

WATER RESOURCES COMMISSION

ROSEBURG

APRIL 8, 1994

MINUTES

MEMBERS

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

STAFF

Martha Pagel
Steve Sanders
Diane Reynolds
Cindy Smith
Rick Bastasch
Steve Applegate
Bev Hayes
Doug Parrow
Al Cook
Becky Kreag
Steve Brown

OTHERS

Dave Loomis
John Youngquist
Karen Russell
Bob Hunter
Larry Magura
Jan Boettcher
Norm Daft
Tom O'Connor
Ron Yockim
Ves Garner
Truscott Irby
Gerald Maxwell
Bob Hall
Pearl Hegge
Walt Barton
Stephanie Burchfield
Joni Low
Sandy Case
Todd Heidgerken

OTHERS (Continued)

Brian R. Stahl
Kimberly Priestly
E. N. Wood
Don Lilja
Dan Shepard
Darlene Haugen
Tory Walker
Jeff Kruse
Glen Spain
Joe Merchep
Phil Matson
Jeri Kimmel
Robert Hall
Andrew Purkey

In addition to the individuals listed above, report authors and other staff were present for particular agenda items.

The 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, 158 12th Street, NE, Salem, Oregon 97310. 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

A motion was made by Cliff Bentz and seconded by Hadley Akins to approve the minutes as submitted. The motion passed unanimously.

B. COMMISSION COMMENTS

Hadley Akins reported that Oregon Water Trust and their new manager, Andrew Perky, made presentations in northeast Oregon to irrigators and community groups. The Oregon Water Trust is hoping to receive some federal generating funds along with the small grants they currently have. They are primarily dedicated to putting water into streams.

Akins also reported on a meeting involving Senator Hatfield, the Umatilla Indian Tribe and Hermiston-area business people. The Tribes are protesting that water spreading outside irrigation boundaries in northeastern Oregon could threaten a federal water project to restore historic Umatilla tribal salmon runs. The Tribes and the irrigators are close to an agreement on interim flows.

Lorna Stickel reported that she met with Steve Sanders, agency heads and Anne Squier to discuss the Western States Water Council's position on the reauthorization of the Clean Water Act. The House and Senate each have a different version of a revised SB 1114.

Stickel also reported that the Supreme Court upheld the State of Oregon's Court of Appeals decision and the order of the Environmental Quality Commission to deny the 401 Water Quality Certificate for the Salt Caves Hydroelectric Project.

Roger Bachman reported that the Governor had submitted for Senate approval a replacement for him on the Commission. Bachman stated that he plans to continue working for streamflow restoration and that he has enjoyed serving as a Commissioner.

Anita Johnson reported that she met with Andrew Purkey, Manager of the Oregon Water Trust, to discuss issues similar to those described by Hadley Akins.

C. DIRECTOR'S REPORT

1. Martha Pagel gave an update on the Parrett Mountain rulemaking.

At the Commission's December 1993 meeting, a subcommittee was created to assist the Department through the completion of the administrative process. Currently, the technical report has been completed and submitted for publication. A rules advisory committee has been formed and has received a

draft copy of the report. The subcommittee will determine whether to send the draft rules to public hearing.

If the subcommittee can agree on the draft rules, public rulemaking hearings could take place in late May. Staff hope the technical report will be available about five weeks prior to the hearing. This schedule would permit the Department to bring the rules to the Commission for adoption at the July meeting.

2. Pagel reported on the budget preparation schedule.

The Department proposes to hold two meetings involving a Commission subcommittee and stakeholders. The first meeting would be on April 20 at 1 p.m; the second on May 5. On May 16, Pagel meets with staff from the Governor's Office and Administrative Services to describe how the Department plans to approach budget cuts and legislation for the next session.

Pagel stated all state agencies have been given target reduction levels in anticipation of a smaller general fund budget for the 1995-97 biennium. The current budget contains approximately \$15 million in general fund money. The Department's budget reduction level is 1.9 million of general funds or roughly 20 to 25 fewer positions. Neither the lottery-funded Watershed Health Program, nor water right funds or special funds are subject to the potential budget reduction.

