

Oregon Water Resources Commission Meeting
March 8, 1996
Coos Bay, 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
Tom Kline
Al Cook
Doug Parrow
Bob Rice
Gary Ball

Others

Phil Matson
Kimberley Priestley
Ron Hoffine
Steve Hinton
Jan Boettcher
Lynn Shumway
F. Wiebe
Keith Shollenberger
Rob Schab
Kip Lombard
David Moon
Jim Brown
Pete Schoonover
John B. Kelsey
Hazel Kelsey
Art Schroeder
Sally Thomas
Jim Thurber
Dave Coots
Tom Hoshau

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.

Chair Bentz opened the meeting by thanking Al Cook for organizing Thursday's tour of the New River area. The tour was very interesting and gave Commissioners an opportunity to visit with area residents.

There were no minutes prepared for Commission approval at this meeting.

B. Commission Comments

John Frewing said he and Barry Norris attended a meeting at Ten Mile Lake Wednesday afternoon regarding potential conflicts of interest of water use. Geoff Huntington and

department staff did a good job working with applicants and local affected people to mediate different interests.

Tyler Hansell spoke at the Oregon Water Coalition annual meeting in Hermiston.

Cliff Bentz asked if the department could develop a list of methods that might make water more available in addition to storage. He said years ago the Commission decided upon the 80 percent water availability standard with the understanding that if measurement could be enhanced and improved, the 50 percent standard could again be used allowing more available water.

C. Director's Report

Martha Pagel summarized Thursday's activities including the New River area tour and the work session.

The major statewide event since the January Commission meeting was the great flood of 1996. The department received many calls during the flood but our role was fairly limited. However, during that time attention was called to the dam safety program staffed by Barry Norris and John Falk. Bentz asked Norris about an article in *The Oregonian* newspaper on dam safety. The reporter was interested in concerns about potential dam failures and the size limitations for dams WRD inspects. The Attorney General's office has directed the department to inspect only dams at least 9.2 acre feet in storage and at least 10 feet in height. A dam that recently failed in the Eugene area was over the height but under the storage capacity. Most of the smaller dams were constructed properly but must be maintained.

Pagel said a number of attempts have been made over the years to get more funding for the dam safety program. It would be very difficult to expand the program responsibilities in any way without increasing the staff.

Frewing asked how Oregon's dam safety program compares with that of other states. Norris said most other states have statutory emergency action authority and require permits for construction. Oregon has less staff, has no emergency action authority, and requires a permit for storing the water but not constructing the dam.

Pagel mentioned the petition for reconsideration of a permit extension to Boeing. An order was issued upholding the original decision to approve the extension.

Geoff Huntington reported concerns on the way the department has been handling public records requests for comments received prior to the close of a comment period on rulemaking. The issue raised was that giving access to others provides a disadvantage to those submitting comments early, and may give advantage to others looking at those comments then responding

directly to them. Huntington and Pagel will work with Steve Sanders on a directive to staff which will clarify and resolve this situation. Sanders reminded Commissioners not to entertain comments on rules after the comment period has closed unless they refer to portions of the rules changed since the public hearing.

Pagel introduced Mark Liverman, Acting Water Program Manager for the Department of Fish and Wildlife (ODFW). Liverman said he is working on several projects with WRD staff -- the triage team, the Coastal Salmon Restoration Initiative, the SB 674 backlog, Division 33 rules, and instream water rights.

He commended the staff's hard work on the triage process and for keeping ODFW informed each step of the way. ODFW will have one or more fish biologist from each coastal fish district at the triage meetings as applications are reviewed over the next few weeks.

D. Request for Adoption of Burnt River Reservations and Other Powder Basin Program Amendments (OAR Chapter 690, Division 509)

Tom Kline and Doug Parrow, Resource Management Division, offered this report for the Commission's consideration. The Commission was asked to adopt final rules establishing reservations requested by the Oregon Department of Agriculture in the Burnt River subbasin. Because of the recent flood, the comment period on the amendments was extended from February 9, 1996, to February 23, 1996. The addendum to the staff report contained comments received during the comment period extension, and proposed minor modifications based on those comments. Staff requested adoption of amendments to the Powder Basin program as shown in Attachment 1 of the addendum.

Following Thursday's discussion at the work session, staff developed alternative language options for the definition of multipurpose.

