

WATER RESOURCES COMMISSION MEETING
OCTOBER 28, 1994
MEDFORD, OREGON
MINUTES

MEMBERS

Cliff Bentz
Nancy Leonard
Mike Jewett
Anita Johnson
John Frewing

STAFF

Martha Pagel
Steve Sanders
Cindy Smith
Rick Bastasch
Fred Lissner
Barry Norris
Tom Paul
Al Cook
Bev Hayes

OTHERS

Marion Millard
Jan Boettcher
Kimberley Priestley
Jeff Curtis
Ed Olson
Ruth Feirich
Todd Heidgerken
Cory Boswell
Steve Schneider
Tam Moore
Anita Ward
Stephanie Burchfield
Dan Carpenter
Dale Hile
Bill Kennedy
Ellen Warring
Roger Bachman
Brad Howe
Sabrina Keen

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.

A. CONSENT AGENDA

A motion was made by Commissioner Frewing and seconded by Commissioner Leonard to approve the consent agenda. The motion passed unanimously.

Following the Consent Agenda, the Commission continued discussion from the previous day of the Grants Pass Irrigation District permit extension. (See minutes of the October 27, 1994, meeting.)

B. COMMISSION COMMENTS

Commissioner Leonard - stated that she enjoyed participating on a panel discussing water supply and water quality at the Fifth Annual Ocean and Coast Conference. The conference dealt with many issues including watersheds and forest health, water supply and water quality.

Commissioner Bentz - announced the formation of a water committee in the Malheur River Basin area. The committee is supporting the development of local solutions.

C. DIRECTOR'S REPORT

Director Pagel commented that staff and Commission went on a tour of the area the previous day. The tour covered Jackson Street Dam, Savage Rapids Dam, and a visit to Talent Middle School where Commissioners presented a certificate of appreciation to students for their environmental work.

Other Business

The groundwater application of Don Montgomery, discussed at the last meeting, is still being worked on, and will be brought back to the Commission at a later date.

Commissioner Frewing asked a question regarding the impact of recent court decisions on the Northwest Power Planning Council's fish and wildlife plan. The Northwest Power Planning Council is in the process of modifying the plan in response to the court decision. Various state agencies had offered comments through the Governor's Office.

The Department has three items to go before the Emergency Board next month. They include a report on the water right backlog, a request for expenditure limitation approval for a more sophisticated computer system to enter well logs, and a request for carryover of funds for the Watershed Health Program.

Director Pagel attended two Western State Water Council meetings. One was a conference held in Colorado on the Endangered Species Act. It was an effort to bring together the state fish and wildlife agencies and the state water management agencies to discuss working better together along with the federal government.

A proposed 1995 Water Resources Commission meeting schedule was approved by the Commission.

Steve Sanders, Legal Counsel, gave an update on the Aslakson civil penalty case.

Commissioner Frewing asked about the basin planning rule advisory meetings that were held and the concepts that were discussed. Director Pagel said the meetings were well attended. There were two concepts discussed, 1) eliminate basin planning and work from the water availability data; and 2) continue with basin planning but have it based on the water availability findings.

Beth Patrino explained the administrative rulemaking schedule.

D. REQUEST FOR APPROVAL TO PRE-SESSION FILE DEPARTMENT LEGISLATIVE PROPOSALS AND INFORMATION REPORT ON THE DEPARTMENT'S STRATEGIC PLAN

Rick Bastasch, Administrator of the Strategic Planning and Policy Coordination Division, briefed the Commission on feedback on the Department's draft Strategic Plan. The relatively light comment focused on several areas, including the need to more clearly state plan outcomes, clarify the relationship between the Oregon Water Management Program and the Strategic Plan, better explain what the Department has accomplished to date, and more clearly identify existing versus new policy directions. Bastasch indicated that the draft plan would be revised to address these areas and would be brought before the Commission at its December meeting for approval. This was an informational report - no action was requested.

Beth Patrino, the Department's Legislative and Rules Coordinator, presented the Department's draft legislative bills for Commission approval. Commissioners questioned provisions of Sections 2 and 3 of LC 768 (hydraulic connection/source switching) and expressed concern about possible enlargement of surface water rights and how transferred rights would be regulated. Patrino explained that the transferred-to groundwater right would be shut-off when the parent surface water source was dry. In regard to the livestock watering exemption provision, Commissioner Frewing asked why the previously-proposed fencing requirement was dropped. Patrino responded that the agency believed such a requirement was administratively difficult and would act to discourage movement of stock out of riparian areas. Commissioner Frewing indicated the Department's approach was worth a try.