3. The staff report regarding Eagle Crest was removed from the current Commission agenda.

Lorna Stickel asked for an expanded discussion of groundwater impacts in the Eagle Crest report.

The Commission agreed to hold a special meeting on this item on April 20.

Mike Jewett and Hadley Akins preferred to have a conference call. Roger Bachman said he would be unable to attend. Cliff Bentz stated that he would serve on the budget subcommittee but cannot attend the April 20 meeting. Anita Johnson said she planned to attend in person.

4. Pagel noted that the Commission and the Department received a petition from WaterWatch to continue with emergency rulemaking to address problems with coastal salmon. The Department is required under state procedural laws to act on the petition within 30 days.

Doug Parrow, Conservation Manager, briefed the Commission on the petition. The effect of the petition would be to prevent or prohibit the issuance of any additional out-of-stream permit during those months in which there is not water available for further appropriation.

DIRECTOR'S RECOMMENDATION

Staff recommended that the Commission deny the petition and, in lieu of adopting the emergency rules, direct staff to provide notice to all new applicants of possible Division 11 and basin program rulemaking, which could affect the consideration of any application received after April 8, 1994. With respect to those applications already on hand, staff would consider the issues raised in the petition when making any public interest determinations pursuant to Division 11. Staff would then develop for the June Commission meeting a more detailed analysis of the issues contained in the petition, along with a schedule and process for considering basin program revisions and any other related rulemaking.

Bob Hunter and Karen Russell, WaterWatch, commented. Tape 1, Mark 594.

Glen Spain, Pacific Coast Federation of Fishermen's Association, commented. Tape 1, Mark 839.

Lorna Stickel asked Karen Russell, WaterWatch, to briefly explain what the second petition was about.

Karen Russell, WaterWatch, commented. Tape 2, Mark 35.

A motion was made by Lorna Stickel and seconded by Mike Jewett to adopt the Director's recommendation to deny the first petition and proceed as proposed. In addition, the Commission would consider the second petition at the same time and compare and contrast the two proposals recommended by WaterWatch and by the Department. The motion passed unanimously.

D. UPDATE ON WATERSHED HEALTH

Mary Lou Soscia, Watershed Health Manager, gave an update on the Watershed Health Program.

The program started in December 1993 with the initial hiring of the Watershed Health Team; hiring for the core and field teams is now complete. The core and field teams are working with local watershed councils and the Grande Ronde Board of Directors and different groups in the South Coast to develop and implement watershed restoration strategies. Through the Strategic Water Management Group process, the group is developing a priority targeting strategy for the South Coast. Initial targeting would be on the Coquille and the Illinois basins with priority attention to the Bear and Applegate. Projects in other basins would also be considered after an evaluation.

To date, tree planting, fish screening, headgate and fish habitat projects in the South Coast have been funded as early action projects.

A Watershed Health Forum meeting was held on March 11, 1994, and another will be held May 3, 1994, in Salem.

On April 12, 1994, \$700,000 in projects will be brought before the Strategic Water Management Group for their recommendation to fund projects in the Grande Ronde, Coquille and Coos basins.

Ron Yockim, Umpqua Basin Fisheries Restoration Initiative, commented. Tape 2, Mark 412.

Joe Merchep, Chairman, Umpqua Basin Fisheries Restoration Initiative, commented. Tape 2, Mark 573.

Dave Loomis, ODFW, commented. Tape 2, Mark 667.

Bob Hunter, WaterWatch, commented. Tape 2, Mark 878.

DIRECTOR'S RECOMMENDATION

This was an informational report. No action was required.

E. INFORMATIONAL REPORT AND PROPOSED REVIEW SCHEDULE ON GRANTS PASS IRRIGATION DISTRICT SUBMITTAL OF PLAN TO MEET PERMIT CONDITIONS

Doug Parrow, Conservation Manager, and Al Cook, Regional Manager, briefed the Commission on the conditions of the Grants Pass Irrigation District's 1990 water use permit.

The district has completed and submitted a water management study as required under a water use permit issued in 1990. Under the terms of the permit, the Commission must review the study and recommended plan of the district and adopt a plan of conservation and improvements for the district by October 1, 1994. Staff outlined a proposed process for completing the review and providing the Commission with a recommended plan for adoption. The process includes 1) a report to the Commission during the July meeting on a proposed plan; 2) conditions of any extension; 3) comments of the district and interested persons; and 4) request for Commission direction on the final plan and conditions.

