

Oregon Water Resources Commission Meeting
January 26, 1996
Salem, Oregon

Members

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

Staff

Martha Pagel
Geoff Huntington
Steve Sanders
Diane Reynolds
Steve Applegate
Dwight French
Tom Paul
Barry Norris
Fred Lissner

Others

Rep. Chuck Norris
Karen Russell
Jan Boettcher
Roger Bachman
Gayle Killam
Doug Myers
Ron Yockim
Todd Heidgerken
Phil Castle
Kevin Hanway
Jerry Schmidt
John Thomas
Susan Schneider
Judith Gruber
Scott Ashcom
Russell Harding

In addition to those listed above, report authors and other staff were present for particular agenda items.

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 St. NE, Salem, Oregon 97310. Audiotapes of the meeting are on file at the same address.

A. Consent Agenda

- 1. Commission Meeting Minutes**
- 2. Request for Approval of Expenditures from the Start Card Fund for Well Inspection Activities**

Minutes of the November 1995 Commission meeting were offered for approval, along with a request to use the start card fund to buy well identification labels and computer equipment. Commissioner Frewing moved approval of the consent agenda; the motion was seconded by Mike Jewett. All voted in favor.

B. Commission Comments

Anita Johnson reported that the Governor's Watershed Enhancement Board (GWEB) met in December in Grants Pass. Ken Bierly is now the Program Manager for GWEB; Mike Golden is the Governor's Watershed Advisor. This program is a high priority for the Governor.

John Frewing announced his retirement from Portland General Electric.

Ron Nelson reported on the Tumalo Irrigation District's pursuit of a study and subsequent financing of a major rehabilitation of their distribution system to enhance conservation. The district serves approximately 8,000 acres and 700 water users west of Bend.

Cliff Bentz said he received an invitation to a field trip from the Tenmile Lakefront Owners Association. Pagel commented that the Commission will be meeting in Coos Bay in March; however, plans are being made to tour the New River area which is quite a distance from Ten Mile Lakes. As an alternative, staff will review the status of the Coos Bay-North Bend application and, if appropriate, set up some time with the Commission or offer to have staff meet with all interested parties.

C. Director's Report

Pagel summarized the work session held Thursday. Rep. Chuck Norris gave his thoughts on issues that the Commission and Legislature may be dealing with in the future. The remainder of the work session was spent reviewing the SB 674 proposed rules which are on the agenda today for Commission action.

Thursday Pagel and staff appeared before the Legislative Emergency Board on four different items. Reports dealt with settlement of the Water Development Loan Fund litigation, an update on the Department's water right backlog efforts, a request for authorization to receive money coming in for the Willamette Reauthorization cost-share study, and a request for temporary staff to finish the final proof certificates in connection with the Umatilla Basin Project. All four reports were accepted and approved.

Pagel mentioned that we are about to start planning for the next legislative session; a report will be given at the March meeting.

All natural resource agencies, including our Department, have been working with the Governor's office on the coastal salmon restoration initiative.

Pagel announced that Russell Harding, Department of Environmental Quality, brought the Commission and staff copies of the proposed listing of water quality limited streams.

The WaterWatch petition for reconsideration of the Boeing permit extension filed with the Department on behalf of WaterWatch and a number of other environmental groups is being evaluated by Department staff. Additional information has been requested of the permittees by January 31. That information will be forwarded to the petitioners, and, hopefully, a decision will be made soon after that.

Al Cook briefed the Commissioners on the New River process and responded to their questions. Cook reported that two meetings with interested parties have been held on the coast. Topics of discussion for future meetings are the physical settings, the instream needs, and the pending out-of-stream applications.

Steve Sanders reported on a lawsuit recently filed against the Department and Jackson County regarding ground water management. The dispute focuses on ORS 537.796 which gives the Commission exclusive authority over inspection and construction of wells, and water well constructors. It deals with the model ground water ordinances proposed by the Commission for use by local planning departments and the concern that some counties may have included provisions that are under the exclusive authority of the Commission.

Frewing asked Pagel about the Hydroelectric Task Force meeting which was recently held. Pagel explained that the group is meeting as a result of legislation passed during the last session. The concept is that the state does and should have a role in evaluating relicensing of existing projects.

Jim Martin, Office of the Governor, reported to the Commission on the Governor's Salmon Restoration Initiative. Governor Kitzhaber has directed the natural resource agency directors to take immediate action to avoid a listing, if possible, and to form the basis of a recovery plan if these fish stocks are listed. These directors are meeting biweekly to brief the Governor on efforts being taken by their agencies. The mission of the initiative is to restore coastal salmon populations and sustainable levels based on their natural, cultural and economic values to Oregonians.

D. Status Report on Agency Rulemaking

Martha Pagel presented this report and handed out an updated agency rulemaking schedule. Public hearings on rules related to transfers and alternate acreage petitions are scheduled to begin in February with Commission action in May. The sensitive, threatened and endangered fish rules have had public hearings -- the issue now is whether to proceed or wait for other specific requests from the Governor's team regarding coastal coho. Staff are currently in the process of holding rulemaking hearings on the Burnt River reservation requests. Public hearings for well construction rules are planned for June. Additional rulemaking in Divisions 320-340 may also be necessary to conform to 1995 legislative changes.

