

WATER RESOURCES COMMISSION
KLAMATH FALLS, OREGON
JUNE 3, 1994
MEETING

MINUTES

MEMBERS

Lorna Stickel
Cliff Bentz
Mike Jewett
Hadley Akins
Nancy Leonard
Anita Johnson

STAFF

Martha Pagel
Steve Sanders
Diane Reynolds
Cindy Smith
Bev Hayes
Rick Bastasch
Fred Lissner
Steve Applegate
Bob Main
Tom Kline
Weisha Mize
Del Sparks

OTHERS

Roger Bachman
Dave Solem
Karen Russell
Stephanie Burchfield
Ron Yockim
Todd Heidgerken
Kip Lombard
Phil Matson
Richard Whitman
Daniel Boldt
Bob Kowing
Jeff Curtis
Denis Babson
Bob Hunter

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. CONSENT AGENDA**1. APPROVAL OF MINUTES**

Anita Johnson asked for a correction on Page 2 of the April 8 minutes. Under Commission Comments, the Oregon Water Trust did not meet in Eugene; she met with Andrew Purkey, Manager of the Oregon Water Trust, in Eugene.

2. COMMISSION APPROVAL OF APPOINTEES TO THE GROUND WATER ADVISORY COMMITTEE

The Ground Water Advisory Committee is a nine-member group which advises the Water Resources Commission on groundwater issues. The committee currently contains one vacancy and two other members serving beyond their expired terms. Neither of the latter wishes to be reappointed. Staff asked for approval to fill the vacancy and to replace one of the beyond-term members. The nominees are Ed Janssen, President of A.M. Janssen Drilling Company and Barry Beyeler, Public Works Director for the City of Boardman.

A motion was made by Mike Jewett and seconded by Hadley Akins to approve the consent agenda with the noted changes to the minutes. The motion passed unanimously.

B. COMMISSION COMMENTS

Anita Johnson - Reported that the Governor's Watershed Enhancement Board met in Coquille to review grant applications. Approximately \$210,000 in small projects statewide and \$200,000 in Grande Ronde and South Coast area watershed health projects were approved.

Mike Jewett - Reported that he received a proposed agreement between Grants Pass Irrigation District and WaterWatch.

Hadley Akins - Commented that this would be his last meeting as a member of the Water Resources Commission.

Lorna Stickel - Reported too that this would be her last meeting. She has been on the Commission for 11 years; it has been a real pleasure. She met many people around the state who care about the water resources.

Stickel plans on being back before the Commission to report on what the Portland Water Bureau is doing on the Regional Water Supply Plan. A preliminary plan is due to be out in the Spring of 1995.

C. DIRECTOR'S REPORT

Martha Pagel reported that the Governor has offered three new Commission appointees. They are: Ron Nelson, Manager, Central Oregon Irrigation District (East of the Cascades); John Frewing, Portland General Electric (Congressional District 3); Wayne Stewart, Urban Planner and Civil Engineer (Congressional District 1). These appointees will be subject to Senate confirmation at the end of the month.

Pagel noted that it will be difficult losing the experience and leadership that Lorna Stickel and Hadley Akins have provided.

Pagel gave an update on the development of the Department's budget. The Department's preliminary target is \$1.9 million in reductions. Two stakeholder meetings were held.

Roger Bachman reported on the Water Development Loan Program. The class action lawsuit is still being negotiated.

D. PROPOSED 1995 LEGISLATIVE CONCEPTS

Beth Patrino, Director's Office, gave a brief discription of the proposed elements of the 1995 legislative package.

The Commission reviewed and approved, at their April meeting, a set of criteria to evaluate potential legislative proposals and a general description of the 1995 legisaltive package.

A more detailed description was prepared of the proposed elements. The Department's bill includes proposed concepts related to water right transfers, water use flexibility, information management, and watershed tools and funding. Other Department proposals relate to well construction start card fees and pump and treat projects. Staff also expect to be involved in the development of a number of multi-agency proposals.

DIRECTOR'S RECOMMENDATION

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

Mike Jewett expressed concern about the idea of a transfer surcharge. Lorna Stickel agreed and suggested that the transfer fee issue be looked at as part of the bigger funding picture and that the Department look at water user fees instead. Fees should be tied to the cost of service.

Bob Hunter, WaterWatch, commented. Tape 2, Mark 379.

Jeff Curtis, WaterWatch, commented. Tape 2, Mark 574.

Roger Bachman, Oregon Trout, commented. Tape 2, Mark 674.

