

WATER RESOURCES COMMISSION

MEETING

ONTARIO

AUGUST 3, 1990

MINUTES

Commission members present:

Lorna Stickel, Chair
Cliff Bentz
Jim Howland
Hadley Akins
Mike Jewett
Roger Bachman
Dierdre Malarkey

Water Resources Staff

John Borden
Jan Shaw
Bev Hayes
Steve Applegate
Doug Parrow
Greg Nelson
George Robison
Ken Weese
Ken Lite
Tom Kline
Becky Kreag
Bill Fujii
Fred Lissner
Kent Searles

Others

Dave Castleberry
Jan Boettcher
Representative Denny Jones
Roger Nicholson
Ambrose McAuliffe
Larry Trosi
Ardith Huffaker
David Hunter
Kevin Campbell
Al Cook
Dennis Myhrum
Larry Sullivan
Jill Zarnowitz
Kathy Jordan
Ronald Cunningham
Jim Nakano
Marshall Loba
John Ross
Timothy J. Joyce
Hugh Kerrington
Ronald Jacobs

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 JUNE 21 AND 22 WRC WORK SESSION AND MEETING

It was **MOVED** by Jim Howland and seconded by Hadley Akins to approve the minutes as submitted. Didi Malarkey abstained because she was absent from the June meetings. The motion passed unanimously.

B. REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON A PROPOSED MALHEUR LAKE BASIN PROGRAM PROVISION

At the March 30, 1990, meeting of the Water Resources Commission, alternatives for water availability determinations on new water use permits in the Malheur Lake Basin were discussed. At that time, staff recommended that procedures be implemented to allow applications for permits to be filed only when accompanied by convincing evidence that water is available.

The Attorney General (AG) advised the Commission that implementation of such a procedure constituted rulemaking. The Commission directed staff to develop a draft rule to require that all applications for new uses of water in the Malheur Lake Basin be accompanied by evidence that water is available to provide for the proposed use.

Director's Recommendation

The staff recommended that the Commission authorize a hearing on the draft Malheur Lake Basin Program provision and designate a member of the Commission as the hearings officer.

The Commission asked Didi Malarkey and Cliff Bentz to decide which one of them will act as hearings officer.

Commissioner Jewett suggested changing the periods to commas in Sections (1) and (2) of the proposed rule and the addition of the word "or" at the end of Section (2).

The Commission asked to change the word "persuasive" in 690-512-040 of the proposed rules to the phrase, "by a preponderance of evidence..."

It was **MOVED** by Didi Malarkey and seconded by Cliff Bentz to approve the Director's recommendation and send the proposed rules as modified to hearing. The motion passed unanimously.

C. REQUEST FOR AUTHORIZATION TO CONDUCT PUBLIC HEARING ON REVISIONS TO CONSTRUCTION AND MAINTENANCE OF WELLS RULES OAR 690-200-030, 690-200-050, AND 690-215-005

The 1989 legislative session adopted House Bill (HB) 3515, the Groundwater Protection Act. HB 3515 established a program to protect the environment from contamination by toxic substances, hazardous materials, and waste. It established mechanisms for cleanup and response to contamination and to protect groundwater quality. HB 3515 modified language in ORS 537.775, relating to wasteful or defective wells. The bill altered the existing language of ORS 537.775 to include "threat to health" as an additional criterion for administrative action on a well, and "permanent abandonment of the well" as one of the administrative actions. The Department proposed revisions to existing rules to include the statutory changes.

Director's Recommendation

The staff recommended that the Commission authorize the Department to conduct a rulemaking hearing on the revisions to the Construction and Maintenance of Wells Rules.

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

PUBLIC COMMENT

Dave Castleberry, Warm Springs Irrigation District, thanked the Commission for making the long journey to Malheur County. He reminded them that the local farmers are trying to use water wisely and are trying to conserve.

D. COMMISSION COMMENTS

1. Cliff Bentz reiterated Dave Castleberry's comments and thanked the Commission for coming to Ontario.

Commissioner Bentz had a question about protocol when individual commissioners receive letters from interest groups or private citizens: Should they be forwarded to the Department. In the case of a contested case, for example, such communications could be considered ex parte contacts. The Commission members were advised to forward correspondence to the Commission Assistant and she will copy and send them to all the commissioners.

2. Roger Bachman reported that he had spent Wednesday in the John Day Basin with Watermaster Jerry Rodgers and felt that he had learned a great deal about the area. He asked if the Commission would be interested in his review of the trip. When the Commission agreed, Commissioner Bachman said he would prepare for them a memo describing his trip.

Bachman said that he had been invited to tour the Umatilla Basin with a group currently developing a program for resolving local water problems. He asked if the Commission would prefer another member to represent the Commission on this tour. The Chair asked Commissioner Bachman to take the tour as the Commission's representative.

3. Hadley Akins reported that Tom Simmons (WaterWatch of Oregon, Inc.) had spent several days with him and others in the Umatilla Basin, where Akins was able to demonstrate conserving water-use methods.