Frewing asked Parrow how staff reviewed the public interest aspects of this reservation request. Parrow responded that the guidelines for that review are in ORS 536.220 and 536.310. In the Burnt River Basin there is no water to appropriate in the summer months. There is sufficient unappropriated water available during the non low-flow period to meet both instream water rights applications and the reservations. The development of storage would offer potential opportunities to augment streamflows for water quality and fisheries purposes while also providing additional sources of supply for human consumption and other beneficial uses.

Chair Bentz asked for public comment on changes to the rules made since the public hearings.

Public Comment

Kimberley Priestley, WaterWatch, spoke in opposition to the deletion of 690-509-000(1)(d). Without a restrictive classification it is going to be somewhat misleading to the public that there is no water available for further out-of-stream use. Priestley also spoke in opposition to the addition of 690-509-000(4) saying the Commission would be asked to overrule their own rules against over-allocation. If the department wants to ensure that livestock and human consumption are going to be allowed, they should reduce the amount of the reservation by this amount. Priestley caught an error in subsection 4, saying that as it now reads it applies to the entire Powder River Basin, not just to the Burnt River.

Priestley commented on the definition of multipurpose in 690-509-100(1). She said WaterWatch asks that any multipurpose storage project provide some water for instream needs. Referring to 690-509-000(6), the intent is on the right track, and WaterWatch supports the requirement that the Department of Agriculture submit this information, but the rule should include the Commission's review of it. Something needs to be added to 690-509-110(2) to ensure that instream flows are protected. Priestley expressed concern that by using the dates October 1 through June 30 in 690-509-110(3) and 690-509-120(3) over-allocation of water in certain months could occur. (tape 1, mark 450)

Lynn Shumway, Burnt River Irrigation District, explained that the Hardman Project on the South Fork reservation would have precedence over the instream water rights on the South Fork; however, all of the instream rights applied for are above that project. Shumway said the district is aware of protecting instream flows and would be seeking multipurpose projects that would benefit the public. He asked for more flexibility on the dates to store water since it is difficult to guess what the snow pack will be and the time of the run-off from year to year. It would be helpful to be able to take advantage of heavy flows early in the season. If too many strings are attached it will be difficult to attract business partners in developing the project. The water is definitely available. (tape 2, mark 85)

Kip Lombard, representing the Burnt River Irrigation District and the Oregon Water Resources Congress, commented on 690-509-100(1), the definition of multipurpose. He asked that "all" and "including uses" be deleted. "All" would suggest that a multi-type purpose project must include all of these uses. Another issue that needs clarification is where in the process an instream component should be mandated. This is a three-step process: reservation, storage permit application, and then the secondary permit application. It is at the storage permit application where the conditions should be put on the permit and the multipurpose uses identified. In 690-509-100(2) Lombard suggested inserting "but is not limited " in the second sentence after the word "includes"; and insert "economic" before "benefits" in the same sentence. In 690-509-100(6) Lombard suggested deleting in the last sentence, "and a description of why the reservations continue to be in the public interest." In 690-509-110(2) Lombard suggested

deleting "in" and inserting "after." Lombard suggested that rather than placing dates of fill in 690-09-110(3) and 120(3), the fill period should be considered at the storage permit stage. (tape 2, mark 214)

Following public comment, the Commission and staff reviewed and discussed the proposed rules page by page.

Parrow said that in 690-509-000(4)(A), the 2.5 cubic feet per second is not intended to apply basin wide. He suggested in Subsection 4 after "purposes" inserting "from the Burnt River and tributaries." All the Commissioners agreed on this change.

Frewing moved that 690-509-000(4) be deleted and instead reduce the cumulative reservation numbers in the Burnt River area from about 25,000 by a total of 1,000 acre feet. The motion failed for lack of a second.

Jewett suggested in 690-509-100(1) deleting "all" and inserting "multiple." All Commissioners agreed on this change.

Nelson suggested in 690-509-100(1) deleting "including uses." All Commissioners agreed on this change.

Leonard suggested in 690-509-100(2) inserting "but is not limited to" following "includes" in the second sentence. Parrow further suggested in the same section inserting "economic" before "benefits" in the second sentence. All Commissioners agreed on these changes.

Parrow informed the Commission of a typo in 690-509-100(2) -- the reference to 690-79-130 should be 690-509-130. All Commissioners agreed with this change.

Frewing moved that 690-509-100(5) be deleted. The motion failed for lack of a second.

