

WATER RESOURCES COMMISSION

MEETING

SPRINGFIELD

SEPTEMBER 21, 1990

MINUTES

Commission members present:

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

Commission members absent:

Dierdre Malarkey

Water Resources Staff

Bill Young
Jan Shaw
Bev Hayes
Steve Sanders
Becky Kreag
Greg Nelson
Jan Koehler
Doug Parrow
Rick Bastasch
John Borden
Steve Applegate
Pam Homer
Fred Lissner
Tom Kline
Jake Szramek
Doug Woodcock
Roberta Jortner
Weisha Mize

Others

Steve Jacky
Dave Degenhardt
Joe Brumbach
Jan Boettcher
Roger Nicholson
Ambrose McAuliffe
David Moon
Libby Henry
Anne Perrault
Karen Russell
Audrey Simmons
Jill Zarnowitz
Susan McAuliffe
Jim Myron
Larry Trosi
Charles Craig

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 AUGUST 3, 1990, WRC MEETING

Hadley Akins asked to make a change on Page 3 of the minutes, under Item D.3. In the first paragraph of that item, Akins reported that the tour of the Umatilla area had been sponsored by Dave Duncan, Bureau of Reclamation, and Bill Porfily, Manager, Stanfield-Westland Irrigation District.

It was MOVED by Hadley Akins, seconded by Cliff Bentz and unanimously approved to accept the minutes as amended.

B. REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON WATER SUPPLY AUTHORITY RULES THAT AMEND OAR CHAPTER 690, DIVISIONS 11 AND 15

In 1987, the Oregon Legislature enacted legislation authorizing the creation of water supply authorities by one or more cities or districts (ORS Chapter 450). The 1989 Legislature passed Senate Bill 1118 and companion House Bill 2936 that expand upon previous water supply authority legislation. These bills allow for greater flexibility and efficiency in the use of water resources by municipalities and water supply authorities. The bills amended the water code.

This required the Commission to develop and adopt administrative rules that implement the legislation. At its August meeting in Ontario, the Commission authorized staff to schedule a public hearing on proposed rules.

As part of this rulemaking process, staff assembled a work group to assist it in developing draft administrative rules. Staff developed draft rules and distributed them for comment. The work group functioned to review and comment on draft rule language.

Director's Recommendation

The staff recommended that the Commission approve draft rules that implement SB 1118 and ORS 537.260, 540.510 and 540.530 for public hearing.

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

C. REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON REVISIONS TO WELL CONSTRUCTION RULES ADDRESSING BACK-SIPHON PREVENTION, OAR 690-200-050 AND 690-215-017

Increasing numbers of irrigators are using their irrigation systems to apply agricultural chemicals to their crops and land. This practice, commonly called chemigation or fertigation, generates concern for groundwater contamination because of the potential for back-siphoning of the chemicals into the well.

In June, 1980 the Environmental Protection Agency established the Label Improvement Program. This program requires pesticide registrants to revise pesticide labels to include, among other things, directions for application and requirement of back-siphon prevention devices as mandatory equipment for pesticide chemigation. These back-siphon prevention devices are designed to prevent the chemicals in the irrigation line from siphoning into the well when the irrigation pump is shut down. Within the state of Oregon, the pesticide chemigation program is

administered by the Department of Agriculture. However, fertilizers and other chemicals are commonly applied through irrigation systems but are not regulated with regard to anti-pollution equipment.

In 1989, the Oregon Legislature adopted House Bill 3515, the Groundwater Protection Act. This bill modified language in ORS 537.780, relating to powers of the Commission. Specifically, the bill alters the language of 537.780 by including "back-siphon prevention devices" with general well construction and maintenance requirements.

The proposed rules reflect the statutory language change, outlining the general standards for back-siphon prevention equipment when fertilizers or chemicals are applied through an irrigation system.

Director's Recommendation

The staff recommended that the Commission authorize the Department to conduct a rulemaking hearing on the draft revisions to the well construction and maintenance rules.

Jim Howland stated that surface waters should also be protected from back-siphoning of agricultural chemicals.

It was MOVED by Jim Howland and seconded by Cliff Bentz to approve the Director's recommendation and to ask the staff to research back-siphoning of surface waters. The motion passed unanimously.

D. REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON REVISIONS TO THE STANDARDS AND PROCEDURES FOR LOW-TEMPERATURE GEOTHERMAL WELLS AND DISPOSAL SYSTEM RULES, OAR CHAPTER 690, DIVISIONS 08, 230 AND 250

Senate Bill 237 was adopted in the 1989 legislative session. Adoption of this bill expanded the authority of the Water Resources Department within the Low-Temperature Geothermal Program. The new language seeks to protect the rights of senior water users from substantial groundwater temperature change and thermal interference between wells by controlling water use.

The new law defines the term "geothermal fluid." It also adds authority to condition or limit a permit to protect senior low-temperature geothermal water users from substantial thermal interference. Oregon law expands the list of reasons for initiating a critical area or for regulating the use of a well to include substantial alteration of groundwater temperatures. By rule, the new law requires adopting a temperature below which low-temperature geothermal appropriations shall not be protected from thermal interference due to non-geothermal appropriation.

The Department drafted rule modifications to define and implement the statutory language changes, and also to clarify elements within existing rules.

Director's Recommendation

The staff recommended that the Commission authorize the Department to conduct a rulemaking hearing on the draft revisions to the Standards and Procedures for Low-Temperature Geothermal Rules.

Cliff Bentz declared a conflict of interest because he has a case which will be directly affected by these rules. He said he would not take part in the discussion nor would he vote.

It was MOVED by Roger Bachman and seconded by Mike Jewett to approve the Director's recommendation. Commissioner Bentz abstained. The motion passed.

E. REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON TWO STATEWIDE WATER POLICIES: CONSERVATION AND EFFICIENT WATER USE, AND RIPARIAN AREA MANAGEMENT ON PUBLIC LANDS

At the January 5, 1990, Commission meeting, staff sought approval to hold a second round of public hearings on revised conservation and riparian-area policies and four others. The Commission withheld hearings authorization for the conservation and riparian-area policies. The Commission directed staff to work with interested parties to resolve remaining issues. The Commission elaborated on this direction at its March 30 meeting by instructing the staff to hold a series of statewide workshops to gather public comment on the conservation and riparian-area policies.

Thirteen workshops were held during May and June. On August 3, the Commission authorized the staff to file notice of hearings for both policies. This report analyzed workshop comments and requests approval of the revised conservation and riparian-area policies for hearings purposes.

Director's Recommendation

The staff recommended that the Commission approve the revised conservation and riparian-area policies for hearing. Staff also invited the Commission to comment on or otherwise direct staff with regard to these policies.

ADDENDUM: REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON TWO STATEWIDE WATER POLICIES: CONSERVATION AND EFFICIENT WATER USE, AND RIPARIAN AREA MANAGEMENT ON PUBLIC LANDS

The proposed definition of "over-appropriated surface water" on page 9 of the draft Conservation and Efficient Water Use policy continued to cause confusion.

Therefore, staff recommended that the proposed definition be modified prior to the hearing to read:

- (c) "Over-appropriated" means a condition of water allocation in which, for a specified period:
 - (A) The quantity of surface water available an average of four out of five years is not sufficient to meet the expected demands from all water rights during the specified period.
 - (B) No change.

Chair Stickel first called for public comments relating to the hearing on the conservation policy.

Jan Boettcher, Oregon Water Resources Congress, said that she appreciated the Department's attention to the comments at the workshops. She hoped that the two hearings could be held on two different nights because many people would like to hear testimony at both meetings.

Ambrose McAuliffe, Water for Life, conveyed his gratitude for restoring his confidence that the public participation process could work.

Roger Nicholson, Water for Life, echoed the comments made by the others and also asked for two different dates for the hearings.

Charles Craig, Oregon Department of Agriculture, seconded what had been said. He said the Department basically supported the proposed rules. The only remaining concern he had was that the language in the policy statement should be applied both to diverted and non-diverted uses of waters of the state.

Larry Trost, Oregon Farm Bureau, said he would like to see a split of the hearing dates.

Joe Brumbach, Oregon Association of Conservation Districts, supported the concept of the additional hearings and appreciated the modifications made to the original draft rule. They do question, though, the wisdom of holding the two hearings simultaneously. His group intends to submit additional testimony at the hearings.

