

WATER RESOURCES COMMISSION

MEETING

PORTLAND

DECEMBER 7, 1990

MINUTES

Commission members present:

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

Water Resources staff:

**Bill Young
Jan Shaw
Becky Kreag
Tom Kline
Steve Brown
Ves Garner
John Borden
Steve Applegate
Bill Fujii
Steve Sanders
Jan Koehler
Greg Nelson
Doug Parrow
Amin Wahab
Rick Bastasch
Fred Lissner
Tom Paul
Steve Brown
Ken Lite**

Others:

**Audrey Simmons
David Castleberry
Bill Smith
Steve Houston
Bruce Niss
David Moon
David Childs
Kevin Campbell
Larry Trost
Ronald Jacobs
Doug Meyers
Jim Rapp
Tad Milburn
Jim Myron
A. McAuliffe
David Bayles
David Moskowitz
Fred I. Otley
Roger Nicholson
Bruce Estes
Jill Zarnowitz
Walt Trimmer
Alan Cook
Bill Gauvin
Karen Russell
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.

The next four items, Items A, B, C and D, were acted on with a single motion, below.

A. MINUTES OF THE OCTOBER 25-26, 1990, WRC MEETING AND NOVEMBER 13 CONFERENCE CALL.

B. REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON THE PROPOSED AMENDMENT TO THE NORTH COAST BASIN PROGRAM

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. The petition sought 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 the North Coast Basin program 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 and a number of other streams in the Columbia Subbasin only for "utilization of water for human consumption, livestock consumption, power development and instream uses for recreation, wildlife, and fish life purposes."

The Commission considered Lammi's petition at its meeting on February 12. The Commission rejected Lammi's petition but directed staff to study the existing classification and uses on a number of streams in the Columbia Subbasin, including OK Creek, to determine if additional use was warranted. In 1989, the Commission amended the North Coast Basin program to allow certain uses on Tide and Goble creeks in the Columbia Subbasin. Lammi's petition for another amendment was the third request in less than two years. This prompted the Commission to determine if restrictive classification of streams was an issue of broader significance in the Columbia Subbasin. Once this was determined and evidence suggested that such a change was needed, the Commission would initiate rulemaking and conduct a public hearing in the basin. Staff's findings and a subsequent hearing would explore the potential to adequately protect fisheries and water quality while allowing some additional use on each of the small streams. Assuming the basin program were amended and additional use were allowed on the streams in question, any permit application would be judged on its own merits. Mr. Lammi's application would also be considered after the staff's findings.

Possible amendment of the North Coast Basin program also provided the chance to deal with a housekeeping matter. The format of the current North Coast Basin program did not conform with rule codification standards used today. As the Department amends and modifies those basin programs that are not in standard administrative rule format, it proceeds to codify those programs consistent with previous discussions with the Commission. The codification is in accordance with a numbering system that has been discussed with the Secretary of State. This codification was not intended to in any way substantively change the meaning of the program.

Director's Recommendation

The staff recommended that:

1. The Commission initiate rulemaking and authorize staff to schedule a public hearing in the affected basin.
2. The Commission appoint a Commission member* to conduct the hearing.
3. The hearing be held at 7:00 P.M., January 17, 1991, at the Columbia County Courthouse in St. Helens, Oregon.
4. The rulemaking hearing will consider the underlined amendment to the North Coast Basin program.

*Chair Stickel offered to act as hearings officer.

C. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-70718 AND 70124 TO STORE AND USE WATER FROM GALES, CARPENTER AND KNIGHTEN CREEKS AND SEWAGE EFFLUENT, TRIBUTARIES TO THE TUALATIN RIVER, FOR NURSERY OPERATIONS, OREGON GARDEN PRODUCTS, WASHINGTON COUNTY.

On September 26, 1990, and November 16, 1989, Oregon Garden Products, submitted Applications R-70718 and 70124, respectively. Application R-70718 proposed to store up to 200 acre-feet of supplemental water in Ritchey Farm Reservoir from Gales, Carpenter and Knighten Creeks. The structure is 12 feet high. Application 70124 proposed to use up to 15.93 cfs from Gales, Carpenter and Knighten Creeks and from sewage effluent from the Forest Grove Treatment Plant for nursery operations on 561 acres. The project is located in the Tualatin River Basin.

The questions before the Commission were whether the issuance of permits for storage of 200 acre-feet of water and for use of up to 15.91 cfs of water have a significant adverse effect on the public interest. OAR 690-11-080 (2)(a)(C) specifies that dams that impound more than 100 acre-feet be referred to the Commission to make a public interest determination under ORS 537.170. OAR 690-11-080 (2)(a)(A) specifies that proposed appropriations of greater than 5.0 cubic feet per second be referred to the Commission for this same determination.

