

Oregon Water Resources Commission Meeting
December 13, 1996
Salem, Oregon

Members

Nancy Leonard
Mike Jewett
John Frewing
Tyler Hansell
Ron Nelson

Staff

Martha Pagel
Geoff Huntington
Steve Sanders
Cindy Smith
Dick Bailey
Barry Norris
Tom Paul
Charlotte Haynes
Dwight French
Rick Cooper
Tom Byler
Doug Parrow
Kimberly Grimsby
Greg Nelson
Weston Becker

Others

Rep. Chuck Norris
Betty Lou Norris
Ves Garner
Paul Berg
Kimberley Priestley
Roger Bachman
Steve Applegate
Jerry Schmidt
Jan Boettcher Lee
Todd Heidgerken
Doug Myers
Mary Phillips

In addition to those listed above, other staff were present for particular segments of the meeting. Agenda reports and other materials submitted at this work session 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 session are on file at the same address.

A.1 Commission Meeting Minutes

The minutes of the October 1996 meeting were offered to the Commission for their consideration. Frewing moved for approval of the minutes; seconded by Jewett. All approved.

B. Commission Comments

Frewing attended the Governor's Watershed Enhancement Board (GWEB) Conference in Seaside. He was very impressed with the presentations and displays.

Leonard too attended the GWEB Conference and enjoyed it very much.

Hansell attended public hearings in La Grande and Baker City on reservation rulemaking.

C. Director's Report

Pagel reviewed Thursday's activities which included a morning field trip on water measurement, an afternoon work session, and an executive session.

Pagel explained in detail the Governor's 1997-99 recommended budget summary for the Water Resources Department and responded to questions by Commissioners. The Governor made a strong effort to keep base programs operating at current levels for all natural resource agencies.

Nelson asked how the Department's field services would be affected if the counties cut back on their financial support. Pagel said this has the potential to seriously impact the Department; staff are now in the process of getting information from counties on how Ballot Measure 47 has affected their budgets. The Commission will be updated on this as soon as possible.

Pagel asked for Commission action to designate a Commission representative to serve on the Governor's Watershed Enhancement Board. Hansell nominated Leonard; seconded by Frewing. All voted approval.

Pagel introduced Representative Chuck Norris and his wife Betty Lou. In appreciation for his leadership and contributions to Oregon water law and to wise consensus-based water management the Commission and Department presented Rep. Norris with a plaque.

D. Water Reservations: Request to Adopt Rules Establishing Reservations in the Malheur, Owyhee and Grande Ronde Basins

Doug Parrow and Kimberly Grigsby, Resource Management Division, presented this report to the Commission and responded to their questions and comments. The proposed rules would reserve 35,900 acre feet of water in the Grande Ronde Basin; 48,200 acre feet in the Malheur Basin; and 60,000 acre feet in the Owyhee. Hearings on these rules were held in La Grande, Baker City, Ontario and Jordan Valley. Four main areas addressed in the public comments received were water availability, site specificity, public interest issues, and storage seasons.

Frewing and Leonard expressed concern that there has not been enough discussion regarding restricting or expanding beneficial uses related to storage. Pagel noted that as basin plans are updated staff recommend considering a general statement of any beneficial use as opposed to a specific listing because of the ambiguity that it creates over time. Pagel suggested considering adding "Except as provided for stored water" at the beginning of 690-508-010(1)(a); and a

language change in 690-508-000(1) might be adding "subject to the provisions of these rules."

Leonard suggested adding "allowed within the basin plan" at the end of 690-508-000(1).

