

WATER RESOURCES COMMISSION  
WORK SESSION  
JUNE 1, 1995  
SALEM, OREGON

MINUTES

MEMBERS

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

OTHERS

Jan Boettcher  
Kimberley Priestley  
John Hogan  
Marion Millard  
Roger Bachman  
Phil Matson

STAFF

Martha Pagel  
Steve Sanders  
Diane Reynolds  
Cindy Smith  
Rick Bastasch  
Steve Applegate  
Becky Kreag  
Barry Norris

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.

1. INFORMATION REPORT ON COMMISSION WATER MANAGEMENT POLICIES

Rick Bastasch, Director's Office, gave an overview of existing policies with an analysis of their applicability to the new water right process proposed in Senate Bill 674.

The Commission has several policy making tools and has exercised many of them recently. However, the effective implementation of existing general policies will likely require that more specific guidance be developed in rules or through internal management directives. The need for greater policy specificity is particularly pronounced in the area of permit decision-making, where statutes give substantial weight to, but little detail on, the role of protecting the public interest. Existing statewide water policies on allocation, storage, conservation and instream flow policies can serve as the basis for more detailed guidance on public interest issues.

#### DIRECTOR'S RECOMMENDATION

The Director and staff recommended the Commission direct staff to begin work on the development of clearer guidance relating to protecting the public interest in the application review process. This may include following up on the areas of statewide water policies needing additional work. In addition, it may include compiling and distilling applicable policies for inclusion in procedure manuals or other materials being prepared to help staff implement the new application review process. It could also include designing a strategy for dealing with policy matters through the next biennium for discussion and adoption at the Commission's September retreat, with a status report on preparations at the July meeting. This would most likely allow methodical consideration of policy directions consistent with staff workload at the start of the new biennium.

Commissioner Bentz asked when the implementation of Senate Bill 674 would occur.

Bastasch said implementation would begin immediately.

Commissioner Frewing asked if internal management directives exist now.

Bastasch said not for permit processing. There is an enforcement manual.

Steve Applegate, Water Rights Administrator, said that a manual is currently in the process of being prepared. An initial version would be available by the first of July when new staff come on board.

Commissioner Frewing asked if the Commission could have a copy at the September retreat.

Steve Sanders, legal counsel, asked the Commission to be aware of the distinction between the internal management directive and rules. By statute an internal management directive cannot affect the substantial rights of the public; the goal of the directive is to direct staff time.

Commissioner Frewing expressed concern about how staff perform when there is insufficient data to make a decision. He prefers to place the burden of developing the necessary information on the applicant. He would like written instructions in the manual that reflect how the staff should perform when there is not enough information.

Director Pagel said the ultimate policy on permit issuance is given to us in statute.

Commissioner Frewing said it would be useful if staff could pull together implementing strategies mentioned on page 5 of the staff report, and highlight any conflicts, so they can be discussed at the September retreat.

Commissioner Jewett asked if staff could provide the Commission at the July meeting an example of the degree of specificity needed in policies.

Pagel commented that the Department's goal is to have clear standards so that at the time of filing an application a person can have a reasonable idea as to whether they will get a permit.

Kimberley Priestley, WaterWatch, expressed concern that the Commission is not going to be as involved under Senate Bill 674 so there needs to be a strategy to elevate policy concerns to the Commission. The Commission needs to address a number of policy issues and then give clear direction to the Department. Policies should be developed ahead of time before issues arise. Some examples are what happens if a stream is water-quality limited; what happens when threatened and endangered species are present; how do you protect the resource when there are no pending instream water rights. Tape 2, mark 49.

Commissioner Frewing said it would be helpful if WaterWatch would suggest policies they'd like to see the Commission clarify.

Jan Boettcher, Oregon Water Resources Congress, expressed concern that by exercising the policies in an entirely new fashion, we can't fit into the timeframes required in Senate Bill 674. Senate Bill 674 is a process that should expedite the process as it exists now. Senate Bill 674 should make the decision-making process somewhat easier. The Commission would deal only with the serious exceptions. It creates changes in how one does apply the public interest. We need to be firmly committed to making this a workable process. Tape 2, mark 80.

Commissioner Bentz asked if there are areas that need clarification in the policies that have been developed.

Boettcher said she likes the idea of putting together information for applicants so that they know up front what the Department needs. She'd be glad to bring any policy suggestions to the Commission.

Commissioner Jewett asked for the first date in which an application would be affected by Senate Bill 674.

Director Pagel said the bill goes into effect as soon as it is signed by the Governor. We'll be doing an analysis between now and July to see if there are inherent conflicts that would stop us from proceeding. There may be areas in the current policies by rule where we need to do some tidying up and areas where new policies may be needed. The Commission may be interested in establishing additional public interest standards.

