

WATER RESOURCES COMMISSION  
MEETING  
FEBRUARY 9, 1995  
SALEM

MEMBERS

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

OTHERS

Roger Bachman  
Audrey Simmons  
Jeff Curtis  
Todd Heidgerken  
Jeff Stewart

STAFF

Martha Pagel  
Steve Sanders  
Diane Reynolds  
Rick Bastasch  
Steve Applegate  
Kent Searles  
Al Cook  
Doug Parrow  
Becky Kreag

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

1. Approval of Meeting Minutes

Commissioner Frewing asked that more of the Commissioners' comments be included in the minutes.

Commissioner Bentz and Steve Sanders, Legal Counsel, said that the minutes meet the legal standard, but that more detail could be included.

A motion was made by Commissioner Hansell and seconded by Commissioner Jewett to approved the minutes as submitted. The motion passed unanimously.

2. Request for Authorization to Conduct Rulemaking Hearings on Proposed Amendments to OAR Chapter 690, Division 19 (Drought Mitigation)

Current rules contain a fee provision which the Legislative Counsel Committee has determined is outside the scope of the rules' enabling legislation. The proposed amendments, developed in consultation with Legislative Counsel, would make the rules consistent with the intent of the Oregon Revised Statutes.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission authorize a public hearing on March 31, 1995, on proposed amendments to OAR 690, Division 19 (Drought Mitigation) that would make the rules consistent with the enabling legislation.

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

B. DIRECTOR'S REPORT

1. Director Pagel gave an update on the department's legislative process.
2. The department's budget will be presented to the Ways and Means Subcommittee on Natural Resources the week of February 13. The Subcommittee will tour the department and be given an overview of the department's programs and strategic plan.
3. The department's long-range vision is to decentralize certain functions of the agency to the field offices. A detailed plan will be created within the next six months to show how this will be accomplished

4. In December 1994, the department received over 2500 filings for exempt status and 3600 reservoir applications for a water right relating to HB 2153 (ponds). Each application could include up to 10 ponds. This tripled the department's current backlog.

Commissioner Frewing asked how the department is going to verify the information on the applications as true.

Steve Applegate, Water Rights Administrator, stated that the exempt filings do not need a permit; copies of these documents are being sent to the watermaster and they will determine if the pond is indeed exempt. The rest of the applications will be handled like any other application and will be added to the pending applications. One new position is available to work on the ponds applications.

Commissioner Hansell went through the ponds registration process personally. He said the department staff did a great job.

5. Steve Applegate was introduced as the acting Administrator of the Water Rights and Adjudications Section. Reed Marbut will be working on Indian water right negotiations and other complex adjudication and federal reserve right issues.
6. Two comments were received regarding the department's administrative rule triennial review process. One comment suggested holding off until the end of the legislative session; the other suggested repeal of all administrative rules. The Commission will take final action at the April meeting.
7. Director Pagel asked Doug Parrow to give the Commission an update on the Grants Pass Irrigation District permit. Two objections have been made regarding the order to extend the District's permit. Staff are working with the objectors to see if there is an alternative to going to a contested case hearing. The alternatives would require that the objections be withdrawn.

Jeff Curtis, WaterWatch, stated that an objection was filed by WaterWatch. In the event there is a failure of due diligence which results in reconsideration of permit conditions, WaterWatch can raise the public interest concerns that were in the objection.

Steve Sanders explained that in the October 28, 1994, Order, the Commission reserved the right of WaterWatch or others to continue to raise public interest issues should the Commission determine that they are going to modify or revoke the Order.

Commissioner Frewing said he considers the Grants Pass Irrigation District to be in violation of their plan to remove the dam and the permit should be revoked.

Commissioner Bentz stated that the department would need to give notice that revocation of the permit was under consideration.

Commissioner Frewing asked staff to prepare necessary paper work for the April meeting to revoke the permit so he could make a formal motion to do so.

Doug Parrow stated that at the April meeting the Commission will have before them the issue of whether or not the progress report is satisfactory. Parrow said that he, along with Al Cook, would work with the District to respond to issues.

Commissioner Jewett said that it would be better if the GPID Board would ratify the prior Order to remove the dam rather than have it all fall apart.

Commissioner Bentz asked Steve Sanders, Legal Counsel, to outline what would happen if the permit was cancelled. Steve Sanders, said that an order could be written to revoke the permit. GPID and other parties would have 60 days to file objections and request a contested case.

8. Steve Sanders, Legal Counsel, gave an update on legal issues. There were three victories in the appellate court since the last meeting. They were Orchards vs WRD, Eric Scura vs WRD, and United States vs Oregon.

C. COMMISSION COMMENTS

Commissioner Hansell reported that he would be on a program that evening on Oregon Public Broadcasting regarding water conservation in the Hermiston area.

He also reported that it is difficult dealing with meeting materials being received at such a late date.

Commissioner Johnson reported that the Governor's Watershed Enhancement Board met and has given out approximately \$96,000 to seven watershed projects. There may be a merger of the Watershed Health Program and the Governor's Watershed Enhancement Board.

Commissioner Frewing noted that the Governor's Budget deleted the Director's efforts regarding water development. He stated that he plans on calling the Governor regarding this issue. Frewing asked for a response to his memo concerning the New River area and also for a status report on the Croft Lake Study.