Commissioners discussed the proposed Water Supply Fund and Water Funding Task Force. While the Fund was recognized by Chair Bentz as a less-than-aggressive package, he believed it represented the most reasonable approach available to the Department. In terms of the Water Funding Task Force and its proposed studies, Commissioner Frewing suggested that it would be better to ask for user fees in the coming legislative session. Director Pagel responded that the planning that must go in a user fee is substantial and must include determining whether the fee would be imposed to generate revenue or to promote water conservation; the level of the fee; who would pay (e.g.,

consumptive users or everyone); and the fee-collection mechanism. These are all issues that the Funding Task Force would consider. If the Task Force is not created, the agency would make it a high priority to answer these questions on its own. While Commissioner Johnson agreed that a fee of some sort would be desirable, she agreed that the Task Force approach is preferable to proposing a fee at this time. Commissioner Leonard concurred. Commissioner Jewett indicated a Water Resources Commissioner and recreational water user representative should be on the Task Force. Commission Frewing suggested the addition of a tribal representative.

Commissioner Frewing suggested that two additional issues be included in the Department's major legislation. First, he indicated that permits should not be issued in perpetuity. Director Pagel responded that, while the Department may be able to recommend that as a sound policy direction, it represented a very major change to existing law - one which the agency had not contemplated and one which would require a lot of staff preparation. Pagel suggested that preparation could take place in the coming biennium. Second, Commissioner Frewing recommended that the statutory domestic exempt groundwater use-threshold of 15,000 gallons per day be reduced substantially.

Jeff Curtis and Bob Hunter of WaterWatch indicated that organization would oppose many, if not all, of LC 768 because they felt there was little in the proposed legislation that moved the state toward restoring streamflows. The organization took particular exception to the livestock watering exemption and the broadening of uses allowed under limited licenses. WaterWatch representatives believe some form of transfer tax is necessary to restore public benefits in water, and that the Department should push harder on conservation and waste elimination. They noted, however, that the Water Supply Fund and Funding Task Force were basically sound. Mark 407, Tape 3.

Roger Bachman of Oregon Trout, while stating that the draft bills represented a good package, offered several suggestions, including requiring measuring and reporting for any temporary transfers and restoring the fencing requirement to the livestock watering exemption. Mark 1, Tape 4.

The Commission had no comments on the Department's proposed minor bill drafts.

A motion was made by Commissioner Jewett and seconded by Commissioner Leonard to adopt the bill elements. The motion passed unanimously.

In separate motions, the Commission unanimously:

- Approved pre-session filing of LC 768 as modified in accordance with the Commission guidance during the preceding discussion.

- Approved pre-session filing of the agency's proposed minor bills (LC 768-1, LC 0-1, and LC 770) as proposed.

Motions were made by Commissioner Frewing and seconded by Commissioner Johnson to approve the pre-session filings. The motions passed unanimously.

The Commission directed staff to report back at the December meeting on recommended approaches to address lowering the domestic exempt use threshold and issuing time-limited permits.

A motion was made by Commissioner Frewing and seconded by Commissioner Jewett that staff report back in December. The motion passed unanimously.

E. REQUEST FOR ADOPTION OF AMENDMENTS TO RESTRICTIVE GROUNDWATER USE CLASSIFICATION FOR A PORTION OF THE SHERWOOD-DAMMASCH-WILSONVILLE GROUNDWATER LIMITED AREA, OAR 690-502-160, AND REPEAL OF RULE ON SPECIAL AREA WELL CONSTRUCTION STANDARDS FOR PARRETT MOUNTAIN, OAR 690-200-026

Fred Lissner, Groundwater Manager, briefed the Commission on the request for adoption.

The Commission held two hearings on proposals to restrictively classify portions of the Sherwood-Dammasch-Wilsonville groundwater limited area and consider modifications to current special areas well construction standards for Parrett Mountain. The testimony was generally against the proposals, viewing them as unnecessary, too limited, or premature. There was widespread support for continued monitoring of the area. Limited buildout potential and the lack of urgency in areas of apparent declines support the argument that restrictive classifications are not needed at this time. In addition, the agency intends to pursue on-going water level monitoring as an important tool to disclose the need for controls in the future. A commitment by the agency to increase enforcement efforts in the area to assure compliance with the commingling rule in the general well construction standards provides an alternative to special area well construction standards.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended adopting the classification rule to allow exempt uses and repeal the special area well construction standards. The alternative would classify all basalt aquifers in the area for exempt uses only but would not apply to the two pending applications in the Parrett Mountain study area which would be processed according to the classifications in effect when the applications were received. The alternative would repeal special area well construction standards and rely on provisions of the general well construction standards and diligent enforcement to control commingling.

A motion was made by Commissioner Frewing and seconded by Commissioner Jewett to adopt the staff recommendation. The motion passed unanimously.

F. PUBLIC COMMENT

Ed Olson, Medford Water Commission, welcomed the Commission to the Rogue Valley and explained what was going on in the area. Mark 646, Tape 4.

Marion Millard stated there should be a moratorium on additional wells in the Deschutes Basin until the Basin Study is complete. Mark 80, Tape 5.

Roger Bachman, Oregon Trout, commended the staff for the work done on the strategic plan. It is very encouraging. Mark 146, Tape 5.

