

WATER RESOURCES COMMISSION  
APRIL 7, 1995  
SALEM, OREGON  
MINUTES

MEMBERS

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

STAFF

Martha Pagel  
Steve Sanders  
Diane Reynolds  
Cindy Smith  
Rick Bastasch  
Becky Kreag  
Barry Norris  
Mary Lou Soscia  
Steve Applegate  
Tom Paul  
Tom Kline  
Al Cook

OTHERS

Jesse Lowman  
Phil Matson  
Karen Bahas  
Jan Boettcher  
Roger Bachman  
Kimberley Priestley  
Karen Russell  
Doug Myers  
Jim Myron  
Duane Robinson  
Kevin Hanway  
Cory Boswell  
Gayle Killam  
Lynn Shumway  
John Thom  
Ben Boswell  
Todd Heidgerken  
Clark Balfour  
Lorna Stickel

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.1 APPROVAL OF MINUTES

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

A.2 INFORMATION REPORT ON RESULTS OF TRIENNIAL RULE REVIEW

Rick Bastasch, Director's Office, presented this report. In December 1994 staff requested and received Commission authorization to publish a notice and request for comments on the triennial review of all rules contained in Chapter 690 of the Oregon Administrative Rules. The comment period closed January 27, 1995.

DIRECTOR'S RECOMMENDATION

This was an informational report that required no Commission action. Commission comments or questions were invited.

Commissioner Frewing had a list of five areas of concern that might be considered in rulemaking.

1. Staff should not use a single process for public interest review for all applications. Staff should define criteria for more significant applications from a public standpoint and differentiate these applications and their public interest review from others.
2. The three permit conditions which staff use regarding measurement, recording and reporting for small, medium and large water uses. Frewing was particularly concerned that a simple distinction based on application amount or streamflow ignores the fraction of streamflow in the application or whether the stream is a fish bearing stream. An alternative definition for use of the three permit conditions should be developed.
3. Condition language that allows permittee to measure and report their own water use.
4. Complete action committed in the prior triennial rule review regarding the problem of commingling of groundwaters not only in specific areas of the state, but statewide. The prior review indicated that Ground Water Advisory Committee would advise the Commission on this matter, but it has not been done.
5. How staff consider technology in reviewing permits, specifically the technology that affects the efficiency of water use. Need to be clearer of what is expected of applicants and how staff review applications to make sure there is no waste.

**B. COMMISSION COMMENTS**

Commissioner Hansell - Hansell, Steve Sanders and Martha Pagel met with the Water Board of the Confederated Tribes of the Umatilla Indian Reservation. Hansell also met with Rolly Smitten, National Marine Fisheries Service, in Washington D.C. on the John Day drawdown.

Commissioner Bentz - He addressed the House Committee on Water Policy yesterday and was introduced to Senator Johnson, Chair of the Senate Committee on Water and Land Use.

**C. DIRECTOR'S REPORT**

1. Director Pagel - She has been busy with legislative matters, making progress on a number of issues.
2. Pagel, Commissioner Hansell and Steve Sanders met with representatives of the Confederated Tribes of the Umatilla Indian Reservation regarding initiating formal negotiations on their reserved treaty rights. An agreement was made to respond informally regarding their reserved treaty rights. However, much work still has to be done on the Warm Springs negotiations first. Several cooperative management issues were discussed. They would like to meet with the Commission the next time we meet in that area.
3. Pagel attended a Klamath Compact Commission meeting this week. The three-member commission oversees the provision of the Klamath Compact, an interstate agreement between Oregon and California.
4. A strong commitment had been made toward future decentralization of the Department. Claudia Howells, on rotation from the Public Utility Commission, is helping evaluate functions and develop recommendations of what services could be moved to field offices. The project timeline is approximately four to six months.
5. Steve Sanders, Assistant Attorney General, updated the Commissioners on legal issues. The Ninth Circuit Court of Appeals has refused to re-hear or reconsider its opinion in the Klamath Adjudication case. The Court of Appeals has refused to reconsider "Hermiston vs. Water Resources Department." "Norden vs. Water Resources Department" is in the trial court in Umatilla County.

6. Rick Bastasch, Strategic Planning Administrator, reviewed policy issues that arose during discussion of the docket items presented in the previous day's meeting.

D. UPDATE ON LEGISLATIVE SESSION

Beth Patrino, Director's Office, briefed the Commission on the status of water-related bills before the 1995 Oregon Legislature, including bills that propose revisions to the Department's water right application process.

