

WATER RESOURCES COMMISSION
DECEMBER 16, 1994
MEETING
SALEM, OREGON

MEMBERS

Cliff Bentz
Tyler Hansell
Anita Johnson
Mike Jewett
Nancy Leonard

STAFF

Martha Pagel
Steve Sanders
Diane Reynolds
Cindy Smith
Becky Kreag
Rick Bastasch
Steve Applegate
Tom Paul
Reed Marbut
Barry Norris
Fred Lissner
Weisha Mize
Bob Main
Doug Parrow
Beth Patrino
Bev Hayes

OTHERS

Senator Rod Johnson
Bob Hoeffel
Phil Castle
Kimberley Priestley
Todd Heidgerken
Roger Bachman
Jan Boettcher
Ed Weber
Jerry Schmidt
Scott Ashcom
Jeff Curtis
Doug Myers
Ves Garner
Stephanie Burchfield
Ron Yockim
Kip Lombard
Jim Myron
Pete Test
Kevin Hanway
Harry Spencer
Richard Koesan

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. COMMISSION MEETING MINUTES

A motion was made by Commissioner Jewett and seconded by Commissioner Johnson to approve the minutes as presented. The motion passed unanimously.

B. COMMISSION COMMENTS

Commissioner Johnson - Attended a meeting of Governor-elect Kitzhaber's task force considering the creation of an office of Natural Resource Policy.

C. DIRECTOR'S REPORT

- Unfinished Business - In November, three new members were elected to the Grants Pass Irrigation District Board of Directors. Under the terms of the permit, the Irrigation District is scheduled to provide an annual progress report by February 1. Staff will brief the Commissioners on the district's report at the February Commission meeting. Al Cook, Southwest Region Manager, and Doug Parrow, Conservation Manager, will be meeting with the new board members before the February Commission meeting.
- Director Pagel summarized yesterday's Work Session. She announced that a January 10, 1995, Commission conference call meeting will be held to seek authorization to take draft rule amendments to public hearing. The rules deal with how groundwater rights will be evaluated when the requested appropriations have the potential to diminish surface flows in scenic waterways.
- An update was given on the Governor's transition team and the Department's budget.
- Director Pagel reported that she spoke before the Oregon Association of Conservation Districts, League of Oregon Cities, Association of Oregon Counties, Oregon Water Utilities Council, Oregon Farm Bureau, and the Oregon Sheep Growers Association. She met in Redmond, Bend and Burns with water users and local public officials to discuss the Department's Strategic Plan and legislative concepts.
- The Department has been working on Treaty Water Rights negotiations with the Confederated Tribes of Warm Springs. At the last formal negotiating session, the Tribal Council suggested taking a break in the formal negotiations. More time is needed for public education and information about what is being proposed and the impacts of the proposals.
- Locations were discussed for the 1995 Commission meeting schedule. No decisions were made.
- Director Pagel gave an update on the Department's docket management approach to water use applications requiring Commission action. Commissioners were asked if they wanted to be involved in the planning. Commissioner Frewing had earlier expressed an interest.

- Doug Parrow, Conservation Manager, gave an update on the Basin Planning Revision process. A Rules Advisory Committee was appointed and has met six times. The committee is considering an approach under which classifications would be based primarily on water availability. This would help to identify the streams which have water available for appropriation. The Committee is also discussing plans for an expedited application review process.
- As of January 1, 1995, the Department will merge the Technical Services and Field Services and Enforcement Divisions. Barry Norris will head this new division.
- Steve Sanders, Legal Counsel, gave an update on the Hermiston Irrigation vs. Water Resources Department case. Sanders also reported on attending a meeting of the Western States Water Council.
- Commissioner Johnson asked about the Northwest Power Planning Council's amended fish and wildlife program. Tom Kline, Watershed Restoration Manager, stated that the comment period on the Lower Columbia rules has been extended to January 20, 1995.

D. WATERSHED HEALTH STATUS REPORT

Becky Kreag, Administrator, gave a brief overview of the Watershed Health Program. The program has moved into its second phase which is focusing on the development and concurrence between the Strategic Water Management Group (SWMG) and the watershed councils on watershed action plans. There are 13 recognized watershed councils, 12 of which exist in the south coast basin. A statewide watershed assessment was also completed with oversight from SWMG through the Division of State Lands.

Tom Kaye, Watershed Health Team, stated that the program's most significant accomplishment to date was that SWMG signed off on four watershed action plans. The program went before the Emergency Board and has until June 1995 to allocate the money and until the end of October 1995 to spend the money.

DIRECTOR'S RECOMMENDATION

This was an informational report. No action was required.