Jan Boettcher, Oregon Water Resources Congress, suggested a rule change to Division 11 regarding dams. Mark 152, Tape 5.

Ellen Warring, Port Orford Watershed Council, stated that the Watershed Health Program and the Strategic Water Management Group have a positive effect in the area. The education level is rising in the communities. Mark 243, Tape 5.

G. INFORMATION PRESENTATION BY BLM ON NEW RIVER AREA OF CRITICAL ENVIRONMENTAL CONCERN

Sabrina Keen, Natural Resource Specialist for the Bureau of Land Management (BLM), gave a slide presentation on the environmental setting of the BLM's New River Area of Critical Environmental Concern. The BLM seeks to heighten awareness of the ecological importance of the area and the role of natural resource (including water) management in the area's administration.

Kimberley Priestley, WaterWatch, urged the Commission and the Department to look at the whole of pending water rights with a broader perspective. The issuance of permits should stop until more data is available. Mark 47, Tape 6.

Brad Howe, Croft Lake Association, expressed his concerns regarding the resources in the Croft Lake area. Mark 77, Tape 6.

Ellen Warring, Kalmiopsis Audubon Society of Curry County, shared observations of New River area of environmental concerns. Mark 141, Tape 6.

Stephanie Burchfield, Oregon Department of Fish and Wildlife (ODFW), thanked BLM for coming to the meeting and giving their presentation. ODFW agrees that the area needs to be protected. BLM is helping with funding to acquire the necessary data needed to protect the area. Mark 172, Tape 6.

Commissioner Frewing asked that Department staff come back at the next meeting to discuss the BLM's concerns on these issues.

H. REQUEST FOR ADOPTION OF PROPOSED AMENDMENTS TO OAR CHAPTER 690, DIVISION 20 (DAMS)

Barry Norris, Technical Services, briefed the Commissioners on this issue.

On July 23, 1994, the Commission authorized staff to hold a public hearing on Division 20 rules. The hearing was held, and staff have developed proposed amendments which would improve the definition of dams subject to dam safety review, and allow for a waiver from the requirement for an outlet conduit.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission adopt the proposed Division 20 rules.

Kimberley Priestley, WaterWatch, expressed concern with the language change and would like "instream needs" retained in the rules. Mark 284, Tape 6.

A motion was made by Commissioner Frewing and seconded by Commissioner Leonard to approve the staff's recommendation. The motion passed unanimously.

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

Beth Patrino, Legislative and Rules Coordinator, briefed the Commissioners on the amendments.

HB 2344 amended Oregon's scenic waterway law to allow issuance of water rights for limited human consumption and livestock uses within or above scenic waterways notwithstanding requisite flows are not met. Before allowing such uses, the Commission must make certain findings, must condition water uses under the limited water rights to protect the flows of the scenic waterways and must track the total combined cumulative water rights issued under HB 2344.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission adopt the proposed rule as an amendment to Chapter 690, Division 11.

Beth Patrino noted a change in language to the amendment. The change appears at 690-11-196(4)(d). It should read, "For applications for livestock consumption uses, the water right is necessary to prevent livestock from watering in or along the streambed and the applicant has excluded livestock from the stream and its adjacent riparian zone; and".

Kimberley Priestley, WaterWatch, commended staff for their work on the rules. She expressed her concern about removing the Commission from the process completely. Mark 457, Tape 6.

A motion was made by Commissioner Frewing and seconded by Commissioner Leonard to adopt the Director's recommendation with the noted change. The motion passed unanimously.

J. REQUEST FOR AUTHORIZATION TO INITIATE RULEMAKING FOR SHORT-TERM LEASES OF WATER RIGHTS FOR INSTREAM USE

Becky Kreag briefed the Commission on this issue.

The Department proposes forming a Rules Advisory Committee (RAC) to assist in developing proposed rules for formal hearings and public comment. Because of the short timeline before the 1995 irrigation season, the rule process would begin immediately and adoption would be scheduled for the March or April 1995 Commission meeting. In the interim, the RAC would also work with the Department on revising the lease form and developing information that would make it easier to describe how instream leases work.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission initiate rulemaking to amend Division 77 and add new provisions describing a non-transfer process for short-term leases of water for instream use following the schedule. Staff further recommended that the Commission identify how it would be involved in the rules process prior to adoption.

Roger Bachman, Oregon Trout, stated that the request should be approved. He is already a member of the Committee. Mark 651, Tape 6.

Jan Boettcher, Oregon Water Resources Congress, stated that it is important that some changes be made to the rules. She is already a member of the Committee. Mark 662, Tape 6.

Bob Hunter, WaterWatch, stated that he encourages the Department to go ahead with rulemaking. He would like to be a part of the Committee. Mark 6, Tape 7.

A motion was made by Commissioner Johnson and seconded by Commissioner Jewett to approve the Director's recommendation. The motion passed unanimously.

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 above the printed name.

Cindy Smith
Commission Assistant