

WATER RESOURCES COMMISSION

MEETING

PORTLAND

FEBRUARY 12-13, 1990

MINUTES

Commission members present:

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

Water Resources staff:

Bill Young  
Jan Shaw  
Bev Hayes  
Becky Kreag  
Jake Szramek  
Doug Parrow  
Amin Wahab  
Donn Miller  
Mike Ladd  
Tom Kline  
Fred Lissner  
Weisha Mize  
John Borden

Others:

Frank Gearhart  
John Houle  
Richard Whitman  
Jill Zarnowitz  
George N. Lammi  
Dan Kovtynovich  
Randy Bryson  
Brad Higbee  
Tom O'Connor  
Tom Simmons  
Dave Hunter  
Jan Boettcher  
Larry Sprecher  
Chuck Sheketoff  
Doug Myers  
Mike Walker  
Mel Kaneberg  
Ed Tenny

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.

FEBRUARY 12, 1990

A. MINUTES OF THE JANUARY 4 AND 5, 1990 WRC WORK SESSION AND MEETING

It was MOVED by Lorna Stickel, seconded by Hadley Akins, and passed unanimously to approve the minutes as submitted.

B. REQUEST FOR AUTHORIZATION FOR HEARINGS ON A REVISED PROPOSED STATEWIDE WATER POLICY ON CONSERVATION AND EFFICIENT WATER USE

During the January 5 meeting, the Commission directed staff to revise the proposed statewide policy on conservation and efficient water use and designated Commissioners Akins and Stickel to work with staff on the revisions. A revised conservation policy was prepared.

Major changes were made in the principles and the strategies. Based on the Commission's direction, the principles were made more specific to better describe the requirements which water users will be expected to meet and the measures which will be taken to eliminate waste and improve the efficiency of water use.

The strategies were rewritten so that they were more consistent with the other statewide policies. Much of the detail previously included in the strategies will be the subject of subsequent rulemaking. Rather than committing the Commission and Department to the specifics included in previous strategies, the conservation plan will identify general areas for rulemaking and program development. A detailed list of the activities which staff believed would be needed to implement the conservation policy was distributed. Upon approval of the conservation policy and subject to continued discussion of the specifics of the activities, staff would begin implementation of the policy and strategies in the manner indicated.

#### Director's Recommendation

The staff recommended that the Commission authorize hearings on the revised proposed statewide water policy on conservation and efficient water use. Staff also recommended that the hearings be held in conjunction with those previously authorized for other statewide policies.

#### ADDENDUM

The Conservation Advisory Committee met on Thursday, February 8, to review the staff report and to develop a committee recommendation. Commissioner Stickel participated in the committee meeting. The committee recommended several changes in the principles and the addition of two statutory citations. The committee did not discuss the strategies.

The committee briefly discussed the information provided in Attachment 2 of the original staff report. The committee was unsure of the purpose for including the attachment. It had been prepared to indicate to the Commission the staff's current thinking on how the listed strategies would be accomplished. Staff does not intend to include the attachment with the material distributed for the hearings and was not requesting Commission action on the attachment.

Some members of the committee suggested that the public should be provided with the most complete, available indication of future activities of the Department under the policy. They would recommend that the attachment be included with the conservation policy and be a subject of the hearing. If it were the preference of the Commission to do so, the attachment could be more clearly labeled to indicate its proper status. All members indicated that the current title was misleading.

#### Director's Recommendation

The staff recommended that the Commission authorize hearings on the conservation and efficient water use policy. The staff had no objection to the substitution of the language proposed by the Conservation Advisory Committee. The Commission was asked to provide staff with direction regarding the distribution of the information in Attachment 2 of the staff report.

It was MOVED by Hadley Akins and seconded by Didi Malarkey to schedule a series of workshops to give people an opportunity to discuss the new draft, to include discussion of the riparian policy in the workshops, to seek the participation of the Department of Agriculture in the workshops, and to announce at the workshops that only one subsequent public hearing would be held. The motion passed unanimously.

#### D. COMMISSION COMMENTS

Jim Howland asked the staff to begin consideration of storage projects which might become necessary in the event of global warming. The Director reported that there is a series of hearings on that very subject coming up soon. Howland asked to see anything in the way of an analysis of the storage question coming out of those hearings.