Commissioner Bentz asked if Senate Bill 674 includes transfers.

Director Pagel said it does not.

## 2. INFORMATION REPORT ON WATER USE REPORTING WAIVERS

Bill Ferber, Technical Services, presented this information report to the Commission.

In 1993 the Commission waived the annual water use reporting 15% accuracy requirement for instream water rights. A condition of the waiver is submission of an annual progress report on efforts to bring all instream water right reporting to compliance with the water use reporting rules. The Commission had asked for a briefing on the use made of data collected by the

Water Use Reporting Program, and the process allowing waivers of the water use reporting requirements.

DIRECTOR'S RECOMMENDATION

This was an informational report only. No action was required.

Commissioner Frewing asked who submitted the nine requests last year for waivers mentioned in the staff report.

Ferber said that requests were submitted by Linn County Parks and Recreation, our Department, and Prairie City.

Commissioner Frewing asked if many waivers are from the Department.

Ferber said yes, the Department asked for approximately 400 waivers for instream water rights from complying with the 15 percent accuracy.

Pagel explained that the Department is responsible for the hundreds of instream water rights that exist. To get to that level of efficiency would require installation of additional gages which is a large expense that individual water right holders wouldn't have. We are trying to track and protect those water rights, but we're not able to meet the 15 percent reporting requirements.

Ferber said no additional gages have been installed and approximately 12 USGS gages have been dropped. We don't have the budget to acquire and monitor all the gages necessary.

Pagel said that the Department has been trying to set up a system of priorities with the Department of Fish and Wildlife and acquire the abilities to monitor the areas with the highest priority need.

Ferber stated that staff gages are located throughout the state with volunteers taking readings.

Commissioner Hansell asked what the cost is to install gages and monitor them.

Ferber said it costs approximately \$10,000 for materials for one automatic recording station.

Commissioner Johnson asked if the required reports are more complicated than they should be.

Ferber responded that the extent of monitoring and the expense depends on the level of accuracy needed. The data collected is used by the Department for water availability models.

Commissioner Frewing asked for a list of the most sensitive locations that are not now monitored that might be attacked through the use of watershed councils.

Bentz said this might also be considered during the budget discussion.

Roger Bachman, Oregon Trout, asked how many diversions are being measured voluntarily. Watermasters don't seem to have the time to check on this. He is interested in the cost of operating a gaging system where there is a higher density such as Trout Creek east of Madras. It is going to be important to find funding to operate a proper gaging system in that basin. If they can't get compliance there, Oregon Trout is prepared to petition the Commission to establish a special water management area. He urged the Department to add this to the "to do" list when the legislature is adjourned. Tape 2, mark 507.

3. INFORMATION REPORT ON THE PROCESS TO IMPLEMENT HB 3203 (1993 SESSION; ORS 536.295)

Adam Sussman, Northwest Region, explained the HB 3203 process using an overhead presentation to summarize the staff report.

The written report describes the process which allows a person to request an exception to the basin program classifications. If an application for a water use is not classified under the applicable basin program, the Director shall conclude that the use will impair or be detrimental to the public interest. Under ORS 536.295 and the expanded provisions of House Bill 3203, the Commission may, under certain conditions, accept an application for a use not allowed by the basin program.

To accept an application, the Commission must find that the use meets one of the criteria under subsection (1) of the statute and evaluate whether the use is consistent with the general policies of the basin program. If findings are made that the criteria in the statutes are met, the Commission may accept the application; no public interest determination has been made by accepting the application. Then staff would continue to process the application and a public interest determination made.

DIRECTOR'S RECOMMENDATION

This was an informational report. No Commission action was required.

Commissioner Hansell expressed concern about applicants who might make it through the Commission consideration process and then still be denied a permit.

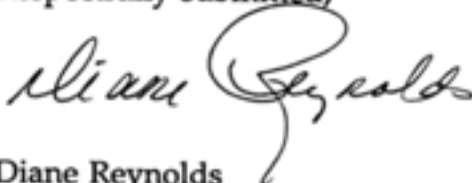
Sussman agreed but said that staff clearly explain to the applicant at the beginning that their permit likely won't be issued; it is the applicant's option to pursue this process if they so desire.

Kimberley Priestley, WaterWatch, expressed concern about the lack of public notice and comment. This is very important in this process. Tape 3, mark 243.

Steve Sanders, Legal Counsel, commented that the Department is relying on the statute alone, which does not specify public notice and comment period. If the Commissioners want to add public notice and comment, they would have to adopt rules to implement House Bill 3203. If the Commissioners approve an application for exception to the basin program classifications, the Department would then conduct a public interest review.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Diane Reynolds  
Commission Assistant