E. REQUEST FOR AUTHORIZATION TO CONDUCT PUBLIC HEARINGS ON PROPOSED AMENDMENTS AND ADDITIONS TO OAR CHAPTER 690, DIVISION 77, ON INSTREAM WATER LEASES

Becky Kreag, Administrator, explained that the instream water rights law provides for two ways of leasing existing rights for conversion to instream use. One, to convert rights obtained through purchase, lease or gift, through the formal transfer process. The other is through a lease that temporarily converts

a right without a transfer. The Department, however, lacks rules to guide the process that would not require a formal transfer of the right. The proposed rules would establish the process and applicable criteria for managing leases and avoiding injury to existing water right holders.

An addendum to the staff report contained the draft rule, because the last advisory committee meeting was held only two days before the Commission meeting, December 14, 1994. During that meeting the committee came to agreement on several changes to the draft rules. The Department made recommendations where the committee did not reach consensus.

Additional changes made to the draft rules were indicated in the addendum.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission authorize rulemaking hearings on the draft rule amendments and additions as shown in the addendum to the staff report.

Jan Boettcher, Oregon Water Resources Congress, generally agreed with the rules. She expressed concerns regarding page 8, subsection 4 and page 7, subsection 1c. There needs to be a longer opportunity to renew leases. Mark 450, Tape 2.

Roger Bachman, Oregon Trout, expressed concern that a five year leasing limit is too short a time. He urged the Commission to go with maximum flexibility. Mark 514, Tape 2.

Stephanie Burchfield, Oregon Department of Fish and Wildlife, explained this is a short term process. Mark 558, Tape 2.

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

F. REQUEST FOR ADOPTION OF ALLOCATION OF CONSERVED WATER RULES, OAR CHAPTER 690, DIVISION 18

Doug Parrow, Conservation Manager, requested adoption of allocation of conserved water rules with amendments.

Amendment of the rules for allocation of conserved water is needed because of passage of HB 2155 and because the adoption of rules provides the opportunity to resolve a number of important questions and policy issues related to the allocation of conserved water. These issues include which project costs will be considered when calculating the percentages for allocation of conserved water, how the Department will review applications for conserved water and protect other water rights from injury, how water users can ensure that sufficient water will be allocated to satisfy their existing

rights, and what procedures water users are to use when changing the uses of conserved water. The proposed rules represent the product of several discussions with the Conservation Advisory Committee and other interested parties and consideration of the comments received during the public hearings process.

Steve Sanders, Legal Counsel, suggested an additional change to the rules. Underlining indicates addition to the existing rule.

690-18-040 (8) The proposed percentages and quantities of conserved water to be allocated to the applicants and to the state and the proposed use of any conserved water allocated to the applicant;

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission adopt the rules with proposed amendments.

Commissioner Hansell expressed concern because the groundwater conservation was not included in the rules.

Richard Kosesan, Water For Life, expressed uncertainty and said the rules need another review. Mark 555, Tape 3.

Todd Heidgerken, Water for Life, shared Kosesan's concerns. Mark 44, Tape 4.

Jeff Curtis, WaterWatch, discussed the project cost issue. He said changes to these rules are beneficial. Mark 97, Tape 4.

Roger Bachman, Oregon Trout, agreed with the rules as proposed. Mark 146, Tape 4.

Staff proposed two additional changes, 1) 690-18-014(2) fourth line, should read ...governmental entities, and other organizations who have asked to be consulted prior to submittal of an application ..., and 2) 690-18-040(16) fourth line, should read ...governmental entities, or other organizations who have asked to be consulted regarding the allocation of conserved water.

A motion was made by Commissioner Jewett and seconded by Commissioner Leonard to adopt the rules with the noted changes. The motion passed unanimously.

G. PUBLIC COMMENT

Jan Boettcher, Oregon Water Resources Congress, attended the National Water Resources Meeting in New Orleans. Water spreading and federal projects were topics of interest. The Bureau is talking about developing partnerships, memorandums of understanding between districts and the Bureau. Mark 317, Tape 4.

H. REQUEST FOR AUTHORIZATION OF TRIENNIAL RULE REVIEW

Beth Patrino, Director's Office, requested authorization of the rule review.

ORS 183.545 requires all agencies to review their administrative rules at least once every three years. The review must include an analysis to determine whether such rules should be continued without a change or should be amended or rescinded, consistent with the stated objectives of the applicable statutes, to minimize the economic effect on businesses and the effect due to size and type of business.

The last triennial review of OAR Chapter 690 concluded on January 31, 1992. As a result of the on-going nature of administrative rule revision, a number of Chapter 690 divisions have been amended since the conclusion of the most recent triennial review.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission approve authorization to issue a Notice and Request for Comments on the Triennial Review of OAR Chapter 690, and report to the Commission on any comments received at its February 1995 meeting.

