

WATER RESOURCES COMMISSION

MEETING

BEAVERTON

JANUARY 5, 1990

MINUTES

Commission members present:

Bill Blosser
Lorna Stickel
Hadley Akins
Dierdre Malarkey
Cliff Bentz
Jim Howland

Water Resources staff:

Bill Young
Jan Shaw
Steve Sanders
Bev Hayes
Becky Kreag
Doug Parrow
Tom Kline
Tom Paul
Bud Bartels
Fred Lissner
Weisha Mize
Steve Applegate
Roberta Jortner
Marshall Gannett
Mike Mattick
Bruce Estes
Jake Szramek
John Borden
Donn Miller

Others:

John Newberg
Audrey Simmons
David Hunter
David Childs
Claude Williams
Myrt Williams
Jim Myron
David Winship
Tom O'Connor
Peter Ravella
Kip Lombard
Tom Vanderplaat
Wally Otto
Cal Krahmer
David Castleberry
Doug Myers
Marjo Nelson
David Getzendanner
Larry Sprecher
Jill Zarnowitz
Gary Krahmer
Eldon Mills

The staff reports presented at this meeting, which contain the Director's recommendations mentioned in these minutes, are on file in the Office of the Director of the Water Resources Department, 3850 Portland Road, NE, Salem, Oregon. Written information submitted at this meeting is hereby made a part of this record and is on file at the above address. Audiocassette recording tapes of the meeting are also on file in the Water Resources Department office.

A. MINUTES OF THE NOVEMBER 16-17, 1989, WRC WORK SESSION AND MEETING

It was MOVED by Jim Howland, seconded by Didi Malarkey, and passed unanimously to approve the minutes as submitted.

B. REQUEST FOR APPROVAL TO HOLD PUBLIC HEARINGS ON PROPOSED ADMINISTRATIVE RULES FOR ENFORCEMENT OF CIVIL PENALTIES UNDER ORS 536.900 to 536.935

The 1989 Legislature enacted Senate Bill 156 which allows the Commission to impose civil penalties for violation of certain water laws. The act is codified in ORS 536.900 to 536.935.

The Commission, at its August 17, 1989 meeting, approved a rulemaking schedule that includes adoption of these rules in April 1990.

Draft rules were prepared by staff, including watermasters and regional managers, and reviewed by Commissioner Cliff Bentz and the Assistant Attorney General. The draft rules were also reviewed by the Department of Forestry and the Division of State Lands, which both have civil penalty authority. Two special interest groups, the Oregon Water Resources Congress (OWRC) and the Oregon Environmental Council (OEC) also reviewed and commented on the draft rules. Logistics did not allow the entire group to meet simultaneously to provide input and review the rules. However, this review process was consistent with the direction and schedule approved by the Commission on August 17.

Director's Recommendation

The staff recommended that the Commission approve the draft rules for public hearing and approve the schedule of public hearings.

(Lorna Stickel arrived at the meeting at this point.)

It was MOVED by Didi Malarkey and seconded by Cliff Bentz to approve the Director's recommendation. The motion passed unanimously.

C. REQUEST FOR APPROVAL TO HOLD PUBLIC HEARINGS TO AMEND OAR 690-250-130 RELATED TO REGULATION OF EXEMPT GROUND WATER USES UNDER ORS 537.545

The 1989 Legislature enacted SB 373 which amended ORS 537.545. The act allows, as an exempt use, the watering of the lawns, grounds and fields not more than ten acres in area of schools located in a critical ground water area. The act also allows establishment of a priority date for exempt uses for regulatory purposes. A rule was proposed that applies to the priority date portion of the statute.

The existing administrative rule related to regulation of exempt ground water uses (OAR 690-250-130) allows regulation of such uses only if directed to do so by a court or Commission order. The statute, as amended, states that the priority date for regulatory purposes shall be the date indicated in the well log filed with the Department or by other documentation provided by the well owner showing when water use began.

This amended statute has been discussed in meetings with the Ground Water Advisory Committee of the Department and with the Oregon Water Well Association.

Director's Recommendation

The staff recommended that the Commission approve both the draft amended rule for public hearings and the hearings schedule.

It was MOVED by Jim Howland, seconded by Hadley Akins, and passed unanimously to approve the draft rule for public hearing.

The staff presented a revised hearing schedule for both Items B and C for approval by the Commission.

It was also MOVED by Lorna Stickel and seconded by Jim Howland to approve the proposed new hearing schedule. The motion passed unanimously.

D. REQUEST FOR AUTHORIZATION OF HEARINGS FOR REVISED STATEWIDE WATER POLICIES

On May 26, 1989, the Commission directed staff to develop statewide water resources policies for ground water management, hydroelectric power, instream flows, interstate cooperation, riparian area management and conservation. The Commission expressed its intent to adopt the policies as rule. These policies would also become part of the Oregon Water Management Program and would represent statements of the Commission's coordinated, integrated water resources policy.

