WATER RESOURCES COMMISSION
TELECONFERENCE CALL
JANUARY 10, 1995
SALEM

MEMBERS
Cliff Bentz
John Frewing
Anita Johnson
Nancy Leonard
Tyler Hansell
Mike Jewett

STAFF
Martha Pagel
Steve Sanders
Diane Reynolds
Cindy Smith
Bob Main
Fred Lissner
Tom Paul
Barry Norris
Reed Marbut
Becky Kreag
Steve Brown

OTHERS
Jim Myron
Kimberley Priestley
Phil Castle
Doug Myers
Cory Boswell
Gil Riddell
Richard Whitman

The report presented at this meeting, which contains the Director's recommendation mentioned in these minutes, is 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.

1. REQUEST FOR AUTHORIZATION FOR RULEMAKING HEARING ON MODIFICATIONS TO DIVISIONS 09 AND 11 DESCRIBING HOW TO PROCESS GROUNDWATER APPLICATIONS IN AND ABOVE STATE SCENIC WATERWAYS

Fred Lissner, Groundwater/Hydrology Manager, briefed the Commission on the request for modifications to Divisions 09 and 11 and responded to their questions.

In processing applications for new permits to appropriate groundwater, the Department and Commission have struggled with the potential impacts of proposed appropriations on surface waters in state scenic waterways. That struggle has been most apparent in the Deschutes Basin, where established scenic waterway flows are not met and demands for new groundwater uses are high. During the Commission's September, 1994, meeting, in the context of reviewing a particular application, staff were directed to explore the issue and recommend a course of action.

At the Commission's December 1994 meeting staff recommended rulemaking to address the issues.

DIRECTOR'S RECOMMENDATION

Staff and the Director recommended authorization for a hearing on the proposed rules and that staff work with interested parties to develop legislative modifications to clarify the intended consequences of the scenic waterway statute on groundwater development. Staff will return to the Commission with a proposal at the next meeting.

Director Pagel explained that department staff want to make sure they are making the right findings in evaluating applications in and above scenic waterways. This issue hasn't been raised by the public, but instead by staff. We will be consulting with the Ground Water Advisory Committee; and the upcoming hearing on the rules will give the public an opportunity to comment.

Commissioner Frewing asked about protection in the rules that would prevent going below the minimum flow established in the scenic waterway. Fred Lissner said that this rule provides for a reasonable period of time within which the appropriation is determined to be the cause of diminished flow, and beyond which changes in flow are attributed to other factors.

Commissioner Frewing said he thinks we would get a better rule if we would give it additional time.

Commissioner Leonard suggested the language in proposed Division 11 rules, 690-11-196(9)(a)(6), regarding the one year period to make the determination about water availability could be more defining. Lissner agreed language could be added about statistics as developed in the water availability program.

Commissioner Hansell asked how many people might be affected by these rules. Lissner responded that approximately 40% of the state's geographic area is in or above a scenic waterway. Reed Marbut added that there are approximately 70 groundwater applications in the Deschutes Basin alone to which objections have been filed. This discussion is necessary before staff proceed with these applications.

The five year travel time was discussed. The public hearing will provide an opportunity for comments on this.

Commissioner Jewett suggested that on page 3 of the proposed Division 11 rules, Section (9), that language be added to the last sentence indicating that other criteria could also be considered in determining the public interest.

Kimberley Priestley, WaterWatch, expressed concern about the expeditious manner the process was following. No time was allowed to consult with groundwater experts or coordinate with other environmental groups. The process that surrounds the issue is biased toward the issuing of water rights. She has some policy concerns regarding the rules. She is concerned about the travel time, concerned the rules do not account for the cumulative effects in any one region. If the department goes ahead with the five year travel time, permits should be clearly conditioned so if the flows are affected before or after the five year cutoff date, the use could be shut down. She expressed concerns regarding the need for a mitigation plan in the draft rules. WaterWatch opposes the proposed amendment. Mark 159, Tape 2.

Jim Myron, Oregon Trout, expressed concern with the five year time frame. The department is trying to do retroactive rulemaking. The department needs to delay the process to allow adequate input. A different approach needs to be used. Mark 219, Tape 2.

Commissioner Bentz noted that on page 5, subsection 4, the explanations are appropriate for the hearing, but should be deleted from the rule. Page 5, subsection 5, the words "below those necessary to maintain the free flowing character of the scenic waterway" should be deleted.

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

There being no further business, the meeting was adjourned.

Respectfully submitted,

Cindy Smith

Cindy Smith
Commission Assistant