Hansell moved that in 690-509-100(6) "and" be inserted after "reservations" in the second sentence and "and a description of why the reservations continue to be in the public interest" be deleted. Mike Jewett seconded the motion. The motion passed 5-2 with Frewing and Johnson voting no.

Hansell moved that in 690-509-110(2) "developed in" be replaced with "developed after." The motion was seconded by Jewett and passed 5-2 with Johnson and Frewing voting no.

After much discussion, Johnson moved that in 690-509-100 new subsections 5 and 6 be added, "(5) A permit application for a project to store water reserved under OAR 690-509-110 or 690-509-120 shall describe whether and how the proposed project will contribute to the support of

instream values. (6) Prior to the issuance of a permit to store water reserved under OAR 690-509-110 or 690-509-120, the Department shall find that the proposed project will contribute to the support of instream values." Leonard seconded the motion. All voted in favor.

Hansell moved that 690-509-110(3) and 690-509-120(3) be changed to read "Permits to store reserved water shall include a specific time period in which storage may occur." The motion was seconded and all voted in favor.

Jewett moved that in 690-509-120(2) the "in" be deleted and "after" inserted. The motion was seconded by Hansell and passed 5-2 with Frewing and Johnson voting no.

Jewett moved that the proposed rules be approved as agreed to and modified above; seconded by Leonard. All voted in favor.

E. Informational Report on Department Participation in Governor's Coastal Salmon Restoration Initiative

Geoff Huntington, Deputy Director, and Bob Rice, Resource Management Division, presented this report to the Commission and responded to their comments and questions.

Huntington explained that the state initiative is being coordinated by four teams. The Public Outreach Team is made up of representatives of several agencies who are contacting stakeholders, municipal officials, watershed boards and other community groups. This team is asking for assistance in developing and implementing a recovery plan that is founded on a collaborative approach to restoring coastal coho salmon populations.

The Science Team is composed of research scientists from the Department of Fish and Wildlife, U.S. Fish and Wildlife Service, the Department of Agriculture, the National Marine Fisheries Service, and Oregon State University. The function of this group is to determine the measures that have to be met by a state-sponsored recovery plan. Their final report will be subject to peer review by independent scientists.

The Planning Team is a group of agency representatives who are meeting every two weeks with the responsibility of pulling together individual agency contributions.

The fourth group is the Governor's Natural Resource Cabinet, made up of agency directors. This group meets with the Governor regularly to review and discuss the latest briefing papers and issues regarding the initiative.

A draft report on the actions the state initiative will propose will be developed by July 1996; the final state sponsored recovery plan for coastal coho salmon is to be submitted to the National Marine Fisheries Service by September 30, 1996.

As part of WRD's contribution to the initiative, staff will lead an inter-agency team reviewing pending water right applications in the North, Mid, and South Coast, Rogue and Umpqua Basins to identify potential impacts of the proposed diversions to coastal salmon and steelhead populations. This case-by-case review will be conducted as part of the public interest determination which is required by existing state law.

F. Informational Report and Policy Discussion on Proposed Rules Related to Sensitive, Threatened, and Endangered Species

Bob Rice, Resource Management Division, presented this update to the Commission for discussion and direction; no formal action was requested. The current Division 33 rules and those proposed are just one of a number of Department actions to protect declining fish species. The proposed rules would apply only to new applications. One major issue of concern is the application of the rules to tributary streams and what geographic areas the rules would cover. Staff recommended including the tributaries in the rules to prevent the need for additional Endangered Species Act listings.

The second major issue is the definition of "sensitive species." Staff recommended amending the definition of "sensitive" in the proposed rules to include the naturally rare category. This would result in six additional fish species being covered by the rules. Additional protection for these species may help to prevent a threatened or endangered species listing in the future. Staff did not recommend including the undetermined category in the definition of "sensitive."

Rice said there are plans to reopen the public comment period on these rules and hold at least one more Rules Advisory Committee meeting. Staff plan to have available a map showing the locations of species and an implementation agreement with the Department of Fish and Wildlife when these rules are presented to the Commission for approval.

Frewing suggested that the rules contain objective standards by which to make decisions.

Pagel commented that staff are making sure that there is a responsible process for evaluating fish impacts under the department's existing authority and standards. Water Resources and other state agencies are working together on the Governor's Coastal Salmon strategy which has similar objectives but has its own strict quick time line. Along with this, department staff are also facing the SB 674 backlog timeline.