At its November 17 meeting, the Commission directed staff to revise the initial draft, taking into consideration the comments received at the public hearings and bring the revised draft to the next Commission meeting. The Commission expressed an intent to hold another round of rulemaking hearings on the revised draft.

Director's Recommendation

The staff recommended that the Commission authorize public hearings on the revised statewide policies for ground water management, hydroelectric development, interstate cooperation, and instream flow protection. A hearing should be held in each of the five regions in order to promote public participation in the process.

Staff further recommended that the Commission determine whether to authorize hearings for policies on riparian area management on public lands and conservation after the work session.

The Commission then discussed the policies topic by topic. Several small changes were made by consensus.

It was MOVED by Cliff Bentz and seconded by Hadley Akins to remove the word "most" from the definition of "best practicable technology," Page 2, 690-400-010(1). Commissioners Blosser, Stickel, and Malarkey voted no. The motion failed.

Jill Zarnowitz, Oregon Department of Fish and Wildlife, recommended adding language from the statute to the second sentence of Principle (b) of the hydroelectric policy.

(Cliff Bentz announced that he represents an electric utility and disqualified himself from further discussion.)

The Commission incorporated Zarnowitz's recommendation by consensus.

Jim Howland MOVED to remove the words "and implemented" from Principle (d) of the hydroelectric policy. The motion failed for lack of a second.

Jill Zarnowitz had some concerns about a weakening of the language in the instream flow protection section of the rules. She promised to submit her changes to the Department staff.

The Commission began discussion of the conservation policy; however, since agreement on this item did not seem possible in the time allowed on the meeting day, the Commission sent a portion of the proposed rules to hearing and reserved the rest for consideration at another meeting.

Lorna Stickel recommended that two Commission members work with the staff between this meeting and the next one in February to prepare another conservation draft for consideration at that time. At that meeting, the Commission could vote on whether to send those issues out to hearing.

It was MOVED by Lorna Stickel and seconded by Didi Malarkey to go to hearing on the Division 400 purpose statement and the policies on hydroelectric, ground water, instream, and interagency cooperation, as amended by the Commission discussion at this meeting, and reserve the conservation policy for the next meeting.

Chairman Blosser suggested that any Commission member with comments forward them to the Department staff. The motion passed unanimously.

G. CONSIDERATION FOR APPROVAL OF APPLICATION 69997 TO USE WATER FROM HENRY HAGG LAKE AND SCOGGINS CREEK, TRIBUTARY TO TUALATIN RIVER FOR WATER QUALITY CONTROL, BUREAU OF RECLAMATION, WASHINGTON COUNTY

On July 10, 1989, the Bureau of Reclamation submitted an application proposing to use 6300 acre feet of water stored in Henry Hagg Lake to meet existing Bureau contracts for water quality control, bringing the total water available for water quality control to 16,900 acre-feet. Both project water and natural flows are used to enhance downstream water quality in the Tualatin River.

Permits R-5777 and 35792, issued to the BOR, allow for storage of up to 10,600 acre-feet of water and use of up to 74 cfs for water quality control. The Bureau had assumed that the existing storage permit was for up to 16,900 acre-feet of storage. Since this was not the case, the Bureau filed for use of the additional amount of water.

The question before the Commission was whether granting a permit to use 6300 acre-feet of storage in Henry Hagg Reservoir for water quality would impair or be detrimental to the public interest.

Director's Recommendation

The staff recommended that the Commission find that the project would not impair or be detrimental to the public interest and authorize the Director to issue the permit for the use of water as outlined in the application.

Gary Krahmer, Unified Sewerage Agency, answered questions regarding water releases from Scoggins Reservoir.

It was MOVED by Jim Howland and seconded by Hadley Akins to approve the application. The motion passed unanimously.

I. INFORMATIONAL REPORT: POLICY ISSUES REGARDING WATER RIGHT APPLICATIONS IN THE TUALATIN BASIN FOR THE TUALATIN VALLEY IRRIGATION DISTRICT AND FOR THE HILLSBORO, FOREST GROVE AND BEAVERTON JOINT WATER COMMISSION

The Tualatin basin has a history of wintertime flooding and summertime water shortages. A study was initiated in the early 1960's to solve this problem. Local officials and the Bureau of Reclamation (BOR) worked together to find a solution. The study recommended that a reservoir be constructed in the basin.

The Department received water right applications in February of 1963 from the BOR. One was to construct Scoggins Dam and store water in Henry Hagg Lake; the secondary application requested use of natural flow and stored water for irrigation, municipal, industrial and water quality purposes. Water right permits R-5777 and 35792 were issued to the BOR on May 1, 1972 for the project.