Cliff Bentz asked if the Governor had made any appointments to the reactivated Columbia River Compact yet. The Director said no, but that he had recently contacted six western states in order to schedule a meeting on this matter.

## E. DIRECTOR'S REPORT

1. Next Commission meeting: The Director recommended postponing the anticipated hearing on the Tenmile Lake issue, which would have placed the Commission meeting in Coos County in March. The petitioner would not have the necessary information ready in time for that meeting and didn't expect to be ready for the hearing until the fall. The Director asked the Commission if they wanted to meet anywhere else. The Commissioners decided to hold that meeting in Salem.
2. Goals and Objectives: The Director described the draft task document he had distributed and invited the Commission's review and comments.
3. Statewide policies: The Director distributed a schedule for a round of five hearings to be conducted around the state on four statewide policies.

## F. PROPOSED ADOPTION OF RULES TO AMEND THE GOOSE AND SUMMER LAKES BASIN PROGRAM, RESTRICTIVELY CLASSIFYING THE MAIN GROUND WATER RESERVOIR OF THE FORT ROCK BASIN

On March 13, 1987, the Water Resources Commission withdrew the main ground water reservoir of the Fort Rock Basin from further appropriation. The withdrawal order and rule prohibited further appropriations but with certain exceptions. The withdrawal contained an expiration date of March 13, 1990, and provided for Commission review prior to that date.

On August 5, 1988, the Water Resources Commission adopted the Goose and Summer Lakes Basin Program. This initial program for that basin classified all surface water in the basin and some of the ground water. The Fort Rock withdrawal was incorporated into the program as OAR 690-80-130(6)(a)(D) and (d) in order to reference Department control in the basin into a single document.

On November 17, 1989, the Commission reviewed the withdrawal and updated ground water information for the basin. That information suggested that conditions were similar to those which prompted the withdrawal. In response, the Commission authorized staff to schedule a hearing on a proposal to continue the existing restrictions on new appropriations. The Commission directed staff to conduct the hearing such that those restrictions could take the form of a withdrawal or a classification through basin program amendment.

### Director's Recommendation

Staff recommended that the Water Resources Commission approve Alternative 1, to adopt the proposed rules to amend the Goose and Summer Lakes Basin program, adopt the amended/renumbered Goose and Summer Lakes Basin Program, and rescind the existing withdrawal order.

It was MOVED by Jim Howland, seconded by Mike Jewett, and passed unanimously to approve the Director's recommendation.

## G. APPLICANT'S EXCEPTIONS TO PROPOSED ORDER IN THE MATTER OF PROTESTED APPLICATION 69655

Application 69655 was filed on June 30, 1988 by Dan Kovtynovich for a permit to appropriate 0.06 cubic foot per second (cfs) of water from an unnamed spring, tributary to Amazon Creek, in Eugene, Oregon. Water would be used for maintenance of a natural pond for rearing rainbow and other trout. Applicant had been using the water from the spring for 14 years for this purpose, but had not obtained a permit for this use.

A protest was filed on November 7, 1988 by Vernon Albert. Mr. Albert alleged that the proposed use would reduce the flow in the unnamed stream from which Albert had a prior right. He further alleged that the proposed use would be detrimental to wildlife in Amazon Park, where the unnamed stream ultimately joined Amazon Creek, and thus would be contrary to the public interest.

Gerald Black filed a protest on January 15, 1989. He alleged harm to the park's aesthetics, and further that there would be no water left for appropriation in the event Black's pending application was approved.

Following proper notice, a hearing was held in Eugene on March 14, 1989, on the protests against application 69655. Applicant Kovtynovich was present and represented by Randall Bryson, attorney. Protestants Albert and Black were present and represented by Bill Kloos, attorney.

On November 23, 1989, the Director's Proposed Order was served on the Parties. On December 22, 1989, Randall Bryson filed Exceptions to the Proposed Order on behalf of the applicant.

Counsel for the parties were given an opportunity to file written argument on the exceptions by January 22, 1990, if they so desired. Written argument was received from both parties before the deadline.