Rick Bastasch led a discussion on SB 674 regarding the water right application process. Senate Bill 674 was passed out of the Senate Water and Land Use Committee Tuesday with a "do pass" recommendation with a number of amendments.

Director Pagel said the bill is now to move onto the Senate floor and then to the House. The Department did not support all of the changes that were enacted on the Senate side; Pagel explained the changes and the staff concerns.

Commissioner Bentz asked about the financing if the bill passes.

Director Pagel said that the fiscal impact shows a need for approximately 17 FTE, but there are 23 new positions. The total price tag is more than a million dollars. This would be financed by the restructuring of the water supply option package in the Governor's recommended budget.

Steve Applegate, Water Rights Administrator, said that with added staff, the Department should be able to eliminate the backlog during the timeframe of July 1, 1995, through October 1, 1996. The new process will allow us to maintain, once current, a current status with new applications. Other divisions in the Department are offering 9.5 FTE to help temporarily (through October 1, 1996) with the water right application review process. There is also a backlog in transfers and certificate issuance that should be significantly reduced in this 15-month timeframe.

Commissioner Frewing asked if SB 674 gets away from the mandatory referral to contested case proceeding.

Pagel responded that mandatory referral would be eliminated.

Patrino continued on with an update on other bills of interest to the Department.

Director Pagel explained the latest concept of SB 1033 (dealing with issuance of new ground water permits within or above scenic waterways).

The ponds bills work group has been struggling with a number of issues. It is likely that the House Committee will adopt an amendment that sets up three categories of ponds: exempt, application received under HB 2153, and new ponds less than 9.2 acre feet or having a dam less than 10 feet in height.

HB 2184 (process for transferring primary and supplemental water rights) - Voted out of committee recently with many changes.

Commissioner Frewing asked if the Willamette reauthorization process has been put back in the Governor's budget.

Director Pagel said not as yet officially but there have been discussions on reorganizing the water supply option package to use some funds for this. We need to spread the project out over more time and reduce the state's contribution to half the cost share.

Commissioner Jewett asked about the budget notes relating to the Grants Pass Irrigation District bills. Pagel responded that there are rumors but no specific language as yet.

HB 2746 (reservation process) - a work group is developing amendments to this bill.

HB 3183 (aquifer storage and recovery) - a work group is developing amendments.

HB 2917 (extension of an irrigation season) - much interest by growers that provide their crops to food processors.

Doug Myers, WaterWatch, said he has heard some good comments to the House Water Committee on instream water rights; Director Pagel gave a very good speech. Chair Bentz also spoke on instream water rights before the committee yesterday. Governor Kitzhaber was one of the prime architects of the Instream Water Right Act. Instream water rights have a lot to do with the

economy and provide other benefits for the health of Oregon. WaterWatch has concerns about the process bill, SB 674. The committee hearing was chaotic. Mark 164, tape 3.

Karen Russell, WaterWatch, said when they reviewed SB 674 there were three things they wanted preserved: 1) no substantive alteration of the standards existing in law; 2) not shutting the public out of the process, and 3) the procedures and the provisions in the bill would apply equally to instream water rights. They don't oppose a more streamline process, but want to make sure these three things are maintained. The bill, drafted with the current amendments, violates two if not more of those issues. The amendments limit the Director's ability to send an application to contested case and the time that an application is able to be sent to contested case. The changes to the Instream Water Right Act are of great concern. They see areas where the substantive standards in the bill have changed: adding significantly to the language "impair or be detrimental to the public interest"; and wholesale deletion of the language that requires any new permit issued to conform to the public interest and result in the highest public benefit. WaterWatch also has concerns with the presumption language in the bill. They will continue to work with the Department. Mark 194, tape 3.

Doug Myers, WaterWatch, said that they continue to work with Director Pagel on SB 1033 and expressed appreciation to her and Department staff. Mark 242, tape 3.

Jan Boettcher, Oregon Water Resources Congress (OWRC), said that all 14 of their bills are still moving. She expressed concern with SB 674. The original concept was to leave instream water rights out of SB 674. There is no reason why the Commission can't address an expedited process for instream water rights by rule. There is now potential that this bill will not pass on the House or Senate floor. They support the 2-tier process. They would be happy to go back to the -6 amendments or will work with the Department to create some kind of consensus on the rest of the bill. The OWRC bill to change the Commission geographic population distribution that allocates where the Commissioners reside passed the House. SB 1051 asks that the OWRC become part of the water fund which is established in the Department of Economic Development. OWRC would like to get involved with the reestablishment of the Water Development Loan Fund for municipal corporations.