Phase I of the Umatilla Basin Project was recently approved by the U. S. House of Representatives, and the Senate is expected to vote on it shortly. Bids will go out soon in order to begin construction on the project by December 1990.

Akins said that he had requested a meeting with the Umatilla River irrigators, which he said was extremely productive. Their goal is to prepare a local Umatilla River management plan as an alternative to the Commission declaring the river a Serious Water Management Problem Area.

Akins noted that many people around the state need more education regarding water rights and water law. He was surprised at the general lack of understanding.

Akins recently met with Ted Hallock and his staff from the Northwest Power Planning Council. At that meeting, Akins described the problems inherent in the potential naming of certain fish species as endangered. Hallock evidently wanted Akins' project group to take a lead in persuading other states to cooperate in proposing mitigation. Chair Stickel asked for a presentation at the next Commission meeting regarding the threatened and endangered species act as it relates to the Columbia River. She asked the staff to discover if the Columbia River Compact Commission would be appointed to act as the "core" group for the Columbia endangered species coordination.

4. Didi Malarkey thanked Cliff Bentz and Dave Castleberry for their hospitality regarding the Commission field trip and meeting.

Commissioner Malarkey reported that she had travelled (along with representatives from BLM, the U. S. Forest Service, and the Extension Service from the western United States and Canada) to Inner Mongolia and the far northwest area of China to inspect grazing practices and range land. Malarkey was also able to visit several local institutions in connection with the travelling group's program. The Commission asked Malarkey to present slides and other material at the next meeting.

5. Mike Jewett said that he had attended his first meeting of the Governor's Watershed Enhancement Board as the WRC representative. He asked that Tom Kline and Lorraine Stahr be invited to a future Commission meeting to describe the role of GWEB and its mission and goals.

6. Lorna Stickel said that Fred Hansen, director of DEQ, has scheduled a meeting with a number of natural resource agencies on heap-leach mining. The Director will attend that meeting.

Commissioner Stickel asked that she be called "Chair Stickel" instead of "chairwoman" or "chairperson."

Commissioner Stickel indicated that the Commission needs a vice-chair designated by the next meeting.

E. DIRECTOR'S REPORT

1. E-Board Funding of Streamflow Restoration Proposal: The Department and Governor's office worked on a stream restoration strategy for Oregon for several months. The Department's stream restoration committee helped identify the scope of the program and candidate areas. The program keys off of the Commission's revised mission statement emphasizing the need to "encourage and foster stream restoration"; under goal 3, "to maintain an Oregon Water Management Program and achieve a coordinated water plan, involving the public, and local, state and federal agencies," the Commission specifically proposed "to develop a stream restoration program"; and under goal 4, to "maximize the availability of water for beneficial uses," the Commission cites the need "to promote stream restoration activities," "to implement a water conservation program" and "to identify potential water sources for structural and non-structural storage, both above and below ground."

The Governor encouraged the Director to pursue the draft Stream Restoration/Water Use strategy. The strategy includes three phases:

1. An E-Board-funded pilot effort to develop consensus on stream restoration strategies in a selected basin and a statewide assessment of stream and watershed restoration projects.
2. A decision package to fund five stream coordinator positions and allocate state funds to help finance agreed-upon stream restoration strategies.
3. A long-range goal of placing stream coordinators in each major basin to help accomplish the major stream restoration and water use needs of the state.

Director's Recommendation

The staff recommended that the Commission concur with the selection of the John Day Basin as the pilot area for the stream restoration program.

The Commission concurred with the Director's recommendation without a formal motion.

2. Need for pre-authorization for filing notices of rulemaking hearings with Secretary of State: The 1989 Legislature adopted Senate Bills (SB) 205, 1118, and 237. SB 205 established new parameters for permitting out-of-basin transfers. SB 1118 enhanced the prospects for consolidating water services and amended the water code relative to municipal water rights. SB 237 required amendment of Division 250 rules governing geothermal resources.

In May of this year, the Secretary of State reduced its schedule for printing agencies' Notices of Proposed Rulemaking and rule adoptions in the Oregon Bulletin. The schedule was changed from the 1st and 15th of each month to publishing only on the 1st of each month. In order to be included in the next month's printing, notices must be filed with the Secretary of State by the 15th of the preceding month. The next Commission meeting is scheduled for September 21, after notice may be filed.

Director's Recommendation

The staff recommended that the Commission pre-authorize staff to file notices of proposed rulemaking for SB 205, SB 237, and SB 1118, and for statewide policies on conservation and riparian areas.

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

3. State Agency Coordination Program Update: On June 21, 1990, the Commission adopted the draft State Agency Coordination (SAC) program, subject to changes approved during the work session. One of those changes involved placing a 60-day limit on the time local governments may have to complete and return a land-use information form to the Department. If no land-use information is received within 60 days of the time the applicant requests it, no further effort is required by the applicant, and the Department may process the water right application. The Commission did not discuss a mechanism for administering this time limit. This report documented how staff implemented the Commission's direction in this regard.