

Oregon Water Resources Commission Meeting
August 1, 1997
Ontario

Members

Mike Jewett
John Frewing
Tyler Hansell
Jim Nakano
Ron Nelson
Dan Thorndike

Others

Chuck Norris
Jerry Franke
Patricia McCoy
Roger Bachman
Kimberley Priestley
Renee Moulun
Ron Jacobs

Staff

Martha Pagel
Geoff Huntington
Steve Sanders
Cindy Smith
Al Cook
Kent Searles
Vern Church
Tom Byler
Weston Becker
Mike McCord
Larry Powers
Rick Lusk
Jason Spreit
Carrie Jones

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

The Commission opened their meeting with an Executive Session to discuss the status of permits and litigation regarding the Grants Pass Irrigation District.

A. Commission Meeting Minutes

The minutes of the May 19, 1997, Commission subcommittee meeting, and May 29-30, 1997, Commission meeting were presented for approval. Pagel suggested that the May 29-30 minutes be corrected by adding Dan Thorndike to the list of guests in attendance. Frewing moved to approve the minutes as amended; seconded by Nakano. All voted approval.

B. Commission Comments

Frewing attended an interesting meeting in Seattle on global warming and water resources — he would like to see the Commission and Department give more consideration to this issue. Frewing visited the Salmonberry drainage, tributary to the Nehalem in the coast range, and an important stream with regard to the Coastal Salmon Recovery Initiative. He's hoping that unused water rights on this stream will be canceled giving instream water rights seniority. Frewing announced that he has recently become the president of the Oregon Independent College Foundation.

Nelson commented that development of the Deschutes Basin Resource Conservancy continues—a more complete report will be given at the Commission meeting/workshop September 30 to October 2. Ron thanked Jim Nakano and others who helped plan Thursday's tour.

Hansell also thanked the folks who planned Thursday's tour — it was great to see local projects and hear about water issues in the area.

Thorndike said how pleased he is to be a member of the Commission. He attended an orientation meeting at the Salem office a few weeks ago. He, too, expressed appreciation for Thursday's tour.

Nakano thanked the Commission and staff for participating in Thursday's tour. Local folks really appreciated having this personal contact with them.

Jewett welcomed Thorndike on the Commission.

C. Director's Report

Pagel commented on the Executive Session the Commission held earlier in the day. The purpose of the session was to receive legal advice on permits and litigation involving the Grants Pass Irrigation District; this matter will be considered by the Commission at its next meeting.

Geoff Huntington summarized the previous day's tour which included local points of interest and water-related projects in the area. Huntington thanked those who made the tour possible including Commissioner Nakano, Regional Manager Kent Searles, the Owhyee Ditch Company, the Owyhee Irrigation District, the Vale Oregon Irrigation District, the Warm Spring Irrigation District, and several local businesses. The last stop on the tour was a visit to the Four Rivers Cultural Center where staff presented for display the certificate for the oldest water right in Malheur County which was signed by Commissioner Frewing's grandfather.

Pagel introduced the Eastern Region staff—Kent Searles, Vern Church, Carrie Jones, Jason Spreit, Rick Lusk, and Larry Powers. Pagel recognized Vern Church, Watermaster from Baker City, for the tremendous work he has done on the House Bill 3111 petitions which bring up to date the legal records and water rights of the irrigation district. Church works long hours and is an excellent representative of the Department.

Pagel briefed the Commissioners on the consideration of the Boeing water rights extension request; negotiations of the Warm Springs treaty tribal rights; the Klamath adjudication process; and the Coastal Salmon Recovery Initiative.

D. Request for Adoption of Amendments to OAR 690-235 Concerning the Ground Water Advisory Committee (GWAC)

Tom Byler, Director's office, was available to speak on this item. The proposed rule amendments included establishing term appointments for up to three years to allow for staggered terms on GWAC; creating a list of ground water interest categories for GWAC membership; and defining a process to solicit candidates for GWAC membership.

Hansell moved to adopt the proposed rule amendment language; seconded by Nelson. All voted approval.

E. Consideration for Approval of Appointments to the Ground Water Advisory Committee

Tom Byler, Director's office, was available to speak on this item. Staff requested that the Commission reappoint the five members who are serving beyond their terms. The requested appointment would harmonize terms for future three-year appointments; and result in three expirations per year, staggering the membership in an orderly way. One of the three well industry membership positions would experience a term expiration annually.

Frewing moved to appoint the slate of candidates which included Greg McInnis (well industry), Alan Parks (irrigation), and Gayle Killam (environmental) to terms expiring on November 30, 1998; and Chuck Stadeli (well industry) and Barry Beyeler (local government) to terms expiring on November 30, 1997; and make appointments coincide with the effective date of the amendments to OAR 690-235 approved in Item D at this meeting. Thorndike seconded the motion; all voted approval.