E. UPDATE AND REQUEST FOR DIRECTION ON PROPOSED ADDITIONAL PUBLIC INTEREST STANDARDS FOR NEW APPROPRIATIONS WITHIN THE LOWER COLUMBIA BASIN BELOW BONNEVILLE DAM, OAR CHAPTER 690, DIVISIONS 11 AND 33

Bob Rice, Resource Management Division, briefed the Commissioners and updated them on the progress made toward developing rules for the Lower Columbia Basin. Three alternatives were brought forward, all of which propose significant changes to the draft rules which went to public hearing. None of these changes were of the nature which would require a re-hearing of the rules, yet the staff believe the draft rules could benefit by additional discussions among the advisory committee members.

Before developing specific language for the proposed rules, staff requested that the Commission indicate any preferences or concerns which should be further developed in the rules. Staff also proposed to meet with the rules advisory committee to discuss the proposed rules and specific language of the final draft rules. Staff would then bring the final draft rules to the Commission for consideration at its next meeting.

DIRECTOR'S RECOMMENDATION

This report invited Commission discussion and direction on the draft rules. After reviewing the public comments and following discussions with the Governor's Office and ODFW, the Director and staff recommended Alternative 2 in the staff report. Additionally, staff recommended calling another rules advisory committee meeting to discuss and reach agreement on the latest version of the proposed rules. At the June Commission meeting, the Commission may be asked to adopt rule amendments.

Roger Bachman, Oregon Trout, commented on seasonal restrictions. Most of the comments received were negative because they came from the users who want to have access to cheap water. Very few were speaking for the fish. He urged the Commission to consider the science. The staff of the Department of Fish and Wildlife that Bachman talked with support the data on seasonal restrictions; their new director does not. We really do not know enough yet to do away with seasonal limits. We need more research and monitoring and need to know more about the affect of the changed hydrograph in the Columbia on the estuary at the mouth. Most of the research has been focused on the dams upstream of Bonneville. Even though the summertime flushing flows and migratory flows increase in the Columbia, according to the National

Marine Fisheries plan, those will be experimental for some years to come. Oregon Trout is very reluctant to approve unlimited appropriations of natural flow until the science is much better understood. The rules advisory committee discussed many ideas, one of which would allow a modest cap on new appropriations. They would prefer this to what staff is recommending. He discussed consistency versus consideration of the Northwest Power Planning Council's (NPPC) fish and wildlife program. Staff argue that the consistency standard would require changes in Oregon law and rules to be followed... well, so what? The rules could be changed or language could be added that consistency would be required only where such rules or statutes do not conflict. The consistency standard should remain in the draft rules. The consideration standard is too vague and subject to heavy political pressure for exceptions. The hydroelectric statutes call for consistency with the plan on this issue. Oregon Trout agrees that it would be reasonable to limit the seasonal restrictions to a period of perhaps 10 years or until a major revision occurs either in the NMFS or NPPC programs. He does not agree with Commissioner Frewing that the provision only applies to flows below Willamette Falls. It should apply to the whole Willamette system. In summarizing, Bachman suggested following the "Four M Rules" for fish survival – maximize resiliency, minimize risk, manage the research, and monitor results. Mark 403, tape 3.

Director Pagel said that fish management on the Columbia system is an interstate matter. Governor Roberts had directed state agencies to implement the NPPC's plan. This was done in adopting the rules above Bonneville. The Council's membership has changed since Governor Kitzhaber came into office, and it is unclear as to what the final plan and the final policy direction of the Council is going to be.

Clark Balfour, lawyer for Tualatin and Clackamas Water Districts, Lorna Stickel, Portland Water Bureau, Kevin Hanway, Special Districts Association of Oregon, commented. Mark 12, tape 4.

Kevin Hanway said his organization supports the recommendation that this be sent back to the rules advisory committee. Lengthy comments were submitted regarding the draft, specifically addressing the legal authority of the rules. The elimination of the seasonal restriction is important to municipalities. Municipalities do not have an alternative supply, and cannot fill the needs of people. It is unclear what the language of staff's recommendation means.