

**Oregon Water Resources Commission Work Session
January 25, 1996
Salem, Oregon**

Members

Cliff Bentz
Mike Jewett
John Frewing
Anita Johnson
Nancy Leonard
Ron Nelson

Others

Rep. Chuck Norris
Kim Swan
Roger Bachman
Jan Boettcher
Todd Heidgerken
Karen Russell
Pat Zwick

Staff

Martha Pagel
Geoff Huntington
Steve Sanders
Diane Reynolds
Jeannette Holman
Tom Byler
Beth Patrino
Fred Lissner
Tom Paul
Weisha Mize

In addition to those listed above, other staff were present for particular segments of the work session.

Written material submitted at this work session is part of the meeting record and on file at the Oregon Water Resources Department, 158 12th St. NE, Salem, Oregon 97310. Audiotapes of the meeting are on file at the same address.

Chair Bentz opened the meeting by introducing Geoff Huntington, newly-hired Deputy Director of the Department.

Rep. Chuck Norris greeted the Commission and spoke briefly about issues he would like to see dealt with in the near future including hydraulic connection, use of reclaimed water, and storage.

He urged staff and the Commission to continue meeting with interest groups, local government, and citizens to reach consensus on these and other water issues.

1. Commission Work Session on Draft Water Right Application Processing Rules.

Jeannette Holman, Director's Office, reviewed the history of these rules. Last July the Commission adopted temporary emergency rules relating to the water right application process. She explained that the temporary rules, which expire at the end of January 1996, were needed because several 1995 Legislative Session bills took effect upon passage and existing agency rules conflicted with the new statutes. This work session provided an opportunity for staff to describe provisions of the proposed rules and to receive comments from the Commission.

Department staff met three times with a rules advisory committee to develop permanent rules. Many of the suggestions from this committee were incorporated into the proposed rules. An interagency work group composed of representatives from the state departments of Environmental Quality, Fish and Wildlife, Parks and Recreation, and Agriculture, and the U.S. Fish and Wildlife Service, also met three times and provided much assistance. Four public hearings were held throughout the state.

Major rulemaking issues included application requirements, public interest review, standing, and the definition of instream flow.

Chair Bentz asked the Commissioners for any comments on the proposed Division 02 rules.

Bentz asked staff about the "reasonable control" standard in 690-02-025(2). Weisha Mize, Hearings Officer, discussed this with the Commission. Bentz suggested using "beyond the control" and dropping the word "reasonable."

Bentz asked about the issue of standing in 690-02-035 and how an interested party would express both some support and some concerns with an application. Pagel explained that a party would either file a protest or file a request for standing. To file a standing request only entitles a person to support the order as it is originally presented; it would not allow a person to argue that the permit should be approved but with different conditions. A person who has filed for standing can argue that the original order should not be changed. If a person wants a change in an order, a protest must be filed.

Frewing expressed concern about the timing of issuing notices to the public.

Bentz asked how the Commission would receive copies of the exceptions in 690-02-175(2), and if a subcommittee of the Commission could consider them. Mize responded that the exceptions would be mailed to the members and would likely be handled by telephone conference. Jewett suggested that the rules include instructions to the public on where to mail exceptions to the Commission.

Chair Bentz asked for comments from Commissioners on the proposed Division 05 rules.

Frewing expressed concern that SB 674 requires the Department to act quickly in processing applications leaving little time for investigation. The applicant must provide more information up front, such as compliance with the local county land use plan -- the proposed Division 05 rules fail to make that clear. Pagel explained that the initial application processing is not held up waiting for the land use process to be completed, but there is a safeguard in that water use is always conditioned on having land use approval.

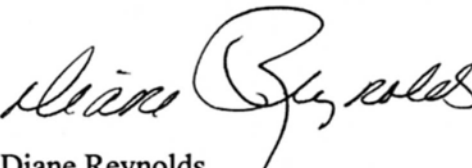
Holman reviewed the application requirements. She said there were two areas of concern that came out of the rules advisory committee meetings and the public hearings. One concern was the language dealing with ground water and information required dealing with hydraulic connection; the other concern was the information related to resource protection.

With the help of a handout, Tom Byler, Director's Office, walked through the basic steps of the public interest review and responded to Commissioners' questions and comments.

Byler explained that SB 674 provides us with two foundation principles -- the presumption and a mechanism to either overcome the presumption or to overcome the fact that the presumption is not established. The four factors in SB 674 that must be established to get the presumption that the proposed use is in the public interest are: 1) the proposed use is allowed in a basin program or given preference under ORS 537.310(12); 2) water is available; 3) the proposed use will not injure other water rights; and 4) the proposed use complies with the rules of the Commission.

Byler explained the debate over the instream flow definition in SB 674. Instream flow means "the minimum quantity of water necessary to support the public use requested by an agency." He asked the Commissioners to focus on the term "public use requested by an agency." Any agency that makes a request for flow to support a public use is doing so to achieve a management objective.

After much discussion, the work session was adjourned.

A handwritten signature in cursive script, appearing to read "Diane Reynolds".

Diane Reynolds
Commission Assistant