The applicant disputed the finding of fact found on page 5 and the conclusion of law found on page 7 of the Director's proposed Order. These provisions were that "applicant's diversion is subject to Albert's prior right to appropriate 2 gpm for a trout pond and up to an additional 4 gpm during the irrigation season for irrigation of .73 acre." The applicant asserted that the determination that Albert had acquired a prior right in water from the spring in question is without any legal or factual basis, and requested the Department to revise its order accordingly.

#### Director's Recommendation

The staff recommended that the Commission consider applicant's exceptions, together with any written argument received, this staff report and the Director's Proposed Order, and reach a Final Order decision. Staff further recommended that the Commission adopt the Director's Proposed Order without modification as its Final Order.

It was MOVED by Lorna Stickel and seconded by Mike Jewett to approve the Director's recommendation. The motion passed unanimously.

#### H. CONSIDERATION OF PETITION TO AMEND THE NORTH COAST BASIN PROGRAM TO CLASSIFY WATERS OF OK CREEK FOR INDUSTRIAL USE

On January 15, 1990, the Department received a petition from George N. Lammi of Lammi Sand and Rock to amend the North Coast Basin program by seeking a change in the existing stream classification for OK Creek, a tributary to Westport Slough in the Columbia Subbasin (7N 5W Section 5). The petition requested an amendment to allow industrial uses of water on OK Creek, including sand and rock washing and related activities. The current basin program classifies waters of OK Creek only for "utilization of water for human consumption, livestock consumption, power development, and instream uses for recreation, wildlife, and fish life purposes."

Lammi Sand and Rock is involved in processing and selling sand and rock products. The business has been operating and using water for its operation without the benefit of a water use permit since being formed in 1981. Mr. Lammi prepared an application for a permit with his petition. The application cannot be processed because the proposed use is not compatible with provisions of the North Coast Basin program.

ODFW, Department of Environmental Quality (DEQ), and Columbia County all expressed concerns over the past operation of this business. Attachment E of the staff report provided a brief history of water pollution problems and violations at the Lammi site and a chronological account of various agency interactions with Lammi.

According to Jeff Boechler, Assistant Fish and Wildlife Biologist in Seaside, OK Creek has been an important coho salmon and resident trout spawning and rearing habitat. Apparently, Lammi's operation adjacent to OK Creek has been the cause of severe sedimentation and turbidity in OK Creek. Important fish habitat has been lost as a result of high turbidity, stream sedimentation and habitat degradation associated with this operation. ODFW is in the process of restoring the stream for the benefit of fish life.

Lammi Sand and Rock operates under a discharge permit from DEQ. However, the company was fined by DEQ for causing severe turbidity and improper discharge into OK Creek. The company is now under DEQ order to refrain from washing rock and discharging turbid water into OK Creek.

Lammi Sand and Rock has been working with Columbia County to secure a surface mining operating permit. The County Surface Mining Committee refuses to issue an operating permit because of Lammi's noncompliance with state regulations. A court injunction in September 1989 allowed Lammi Rock and Sand to operate without a county surface mining permit. However, Lammi was directed to file a petition with the Department, within 60 days of the injunction, to amend the North Coast Basin program to allow industrial use of water for sand and rock processing. The petition was not filed within the given timeframe. The court then ordered a suspension of Lammi's operation until all the proper permits were acquired. Following the order, Lammi Sand and Rock filed the petition with the Department.

#### Director's Recommendation

The staff recommended that the Commission grant the petition, initiate rulemaking, and authorize staff to schedule a public hearing in the affected basin. The staff further recommended that the Commission broaden the scope of the hearing to examine all streams that are similarly classified in the basin. Broadening the hearing would provide direction for dealing with such inquiries in the future. In addition, the staff recommended that the Chair appoint a member of the Commission to conduct the hearing.

George Lammi, petitioner, spoke in behalf of his position in this matter.

Jill Zarnowitz, ODFW, said that her agency supported the staff recommendation. She asked for a broader policy look taken of the subbasin in order to avoid seeing a number of companies operating illegally, causing the Department to have to deal with the problem on a case-by-case basis.

It was MOVED by Lorna Stickel and seconded by Didi Malarkey to deny the petition to amend the basin program for this use but to direct the staff to determine which streams are involved in the same circumstance and to reevaluate the North Coast Basin Program for consideration of amendments.

