

WATER RESOURCES COMMISSION  
MEETING  
FEBRUARY 10, 1995  
SALEM

MEMBERS

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

STAFF

Martha Pagel  
Steve Sanders  
Diane Reynolds  
Cindy Smith  
Rick Bastasch  
Reed Marbut  
Steve Applegate  
Doug Parrow  
Tom Paul  
Fred Lissner  
Becky Kreag

OTHERS

Audrey Simmons  
Roger Bachman  
Karen Russell  
Amin Wahab  
Roger Buchholtz  
Jan Boettcher  
Dave Graham  
Gayle Killam  
Doug Myers  
Todd Heidgerken  
Kip Lombard  
Jerry Groff  
Stephanie Burchfield  
Reed Benson  
Ves Garner  
Roger Nicholson  
Jeff Stegaert  
Dale Hile  
Kimberley Priestley  
Jerry Schmidt

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.

F. INFORMATIONAL AND RELATED REPORTS ON WATER MANAGEMENT AND ADMINISTRATIVE PROCESSES

1. Discussion of "Docket" Approach to WRC Consideration of Water Right Applications

Rick Bastasch, Director's Office, Dwight French, Water Rights Manager, and Steve Applegate, Water Rights Administrator, presented this item to the Commissioners and responded to their questions and comments.

Under existing department rules, most application decisions are made by the Director, but certain water right applications must be considered by the Commission. Among these are applications requesting amounts of water in excess of various thresholds, as well as applications that have been protested. The Commission must make findings and take certain actions on each application it considers. As the number of protested applications grows, a more organized method of dealing with Commission review of applications is needed.

DIRECTOR'S RECOMMENDATION

Staff and Director recommended the Commission employ the docket approach at regularly-scheduled Commission meetings.

Commissioner Frewing expressed his concerns regarding the waste of water. He would like to increase the priority of the Commission defining waste through rules. Director Pagel responded that the Strategic Plan lays out a process; the first step would be to hold regionalized workshops on efficiency standards. Commissioner Frewing said that he would like to be involved on any committee relating to efficiency standards.

Commissioner Frewing asked about strengthening the staff's review of applications. Bastasch responded that we must often turn to the expertise of local agencies, state or federal in determining if the public interest might be threatened by a proposed water use. Improving the clarity of our public notice will help.

Commissioner Jewett suggested that the public should have the opportunity to be allowed a certain amount of time for testimony on the applications that go through this process.

Commissioner Bentz asked Commissioners to let staff know of any issues they would like added to the annotated checklist.

A motion was made by Commissioner Hansell and seconded by Commissioner Jewett to employ the docket approach at regularly-scheduled Commission meetings, allowing five minutes total of public testimony from the supporting side and the opposing side. The motion passed unanimously.

2. Update on Revisions to Basin Planning Process

Doug Parrow, Conservation and Planning Manager, presented this item.

The Basin Planning Rules Advisory Committee (RAC) was convened to help the department take a new look at the basin planning program and related issues and to provide a forum for input from various groups. The RAC has met on a relatively fast-track since late September 1994. At its meeting on December 14, 1994, the RAC opted to delay its next meeting to give members time to meet with and consult their constituencies. The RAC was to meet again on January 31 to continue discussions and seek resolution on key issues. The next RAC meeting would be held March 17, 1995. Parrow invited the Commission to attend.

Commissioner Jewett asked Parrow if it is mandated by statute for the Commission to do basin planning. Parrow responded that the Commission is charged with the responsibility to progressively formulate a plan for the use of all the state's water.

DIRECTOR'S RECOMMENDATION

This was an informational item only. No Commission action was required.

3. Water Rights Process/Backlog Update

Steve Applegate, Water Right Administrator, and Dwight French, Water Right Manager, presented this item.

As of January 1, 1995, the water right backlog consists of 5594 applications; this does not include the ponds applications that have been filed. An additional 6500 pond applications were filed as a result of HB 2153. Of the 5594 regular applications, 1,624 have not yet received a technical review. The

department is still working toward its goal of having an application wait no longer than eight months to receive a technical review. Over 3000 applications are in protest and objection status. Of those, 2429 applications have standing objections on them, and approximately 700 applications are within the 60-day window after the technical review and thus may receive an objection. Staff are working on approximately 600 which have been through the process and have not received a protest or objection. Approximately 80 of these had an unsatisfactory technical review and will likely move toward being rejected. Thirty-nine applications have standing protests and will come before the Commission.