E. INFORMATION REPORT ON DEVELOPMENT OF THE STRATEGIC PLAN

Rick Bastasch, Manager, presented an oral informational report on the agency's draft Strategic Plan. Copies of the draft were provided to the Commission. The Commission asked questions about the Plan's content, especially with regard to information management and legislative proposals. Bastasch indicated that the draft would be the subject of additional staff discussion through the summer. A final plan would be produced in the fall.

DIRECTOR'S RECOMMENDATION

This was an informational report. No action was required.

F. PUBLIC COMMENT

Linda Barrett, Barrett Livestock, commented. Tape 3, Mark 105.

G. RESPONSE TO WATERWATCH ET. AL. DIVISION 11 PETITION AND RECOMMENDATION FOR LOWER COLUMBIA AND STATEWIDE RULEMAKING

Bob Rice, Resource Management Division, briefed the Commission on the petition and rulemaking.

At the Commission's April meeting, staff were authorized to conduct public hearings in June on draft rules affecting weak, threatened and endangered fish stocks in the Columbia Basin above Bonneville Dam. The Commission also directed staff to develop a plan to initiate lower Columbia Basin rulemaking and respond to a Division 11 petition which WaterWatch and other groups filed for temporary emergency rulemaking.

The draft rules have come under criticism for what has been perceived as retroactive rulemaking since the rules also apply to weak fish stocks.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission deny the WaterWatch Division 11 petition; endorse the proposal to limit the Columbia/Snake draft rules above Bonneville Dam to threatened and endangered fish stocks; form a Commission subcommittee to work with staff to begin rulemaking on the lower Columbia for threatened and endangered fish stocks and statewide rulemaking for weak, threatened and endangered fish stocks (for Columbia Basin, only weak fish stocks); and put the state on notice that additional rules may apply to new water right applications.

Ron Yockim, Oregon Cranberry Growers Alliance, commented. Tape 3, Mark 214.

Jeff Curtis, WaterWatch, commented. Tape 3, Mark 258.

Karen Russell, WaterWatch, commented. Tape 3, Mark 345.

A motion was made by Anita Johnson and seconded by Mike Jewett to approve the Director's recommendations with modifications. Staff were asked to bring back to the Commission a revised timeline for initiating statewide rulemaking at an earlier date than the proposed schedule. Public notification that additional rules may apply to new water rights would be effective as of three dates: for the Columbia/Snake Basin area above Bonneville Dam, July 17, 1992; the North Coast, Mid Coast, South Coast, Rogue and Umpqua Basins and Clackamas Subbasin, April 8, 1994; and the remainder of the state, June 3, 1994. The motion passed unanimously.

H. REQUEST FOR APPOINTMENT OF COMMISSION SUBCOMMITTEE TO REVIEW EXCEPTIONS TO PROPOSED ORDER AND ASSIST IN PREPARATION OF DRAFT FINAL ORDER ON APPLICATIONS IN THE NAME OF MEADOWS WATER COMPANY

The Commission was asked to appoint a subcommittee to review a revised Proposed Order and exceptions, and to present recommendations to the Commission on issuance of a Final Order on the water use applications filed by Meadows Water Company (MWC).

Surface water Application 69976 was filed by MWC on June 29, 1989, and superseded by amended application filed May 24, 1991. Groundwater Application G-12250 was filed by MWC on May 23, 1991. Reservoir Application R-71657 was filed June 5, 1991. Protests were filed against one or more of the applications by Oregon Department of Fish and Wildlife (ODFW), Friends of Mt. Hood (FOMH), and Crystal Springs Water District. The applications and protests were considered by the Commission on April 24, 1992, and referred to contested case hearing. WaterWatch, Hood River Valley Residents Committee (HRVRC), and the Confederated Tribes of the Warm Springs Indian Reservation were admitted on petition for party status.

The contested case hearing on the applications and protests was held on December 8 and 9, 1992, and January 4 and 5, 1993. The record was held open for some time to allow for filing of rebuttal testimony and post-hearing briefs. The Proposed Order was issued on October 7, 1993. Exceptions were filed by ODFW, FOMH/HRVRC, WaterWatch and the applicant.

DIRECTOR'S RECOMMENDATION

Staff recommended the a subcommittee of the Commission be appointed as described above.

A motion was made by Anita Johnson and seconded by Mike Jewett to approve the Director's recommendation. The subcommittee will consist of Mike Jewett and Cliff Bentz.

I. REQUEST FOR AUTHORIZATION TO CONDUCT RULEMAKING HEARINGS ON PROPOSED AMENDMENTS TO OAR CHAPTER 690, DIVISION 11, TO IMPLEMENT HOUSE BILL 2344 (HUMAN CONSUMPTION AND LIVESTOCK WATER USE IN SCENIC WATERWAYS)

Reed Marbut, Administrator, Water Rights Division, briefed the Commission on this request.