The Chairman clarified that under the motion the petition would be denied but the staff was to entertain a general amendment scheme for reevaluation. The motion passed 6 to 1. Cliff Bentz voted no.

Lorna Stickel asked for further evaluation from the staff of the local streams and the need for looking at a basin amendment to open up those streams to industrial use.

#### I. CONSIDERATION FOR APPROVAL OF APPLICATION 69637 TO USE WATER FROM SCOGGINS CREEK, TRIBUTARY TO THE TUALATIN RIVER, FOR MUNICIPAL USES, HILLSBORO, FOREST GROVE AND BEAVERTON JOINT WATER COMMISSION, WASHINGTON COUNTY.

On June 9, 1988, the Hillsboro, Forest Grove and Beaverton Joint Water Commission filed Application 69637, which proposed to use up to 75 cubic feet per second (cfs) from Scoggins Creek for municipal uses between October and May. The water would be diverted from Scoggins Dam via a seven-mile gravity pipeline to the joint water treatment plant near Forest Grove. The pipeline is scheduled to be completed in 1992 or 1993.

During the winter, Scoggins Reservoir is kept low to provide space to control potential spring flooding. During this period, some inflow from the drainage is passed through the reservoir. The Joint Water Commission is seeking the use of that water which is released in excess of the rule curve that the Bureau uses and that is not needed to meet downstream uses.

In response to the initial public notice, ODFW raised concerns over the protection of river flow. The DEQ raised some concerns over water quality during October in the Tualatin River.

The question before the Commission was whether the issuance of a permit for up to 75 cfs would impair or be detrimental to the public interest. Administrative Rule [690-11-080 (2)(a)(A)] specifies that appropriations for greater than 5 cfs be

referred to the Commission. The Commission must determine the need to make a public interest determination under ORS 537.170.

Several people testified. They were Eldon Mills (JWC), Gary Krahmer (USA), and Cal Krahmer (TVID). Tom Paul presented the report and responded to questions.

#### Director's Recommendation

The staff recommended that the Commission find that the use of water would not impair or be detrimental to the public interest as conditioned, and authorize the Director to issue the permit with the appropriate conditions as described above.

It was **MOVED** by Lorna Stickel, seconded by Jim Howland and passed unanimously to approve the Director's recommendation.

#### J. CONSIDERATION FOR APPROVAL OF APPLICATION 70080 TO USE WATER FROM THE MULTNOMAH CHANNEL, TRIBUTARY TO THE COLUMBIA RIVER, FOR IRRIGATION, ESTATE OF JOHN W. KOPPLIN, MULTNOMAH COUNTY

On September 25, 1989, the Estate of John W. Kopplin filed Application 70080 which proposed to use up to 7.60 cfs of water from the Willamette River (Multnomah Channel, Gilbert River and two unnamed drainages) to irrigate 608 acres on Sauvie Island.

The question before the Commission was whether the issuance of this permit would impair or be detrimental to the public interest. Administrative Rule 690-11-080 (2)(a)(A) specifies that appropriations for greater than five cubic feet per second, except from the Columbia River, be referred to the Commission. The Commission must determine the need to make a public interest determination under ORS 537.170.

#### 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.

It was **MOVED** by Lorna Stickel, seconded by Hadley Akins and passed unanimously to approve the Director's recommendation.

#### K. CONSIDERATION FOR APPROVAL OF APPLICATION 69200 TO USE WATER FROM THE IMNAHA RIVER, TRIBUTARY TO THE SNAKE RIVER, FOR FISHERY USES, ODFW, WALLOWA COUNTY

On July 22, 1987, ODFW filed Application 69200 which proposed to use up to 15 cfs of water from the Imnaha River for the acclimation of salmon smolts in March and April. ODFW also intends to use the water to trap and hold the returning adult spring chinook in a concrete pond from June 1 through June 30 of each year.

The question before the Commission was whether the issuance of this permit would impair or be detrimental to the public interest. Administrative Rule 690-11-080 (2)(a)(A) specifies that appropriations for greater than five cubic feet per second be referred to the Commission. The Commission must determine the need to make a public interest determination under ORS 537.170.

#### 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.

It was **MOVED** by Mike Jewett and seconded by Jim Howland to approve the Director's recommendation. The motion passed unanimously.