Director's Recommendation:

The staff recommended that the Commission find that the proposed storage and nursery use of water would not have a significant adverse effect on the public interest and authorize the Director to issue the permits, as conditioned.

D. REQUEST FOR CONCURRENCE WITH THE PARKS AND RECREATION DEPARTMENT'S PROPOSED AMENDMENT TO THE DESCHUTES RIVER SCENIC WATERWAY RULES

Under ORS 390.805 through 390.925, the Water Resources Commission is assigned a number of responsibilities relating to state scenic waterways. The most important responsibility is protecting flows to support recreation, fish, and wildlife in scenic waterways. In addition, the Parks and Recreation Department must obtain the concurrence of the Commission when (1) adopting rules governing the management of lands adjacent to scenic waterways; (2) condemning lands along scenic waterways; or, (3) recommending designation of additional scenic waterways.

The Parks and Recreation Department was proposing to amend rules governing management of the Deschutes River Scenic Waterway to prevent unfair use of campsites by some commercial operators.

The proposed rule amendment was consistent with findings in the Deschutes River Basin Program which state that "recreation is ... an important factor in the economy of the basin" and that there is "potential for more extensive use of existing waters for recreational purposes."

Director's Recommendation

The staff recommended that the Commission concur with the Parks and Recreation Department's proposed rule amendment.

It was MOVED by Jim Howland and seconded by Mike Jewett to approve the Director's recommendation in the four items above, Items A, B, C and D. The motion passed unanimously.

PUBLIC COMMENT

Steven Houston, spoke on his own behalf concerning cancellation of water rights associated with property he owns.

After some discussion, the Commission asked the Department to review this issue and come back before the Commission at a later time.

E. COMMISSION COMMENTS

1. Didi Malarkey reported that she had attended a groundwater conference and had learned about new technology developed at Oregon State University.

Malarkey asked the Department about the Willamette and Deschutes planning process. Becky Kreag reviewed the progress of the basin planning, reporting that the Willamette Basin plan will come before the Commission at its March meeting, and the Deschutes work priorities will come to the Commission at a future meeting.

2. Jim Howland remarked how impressed he was with the way the staff had taken the proposed statewide policies to the public, listened to public testimony, and made appropriate changes in the policies where necessary.

3. Lorna Stickel reported that Bill Young, Steve Sanders and she had recently attended the quarterly meeting of the Western States Water Council in Denver. Stickel offered the proceedings book for review by anyone interested.

Stickel delivered a speech at the recent convention of the Association of Oregon Counties. She offered copies of her speech for distribution to the Commission members.

4. Hadley Akins reported that Phase One of the Umatilla Basin Project had been funded, including part of the second phase which is predicated on getting 220 cfs from the Columbia River.

The Hermiston Regional Water Plan to satisfy increasing economic development demands is being readied and will contain a complicated water right application. Akins stated that he felt that pre-application conferences might be appropriate on both of these issues. He said he will inform potential applicants to contact Salem to set up these conferences.

F. DIRECTOR'S REPORT.

1. Request for Authorization to conduct a Public Hearing on Proposed Amendment of OAR 690-01-041(1).

At its June 22, 1990, meeting, the Commission adopted procedural rule 690-01-041 concerning proposed and final orders and filing of exceptions. In subsection (1), parties are given 60 days in which to file exceptions to proposed orders. The practice of the Department and Commission prior to adoption of this rule was to provide 30 days for filing exceptions. The 60-day provision was a typographical error on the part of the author who had intended to provide a 30-day period in this rule.

Director's Recommendation

The staff recommended the amendment of OAR 690-01-041(1). The staff further recommends that the Commission direct the staff to file the notice of proposed rule amendment and distribute the notice of hearing.

The Director told the Commission that he would bring this matter back at the Commission's February 1 meeting.

2. **Request for time extension.** In November, representatives of Clackamas County and Oregon Association of Water Utilities requested an extension of the written comment period in which to respond to the proposed Sandy Basin rules and plan. The Department suggested postponing final action on the rules until the March 1991 Commission meeting rather than grant a time extension. Postponing action until March would provide additional time to work out alternatives and solutions. The staff would characterize the status and options open to the Commission in its staff report prepared for the March meeting.

3. **Butter Creek Critical Groundwater Area.** Steve Sanders reported that the Department had received two petitions on this matter. The first asked for a modification of the Umatilla Basin Program. The purpose was to repeal the provision in the proposed Butter Creek distribution rules that would have eliminated the gradual phase-in of pumping reductions in the event of a legal challenge to the rules. This provision was deleted prior to adoption of the rules.

