECOMMENDATION

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

H. PUBLIC COMMENT

Bob Hoeffel, Oregon Water Coalition, commented. Mark 225, Tape 2.

Marc Thalacker, Squaw Creek Irrigation District, commented. Mark 150, Tape 3.

Jeff Curtis and Karen Russell, WaterWatch, commented. Mark 330, Tape 3.

I. CONSIDERATION OF EXCEPTIONS TO CIVIL PENALTY PROPOSED ORDER, CASE CP93-5, ARIE DEJONG

Weisha Mize, Hearings Officer, reported on the consideration of exceptions to civil penalty proposed order, Case CP93-5, Arie DeJong.

Arie DeJong was charged with violation of ORS 537.535 for using water from a well previously authorized under an emergency drought permit, after the Governor had lifted the drought declaration for Klamath County. Following a hearing, the Referee issued a Proposed Order finding Mr. DeJong in violation of ORS 537.535 and assessing civil penalties of \$1,000.

Mr. DeJong filed an exception to the Proposed Order finding him in violation of ORS 537.535 and assessing civil penalties.

DIRECTOR'S RECOMMENDATION

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

Arie DeJong, commented. Mark 692, Tape 3.

A motion was made by Mike Jewett and seconded by Roger Bachman to adopt the Director's Recommendation. The motion passed unanimously.

J. REQUEST FOR ADOPTION OF AMENDMENTS TO RULES TO EXTEND PARRETT MOUNTAIN CONTROLS, OAR 690-200 & 690-502

Donn Miller, Groundwater Section, requested that the Commission approve adoption of amendments to the rules for Parrett Mountain.

In November 1993, the Commission authorized a Commission subcommittee to track any new proposed rule development for groundwater and well construction on Parrett Mountain and determine if such rules should proceed to hearing. Following a public meeting in November 1993, the subcommittee responded to public concerns and concluded that more time was needed to weigh the new technical information before developing any proposed rules. The subcommittee elected to go to hearing to extend the current rules for several more months to afford more time for public involvement in any final rule development without losing the

protections of the existing rules. On January 21, 1994, the Commission held a hearing on the proposal to extend the current rules until November 13, 1994. A decision on the proposal from the hearing record was needed or the existing rules would expire after March 13, 1994.

During consideration of the Willamette Basin Rules and Plan at the Commission's January 1992 meeting, staff described a possible Parrett Mountain groundwater study. The study was planned to take 18 months and a staff commitment of two person-years. The staff report also described the delays that such a study would place on previously contemplated activities. As previously indicated to the Commission, the study would "better define the geology, aquifers, and groundwater flow system and will identify the reasons for the documented water level declines and refine estimates of historic and potential groundwater pumpage." The study is nearing report completion.

At the August 1992 meeting, the Commission adopted the current time-dated rules regarding Parrett Mountain. An amendment to the Willamette Basin rules withdrew shallow basalt groundwater on Northern Parrett Mountain from further appropriation but slightly expanded the classification for that area's deep basalt groundwater, allowing domestic and rural residential fire protection. The Commission also adopted special area well construction standards to reduce commingling within new and altered wells. Both rules were set for expiration on March 13, 1994. That date was selected to provide rule coverage during the groundwater investigation and any follow-up rulemaking period.

At the November 1993 meeting, the Commission endorsed a tentative public involvement process, authorized a rulemaking hearing, selected a Commission subcommittee for draft rule assistance, and selected a Commissioner to hold the Basin amendment hearing, if needed. The subcommittee was given the authority to modify the process to seek extension of the current rules if it was determined that the proposed public involvement process was not adequate. Responding to input at the Department's public information hearing on November 23, 1993, the subcommittee decided to modify the process. Public comments suggested that the proposed schedule provided neither enough time for public review of the technical information nor enough time for citizen advisory committee formulation of any proposed rules which might be recommended.

The Commission's reason for proposing to extend the rules was to provide more time for public involvement in the development of any final rules without allowing the automatic expiration of the current rules. It would also allow more time for a public rules advisory committee to consider the report information during formulation of any proposed final rules. The completion of the groundwater study is independent of the current rules extension issue.

The Commission gave broad public notice, and Commissioner Bachman conducted a hearing on January 21, 1994, concerning extending the existing rules. The proposed extension date,

November 13, 1994, appears adequate to allow sufficient time for any challenges or other delays. At this point, the public involvement process should result in a final Commission action on final rules by July 22, 1994.

DIRECTOR'S RECOMMENDATION

The Director and staff proposed that the Commission adopt amendments to extend rules on Special Area Well Construction Standards, OAR 690-200-026, and Restrictive Groundwater Use Classification, OAR 690-502-160 until November 13, 1994. This provides a means for continuing rules, as necessary, without a gap.

Ralph Christensen, GWAC Chair, commented. Mark 443, Tape 2.