F. Request for Approval to Enter into Rulemaking to Amend OAR Chapter 690, Division 320, Section 010, Pertaining to Extensions of Permit Time Limits

Tom Byler, Director's office, presented this item to the Commission. Byler referred to the July 25, 1997, letter from the City of Pendleton in support of this rule amendment; and a June 26, 1997, letter on this same issue to Dick Bailey from Assistant Attorney General Steve Sanders.

Byler explained that water use permits contain dates by which the construction must be started, and complete beneficial use must be made. Under certain circumstances, an extension can be granted for the amount of time necessary to complete construction or to put the water to beneficial use. Existing Department rules limit an extension period to five years for municipalities and one year in most other situations. When these rules were adopted, they were not intended to arbitrarily limit the extension period, but were intended to establish a process for periodic reviews of progress toward the completion. The Sanders letter suggests that the Department must issue a permit extension with the understanding that the permittee will complete construction or put the water to beneficial use within the extension time period. In many cases, the extension rules unnecessarily limit the allowable extension period. Even when the permittee has diligently pursued completing the construction, some permits require more than one additional year to complete the beneficial application of water. The proposed rulemaking would address this issue.

Public Comment

Roger Bachman, representing Oregon Trout, disagreed with the statement that the rules were not intended to limit the extension period. He believes the rules were thoroughly discussed prior to adoption, and that there are people who believe this is an attempt to make an end run around the challenge to the Boeing water right situation. He suggested that if that is the case, there will be problems settling the lawsuit out of court. He suggested that because the environmental situation is changing so rapidly, the rulemaking might consider whether extension requests should be subject to a public interest review and considered by the Commission. (tape 1, mark 493)

Pagel said the Rules Advisory Committee (RAC) would look at the extension program. The need for the rulemaking came to light as a result of the Boeing permit extension process and legal advice received from the Attorney General's office. The RAC would review and discuss what types of factors should be considered in granting an extension—what time period, whether or not it should be retroactive, etc. There are no commitments or expectation that this rulemaking is being done to benefit Boeing specifically. Rather, Boeing's request is one of many pending requests.

Kimberley Priestley, representing WaterWatch, agreed with Roger Bachman that the staff report was a little misleading and unclear in places. She indicated that WaterWatch would likely

concur with rule amendments so long as the period of time allowed for an extension is all that is being considered, and that only one extension would be allowed. WaterWatch would likely not agree to anything more than five years. If the rulemaking goes beyond this narrow scope, many other things would need to be discussed such as instituting a public notice and comment period in the extension procedures, doing a public interest review, etc. She asked that there be as many recreationalists and environmentalists as there are agriculture interests on the Rules Advisory Committee. (tape 1, mark 575)

Frewing moved that staff initiate rulemaking to consider the permit extension process including the permit time limits; seconded by Nelson. All voted approval.

G. Request for Approval of Nominations for Appointment to the Water Development Loan Fund Advisory Board

Geoff Huntington, Deputy Director, presented this request to the Commission. Nominees included Roger Bachman, Rex Barber, James Clark, C. Lance Colley, Michael Golden, Maynard Hammer, and Victoria R. McKelvy.

Thorndike moved approval of the slate of nominees as presented, each for a term of two years subject to renewal; seconded by Hansell. All voted approval.

H. Legislative and Budget Final Report

Tom Byler, Director's office, and Martha Pagel gave an overview of the recently-adjourned legislative session. Byler gave the Commission copies of a publication put together by Weston Becker which includes summaries of 19 water-related measures enacted during the 1997 legislative session, and a copy of SB 924, the "Oregon Plan."

Jewett asked what the chances of a special session might be. Pagel said the Governor is continuing to work very hard on the transportation issues and is hopeful there will be a special session to deal with them.

I. Public Comment

Chuck Norris, former state legislator, spoke on Columbia River appropriations by the states of Oregon and Washington; he submitted a written copy of his testimony. He urged that with respect to the waters of the Columbia River we place ourselves in a status comparable to that existing in Washington to ensure that future cooperative efforts are between full partners. (tape 2, mark 20)

J. Informational Briefing on Idaho and Oregon Water Uses and Storage

Ken Pedde, Deputy Director for the U.S. Bureau of Reclamation, spoke to the Commission on the Bureau's activities in Oregon and their perspective on regional water allocation and storage policies. Pedde responded to questions and comments; he handed out the publication, "1997 Overview Pacific Northwest Region," which highlights various programs and activities of the Bureau.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Diane K. Addicott
Commission Assistant