House Bill 2344 amended Oregon's scenic waterway law to allow issuance of water rights for limited human consumption and livestock uses within or above designated scenic waterways. The Department must make certain findings, must condition water uses under the de minimis water rights to protect the flows of the scenic waterways and must track the total combined cumulative water rights issued under the bill.

DIRECTOR'S RECOMMENDATION

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

Karen Russell, WaterWatch, commented. Tape 4, Mark 171.

Staff and Commission made corrections to Division 11, 690-11-196(4)(a) and (6).

A motion was made by Mike Jewett and seconded by Cliff Bentz to allow the edited rules to go to hearing, with the understanding that staff will make it clear that the Director makes the finding and that under 690-11-196(6) staff include information to support the Department's finding. The motion passed unanimously.

J. REQUEST FOR ADOPTION OF PROPOSED AMENDMENTS TO OAR CHAPTER 690, DIVISION 11, TO IMPLEMENT HOUSE BILL 2970 (WATER USE FOR PUBLIC ROAD AND HIGHWAY MAINTENANCE AND CONSTRUCTION)

Reed Marbut, Water Rights Administrator, requested the adoption of Division 11, to implement House Bill 2970.

HB 2970 established a program for public agencies with jurisdiction over roads or highways to register water use for road and highway construction or maintenance. The Commission authorized the Department to conduct rulemaking hearings to implement HB 2970. Testimony was received at the hearing and in writing. Department staff revised the

draft rules pursuant to a number of suggestions presented in the testimony.

DIRECTOR'S RECOMMENDATION

Adopt the proposed rules as amendments to OAR Chapter 690, Division 11, to implement HB 2970.

Marbut suggested changes to rules on Page 3(h). The changes are as follows:

- (h) First sentence - replace "less" with "fewer." Second sentence - insert "or above" after "within." Second sentence - insert at the end of the sentence "in quantities necessary for fish, wildlife and recreation."

Marbut suggested an amendment to Page 4 (7). The paragraph should read as follows: The registrant shall provide copies of its registration form and map to the local office of the Oregon Department of Fish and Wildlife (ODFW) at least 30 days before water use under the registration is initiated. If sensitive, threatened or endangered aquatic species are present in the stream(s) proposed as a source(s) of water under the registration and may be affected, ODFW shall advise the watermaster to direct the registrant to withdraw water from an alternative location(s) or stream(s) where the proposed withdrawal will not cause significant adverse impact to the affected watershed.

Ron Yockim, Grant County, commented. Tape 4, Mark 425.

Bob Kowing, Grant County Road Department, commented. Tape 4, Mark 430.

Dan Boldt, Wasco County, commented. Tape 4, Mark 516.

Stephanie Burchfield, ODFW, commented. Tape 4, Mark 653.

Karen Russell, WaterWatch, commented. Tape 4, Mark 738.

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

K. REQUEST FOR REPEAL OF THE RULE DEFINITION OF PLACER MINING (OAR 690-11-010[26])

The Attorney General's office issued Opinion No. 8228 on February 24, 1994, on the question of placer mining activities within state scenic waterways. The opinion states that all forms of placer mining are prohibited under ORS 390.835(1), and that the commonly accepted definitions of the terms "placer" and "mining" were intended to apply to the statutory prohibition. An existing administrative rule definition, adopted by the Water

Resources Commission (Commission) prior to the issuance of this opinion, defines placer mining in a manner that would appear to allow certain types of placer mining activities to continue, and is therefore inconsistent with the recent legal advice. Four public hearings were held on the proposal to repeal the existing rule definition.

On April 8, the Commission approved the Director's recommendation to participate in four joint hearings with the Division of State Lands (DSL) on the question of repeal of the existing rule definition of placer mining.

The hearings were held in Salem, Bend, John Day and Grants Pass on April 11 and 12. The hearing attendance was relatively light. A total of 32 people testified, eight in favor of the placer mining ban and 24 against. Written testimony was accepted through April 22.

On May 10, the State Land Board adopted rules to prescribe the standards and process for Removal/Fill permitting within State Scenic Waterways.

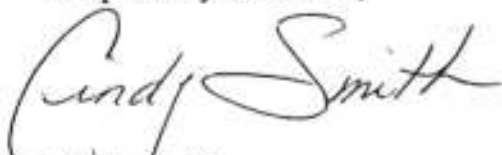
DIRECTOR'S RECOMMENDATION

The director and staff recommended that the Commission approve the repeal of the rule definition of "Placer Mining," OAR 690-11-010(26).

A motion was made by Mike Jewett and seconded by Hadley Akins 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