

WATER RESOURCES COMMISSION

MEETING

KLAMATH FALLS

JUNE 22, 1990

MINUTES

Commission members present:

Lorna Stickel, Vice-Chair  
Cliff Bentz  
Jim Howland  
Hadley Akins  
Mike Jewett  
Commissioner-elect Roger Bachman

Commission members absent:

Bill Blosser, Chair  
Dierdre Malarkey

Water Resources Staff

Bill Young  
Jan Shaw  
Bev Hayes  
Becky Kreag  
Rick Bastasch  
Roberta Jortner  
Steve Applegate  
John Borden  
Mike Mattick  
Bob Main  
Tom Kline  
Del Sparks  
Steve Sanders  
Weisha Mize  
Marc Norton  
Donn Miller  
Dennis Glender

Others

Jan Boettcher  
Audrey Simmons  
Charles Dehlinger  
Wm. L. Wales  
Roger Nicholson  
Ambrose McAuliffe  
John Castle  
Curly Paynter  
Kent Madison  
Steve Bloom  
Tracey Liskey  
Jill Zarnowitz  
Don Roeder  
Tom Hawkins  
Kirk Rodgers

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 MAY 10 AND 11 WRC MEETING AND WORK SESSION

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

B. REQUEST FOR AUTHORIZATION OF PROPOSED AMENDMENTS TO OAR 690 DIVISION 17, FORFEITURE AND CANCELLATION RULES, SCHEDULED FOR HEARING IN AUGUST, 1990

The 1989 legislature adopted Senate Bill (SB) 153 which amended ORS 540.610 and 540.631 relating to forfeiture and cancellation of water rights. The changes in the forfeiture laws require commensurate changes in the Commission's administrative rules on forfeiture and cancellation.

At its May 11, 1990, meeting, the Commission gave early authorization to staff to file a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impacts for publication in the June 15 Secretary of State's Bulletin. Early authorization for filing was needed because the Bulletin is now published only once a month. The Commission had not yet approved the rules in draft form to go to hearing.

The draft amendments underwent extensive review in-house. The draft amendments were also circulated to five Oregon attorneys for their review and comment.

The draft amendments, together with the hearing notice, were submitted to the Commission for their review, discussion and approval for hearing.

Director's Recommendation

The staff recommended that the Commission approve the draft rules for hearing and authorize staff to conduct a public hearing on the draft rules.

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

K. REQUEST FOR ADOPTION OF RULES TO AMEND THE UMATILLA BASIN PROGRAM FOR REGULATION OF THE BUTTER CREEK CRITICAL GROUNDWATER AREA, MORROW AND UMATILLA COUNTIES.

On November 30, 1989, the Oregon Supreme Court affirmed the decision of the Court of Appeals which upheld the Department's order creating the Butter Creek Critical Groundwater Area (C.G.A.). The order set exterior boundaries for the basalt groundwater reservoir and divided the area into six subareas. There were no restrictions on pumpage from the basalt groundwater reservoir in the order.

Pumpage must be reduced so that reasonably stable groundwater levels can be reached. To that end, staff developed proposed rules which do the following:

- a) Describe a method for distributing the available groundwater supply.
- b) Describe the method for determining the sustainable annual yield for each subarea.
- c) Provide for adjustments in the sustainable annual yield based on new data.
- d) Provide for adjustments in subarea boundaries based on new data.
- e) Allow for a gradual reduction in pumpage over the next five years if the rules are not challenged in court.
- f) Provide for reporting of annual pumpage.
- g) Give flow meter specifications.
- h) Provide for enforcement of violations.

On March 30, 1990, the Water Resources Commission directed staff to schedule a hearing on the proposed rules for the regulation of pumpage within the Butter Creek C.G.A.

#### Director's Recommendation

The staff recommended that the Water Resources Commission adopt the proposed rules to amend the Umatilla Basin Program to allow a phased-in reduction of pumpage from the basalt reservoir in the Butter Creek Critical Groundwater Area.

#### ADDENDUM TO AGENDA ITEM K:

After the staff report on proposed rules for distribution of groundwater in the Butter Creek Critical Groundwater Area was distributed to the Commission, Steve Sanders, Assistant Attorney General, advised the Department of the need for some minor changes. Also, two individuals submitted a considerable amount of testimony, both at the hearing and by mail. On request from Commissioner Stickel, a more detailed response to the testimony was provided to the Commission.

#### Director's Recommendation

The staff recommended that the proposed rules for distribution of groundwater in the Butter Creek Critical Groundwater Area be adopted as modified by the Assistant Attorney General.

The acting chair ruled that no additional testimony would be taken on this matter.

It was MOVED by Jim Howland and seconded by Mike Jewett to accept the staff's recommendation as amended by the staff report addendum. The motion passed unanimously.