Miller stated that the target date for coming back to the Commission for final Parrett Mountain rule action is July 1994.

Commission adjourned until 1:00 p.m.

After lunch the meeting reconvened and Donn Miller summarized the morning presentation.

A motion was made by Anita Johnson and seconded by Roger Bachman to adopt the Director's Recommendation. The motion passed unanimously.

K. REQUEST FOR ADOPTION OF AMENDMENTS TO DISTRICT REMAPPING RULES, OAR 690-13

Bob Main, Regional Manager and Steve Applegate, Field Services and Enforcement Manager, presented this report.

The Irrigation District Remapping Statutes (ORS 541.325-333), which allow a broad class of irrigation delivery organizations to request relocation of their water rights, were originally adopted in 1989. Rules were adopted and codified in OAR Chapter 690, Division 13. SB 129 (Chapter 818, Oregon Laws 1993) amended these statutes, leaving the existing Division 13 rules inconsistent with the amended statutes.

The district remapping program, as adopted in 1989, allowed a one-time opportunity for irrigation districts to request that the Department change its water right records, incorporating any changes actually made in water usage to match present water usage, without the need for a formal Division 15 transfer. SB 129 extended for one year the time within which an irrigation district can submit a petition for correction of its water right certificates. This bill also amended the statutes to ensure that no enlargement of the area petitioned by the district

would occur due to the granted time extension. The time to submit petitions expires on July 1, 1994.

Proposed rule amendments were presented to the Commission in November 1993. Concerns with the rules as proposed prompted the Commission to create a subcommittee of the Commission to work with staff, Oregon Water Resources Congress (OWRC) and WaterWatch of Oregon to prepare a revised rule proposal to take to hearings. The subcommittee met with staff and the interest groups on December 6, 1993, and reached general agreement on language for the rules to go out to hearing.

Hearings on the proposed rules were held January 24, 1994, in Bend, and January 25, 1994, in Salem. In preparation, staff mailed hearing notices to approximately 1,100 people on the Department's Rulemaking mailing lists. In addition, copies of the proposed rules and rule "commentary" were mailed to all petitioning districts, OWRC and WaterWatch. Twenty-eight individuals attended the two hearings, of whom eight testified on the proposed revisions. In addition, seven individuals submitted written testimony during the comment period. Staff analyzed the oral and written testimony and prepared a final rule draft.

DIRECTOR'S RECOMMENDATION

Director and staff recommended adoption of the final draft rules as amended pursuant to oral and written testimony as shown in the staff report.

A motion was made by Anita Johnson and seconded by Mike Jewett to adopt the Director's Recommendation. The motion passed unanimously.

L. CONSIDERATION OF APPLICATION NUMBER G-11923 IN THE NAME OF BIG FALLS RANCH COMPANY FOR USE OF GROUNDWATER IN THE DESCHUTES RIVER BASIN, DESCHUTES COUNTY

Reed Marbut, Water Rights Administrator, briefed the Commission on Application G-11923 in the name of Big Falls Ranch Company.

The proposed use of water described by Application G-11923 is from four wells. Big Falls Ranch Company filed Application G-11923 for use of up to 12.07 cubic feet per second (cfs) for irrigation use. A satisfactory Report of Technical Review was issued on January 25, 1993. WaterWatch filed an objection to the proposed use of water on March 30, 1993. The Director denied the WaterWatch objections on January 6, 1994. WaterWatch filed a protest to the denial of objection on February 4, 1994.

The application, objection, objection denial and protest were submitted to the Commission for determination as to whether the proposed water use may impair or be detrimental to the

public interest.

Karen Russell, WaterWatch, commented. Tape 4, Mark 470.

Jim Myron, Oregon Trout, commented. Mark 561, Tape 4.

Stephanie Burchfield, ODFW, commented. Mark 607, Tape 4.

Neil Bryant, representing Big Falls Ranch, commented. Mark 647, Tape 4.

Karen Russell, WaterWatch, commented. Tape 5, Mark 153.

Roger Bachman requested that the recommendation be amended.

Steve Sanders rewrote the Director's original recommendation (as it appeared in the staff report) as follows:

DIRECTOR'S RECOMMENDATION

The Hearings Officer shall determine if the use of Groundwater as set forth in the Technical Review and with conditions proposed in the denial of objections letter on Application G-11923, will have the potential to cause substantial interference with the surface waters of the Deschutes River. If the Hearings Officer finds no potential for interference, the Hearings Officer shall recommend issuance of the permit. If the Hearings Officer finds that there is a potential for substantial interference, a second phase of the hearing will determine whether the application, as conditioned, will impair or be detrimental to the public interest.

A motion was made by Roger Bachman and seconded by Mike Jewett to adopted the amended recommendation. The motion passed unanimously.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Cindy Smith
Commission Assistant