A reply letter for the Director's signature was to be prepared explaining that fact and indicating, therefore, that the petition was denied.

The second petition was for judicial review of the Butter Creek groundwater distribution rules. The basis of the petition was the claim that "...the rights of the petitioners to pump groundwater...will be substantially curtailed or eliminated" under terms of the rules. The Department is not stayed from enforcing the rules pending outcome of the judicial review.

The Department was awaiting information from legal counsel as to the level of the agency's involvement in the legal proceedings.

4. **Water right application from the City of Sherwood.** Groundwater users in the area have expressed concern about water levels in local wells. These problems may mature into a public interest question, the Director told the Commission. This might be an appropriate situation to consider alternative dispute-resolution techniques.

5. **State Agency Coordination.** The Land Conservation and Development Commission approved WRD's SAC program on November 8 and commended the agency's staff for their fine work on this program. The Department will continue to implement the program in the coming months by visiting with local governments and reacquainting WRD personnel with program particulars.

6. **Scenic waterway flow assessments.** Pursuant to the Commission's direction at its last meeting, the agency will hold a series of public meetings in association with the scenic waterway flow assessments. Two meetings for the Deschutes Scenic Waterway Flow Assessment will be held in the first week in January in Bend and either Madras or Maupin. The Department staff expects to return to the Commission at a future meeting with results. The Commission was invited to attend the meetings.

7. **Supplemental Environmental Impact Statement on Elk Creek Dam.** The Department must coordinate a state response to the SEIS which was mailed out by the Corps of Engineers the week of December 3. Comments are due January 28. Commission members were invited to contact the Department for additional information.

8. **Legislation.** The Director described the Department's customary methods for filing and tracking bills during legislative sessions. In past sessions, the Commission has been involved in a weekly conference telephone meeting for the Department's commentary and up-to-date analyses of bills. The Director asked the Commission members how they would like to be

Included in regular reviews of new legislation and changes in current bills. After the Commission has had time to reflect, the Director will approach them at the February 1 meeting for their ideas.

9. FBC Salmon Farm. The Director updated the Commission on the current status of this matter. A \$2,500 civil penalty was assessed and collected from the owner, Fred B. Cuda. The agency has asked the AG for assurance that the process was moving forward. If this was not the case, the Department was prepared to assess daily penalties plus any additional monies owing.

G. INFORMATIONAL REPORT: IRRIGATION CONSERVATION TECHNIQUES.

Walt Trimmer, Oregon State University Extension Service, gave a slide presentation and discussion of techniques for conserving water during irrigation.

H. REQUEST FOR APPROVAL OF JOHN DAY RIVER SCENIC WATERWAY FLOWS FOR DIACK FINDINGS

A first draft of the John Day River Scenic Waterway Flow Assessment was presented to the Commission at its August 3, 1990, meeting. The Commission reviewed the report and directed staff to hold workshops in the John Day basin to gather public input on the report. Two workshops were held in October. At the October 26 meeting, staff provided the Commission with a brief report on the workshops and indicated more detailed information would be presented at this Commission meeting. In addition, at the October 26 meeting, staff requested and received approval to incorporate public workshops into the flow assessment workplan for all Scenic Waterways and revise the schedule accordingly.

Staff evaluated public comment and revised portions of the assessment to reflect public concerns.

In accordance with the Diack decision, before issuing new water rights, the Commission must find that recreation, fish and wildlife uses in the scenic waterway will not be impaired. The John Day Scenic Waterway Flow Assessment documents flow ranges needed to support recreation, fish, and wildlife. The Commission could use this documentation to make findings on pending and future water rights in or upstream from scenic waterway reaches. There are 204 pending water use applications in the John Day basin. Most of these are from the federal government for existing livestock watering ponds.

Director's Recommendation

The staff recommended approval of the John Day Scenic Waterway Assessment and the use of the mid-level flow ranges for the Mainstem and North Fork sections, and the base level flow range for the Middle Fork and the South Fork, as specified therein for making findings pursuant to the Diack decision. Additionally, the Commission was asked if it wished to direct staff to explore other options, including administrative actions such as withdrawal or restrictive classification.

Alan Cook, Oregon Parks and Recreation Department, said that after their commission adopted the instream water rights rules during the following week, they would be looking carefully at WRD's rules before filing any instream water rights applications with the Department.

Kevin Campbell, Grant County judge, said that the Diack findings must be based on a strategy that is based on fact. He believed that what the Department was doing in the John Day area was "deceive and leave." He believed his obligation was to get this strategy changed. It is not fair, Campbell said, to "put figures on paper which are not achievable." The Department should make findings on Diack based on facts on specific sites. The Department needs a common goal and a common objective, he said.