Public Comment

Kimberley Priestley, WaterWatch, thanked staff for Thursday's discussion on water availability. She suggested that the storage season should be in the rules. The exceedance levels should be used to determine the volume to be held in a reservoir and not the storage seasons. By not limiting the storage season in peak years, the storage project could appropriate water continually. Some basic restrictions should be put in the reservation. If there is no storage season spelled out in the reservation, it will be politically hard to limit the seasons. The issue of exceedance levels and water availability goes beyond the reservation request forum. This would be an issue that many members of the public would be interested in and would participate in hearings. Priestley asked that language stating that storage seasons be determined by water availability analysis be reinserted, or add "as determined by the water availability determination" in 690-508-100(5) and in the same section for other basins. (tape 2, mark 340)

Priestley also commented on 690-508-000(1), "Stored water may be used for any beneficial purpose." WaterWatch supports either the deletion of that section or an amendment such as "Stored water may be used for any beneficial purpose allowed under the basin plan." (tape 3, mark 160)

Rick Kruger, Department of Fish and Wildlife (F&W), supported the suggested revision to define uses as those in the basin plan, or deleting that line altogether as Priestley suggested. F&W generally supports the rules as they are written. He expressed concern about the discussion regarding available water and the practice of storage. As part of the set of conditions for a project he would hope that the Department of Fish and Wildlife would seek conditions that would limit the actual storage rate. The fifty percent allocation policy builds in protection for peak flows that occur. (tape 3, mark 205)

Ves Garner, Department of Agriculture, and Jan Boettcher Lee, Oregon Water Resources Congress, spoke on water availability and the multi-purpose aspect. Garner said that the Department of Agriculture (ODA) intended to establish reservations on a basin or subbasin approach. In some cases Water Resources Department (WRD) provided water availability analysis on a much smaller area. Consequently in some cases WRD has recommended reduced quantities from what ODA had requested. The rules should make it clear to a developer that water may not be available once the reservoir has been built. The fifty percent exceedance value seems to imply that water is going to be there at least half of the time. More water is there than what the water availability model actually demonstrates so other attempts to be conservative are not necessary. Regarding not addressing multi-purpose storage, Garner said that ODA intended

that projects would enhance stream values, improve stream flows, and create more habitat. Unless water is allowed to be stored for release downstream we would lose opportunities for the future. Garner urged the Commission to leave the rules as they are in defining that storage can be used for any purpose.

Boettcher said the concerns of the Oregon Water Resources Congress (OWRC) are in regard to the definition of what uses in the classifications are named. Exempt reservoirs do not go through the normal permit process and are regulated only on an on-call basis. An actual reservoir for storage of a larger size would have to go through much more for approval -- these are the type of reservoirs that we need to consider when working with these rules. There is nothing in the current statute or policy that disallows the Commission to look at all the existing water rights when making choices under a reservation or otherwise. The Department's water storage rules, 690-410-080, specifically speak to maximizing beneficial uses as does the water management program for water storage. So the Commission has already spoken to the prospect that all beneficial uses are included in the basin plans. Instream and out-of-stream rights already prevail in the water allocation policy.

Pagel responded to Frewing's question about water availability by noting that the determination of water availability reviews a season for a number of years and determines that water is available at the fifty percent exceedance rate. That does not mean that water will be available for any given project on any given day. The storage season has been a way to approximate when water is likely to be available for storage. What staff are doing is making the best estimate for a time period, or an amount of water that is available for storage in a basin without specifying a particular time period. When an application for storage under the reservation is received by the Department, a public interest determination is made which includes setting the storage season for that particular use. Water availability is just a tool.

Hansell asked if the reservation water would be subtracted from the water available when an application outside the reservation is received. Pagel said it would be subtracted.

Jewett suggested adding the language "based on month by month availability" to 690-508-100(6)(c) following "What storage season is appropriate". Pagel said she would rather use a term other than "water availability" since that is not the determination of the specific flow characteristics at a proposed site.

Doug Parrow proposed that staff return to the next Commission meeting with revised language to resolve some of the questions raised at this meeting. Pagel agreed with this recommendation but said it would be helpful to know the intent of the Commission so staff can work on the precise wording.