Tory Walker, Dan Shepard, and Darlene Haugen, Grants Pass Irrigation District, described the conclusions of the water management study and the implementation of the district's conservation plan. They also responded to questions from the Commission about the low on-farm water use efficiencies identified in the study, institutional options for providing water service within the Grants Pass urban growth boundary, and what an acceptable level of water use efficiency would be for the district.

DIRECTOR'S RECOMMENDATION

This was an informational report. No action was required.

Bob Hunter and Larry Magura, WaterWatch, commented. Tape 4, Mark 762.

F. REQUEST FOR ADOPTION OF PROPOSED AMENDMENTS TO OAR CHAPTER 690, DIVISION 11, TO IMPLEMENT HB 2107 & HB 2153 (1993 LEGISLATIVE SESSION)

Carol Spence, Water Rights Permits and Adjudication Section, explained that the proposed amendments to OAR Chapter 690, Division 11, would implement the provisions of HB 2107 and HB 2153. The proposed rules were developed with the help of a Rules Advisory Committee and were the subject of two public hearings. Commentors identified three key issues: (1) the definition of

off-channel; (2) the effect of the proposed rules on federally designed and funded projects; and (3) public notice and information. Several changes to the proposed rules resulted from the public input.

Beth Patrino, Director's Office, suggested two additional changes to the proposed rules. The changes were as follows:

Page 7 - Definition of "riparian area." Restore the word "ephemeral" because the original definition of "riparian area" is consistent with the Governor's Watershed Enhancement Board statutes.

Page 9 - Section (2)(c), related to the exemption for fish passage facilities. In (c), delete the phrase "causes no injury to existing water right and ." In (A), delete all and replace with "Is part of a hydroelectric project permitted or licensed by the Department; or."

Page 10 - (B) Add at the end, "and causes no injury to existing water rights."

DIRECTOR'S RECOMMENDATION

The Director and staff recommended the Commission adopt the final draft rules as amended.

Lorna Stickel expressed concern regarding the term "contiguous property" of the proposed rules. She noted that the definition of "ownership" could affect the interpretation of this rule and suggested that the Department should consider defining "ownership." Stickel felt that for the purpose of this rule, the Department will interpret a single ownership to refer to property held in the same name.

Mike Jewett asked whether the definition of "off-channel" is too vague. Staff responded that they will clarify in the public information materials that the legislative intent was to exempt a fairly narrow category of ponds which do not interrupt flow to which others might have a right.

Tom O'Connor, Eugene Water and Electric Board, commented. Tape 4, Mark 750.

It was moved by Mike Jewett and seconded by Anita Johnson to adopt the rules with changes described by Patrino. Motion passed unanimously.

G. PUBLIC COMMENT

Jan Boettcher, Oregon Water Resources Congress, commented. Tape 3, Mark 28.

Ves Garner, Oregon Department of Agriculture, commented. Tape 3, Mark 110.

I. REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON THE PROPOSED REPEAL OF THE RULE DEFINITION OF PLACER MINING

Steve Applegate, Field Services and Enforcement Manager, requested authorization to conduct a public hearing on placer mining.

The Scenic Waterways Act prohibits placer mining activities on waters within Scenic Waterways. A 1982 Attorney General's opinion stated that the Commission could distinguish between commercial and recreational placer mining. The rule definition adopted by the Commission exempted small suction dredges from the placer mining prohibition.

To maintain consistency with a 1993 policy of the State Land Board, the Commission directed staff to amend the rule definition to remove the exception for small dredges. The Attorney General, at the request of the Department and Division of State Lands (DSL), reviewed the prior opinion and issued a revised opinion on February 24, 1994. The current legal interpretation is that all forms of placer mining are prohibited under the Act, and that the common definitions of the term "placer mining" were intended to apply in the statutes. The existing rule definition is therefore inconsistent with the legal interpretation, and staff proposed its repeal.