#### PUBLIC COMMENT

Steve Bloom, attorney from Pendleton, representing Bob Schiller and Fritz Cutsforth in the Butter Creek area, claimed that he had had no opportunity to speak on behalf of his clients because "the agenda was changed," apparently a reference to the fact that Agenda Item K was heard early in the meeting. He offered written and oral comments on the Butter Creek rule.

#### C. COMMISSION COMMENTS

1. Hadley Akins reported that a U. S. House Committee approved the full package of funding for phase one of the Umatilla Basin Project.

Akins announced that the date for the Umatilla River Serious Water Management Problem Area workshop was July 9.

Akins further reported that he is critical of the current conservation rules which he thinks need amending so that people will take advantage of them. Akins said he thought that the conservation program is not working and concluded that we should do more to provide incentives for people to conserve water.

2. Cliff Bentz commended the Department staff for their recent series of well-planned statewide policy workshops.

Bentz said he was looking forward to the Commission's August meeting in Ontario and said he hoped everyone would be able to attend.

#### D. DIRECTOR'S REPORT

1. Governor's Watershed Enhancement Board - The Director reported that Didi Malarkey will be leaving GWEB and that the Commission should contemplate appointing a new representative to GWEB. Mike Jewett announced that he thought that he had been appointed to serve and agreed to do so.

It was MOVED by Jim Howland and seconded by Hadley Akins to appoint Mike Jewett to act as the WRC representative on GWEB. The motion passed unanimously.

2. Legislative Activity - Bev Hayes reported that all but one of our legislative concepts were approved for drafting by Legislative Counsel.

The legislative Water Policy Committee met on June 30 for an update on the results of a meeting in May with the governors of the Columbia River Compact states. The committee also examined the Department's response to questions from Representative Larry Sowa.

The committee discussed the fishery on the Columbia River, in which they are keenly interested.

The committee formed a subcommittee on streamflow restoration, chaired by Sen. Dick Springer. The work group will meet on July 5 and 18. The full committee will meet again in September and November.

The committee has continued interest in the Diack matters and wants the Department to keep them informed of new developments.

3. Federal Energy Regulatory Commission The Director reported that the Supreme Court has delivered a decision on the Rock Creek matter and asked Assistant AG Steve Sanders to review the facts of that case. The court, in a unanimous opinion, decided that FERC controlled bypass flows for fish runs. The state of California argued that the state's regulation should prevail, but the court ruled that a FERC license preempted state restrictions. Sanders offered to send copies to the Commission of the court's decision.

4. Emergency Board The Director reported that going to the July E-Board are (1) an item seeking funds in a set-aside for stream restoration, and (2) a report required by a budget note on what it costs us to process an instream water right application. DEQ and ODFW

have recommended that there should not be fees. Instead, general funds should support the processing of instream water right applications.

PUBLIC COMMENT (continued)

John Dehlinger, Klamath Soil and Water Conservation District, went on record to recommend additional water storage as one of the goals for additional water development in the area.

E. INFORMATIONAL REPORT REGARDING APPLICATION 70272 TO USE WATER FROM COLUMBIA RIVER, TRIBUTARY TO THE PACIFIC OCEAN, FOR PRIMARY AND SUPPLEMENTAL IRRIGATION AND REQUEST FOR COMMENTS FROM COMMISSION, KENT AND SHANNON MADISON (MADISON RANCHES), MORROW COUNTY.

On April 2, 1990, Kent and Shannon Madison submitted Application 70272, proposing use up to 33.42 cfs (15,000 GPM) of water from the Columbia River, tributary to the Pacific Ocean, for primary irrigation of 7,597.9 acres and supplemental irrigation of 2,047.3 acres. The ranch intends to use water originally pumped from the Columbia River through the existing Columbia Improvement District (CID) pumping station.

WaterWatch of Oregon and Oregon Trout each submitted formal protests on the grounds that the public interest would be adversely affected due to cumulative impacts on anadromous fish and wildlife values on the Columbia River. They further requested that the permit not be issued until instream water rights are issued "in amounts sufficient to protect" these public uses.

Staff attended a negotiation session between the applicant and WaterWatch. Oregon Trout was unable to attend. The parties agreed to a permit condition to make the Madison permit subordinate to a future instream water right, provided all subsequent permits from the Columbia River were similarly conditioned. The Director could not accept this condition and recommend an alternative.

Director's Recommendation

Based on the information provided by the applicant, and resolution of the pending protests the staff found the issuance of the permit, as conditioned, would not have a significant adverse effect on the public interest. Commission comments were invited. This report was provided for information, and no Commission action was required.

Kent Madison, the applicant, testified as to his understanding of the facts. He explained the potential for discrimination by the state if he accepted the condition recommended by staff and future permits from the Columbia did not receive the same condition.

Roger Nicholson, Water for Life, warned the Commission not to let a special interest group like Oregon WaterWatch dictate conditions for water right permits, something he thinks they are in danger of doing.

It was MOVED by Hadley Akins and seconded by Jim Howland to instruct the Director to issue the permit as written but without the 25-year subordination clause. The motion passed unanimously.