

Oregon Water Resources Commission Meeting
April 4, 1997
Salem

Members

Nancy Leonard
Mike Jewett
John Frewing
Tyler Hansell
Ron Nelson

Others

Rick Kruger
Kimberley Priestley
David Moon
Phil Castle
Jan Boettcher Lee
Maynard Hammer
Bill Nessly
Gwen Ulrey

Staff

Martha Pagel
Geoff Huntington
Steve Sanders
Diane Addicott
Al Cook
John Drolet
Adam Sussman
Doug Parrow
Weisha Mize

In addition to those listed above, other staff were present for particular segments of the meeting. Written material submitted at this meeting 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.

A. Commission Meeting Minutes

The minutes of the February 1997 meeting were presented for approval. Hansell asked that the draft minutes be corrected to show in Item B, Commission Comments, he attended the Oregon Water Coalition's meeting in Hermiston, not Pendleton. Hansell made a motion that the minutes be approved as corrected; seconded by Jewett. All voted approval.

B. Commission Comments

Frewing attended the field trip and one day of the Western States Water Council quarterly meeting in Portland. He found the discussion regarding upstream federal properties and bypass

flows interesting. Frewing thanked Pagel and Sanders for the good job they are doing in representing Oregon on the Council.

Hansell commented on donating trees to replace those dying along a creek which was part of a project that the Commission had toured in the Pendleton area last May. A topic of interest in Hansell's area is the Confederated Tribes of the Umatilla Indian Reservation filing on their well.

Jewett attended the second day of the Western States Water Council quarterly meeting and was pleased with Oregon's water management leadership.

Nelson asked the Commissioners if they would be interested in hearing a report from the Deschutes Basin Working Group at an upcoming meeting. All agreed this would be worthwhile.

C. Director's Report

Pagel said that Jim Nakano's name has been resubmitted for Senate confirmation as a member of the Water Resources Commission.

Huntington reviewed a list of tentative future Commission meeting agenda items. A proposed schedule for meeting locations will be available at the next meeting for Commission consideration.

Pagel said that Jim Martin of the Governor's office gave a report on the Coastal Salmon Recovery Initiative at the Western States Water Council meeting in Portland. On Friday the Council met briefly and, together with the Western Governors' Association, held a workshop on water quantity and quality issues.

Pagel reviewed the topics discussed at the Commission's Thursday work session.

Frewing asked Pagel to comment on the water right transfer recommendation included in the Water Quality and Quantity Task Force report. Pagel said this relates to whether and to what extent water quality degradation is a component of the injury determination. The legal test now used is whether it results in injury to other water users. The issue for the task force to consider is how and in what circumstances does a water quality issue get factored into that determination.

D. Proposed Adoption of Amendments to Administrative Rules of the Water Development Loan Fund Program

Geoff Huntington, Deputy Director; Assistant Attorney General Bill Nessly; and Gwen Ulrey on loan from the Department of Energy, presented these rules for consideration. Major issues

identified during the public comment period include criteria for loan approval; public interest and need determination; and the appeals process.

Frewing asked about decommissioning projects so as not to allow them to become a public burden. Nessly responded that the loan program would fund construction, but not regulate it. The useful life of a project would be well beyond the period of financing that project. Pagel said that perhaps decommissioning of a project could be added as a condition to the regulatory permit issued in connection with a project that affects public waters.

Nelson asked if the two-year terms suggested for members of the Loan Advisory Board would allow the necessary stability and continuity. Ulrey and Huntington said they are confident that two-year terms would work.

Maynard Hammer, Department of Administrative Services and member of the Rules Advisory Committee, spoke in favor of the proposed rules. He expressed appreciation for the time and effort given by Pagel and Huntington to this process of revising the loan program rules and lending policies. Issuing and financing loans is extremely complex at this time; it is important to have a financially sound program that builds equity. Hammer supports the creation of the Loan Advisory Board.

Referring to the one-page hand out showing four changes from "and/or" to "or", Nessly suggested that the Commission instead consider the language "in compliance with all state and federal laws as applicable." Jewett agreed.

Jewett moved adoption of the proposed rules with the changes suggested above by Nessly and to include the change on that same hand out which deletes "affecting public waterways." The motion was seconded by Hansell. All voted in favor.

E. Review of Grants Pass Irrigation District (GPID) Progress Report

Doug Parrow, Resource Management Division; and Al Cook, Manager of the Southwest Region, presented this item for the Commissioners' consideration. Under the term of their permit extension, GPID must exercise due diligence in implementing their conservation and fish passage plans. By February 1 of each year the district is required to submit an annual report detailing these efforts.

Parrow said the district has continued to implement the conservation plan during the past year. The education and training programs which the district has implemented will help improve water management. The canal improvements which have been implemented, or are being planned, are reducing seepage losses and should allow reductions in diversions when better control of the pumping plants is achieved.

The district has shown due diligence in implementing the fish passage plan. The district participated on the Savage Rapids Dam Task Force and has been evaluating the task force recommendations and how to proceed. The workshops sponsored by GPID and facilitated by the Rogue Valley Council of Governments have been helpful in building local understanding of the fish passage issues at the dam. The workshops represent a concerted effort by the district to come to grips with the issues and to build public support for a solution.