Staff proposed to participate jointly with DSL in four rulemaking hearings on the proposed repeal of the definition, and requested approval from the Commission to proceed with that approach.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission authorize rulemaking, including public hearings on the proposed repeal of the rule definition of "Placer Mining," (OAR 690-11-010[26]).

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

J. REQUEST FOR AUTHORIZATION TO CONDUCT RULEMAKING HEARINGS TO AMEND DIVISION 11 AND CREATE DIVISION 33 FOR PUBLIC INTEREST REVIEW OF APPLICATIONS POTENTIALLY AFFECTING COLUMBIA/SNAKE WEAK STOCK FISH

Tom Kline, Planning Manager, requested authorization to conduct rulemaking hearings.

Staff have been working with a subcommittee of the Commission and an advisory committee to draft rules setting standards for public interest review of applications for water uses potentially affecting weak stock fish in the Columbia Basin. Staff requested authorization to conduct public hearings on the proposed rules.

Kline noted the anadromous fish runs in the Columbia Basin were expected to drop to record and near-record lows this year. The proposed rules would add additional standards to be considered during the public interest review of applications. As drafted, the rules would apply to all applications for water right permits in the Columbia River and tributaries above Bonneville Dam filed after July 17, 1992.

Major issues on which the rules advisory committee did not reach agreement included extending the rules to the lower Columbia and applying the rules to pending applications filed before July 17, 1992. Staff also recommended minor wording changes in sections 690-33-020(1) and 690-33-040(b). These changes are as follows:

690-33-020(1)	The Department shall <u>at least</u> consult ...
690-33-040(b)	Projects <u>for any beneficial use</u> that ...

DIRECTOR'S RECOMMENDATION

The Director and staff recommended the Commission authorize public hearings for review of the draft rules on public interest standards on applications potentially affecting Columbia/Snake weak stock fish.

Joni Low, League of Oregon Cities, commented. Tape 5, Mark 87.

Ves Garner, Oregon Department of Agriculture, commented. Tape 5, Mark 116.

Robert Hall, Portland General Electric, commented. Tape 5, Mark 185.

Gerald Maxwell, Powder Valley Water Control District, commented. Tape 5, Mark 238.

Truscott Irby, Baker County Commissioner, commented. Tape 5, Mark 280.

Jan Boettcher, Oregon Water Resources Congress, commented. Tape 5, Mark 333.

Brian Stahl, City of The Dalles, commented. Tape 5, Mark 386.

Karen Russell, WaterWatch, commented. Tape 5, Mark 424.

Stephanie Burchfield, ODFW, commented. Tape 5, Mark 544.

Roger Bachman suggested that staff clarify in the public notice that Fifteen Mile Creek, Walla Walla River and Imnaha River are part of the listed basins. He also asked that an additional hearing be held in Ontario and commented that a 10-year rather than a 5-year sunset would give the fish population a more reasonable chance to recover.

A motion was made by Roger Bachman and seconded by Mike Jewett to approve the Director's recommendation with amendments to the rules and that an additional hearing be held in Ontario. The motion passed 5 to 1, with Cliff Bentz opposing.

K. REQUEST FOR AUTHORIZATION TO CONDUCT RULEMAKING HEARINGS ON PROPOSED AMENDMENTS TO OAR CHAPTER 690, DIVISION 19 (DROUGHT MITIGATION) TO IMPLEMENT SENATE BILL 92

Barry Norris, Administrator, requested authorization to conduct rulemaking hearings on Division 19 rules.

The Commission was asked to authorize formal rulemaking to implement legislative direction contained in Senate Bill 92 (1993 Legislative Session), relating to emergency authorization during a drought.

The decision to authorize rulemaking and public hearings was deferred to the April 20 special meeting.

Jan Boettcher, Oregon Water Resources Congress, commented. Tape 6, Mark 228.

Joni Low, League of Oregon Cities, commented. Tape 6, Mark 253.

Karen Russell and Kimberly Priestly, WaterWatch, commented. Tape 6, Mark 363.

The Commission agreed to file notice and wait for rulemaking direction on April 20.

There being no further business, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cindy Smith". The signature is written in black ink and is positioned to the left of the typed name.

Cindy Smith
Commission Assistant