Pagel asked the Commission if there was interest to limit use of the stored water to the list of

beneficial uses already identified. Frewing moved to delete 690-508-000(1) and the corresponding line in the other two basin plans; seconded by Leonard. Motion failed with Hansell, Nelson and Jewett voting no. Staff will return to the Commission with new language.

Pagel said another issue would be the nature of the site specific determination of the stream flows and the broader question of water availability. A suggested change would be added language to 690-508-100(5) following Division 310, "and subject to the provisions of subsection (6) of this section." In subsection (6) language would be added to convey the intent to perform a site specific flow analysis. The Commission agreed that staff should work on this language.

Hansell moved that the Commission accept the intent of the 690-508-000(1) language as stated in the draft rules and make no changes; seconded by Jewett. Nelson, voted yes; Leonard and Frewing opposed. The motion did not pass due to the need for four votes to carry any action.

Hansell moved that staff offer new site specific evaluation language at the next meeting; seconded by Nelson. All voted approval.

E. Legislative Proposals: Follow-Up on Task Force Reports

Tom Byler, Legislation and Rules Coordinator, reviewed the task forces involving the Department and updated the Commissioners on the proposed legislative concepts. The three legislatively-created task forces involve reclaimed water, hydroelectric project reauthorization, and reservations.

The Reclaimed Water Task Force has completed its work; the final report with policy recommendations will be mailed the week of December 16. The Department will be pre-session filing a legislative concept on behalf of the task force. The task force report will recommend legislative changes focusing on the reuse of industrial waste water. The report will propose to allow the reuse of ground water provided that the ground water is initially appropriated and used for industrial or confined animal feeding purposes; the ground water is reused for irrigation purposes and the period of irrigation is a period during which the reused water has never been discharged to the waters of the state; and the reused water conforms to certain Department of Environmental Quality permit requirements. The proposal exempts the reuse of such water from water right permit and transfer requirements. In addition, the task force will propose to permit industrial users under a municipal water right to land-apply treated industrial process water without having to return the water to the municipal system for treatment.

The Hydroelectric Reauthorization Task Force is continuing to meet and expects to issue its report with recommendations to the Legislature in January. The Department is planning to pre-session file a bill on behalf of the task force.

information and responded to comments and questions by Commissioners.

The Water Development Loan Fund (WDLF) was created by a referendum approved by voters in 1977. Between 1979 and 1984 the WDLF sold the State's General Obligation Bonds and funded loans for the development of projects authorized by the statutes. The Department stopped lending in 1984 because of problems that ultimately led to some defaults on several loans, and litigation brought against the Department arising from the handling of reserve accounts held on behalf of the borrowers.

The process for restructuring the loan program is moving forward toward a target of adopting rules at the Commission's April 1997 meeting. Staff have formed a Steering Committee comprised of bond program administrators from other state agencies with loan programs. This committee will review the draft rules, proposed credit standards and underwriting criteria, and other issues pertinent to ensuring a solid fiscal foundation for the new loan program. A Rules Advisory Committee has been formed to discuss and make recommendations on proposed amendments to the administrative rules. Participants on this committee represent landowners, irrigation districts, water districts, cities, counties, and instream public interest groups.

Staff will develop a loan manual with underwriting guidelines and loan servicing procedures, and begin to evaluate the Department's internal loan and accounting systems and determine if changes are needed. Assuming that rules are in place and loan applications are once again accepted this spring, staff will also work on a business plan, a work plan, and financial management plan to assist in implementing the program.

Carol Samuels explained that bonds are a form of borrowing used by a wide range of individuals and groups. Investors expect that there is going to be a risk/reward relationship on the obligation -- the higher the risk, the higher the interest rate they will charge. When the state assumes that risk in the place of the investor, the interest rate is minimized and the benefit to the borrowers is maximized. In loan programs funded by the state through bond sales, the state is the one with the ultimate responsibility to the investors.