G. Public Comment

Mayor Pete Schoonover, City of Lakeside, submitted a written copy of his statements to the Commission. He spoke in opposition to the water right application by Coos Bay/North Bend Water Board. The water would be transferred from the Ten Mile Lakes Basin to the Coos River Basin for the benefit of the Water Board's users. There is no excess water in the Ten Mile Basin and the public policy implications must be weighed. (tape 4, mark 449)

Rob Schab, General Manager of Coos Bay/North Bend Water Board, said that the Water Board has a proposed project which is the raising of the Upper Pony Creek Dam and reconstruction of the dam on Joe Ney Reservoir. One of the alternatives to that project, as required in the NEPA process, is the consideration of the water supply on Ten Mile Creek. Environmental, hydrological, and water rights issues are involved. The Board is currently in the process of amending its application for less water. The Board is completing an Environmental Impact Statement (EIS) that should address the environmental and hydrological issues. The draft EIS should be available in the fall of 1996. Schab responded to questions by the Commissioners. (tape 5, mark 1)

Jim Thurber submitted written testimony. He, as a resident of Lakeside, spoke in opposition to the Coos Bay/North Bend Water Board water right application. He expressed concern for the decline of fish stocks in the Ten Mile Lakes and tributaries. Thurber urged the Commission and department staff to consider the alternative proposals for consideration in the EIS. (tape 5, mark 62)

Art Schroeder, Ten Mile Lakefront Owners Association, spoke in opposition to the Coos Bay/North Bend Water Board application. Schroeder submitted a written list of issues supporting rejection of that application. (tape 5, mark 203)

Sally Thomas, member of the Ten Mile Basin Watershed Council, spoke in opposition to the Coos Bay/North Bend Water Board application. She expressed concern about declining fish stocks. (tape 5, mark 310)

Jan Boettcher, Oregon Water Resources Congress, spoke on borrowing money for reservoir projects. The Water Development Loan Fund has no grant funds for public benefits. There are lots of opportunities for other kinds of water resource development – the Deschutes Basin Alliance would be a good contact for option agreements for permanent water allocation. Regarding the Dam Safety Program, districts have federal inspections for which they pay approximately \$5-10,000 per inspection; some are regulated by FERC. Other states exempt federal projects from their statute. (tape 5, mark 394)

Kimberley Priestley, WaterWatch, said her organization shares many of the concerns raised by Ten Mile Lakes residents. WaterWatch is disappointed that action is being delayed on the Sensitive, Threatened and Endangered Species rules. (tape 5, mark 439)

Steve Hinton, Oregon Trout, expressed concern that rulemaking is being delayed on the Sensitive, Threatened and Endangered Species rules. (tape 5, mark 491)

H. Review of Grants Pass Irrigation District Progress Report

Doug Parrow, Resource Management Division, led the discussion on this report. No formal action by the Commission was requested. Grants Pass Irrigation District (GPID) is required to submit annual progress reports on implementation of their fish passage and conservation plans.

The fish passage plan is to replace Savage Rapids Dam with two pumping plants. Senate Bill 1006 (1995 Session) created a Savage Rapids Dam Task Force to review replacement of the dam. The District is participating on that task force. The District has also sent letters to Senator Hatfield and Representative Cooley asking for an opportunity to discuss the prospects of federal funding.

Parrow said the Savage Rapids Dam Task Force has met twice. The first meeting was basically organizational. The second meeting focused on a discussion of the fish passage issues associated with the dam.

Regarding the conservation plan, Parrow said that GPID has continued to improve communications among their staff, reinforcing the importance of water measurement and management. District staff are working on programs to better educate their patrons and provide technical assistance and advice in repairing conveyance systems and improving water application methods. The pump turbines on the dam are relatively inflexible in the amount of water that is being diverted so the District is spilling excess water back into the Rogue River at the first available point down through their canals. The District has been divided into five project management areas to better regulate water. The progress report lists conveyance system improvement projects that have been completed.

Dan Shepherd, Manager of GPID, and Darlene Haugen, Water Coordinator, responded to questions by the Commissioners. David Moon, attorney for GPID, was also available for comments. (tape 4, mark 306)

I. Update on Implementation of SB 674

Steve Applegate, Water Rights and Adjudications, offered this briefing to the Commissioners. He distributed a chart showing the major activities in application processing since July 1995. As