Original plans called for the construction of a pipeline from the dam to serve municipal and industrial water users and the construction of an open canal to deliver irrigation water. Construction plans were modified after the water right permits were issued. Neither the pressure pipeline from the dam nor the open canal were constructed.

The project, as constructed, uses Scoggins Creek and the Tualatin River to transport stored water from the reservoir to a pump station approximately 11 miles downstream. A pressure pipeline is used to deliver water from the pump station to most irrigation users. The pressure pipeline is in a different location than proposed for the canal. Because of this, some lands proposed to be irrigated do not have access to the water. Other lands not originally in the project now do. The same pump station is used by the Forest Grove, Hillsboro, Beaverton Joint Water Commission (JWC) to divert municipal water from the Tualatin River.

The Tualatin Valley Irrigation District (TVID) operates Scoggins Dam and pump stations on Scoggins Creek and the Tualatin River. Irrigation water is delivered to approximately 17,000 acres. Crops grown in the basin include row crops for fresh and cannery use, hay, grain, nursery and pasture and are rotated from field to field to maintain the soil's ability to produce.

The adjudication of the Tualatin basin was completed in 1960. The decree establishes the irrigation season as beginning May 1 and ending September 30. The distribution rules (OAR Division 250) state that the irrigation season for water right permits issued on adjudicated streams is the same as that established by the court for that stream. Local irrigators claim water is needed for irrigation before and after the established season.

The construction of Scoggins Dam has provided a reliable source of summertime water in the basin. The stored water designated for water quality is used to increase streamflow for dilution. However, instream water quality is still a problem. As part of the Willamette Basin Plan update, the Department of Environmental Quality (DEQ) submitted a list of streams needing additional instream protection. The Tualatin River is included in their list.

Water right applications were submitted by the TVID and JWC. Staff has reviewed the applications. The Department identified a number of policy issues as a result of the review.

TUALATIN VALLEY IRRIGATION DISTRICT APPLICATION

Crops are rotated from field to field. As crops are rotated, the need for irrigation water is also rotated from field to field. The water right transfer process is one way to legally move water from field to field as crops move. When crops are rotated annually, the transfer process is often over a year behind. And only certificated water rights can be transferred. Another method is to file a water right covering all lands on which irrigated crops are rotated.

The TVID filed application 69623 requesting irrigation of an additional 12,500 acres, to cover the rotated acres. The application also requests out-of-season irrigation for 29,500 acres. The out-of-season would be from March 1st through April 30th and October 1st through October 31st.

JOINT WATER COMMISSION APPLICATION

Water right application 69637, filed by JWC, requests a right to divert 75 cfs from Scoggins Creek. They are looking for ways to comply with the Drinking Water Act. This act places strict standards on water used for human consumption. Currently, JWC diverts water into their treatment plant from the Tualatin River. Moving their point of diversion to Scoggins Dam would provide better quality water.

New water right applications from Scoggins Creek are subject to earlier rights, including instream rights on the Tualatin River, and permit R-5777, to fill Scoggins Reservoir. The authorizing document for the construction of the reservoir requires a minimum flow of 10 cfs at the outlet of the dam except in the months of October and November when 20 cfs is required to pass the Stimson Lumber Mill dam. The Stimson dam is located just downstream from the outlet from Scoggins Reservoir. There are no instream water rights on Scoggins Creek below the dam.

The reservoir is used as a flood control facility during the winter. A rule curve for operating the reservoir has been developed by the BOR. The rule curve establishes the maximum amount of storage to be in the reservoir on any given day.

Because all active storage in the reservoir is contracted for, by the end of the use season reservoir levels are well below the rule curve.

The JWC would only be able to divert water when instream water rights on the Tualatin River are met and when more water than the project flows are being released. The United States Geological Survey (USGS) operated a streamflow recording station below the dam. Records indicate there may be long periods from November through April when water will not be available.

Director's Recommendation

This was an informational report only to advise the Commission of two water right applications which have been filed in the Tualatin basin and to identify policy issues associated with them. No formal action was required. However, Commission guidance was sought by staff to prepare reports for each application, which would be presented for Commission action at a later time.

Eldon Mills, City Manager of Hillsboro, answered questions put to him by the Commission.

Cal Krahmer, Tualatin Valley Irrigation District, spoke on behalf of his district's position on this issue.

Kip Lombard, representing Tualatin Valley Irrigation District, answered questions from the Commission.

The Commission took no formal action on this item.

D. COMMISSION COMMENTS

Bill Blosser commented that a global warming document which had been distributed by the Department had proved very useful.

Blosser reminded the Commission to submit their ideas for public notice materials to Bev Hayes. Hayes will incorporate those comments and prepare the Department's recommendations.