Cook said that GPID was extremely conscientious and quick to act during the last two major floods in the Grants Pass area. The district worked hard to restore their ditches and help the community work to minimize the damage from the flooding.

Dan Shephard, GPID Manager; Darlene Haugen, GPID Water Coordinator; and David Moon, Attorney, came forward to comment on the report and respond to questions of the Commissioners.

Frewing asked Sanders about the Department's standard of due diligence. Sanders responded that according to the permit language in condition 5 and 9, if the Commission finds the permittee has failed to exercise due diligence toward implementation of the plans, the Commission may take action to restrict use, issue civil penalties, or modify or cancel the permit. Pagel said that the main concern of whether to issue the permit or not had to do with fish passage improvement. The district had agreed a few years back to proceed with a plan that would remove the dam, but the Legislature intervened with SB 1006 putting all plans on hold and directing the parties to participate in a task force process. The legislation indicated that participation on the task force is consistent with due diligence.

Eric Glover, Manager for the Lower Columbia Office of the Bureau of Reclamation, commented on the Bureau's record of decision. The Bureau has supported the task force process and has been waiting for their report. Now the Bureau must finish the National Environmental Policy Act evaluation process. No decision has been made since there does not appear to be a publicly-acceptable alternative. By not making a decision, the door is still open; the environmental statement applies to both the alternative to remove the dam and the alternative for retaining the dam with improved fish passage. Presently there does not seem to be support in the state to get removal of the dam through Congress. Glover said that hopefully the Governor will work with legislators and Oregon's congressional delegation on a course of action -- if legislation results, the Bureau should be in a position to support the state's decision.

Public Comment

Kimberley Priestley, WaterWatch, commented in support of the Commission reconsidering this issue at an upcoming meeting. At that time hopefully a detailed report including scheduling and funding would be submitted by GPID. (tape 2, mark 190)

In light of the Commission's concern about the district's ability to meet due diligence in the reporting period of February 1997 Frewing moved to request a mid-term report from GPID in August to be discussed at the September Commission meeting; seconded by Jewett. -All agreed.

F. Consideration of Exceptions and Direction for Issuance of Final Order on Applications S-73292 (Greenlund) and S-73439 (Fairview Church)

Weisha Mize, Hearings Officer, explained the background and reviewed the issues to consider. The two applications were the subject of a consolidated hearing and order. Upon evaluation of the applications for domestic use and lawn and garden irrigation, the Department found that water is not available for the purposed uses as requested. The Director found that if water use were limited to human consumption only, the uses could be made without detriment or impairment to the public interest. After consideration of the hearing record Mize issued a proposed order approving the Greenlund and Fairview Church applications for human consumption only. Exceptions to that proposed order were filed by the Greenlunds and Pastor Craig Curtis of the Fairview Church.

Department staff traveled to Coquille to meet with the applicants to explore alternative water sources. Alternatives such as storage, exempt use wells, and water right transfers were identified as possible solutions.

Christopher and Robyn Greenlund and Pastor Craig Curtis came forward to comment on their exceptions. Mr. Greenlund requested that the contested case hearing record be reopened so that additional evidence might be submitted.

Jewett moved that the Commission remand the applications to Mize to decide whether to reopen the record and if the record is reopened, to issue a new order if the evidence warrants; seconded by Nelson. All voted approval.

H. Final Report on Portland Regional Water Supply

This item was rescheduled to a future meeting.

I. Reservations Task Force

Doug Parrow, Resource Management Division, presented this item for discussion.

An interim proposal passed by the 1995 Legislature allowed adoption of pending reservation requests through rulemaking.

House Bill 2746 (1995) directed the Department to review the reservation program and report

back with recommendations for any necessary statutory changes to ensure expeditious review of reservation requests and the protection of reservoir sites. The Department has provided the required report to the Legislature.

The Department convened a task force to assist in reviewing the program and developing draft legislation. The task force report includes a legislative concept for the establishment of reservations through amendment of basin programs -- the Department recommends this concept. The Department does not support a second concept for issuance of "determinations of water availability" which would provide individual reservoir sponsors with protection of the water needed for storage in the projects. The Department instead is continuing discussions with interested parties to develop alternatives which would protect the quantities of water needed for planned storage projects.

Pagel said that with the Commission's concurrence, the Department would recommend legislation to implement the first concept mentioned above only, and would continue discussions on alternatives to the second concept.

Public Comment

Jan Lee, Oregon Water Resources Congress (OWRC), spoke in support of concept one for basin planning attempts to look at reservations. There is a need for an extension for the purpose of developing studies so that the public interest could be determined. If there is no type of hold on the water, thousands of dollars would be spent on studies with no guarantee that a reservoir might ever exist. OWRC is looking for a concept that would protect sites that may benefit all uses. If this can be handled in a way other than through legislation, it might be easier and more appropriate. (tape 2, mark 828)

Frewing moved to approve the action of the Department to support legislation along the lines of concept one, and to direct staff to continue working with interested parties on rulemaking alternatives to the second concept; seconded by Jewett. All voted approval.

There being no further business to discuss, the meeting was adjourned.

Respectfully submitted,



Diane K. Addicott
Commission Assistant