

WATER RESOURCES COMMISSION

WORK SESSION

PORTLAND

DECEMBER 6, 1990

MINUTES

Commission members present:

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

Water Resources staff:

Bill Young
Jan Shaw
Beverly Hayes
Becky Kreag
Tom Kline
Mike Mattick
John Borden
Steve Sanders
Ken Weese
Steve Applegate
Rick Bastasch
George Robison
Bill Fujii
Tom Paul

Others:

Roger Nicholson
Doug Meyers
David Childs
David Moon
A. McAuliffe
Frosty Abramson
Jim Myron
Karen Russell
Rick Kruger
Al Mirati
Jill Zarnowitz

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.

1. INFORMATIONAL REPORT BY OREGON FISH AND WILDLIFE AND WATER RESOURCES STAFF ON THE INSTREAM WATER RIGHTS PROCESS

The 1987 Legislature passed SB 140 which established a new type of water right, called instream water rights. These rights are held in trust by the Water Resources Department to support benefits for public uses in streams and lakes. The law requires conversion of existing minimum perennial streamflows to instream water rights; it also provides for new applications for instream water rights from three state agencies: the Oregon Department of Fish and Wildlife (ODFW), the Parks and Recreation Department (Parks), and the Department of Environmental Quality (DEQ). The law also provides for converting existing water rights into instream rights through the transfer process. An additional provision was to set up a process for reserving water for future out-of-stream use for economic development.

On October 28, 1988, the Commission adopted rules to guide the Department in the administration of the 1987 instream water rights legislation.

Of the 530 minimum perennial streamflows subject to this legislation, 497 have been converted. Of the remaining 33 minimum flows, 2 are on the Siletz River in the Mid-Coast Basin, 3 are on the Applegate River in the Rogue Basin and 28 are on various streams in the Willamette Basin.

The Department has received 315 instream water right applications since the October 1988 adoption of administrative rules. 177 of these have arrived since September 1990. The Department has issued final certificates on 36 of the requested stream reaches.

At its October 26, 1990, meeting, the Commission requested a presentation describing the entire instream water right process, including 1) how applicants decide what quantities of water they need; 2) how the Department evaluates instream water right applications; and 3) what effect these rights have on potential storage projects. DEQ and Parks have not yet adopted rules and therefore cannot submit applications. The Commission requested at least two example certificates and the "story" leading to the issuance of each.

Staff from the Oregon Department of Fish and Wildlife presented a report on Item 1, above. The Department's staff report dealt with Items 2 and 3.

Director's Recommendation

This was an informational report and no Commission action was required. Staff asked for any Commission comments regarding the instream water right process.

The Commission requested staff to further analyze the flow regimes for the Meacham and Trout Creek examples and to provide this further analysis at their next meeting. The Commission also requested staff to suggest

language for the instream water right rules to provide exceptions for human consumption and livestock uses.

In response to concerns expressed about the need for more time to review instream water rights, it was MOVED by Roger Bachman and seconded by Didi Malarkey that the response time on all water right applications be increased from 30 to 60 days and that the staff should return to the Commission with a request for public hearing, along with the draft rules. The motion passed unanimously.

Jim Myron, Oregon Trout, thanked the Commission for the previous motion which would, he said, extend the response time. Myron asked that the Fish and Wildlife Commission be allowed to hear this same presentation that the Water Resources Commission had just heard. Chair Stickel asked the Department staff to arrange such a meeting.

A. McAuliffe, Water for Life, thanked the Commission for extending the time period but complained still about the public notice process. He asked that landowners be notified of instream water right applications in their areas.

McAuliffe thought that there were basic problems with the applications, such as excessive flows based on inadequate data and imperfect methodology.

McAuliffe said that his group had filed that day a request for review because of excessive flow amounts requested in instream water right applications and the definition of "waste," among other things.

Karen Russell, WaterWatch of Oregon, Inc., asked the Commission to review Divisions 1 and 11 rules which are "riddled with inconsistencies and lack of clarity." While the Department looks at Fish and Wildlife's methodology, she said, it should examine its own process. The agency also should look closely at legislative intent when studying stock watering and other water uses.

2. REQUEST FOR FINAL APPROVAL OF DEPARTMENT LEGISLATION TO BE SUBMITTED TO THE 1991 LEGISLATURE.

Last spring, the Commission approved 11 legislative concepts for submittal to the 1991 Legislative Assembly. The concepts were approved by the Governor's Office in July. The Commission provided some comments on draft legislation at its October meeting in Dallas.

Legislative Counsel staff members notified agencies that they will not redraft legislation after December 1. The Counsel advised the Department that minor word changes and deletions can be marked on bills when they are filed with the House or Senate. Major revisions will have to wait until bills are considered by a legislative committee. Agency bills must be pre-session filed by December 15. The Governor-elect's transition team

must review all concepts by December 11. Therefore, the Commission's decision on these drafts at this point is to:

1. Move forward with the legislation or not.
2. Make minor changes for pre-session filing.
3. Advise staff of changes you would want to make as the bill is scheduled for hearing.

Director's Recommendation

The staff recommended that the Commission approve the Department's 12 legislative proposals for submittal to the 1991 Legislative Assembly.

After considerable discussion, it was MOVED by Didi Malarkey and seconded by Roger Bachman to approve the draft legislation for pre-session filing. The motion passed unanimously.

There being no further business, the Commission adjourned until the following day.

Respectfully submitted,



Jan Shaw
Commission Assistant

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