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

I. UPDATE ON THE DEPARTMENT'S 1995 LEGISLATIVE PROPOSALS

Beth Patrino, Director's Office, gave a brief update on the Department's proposals.

Staff have pre-session filed four legislative proposals approved by the Commission at its October 28 meeting. The legislative proposals include one major policy bill and three other bills.

At the Commission's last meeting, Commissioner Frewing brought up two issues that could be potential legislative concepts. These issues had to do with time-limited permits and reducing the single domestic groundwater use level. Staff have developed a proposed approach for addressing these concepts. Because of Commissioner Frewing's absence from this meeting, this discussion was delayed until the February Commission meeting.

DIRECTOR'S RECOMMENDATION

This was an informational report. No action was necessary.

Jeff Curtis, WaterWatch, expressed concerns with Section 7 of Legislative Concept 768. He said that illegal use should be shut off, not legalized. It could be possible to provide for limited duration permits under the current system of law; this could be abused. Recommended taking Section 7 out of the bill. Mark 509, Tape 4.

J. REQUEST FOR APPROVAL OF STRATEGIC PLAN

Rick Bastasch, Director's Office, requested approval of the agency's Strategic Plan.

Comments of Commissioners and other interested parties are addressed in the revised draft of the Strategic Plan. Recent policy direction and agency actions are more clearly identified both in the previous narrative and through the addition of new sections and format features. New policy choices and the rationale for their selection are more carefully explained. An explanation of the relationship between the Oregon Water Management Program and the Strategic Plan is explained and diagrammed. The Commission's interest in establishing time-limited permits is added as a prominent policy direction with accompanying Management Priorities identified.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended approval of the Strategic Plan as submitted with modifications as directed by the Commission.

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

K. PETITION FOR RECONSIDERATION OF WATER RIGHT PERMIT G-11826 ISSUED TO HARRY G. SPENCER AND WATER RIGHT PERMIT G-11827 ISSUED TO STEPHEN D. WARNOCK.

Reed Marbut, Water Rights Administrator, briefed the Commission on the petition for reconsideration.

In October 1991, Harry G. Spencer (Application G-12685) and Stephen D. Warnock (Application G-12692) filed for use of groundwater in the Croft Lake Basin. In February 1993, the Department issued a satisfactory report of Technical Review. WaterWatch of Oregon filed an objection to the Department's Technical Review in April 1993. The Department denied the objection in October 1993. In November 1993, WaterWatch filed a protest to the Department's denial of the objection and pursuant to OAR 690-11-175(6), the applications were referred to the Commission. On September 9, 1994, the Commission found that the proposed water use would not impair or be detrimental to the public interest and ordered the Director to issue permits on these applications. On October 5, 1994, the Director issued the permits.

DIRECTOR'S RECOMMENDATION

Staff recommended the Commission accept both petitions and review its decision to issue Permits G-11826 and G-11827. Staff would be directed to assess the technical information in the application files and prepare a recommendation for Commission action at the February 10, 1995, meeting.

Kimberley Priestley, WaterWatch, asked the Commission to rescind the permits until more information is available. Mark 164, Tape 5.

Kip Lombard, representing Harry Spencer and Stephen Warnock, stated that WaterWatch didn't have the legal standing to protest these permits under the provisions of 537.622(1). He urged the Commission to deny the petitions. Mark 200, Tape 5.

Ron Yockim, Oregon Cranberry Farmers Alliance, clarified the petition regarding cranberry acreage in the New River/Croft Lake Drainage. Out of approximately 1950 acres of cranberry production, less than 20%, or approximately 390 acres, are within the New River Drainage, of that, a small percentage are in the Croft Lake Drainage. He recommended the Commission deny the petition. Mark 50, Tape 6.

Kimberley Priestley, WaterWatch, disagreed with the figures that Ron Yockim presented. WaterWatch said that the file and the record reflect uncertainty. They did not find in the files that there was no potential for substantial interference. Mark 200, Tape 6.

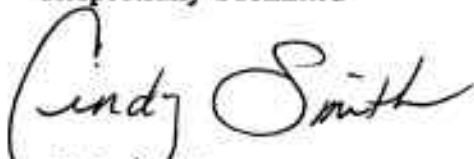
Kip Lombard, representing Harry Spencer and Stephen Warnock, gave his rebuttal on this issue. Mark 275, Tape 6.

Harry Spencer testified on his own behalf that the proposed groundwater use would not substantially affect surface water. Mark 555, Tape 6.

A motion was made by Commissioner Jewett and seconded by Commissioner Hansell to deny the petitions. Motion passed 4-1. Commissioner Johnson opposed.

There being no further business, the meeting was adjourned.

Respectfully Submitted



Cindy Smith
Commission Assistant