

OREGON WATER RESOURCES COMMISSION MEETING

September 13, 1995

Silver Falls Conference Center

Members

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

Staff

Martha Pagel
Steve Sanders
Rick Bastasch
Diane Reynolds
Danielle Clair
Al Cook
Steve Applegate
Tom Kline
Steve Brown
Jeannette Holman
Tom Paul
Becky Kreag
Greg Nelson
Tom Byler
Barry Norris
Fred Lissner
Dick Bailey

Others

Kimberley Priestley
Reed Benson
Todd Heidgerken
Rick Kruger
David Moon
Mike Stevenson
Kevin Hanway
Jerry Schmidt
Bob Hoeffel
Jan Boettcher
Dave Duncan
Doug Myers
Susan Schneider
Roger Bachman
Phil Ward
Lindsay Slater

Agenda reports and other written material submitted at this meeting are part of the meeting record and are on file at the Oregon Water Resources Department, 158 12th Street NE, Salem, Oregon 97310. Audiotapes of the meeting are on file at the same address.

A. Minutes

Commissioner Hansell suggested a correction to the minutes as presented for the July 28, 1995, meeting. On page 14, line one should read the motion passed 4-1 rather than 5-4. Commissioner Jewett made a motion to adopt the minutes as corrected. The motion was seconded by Commissioner Leonard. All voted in favor.

WRC MEETING MINUTES

September 13, 1995

Page 2

B. Commission Comments

Following an Executive Session briefing relating to pending litigation, Commissioner Jewett made a motion that the Commission delegate to the Director authority to settle the *Poplars Ranch v. Water Resources Department* case pending in court. The motion was seconded by Commissioner Hansell. All voted in favor.

Commissioner Johnson reported that the Governor's Watershed Enhancement Board (GWEB) will meet September 15 with Paula Burgess as chair. Director Pagel explained that GWEB is now merged with what was the Watershed Health Program.

To help establish continuity on the Commission, Chair Bentz urged people to call the Governor and Senators and ask that appointments of Commissioners be made in November. Both Bentz and Johnson will be leaving the Commission next June, and it is important that the Commission be complete now so that members will gain experience before those additional changes are made.

C. Director's Report

It may be necessary to change the date of the November Commission meeting since the Legislative Emergency Board will be meeting on the 16th and 17th.

Pagel has been speaking to groups throughout Oregon on recent legislation and how it affects the Department. She and several other directors of natural resource agencies attended a public meeting in La Grande August 24 hosted by the Association of Oregon Counties. Other state agencies represented included the departments of Fish and Wildlife, Forestry, Agriculture, Land Conservation and Development, Parks and Recreation, and Environmental Quality. Among the topics discussed were water issues and state and local coordination.

A formal negotiating session with the Confederated Tribes of the Warm Springs Reservation regarding their water rights is being scheduled. Hopefully a proposal will be agreed upon by next spring. The Department also has requests for negotiations from the Confederated Tribes of the Umatilla Indian Reservation. Pagel attended a symposium on the settlement of Indian reserved water rights claims hosted by the Native American Rights Fund and the Western States Water Council. The symposium was well-attended and brought forward the issue that there are several pending unsettled tribal claims throughout the state.

WRC MEETING MINUTES

September 13, 1995

Page 3

D. Update on Agency Rulemaking Schedule

Rick Bastasch reviewed the rulemaking schedule for the 1995 biennium as well as the status of rulemaking efforts currently underway. Permanent rulemaking will begin right away on Divisions 11 and 77 pertaining to the water right application process with the assistance of a rules advisory committee.

The rulemaking schedule at this time also includes limited license procedures, aquifer storage and recovery, transfers, and special public interest standards.

The Commission will be updated on a regular basis as rules are developed.

Commissioner Frewing asked about updating the basin plans. Becky Kreag, Administrator for Resource Management, responded that because half of the basin planning staff are now temporarily assigned to help with the backlog of water right applications, that project has been put on hold.