Commissioner Jewett was concerned that the definition of "waste" was too weak because of the phrase "reasonably efficient."

It was MOVED by Mike Jewett and seconded by Roger Bachman to amend the definition of "waste" as discussed and to remove the word "reasonably" and insert "most" on Page 9 at (3)(f). Jewett and Bachman voted yes. The motion failed.

It was MOVED by Mike Jewett and seconded by Jim Howland to omit the word "reasonably" on Page 9 at (3)(f). Cliff Bentz voted no. The motion passed.

It was MOVED by Jim Howland and seconded by Hadley Akins to make the recommended changes in the addendum to the staff report on the definition of "over-appropriate" and approve the amended conservation policy for hearing. The Commission directed the staff to set two separate hearing dates. Howland also directed the staff to work with Forestry to see if something amenable to both departments could be worked out.

Chair Stickel then called for public comment on the hearing for the proposed riparian policy.

Charles Craig, Oregon Department of Agriculture, said that his department is grateful for the opportunity to work with the staff on the riparian policies. He did have one remaining concern with the language and he proposed qualifying the policy based on ecological and economic feasibility.

Steve Jacky, Oregon Department of Forestry, wanted the Commission to withhold approval on the riparian rules because it is not totally consistent with statutes, especially with the land-management agencies in the state. Most of his remarks were included in a letter sent earlier to the Commission. Because the policy was aimed at public lands only, if the rules were adopted, the land-management agencies would not be able to carry out some land-management activities.

It was MOVED by Mike Jewett and seconded by Roger Bachman to send the proposed rules out in current form to hearings, along with the conservation policy. The motion passed unanimously.

PUBLIC COMMENT: No one asked to speak during the public comment period.

F. COMMISSION COMMENTS:

1. Hadley Akins was concerned that approval of applications for instream water rights were granted without exemptions for certain uses, such as future storage or domestic use.

Akins reported on visits through the Umatilla Basin by the Water Policy Committee members and the Governor looking at the Umatilla project and streamflow restoration activities.

Akins asked the staff to work on a statewide storage policy as soon as they can do so.

2. Lorna Stichel reported that she had attended Conserv 90, a conservation conference held in Arizona. She hefted a large \$75 book of proceedings which she offered to loan to any interested Commission members.
3. Roger Bachman asked for a presentation by Walt Trimmer and others on irrigated agriculture so that he could begin making better sense of the technical information on water use that comes to him regularly. The Chair suggested scheduling this for the next meeting.

G. DIRECTOR'S REPORT

1. Informational Report on Columbia River Activities. At its last meeting, the Commission asked for a report on current activities involving the Columbia River. The Commission was especially concerned about the threatened or endangered salmon and the role of the compact. A number of the activities now underway could lead to significant changes in the management of the Columbia River and the system of hydroelectric projects. The Department prepared a summary report that highlighted only those activities most directly related to water management.

2. 1991-93 Budget Update. The Department submitted its 1991-93 agency-requested budget to the Executive Department, Budget and Management Division. During the process of developing the budget, the Commission reviewed status reports on three occasions.

The 1991-93 agency-requested budget includes \$17,023,680 in General Funds, \$4,340,926 in Other Funds, and \$25,000 in Federal Funds, totalling \$21,390,106.

The Director distributed copies of the Department's budget as submitted to the Executive Department.

3. Heap-leach Mining. The Director distributed a petition from a number of organizations asking the state to declare a moratorium on issuing permits for cyanide heap-leach mining operations until a cumulative impact analysis can be prepared. The petition also asked the state to promulgate rules to "implement policies, procedures, and regulations related to the cumulative and comprehensive effects and mitigation of adverse impacts of cyanide heap-leach mining. The Director explained that the petition did not qualify as such under our rules and he expected that we would inform the petitioners of that in the Department's reply.

(Mike Jewett announced that one of the signers on the petition was a former client.)

4. FBC Salmon Farm, Inc. This is a facility on the Pistol River in Gold Beach. A local judge has enjoined three state agencies (WRD, ODFW, and DEQ) from enforcement against the facility for 20 days to allow the owner to correct alleged deficiencies.