Public Comment

Jan Boettcher, Oregon Water Resources Congress, urged the formation of a task force on reclaimed water, and consideration of the reservation requests. She also asked for consideration of a legislative change to the Water Development Loan Fund that would allow districts to purchase federal facilities. (tape 4, mark 622)

Karen Russell, WaterWatch, expressed concern about delaying adoption of the sensitive stock rules. (tape 5, mark 8)

E. Request for Adoption of Rules to Implement an Aquifer Storage and Recovery Program, Re-adoption of Artificial Ground Water Recharge Definitions and Renumbering of Artificial Ground Water Recharge Rules, OAR Chapter 690, Division 350

Donn Miller presented this item for the Commissioners' consideration, briefly reviewed major issues, and responded to their questions. During the last session the Legislature passed a bill which created aquifer storage and recovery opportunities. Miller explained that Aquifer Storage and Recovery (ASR) does not rely so much on a new water right dedicated to the purpose of putting water in the ground to store as it does in using existing water rights for that purpose. The Water Resources Department would rely on the Department of Environmental Quality and the Health Division for assistance with water quality standards.

Bentz suggested a clarification of 690-350-010(7), perhaps removing the word "may" in the second sentence to make it consistent with subsection (a). Miller agreed.

Johnson asked about a fee structure. Miller said the Department does not have the statutory authority to collect fees for ASR limited licenses or permits at this time.

Public Comment

Ralph Christensen, Chair of the Ground Water Advisory Committee, urged passage of the rules and referred to written comments he had submitted to the Department. He urged the Commission not to remove the word "sought" under the limited license section in 690-350-020(3)(a)(H). He urged that paragraph IV on page 8 of attachment 2 be moved to paragraph iv and read, "Notwithstanding the provisions of 690-350-020(3)(b)(E)(i), (ii), and (iii) of this rule and after consulting with the DEQ and the HD, the Department may determine that the circumstances are such that an alternative source, treatment method, system, or other alternative method is acceptable or not necessary." Donn Miller said staff would agree with this suggestion. (tape 2, mark 440)

Kevin Hanway, Special Districts Association and member of the Rules Advisory Committee,

spoke in support of the GWAC recommendation of reinstating the word "sought" on land use provisions at the limited license stage. He reminded Commissioners that there are protections in the bill and the rules throughout the life of the permit to assure that the state has the opportunity and authority to prevent any threats or harm to the ground water resource. Hanway suggested adding on page 8 of Attachment 2 a new (ii) reading "The lesser of:", change (II) to an A, (III) to a B, and change reference in (iii) accordingly. On page 17 there would be the same changes at the permit stage. (tape 2, mark 580)

Gayle Killam, Oregon Environmental Council and member of GWAC and the Rules Advisory Committee, spoke in support of the changes suggested by Hanway. (tape 3, mark 40)

Richard Kepler, Department of Environmental Quality, spoke in support of the changes suggested by Christensen and Hanway. Frewing asked if the testing in these rules satisfy his department. He responded that DEQ does agree with the testing in these rules. In response to a question by Jewett, Kepler said that DEQ does agree with change #3 in Christensen's written comments to the Commission. (tape 3, mark 470)

Nancy Leonard moved approval of the rules in attachment 2 of the staff report with the following changes; Jewett seconded the motion. On page 3, subsection 7, the word "may" would be deleted; on page 4, subsection 10, the word "program" used twice in the last line would be changed to "plan"; on page 6, subsection H, the word "sought" would be restored; on page 8, under (I) following the word "or" add "the lesser of", change (II) to A, change (III) to B, change (IV) to (iv) with a slightly modified language that would read "Notwithstanding the provisions of 690-350-020(3)(b)(E)(i),(ii), and (iii) of this rule and after consulting with the DEQ and the HD , the Department may determine that the circumstances are such that an alternative source, treatment method, system or other alternative method is acceptable or not necessary" -- and comparable wording for ASR permits on page 17 of attachment 2, 690-350-030(4)(b)(D)(ii)(IV) as paragraph (iv). On page 9 of attachment 2, subsection (G) change "chemical precipitation" to "hydrogeologic or hydrogeochemical changes." On page 11, subsection (f), add at the end of that sentence, "and allow the licensee to respond." On page 19, subsection c, add at the end of the sentence, "and allow the permittee to respond." On page 17, subsection (I) following the word "or" add "the lesser of." On pages 8 and 17 in (iii) delete the reference to III. All of the above changes should be made consistent with the outline form. All voted in favor.

Pagel added that the purpose for the above changes is to accept and incorporate the comments from the GWAC letter, Kevin Hanway's testimony, and the Chair's recommendation.

F. Information Report on Changes to the District Water Rights Mapping Statutes (HB 3111) and Update on Petitions being Considered for Final Order

Adam Sussman presented this report explaining amendments to the District Water Rights