Gwen Ulrey spoke on the WDLF program authority to operate which is found in the Constitution. The statutes allow implementation of the constitutional provisions. The administrative rules give more detail about how the program is implemented. Ulrey reviewed the guiding principals on which to base the revised WDLF administrative rules and business plan.

Hansell asked why the Water Development Loan Fund program ran into the problems it did in the past. Huntington responded that program staff who were handling the program at that time did not have the financial background necessary. Roelin Smith, currently managing the WDLF program, was hired after the program ceased issuing loans.

The Reservations Task Force is continuing to meet and expects to issue its report with recommendations to the Legislature in January. Staff will provide the Commission with a copy of the task force final report and any legislation based on the report as they become available.

The Governor's Task Force on Water Quality and Quantity has divided its report into two segments -- a short-term report that will focus on immediate needs and a long-term report that will look at broader issues which the task force will work on in 1997. The task force is not recommending any legislative changes for the upcoming session.

Monday, December 16, is the deadline for pre-session filing proposed legislation. Following the October Commission meeting in Bend, staff held a meeting with stakeholders to discuss the fees legislative concept. However the meeting was not well attended. Based on the comments received, no significant changes were made to the legislative concepts. Two minor changes included increasing the permit recording fee by \$25.00 and an adjustment to the storage fee structure for large reservoirs.

Byler said that to keep the Commissioners informed on legislative happenings, they will receive weekly copies of bills the Department is tracking and an updated copy of the bill tracking log. The Commissioners also agreed to hold a telephone conference call every other Monday at 9 a.m. beginning February 3, 1997. The public will be notified of these meetings and may participate by attending the meeting in Salem.

Frewing asked if there might be legislative action on extensions of permits. Byler had not heard of any. Pagel responded that staff could provide a briefing at some time in the future on how this is currently being handled.

F. Public Comment

Mary K. Phillips, board member of Friends of Yamhill County and resident of Eola Hills, spoke on a request to include Walnut Hills in the ground water limited area of Eola Hills. Ms. Phillips presented a letter and map from Jim Ludwick, President of Friends of Yamhill County, to Chair Leonard and asked that this request be considered. Leonard said the Commission will ask staff to look into the request and report back at a future meeting. Pagel said the general issue relates to how the Department is dealing with sensitive ground water areas, looking at our model ordinance, and our work plan for dealing with specific areas. Tom Paul said staff have been collecting data for the Willamette ground water study. (tape 4, mark 139)

G. Water Development Loan Fund

Geoff Huntington, Deputy Director, along with Gwen Ulrey, Office of Energy, and Carol Samuels, Seattle Northwest, presented this report. Using an overhead presentation, they shared

Staff will return to the Commission with specific policy issues for discussion and guidance.

H. Backlog Elimination: A Final Report

Dick Bailey and Dwight French, Water Rights Division, offered this report to the Commission. Of the 5,722 applications that were pending July 1, 1995, there are 105 applications pending without a contested case hearing scheduled, a final order or a request for a delay in processing. Additionally, there are 136 protested instream water right applications that are being reviewed in preparation for contested case hearings and/or settlements.

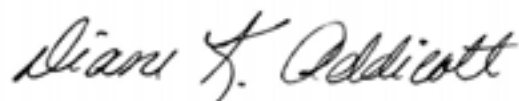
The current workload, including new applications, is 488. The target is to get the current workload to maintain the processing of 350 to 400 applications. Staff will be submitting regular written reports to the Commission to update them on the current status of water right applications. Hansell would also like regular updates on the transfer process.

The strategy for staying current in application processing can be broken into three main categories: improve the quality of applications that are received by encouraging applicants to participate in pre-application conferences; increase application processing efficiency for faster results; plan ahead to meet several time lines and make sure each application is where it belongs in the process.

Page thanked the Water Rights Division staff for the terrific job they did to overcome the backlog and develop an improved application review process.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Diane K. Addicott
Commission Assistant