Commissioner Frewing stated that there are two issues that need attention from a policy standpoint. They are the Willamette Reauthorization Study and the Department of Energy study on carbon dioxide and earth warming.

Commissioner Bentz reported that he wrote a letter to Senator Timms and Representative Denny Jones asking them to address the groundwater/surface water hydraulic connection issue.

D. REQUEST FOR ADOPTION OF AMENDMENTS TO OAR 690, DIVISION 200 (WATER SUPPLY WELL CONSTRUCTION AND MAINTENANCE) AND DIVISION 240 (CONSTRUCTION MAINTENANCE AND ABANDONMENT OF MONITORING WELLS AND OTHER HOLES IN OREGON) TO MODIFY THE DEFINITION OF MONITORING WELLS WHICH AFFECTS REGULATION OF MONITORING WELLS, GEOTECHNICAL HOLES AND OTHER HOLES

Marc Norton, Groundwater Section, briefed the Commission on a request for adoption of amendments to Division 200 and Division 240.

The proposed changes to the monitoring and water well construction rules are the result of the continued effort to protect groundwater. Piezometers and observation wells, constructed to gather hydrologic data, would be elevated from the "other hole" classification to monitoring well status in order to be consistent with statutory guidance. Certain temporary holes such as push point temporary holes (hydropunch and cone penetrometer) would no longer be considered as wells. A subset of "other holes" has been created to more effectively regulate certain types of geotechnical holes which have a potential to lead to groundwater contamination or waste.

Norton noted some additional changes to the proposed rules. The new language is as follows:

690-200-050(36) "Geotechnical hole" means a cased or uncased hole constructed to collect or evaluate subsurface data or information. Geotechnical holes are not monitoring wells as defined in (54) below. Various classes and examples of geotechnical holes are listed in 690-240-035(5-8).

690-240-010(5) "Geotechnical hole" means a hole greater than 10 feet in depth constructed to collect or evaluate subsurface data or information, or to stabilize or dewater landslide features. Geotechnical holes are not monitoring wells as defined in (8) below. Various classes and examples of geotechnical holes are listed in 690-240-035(5-8).

690-240-035(5)(a) Temporary geotechnical holes include but are not limited to: drive points, soil and rock borings, temporary sample holes, permeability test holes and soil vapor holes.

690-240-035(6) Cased permanent geotechnical holes include but are not limited to: gas migration holes, cathodic protection holes, dewatering holes, and vapor extraction holes.

690-240-150(4) Any registered geologist or civil engineer involved in construction, alteration, or abandonment of a geotechnical hole.

DIRECTOR'S RECOMMENDATION

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

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

E. DISCUSSION OF COMMISSION AND DEPARTMENT AUTHORITIES AND ROLES

Rick Bastasch and Weisha Mize, Director's Office, summarized the authorities, roles and responsibilities of the Department and Commission as they exist in statute, rule, custom and internal management directives.

Rick Bastasch explained that Department staff spend approximately 350-400 hours of preparation time prior to each Commission meeting. This begins a week after the previous meeting. This is a cost of approximately \$14,000 per meeting; and \$100,000-\$110,000 per biennium. This also reflects the staff time necessary to prepare for rulemaking hearings.

Commissioner Bentz asked each Commissioner for comments on the role of the Commission.

Commissioner Frewing stated that the Commission defines policy issues; and does not just react to what the Department brings forward. The Commission initiates policy statements that serve the statutory purpose of the Commission; initiates policy where there is no policy; and serves as an appeals board. The Commission is not intended to second guess the technical work of the staff. The Commission has an obligation to exercise its judgment and make decisions.

Commissioner Johnson stated that she is frustrated by state government. The Commission is set up to take the political heat from elected officials. It is hard to get past the point of resolving the tough issues. It is difficult for this Commission as structured to take a long view.

Commissioner Jewett stated that the Commission is here to legitimize actions of the Department. It is created to have some oversight authority; should be focusing more on policy. The Commission tends to micro-manage and is hesitant to delegate.

Commissioner Leonard said she is too new to the Commission to identify specific issues. In general, she would like to see the Commission be more of a policy direction source than micro-manage. There are more things that could be delegated.

Commissioner Hansell stated that he would like the Commission to consider an economic value when setting policy. We react to problems instead of planning the future and looking at the big picture. The Commission needs to listen; people should be able to talk to the Commission. It's helpful to visit other areas in Oregon.

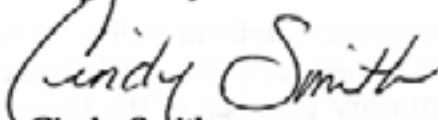
Roger Bachman, Oregon Trout, stated the Commission has three roles: 1) quasi-judge on policy issues and disputes; 2) ombudsman with the opportunity to redress a citizen's wrong; and 3) formal supervisor of staff. The Governor expects

the Commission to observe the staff and ask questions. Watermasters give very helpful information. There is a natural tension between staff and Commission.

The Commission should question things that don't seem right. It's good that the staff spend 350-400 hours preparing for meetings. Mark 120, Tape 4.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Cindy Smith  
Commission Assistant