E. Update on Implementation of SB 674

Steve Applegate and Rick Bastasch gave an oral briefing on the agency's implementation of SB 674. The bill puts into place an expedited review process for most water requests and establishes a deadline of October 31, 1996, to work through a backlog of approximately 6,000 instream and out-of-stream applications. Once the backlog is eradicated, the bill sets up timelines for processing applications.

Applegate reported that initial reviews are ahead of schedule; 480 initial review reports have been sent to applicants since July 1, 1995. Thirty-three applications have been withdrawn and 65 applications have been rejected. Eighty-eight permits which were already in process as of the first of July have now been issued. Approximately 100 certificates have been issued. The current number of pending applications is 5,753, not including the ponds applications. Several field office staff have been recently trained to help process transfer applications.

Commissioner Bentz asked Applegate if he is optimistic about meeting the legislative deadlines. Applegate responded yes. Pagel agreed that there is a real sense of optimism among staff who are excited about the new process and having the resources to get the job done.

Commissioner Frewing asked what staff are writing in initial reviews or proposed orders when water is available only a portion of the months requested. Applegate said the months the water is available would be listed. Pagel said this will be an issue that will be considered in the permanent rulemaking.

WRC MEETING MINUTES

September 13, 1995

Page 4

Commissioner Frewing asked how the concern about waste and efficiency is being handled. Applegate responded there is a standard condition on every permit that requires beneficial use without waste. In addition, internal guidelines for maximum allowable rates and duties for various beneficial uses are followed. There have been no significant changes. Staff look closely at the description of the proposed irrigation system, and point out in the proposed order if the amount of water the applicant is requesting is in excess.

Bastasch said these issues will likely come up as applicants request a contested case as provided them in SB 674. He mentioned that additional hearings officers will be hired to help handle the many contested cases that are expected.

F. Federal Water Management Activity Update

Steven Stockton, Chief of the Planning and Engineering Division, U.S. Army Corps of Engineers, gave a general overview of the Corps' Portland District mission and ongoing and future projects. The District spans most of Oregon and a small portion of southwestern Washington state.

Dave Duncan, Oregon liaison for the Bureau of Reclamation's Pacific Northwest Region, described the Bureau's current activities and projects in Oregon.

Tape 2 through Tape 3, mark 190.

G. Information Report on Reservations of Water for Future Economic Development

Greg Nelson, Resource Management Division, presented this item and explained that the purpose of it was to engage the Commission in a discussion of the water management issues to be considered in the reservation process. Each of the pending reservation requests will be dealt with through rulemaking.

The basin rulemaking process grants the Commission the flexibility to weigh and balance the public interest issues according to the policy guidance prescribed under ORS 536.220 and 536.310. Prior to HB 2746 (1995 Legislative Session), each reservation request would be established through a contested case hearing requiring a public interest analysis similar to what is done in a water right application review.

WRC MEETING MINUTES

September 13, 1995

Page 5

Commissioner Frewing asked how the pre-1909 adjudication process fits time-wise into the reservation process. Steve Sanders answered that ideally it would be best to have the adjudications completed before considering reservations, but it's not possible. Pagel added that the adjudication process relates to formalizing existing uses, and reservations relate to future uses. If we haven't fully accounted for existing uses, it might have some bearing on water availability information but technically they are two different decisions.

Jan Boettcher, Oregon Water Resources Congress (OWRC), spoke in support of the Burnt River and the Prineville Reservation requests. All of the basins east of the Cascades upstream of Bonneville Dam have potential restrictions on use, and these reservations would allow stored water for multiple purposes. The Burnt River is a specific reservoir site ready to go to rulemaking. A study has been done by the Bureau of Reclamation, but the documentation to deal with the broader public interest question of the final use of the reservoir won't be available until further studies are completed. OWRC tried to go through the contested case process, spent \$5,000 in attorney fees, and saw it as a futile process because no one could agree on what the public interest criteria would be. The Prineville Reservoir is of great interest to OWRC since there is a sink hole in the other reservoir that the Ochoco Irrigation District is using. The reservation process was added to SB 140 (1987 Legislative Session) as a way of drawing balanced interest to support the bill. The discussion at that time from OWRC's viewpoint was that one would look at minimum flows for the instream use with the additional water to be balanced between future economic development and optimum flows. That process has never occurred. Tape 3, mark 388.