Staff are working on a short-term action plan directing efforts over the next few months. The water rights application processing will likely be modified by legislation or administrative rulemaking.

Because of the significant effort placed on issuing technical reviews, there are several programs in the Water Rights Section which have been neglected over the last few years. These include certificate issuance, transfer applications (about 650), adjudications, and cancellations.

Dwight French stated that he and Ken Weese, Fiscal, have been working on a time-cost production model. This will track production, time spent on each area of process and costs incurred to the agency at each step of the process. Staff will be able to calculate cost and/or time per unit for each step or the process as a whole. This will help us evaluate our use of staff time, number of staff needed, types of staff needed (technical or support), and necessary budget.

Commissioner Frewing is concerned that the staff are doing a lot of work the applicant could be doing, such as looking up water availability and deciding on special conditions.

Commissioner Jewett asked where the backlog came from.

Applegate said that the backlog stems from a combination of an increase in objections and applications, the drought, increased public awareness, and increased stream regulation. From 1980-1990 the application rate was approximately 400 per year. In 1990, the rate jumped to approximately 1000 per year.

Commissioner Bentz asked how many staff currently work on the backlog.

Director Pagel stated that the department currently has 8 FTE (full time equivalent) that are dedicated to working on the application process, but many other agency staff are also helping.

Rick Bastasch gave an overhead presentation explaining the proposed application process the department has developed.

During testimony by Karen Russell, WaterWatch, the tape recorder malfunctioned and staff were unable to record all of her comments. She did express concern about limited Commission review of applications in the proposed process; and encouraged rejection of applications not allowed in basin plans.

Jan Boettcher, Oregon Water Resources Congress, stated that last summer she visited around the state and talked to people about their top water issues. The expedited water right process concept is a priority to everyone. Legislators are concerned about the process and are moving legislation as fast as they can. Legislative Council draft 2224 is sponsored by the Congress and deals with this issue. This process is similar to the Department of Environmental Quality's application process. The Commission could spend time dealing with issues in the first tier of the new process where the basin plans are identified and accept or reject an application earlier. Mark 589, Tape 2.

Roger Bachman, Oregon Trout, stated that he was involved in the preliminary draft of this concept. It is a good idea. He shares some of the same concerns as WaterWatch about the opportunity for public review, but this seems like a workable process. He asked about the proof of water availability and hopes that is still in the concept. The Commission needs to be formally involved before the time indicated on the flow chart. The public notice would better serve the raising of policy issues if it contained more information and it appears this process will allow for that. Mark 133, Tape 3.

Director Pagel explained that the draft order would have more information. It would have specific finding and permit conditions. The purpose of the public notice would determine who wants more information.

Commissioner Bentz asked about the issue of retroactivity. Pagel responded that in this case it could work to the advantage of everyone.

G. PUBLIC COMMENT

There was no public comment.

H. REQUEST FOR ADOPTION OF AMENDMENTS AND ADDITIONS TO OAR CHAPTER 690, DIVISION 77 (INSTREAM WATER RIGHTS RULES FOR LEASES OF WATER FOR INSTREAM USE)

Becky Kreag, Resource Management Division Administrator, and Steve Applegate, Water Rights Administrator, presented this item for the Commission's consideration.

The proposed rules, developed with the assistance of a rules advisory committee, were the subject of public hearings on January 24, 1995, in Salem and Bend. A general support for the proposal from those who commented was widespread. The issues receiving the most comment were: the length of the comment period which many felt should be extended to 30 days, and others wanted to keep at 15 to keep the process quick; whether there are adequate and appropriate provisions to avoid injury; and whether there should be a limit on renewability for the leases. Staff proposed some changes in all of those areas.

Kreag announced two changes that should be made on the proposed rules, Attachment 1 to the Addendum. The first, on page 9, lines 30 and 31, delete "however, no other supplemental source shall be allowed." The second, on page 7, line 38, add "or similar organization" after "district" in the first line.

Staff proposed an additional change to the rule:

690-77-077(2)(b) Any irrigation district or similar organization as defined in ORS chapters 545, 547, 552, 553, or 554 which conveys water to the subject water right and the owner of any storage facility which is the source of the water, as co-lessor, if applicable;

Commissioners Bentz and Frewing expressed concerns regarding injury claims and actions required.

Staff said that it is difficult by rule to define "injury." But there are certain situations where injury would likely be found. The watermasters would be looking for these situations in their review. A public notice period of 21 days