Pagel commented that the Department is moving ahead with the pending applications, bringing them to the Commission in the rulemaking process.

Reed Benson and Doug Myers, WaterWatch of Oregon, commented that the state water supply is already over-appropriated. The Department's Strategic Plan indicates that various interests are competing for the last drops of water. The pending requests raise some fundamental questions of public policy to be considered by the Commission. The requests cover various uses but the majority would be for irrigation. WaterWatch is concerned about instream flow problems and threatened and endangered fish species. The public interest review needs to include hard data on water availability, existing water uses in the reservation areas, environmental needs, economics of water use, and alternative water uses. Regarding the legal standard for public interest, the policies in the basin planning part of ORS 536.310 are relevant; but some elements of ORS 537.170, especially specific considerations of water availability, conserving the highest use of water, prevention of wasteful, uneconomic or unreasonable uses also need to be part of that determination.

WRC MEETING MINUTES

September 13, 1995

Page 6

Regarding the process for reservation requests, WaterWatch would like to see a specific provision on how policy issues can be raised to the Commission and the public comment on these issues. WaterWatch wants reserved water to be treated as appropriated water for all purposes. WaterWatch agrees with the staff report regarding reserving water stored in existing federal projects. WaterWatch would like to be included in a work group if one is formed to work on the reservation process. Tape 3, mark 495.

Susan Schneider, City of Portland, spoke on behalf of Joni Low, League of Oregon Cities. She urged the Commission not to concur with the recommendation in the staff report as it relates to storage. Storage is a matter of policy for the Commission to consider. The League of Oregon Cities wants the staff to continue discussions on reservations. The reservation process is an officially sanctioned way for the state to give its preference in the reauthorization process as to how water ought to be reallocated in the future. Tape 4, mark 1.

Kevin Hanway, Special Districts Association of Oregon, said that it is important when considering the public interest issues and analysis to recognize that municipal uses are a critical public benefit. Cities are planning for the future. The state has a goal of channeling growth into municipal areas; to make that work, the infrastructure and natural resources, including water, must be there. Tape 4, mark 37.

Phil Ward, Department of Agriculture, spoke in support of the Department moving ahead with the reservations process. Regarding the stored water issue, it is appropriate for the Commission to consider a reservation in this instance. As reauthorization is underway, a clear way for the state to determine priorities is to provide some reservations. There will be a legitimate need in Oregon's agriculture industry for water in the future. Tape 4, mark 103.

Bentz asked Pagel what happens next. Pagel responded that we will continue with the rulemaking schedule. The first request to consider will be Burnt River.

Greg Nelson spoke on the issue of federal stored water and the reauthorization process. Staff are involved in reauthorization discussions with the Corps of Engineers. All beneficial uses need to be considered. The data that the Oregon Department of Agriculture, the League of Oregon Cities, and the Special Districts Association have put into their reservation requests is being used to identify future demand.

WRC MEETING MINUTES

September 13, 1995

Page 7

H. Public Comment

David Moon, attorney representing Mike Stevenson of Knee Deep Cattle Company, spoke on concerns of alleged illegal water use north of Eugene. Moon asserts this illegal use is affecting the amount of water available for cattle downstream. Martha Pagel said the Department would look into the situation. Tape 4, mark 216.

Todd Heidgerken, Water for Life, and Lindsay Slater, Oregon Cattlemen's Association, spoke in support of David Moon's comments. Tape 4, mark 399.

I. Other Business

Barry Norris presented the Commission with a request for expenditure approval and authority to seek legislative Emergency Board spending limitation in using the start card fee account for the groundwater resource information distribution project. This project is a computerized well log data base and must be developed by January 1, 1996, in accordance with House Bill 3456 (1993 Legislative Session).

Mike Jewett made a motion to approve the request, seconded by Anita Johnson. All voted in favor.

There being no further business, the meeting was adjourned.



Diane Reynolds
Commission Assistant