

WATER RESOURCES COMMISSION

MEETING

SALEM

MARCH 8, 1991

MINUTES

Commission Members present:

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

Water Resources staff:

Bill Young
Jan Shaw
Steve Sanders
Pam Homer
Becky Kreag
Fred Lissner
Tom Kline
Mike Zanon
Mike Zwart
Doug Parrow
Greg Nelson
Amin Wahab
Mike Mattick
Steve Applegate
Weisha Mize

Others:

Leonard Knott
Audrey Simmons
Mildred Gressel
Bruce Niss
Dick Robbins
Jan Boettcher
Kip Lombard
Mike Walker
Clay Moorhead
David Moon
Jerry Schmidt
John Borge
Jill Zarnowitz
Roger Nicholson
Ambrose McAuliffe
Charles Ciecko
Marjo Nelson
David Moskowitz
Daryl Peters
Jim Myron

A. MINUTES OF THE FEBRUARY 1 WRC MEETING.

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

B. REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON AMENDMENTS TO THE WATER USE REPORTING RULES (OAR 690-85-010).

At its September 21, 1990, meeting, the Water Resources Commission was informed of a staff proposal for revising the water-use reporting rules. Under the current rules, methods used by public entities to estimate water use must be approved in advance by the Director for reports submitted after December 31, 1991. The staff proposed a process for approving methods which would minimize the need for the Department to review individual proposals.

Director's Recommendation

The staff recommended that the Commission authorize a hearing on the draft water-use reporting rules.

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

C. REQUEST FOR AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON PROPOSED RULES FOR REGULATION OF THE PROPOSED STAGE GULCH CRITICAL GROUNDWATER AREA.

At its October 25, 1990, work session, the Commission reviewed alternative strategies for groundwater management for the Stage Gulch area of Umatilla County. The recommended alternative was to follow the course of action that the Department pursued in the Butter Creek Critical Groundwater Area determination. That was a two-part process in which a contested case hearing was held to establish the external boundaries of the area, as well as the internal subarea boundaries. The second part of the process, a rulemaking hearing, was held to identify proposed management strategies for each subarea. The adopted rule amends the Umatilla Basin Program.

Director's Recommendation

The staff recommended that the Commission conduct a public hearing on proposed rules to amend the Umatilla Basin Program. The proposed rules seek to regulate pumpage of water from the basalt reservoir in the proposed Stage Gulch Critical Groundwater Area. The Commission also was asked to appoint a member to conduct the hearing on March 27th in Hermiston.

ADDENDUM:

The hearings referee issued a proposed order on March 7, 1991, following a contested case hearing held in Hermiston on February 14. Amended draft rules were distributed to the Commission. The amendments were necessary for agreement with the proposed order. They address changes in the size, total number of, and nomenclature for, proposed subareas within the Stage Gulch area.

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

D. REQUEST FOR CONCURRENCE IN CONSERVATION ADVISORY COMMITTEE MEMBERSHIP.

No staff report was prepared for this item. After an oral report, there was general discussion among the Commission members and staff, but no formal action was taken.

E. PUBLIC COMMENT: No one chose to speak.

F. COMMISSION COMMENTS

1. Roger Bachman commended the staff for preparing a current version of the Department's rulemaking activity schedule.

2. Cliff Bentz and Mike Jewett remarked that they meant no criticism the day before on the staff's report on the Willamette Basin and commended the Department for good work on this issue.

3. Lorna Stickel asked about a parting gift for Commission member Didi Malarkey who resigned last month. Jan Shaw will arrange for the purchase of mementos of Malarkey's term with the Commission.

G. DIRECTOR'S REPORT

1. Rulemaking activity: The Director said that the staff would issue regular updates of the rulemaking schedule.

2. Next meeting: The Director told the Commission that the Department's staff was preparing for the next meeting a slide show on gauging stations and the measuring process.

3. Request from Oregon Cranberry Farmers' Alliance for Amendment of OAR 690-11-095(3), Extensions of Time.

The Oregon Cranberry Farmers' Alliance submitted a request to allow extensions of time limits of up to five years under permits for cranberry use. The request was supported by Senator Bill Bradbury.

The Commission adopted a rule revision at its August 3, 1990, meeting, which now limits extensions of time to one year, except for permits for municipal, quasi-municipal, group domestic and districts. These are allowed extensions of up to five years at a time.

The Administrative Procedures Act allows any interested person to file a petition with the agency to amend an existing rule. The staff believed that, although this request did not meet all of the formal rule requirements for such a petition, it should be treated as such.

The Director had responded earlier to Senator Bradbury, explaining that timely development of water use under permits was important. Staff thus recommended to the Commission that rule-making not be initiated and the petition (request) be denied.

Director's Recommendation:

The staff recommended that the petition for rulemaking be denied.

It was MOVED by Mike Jewett and seconded by Hadley Akins to accept the Director's recommendation. The motion passed unanimously. The petition was denied.

4. Sandy River Basin Program Plan.

The Director distributed a letter from Clackamas County on this matter. The County said it was "reluctant to support a program that fails to resolve the critical issue of availability of water for human consumption."

The County urged the Department to take a lead role in resolving remaining water issues and to continue the development of an equitable program for all users.

5. Legislation: Bev Hayes reviewed the latest activity at the Legislature. She reported that three draft bills were introduced by the Water Policy Committee on March 7.

Hayes said that on Tuesday the Senate committee heard three agencies (WRD, Fish and Wildlife, and DEQ) on water conditions around the state. The committee expressed concern about state laws which could not protect instream flows at times of drought.

The House on Tuesday discussed the spring bill (SB 202), the only bill scheduled to be heard. Some additional concerns were expressed by the Committee.

The Committee has had continuing discussion on SB 208, which would repeal certain provisions in the law regarding hydro facilities. The agency had received additional requests for information from a number of groups and would be taking it up again the following week.

The Department has had discussions on its groundwater bill, and it seemed like agreement would be reached by next Tuesday's meeting.

The Commission decided to take up discussion of a draft bill, LC 3119, at its next Monday conference call.

Hayes reported that on Tuesday the House committee would consider the critical groundwater bill and HB 2762, sponsored by Representative Denny Jones, which repeals the agency's civil penalty authority. The Department will testify in opposition to that bill.

H. REQUEST FOR APPROVAL TO INITIATE DEVELOPMENT OF THE STATE WATER RESOURCE POLICIES FOR WATER ALLOCATION AND STORAGE

The Water Resources Commission is responsible by statute for adopting policies to guide and integrate state water management. In striving to achieve this goal, the Commission worked with other agencies and interest groups in 1987 to develop a new water planning process for Oregon. The process was approved by the Commission and endorsed by the Strategic Water Management Group in 1988.

As part of this process, the Commission embarked on adopting state resource policies on a broad range of water management topics. State policies address important water management issues across the state. Adoption of statewide policies prevents repetitive policy setting or nagging inconsistencies in basin programs. The policies also set out ways they will be implemented.

In May 1989, the Commission directed the Department to formulate policy statements for six topics. These were 1) Groundwater Management, 2) Hydro-electric Power Development, 3) Instream Flow Protection, 4) Interstate Cooperation, 5) Protection of Water Resources on Public Riparian Lands, and 6) Conservation and Efficient Water Use. The Commission adopted all six of these policies in 1990.

The 1991-93 biennial water management program lists water allocation and storage as two policies which the Water Resources Department intends to develop. The staff requested the Commission's approval to initiate work on those two policies. The staff report outlined and proposed approaches to developing the statewide allocation and storage policies.

Director's Recommendation

The staff recommended that the Commission approve the process and time-line to develop state policies on water allocation and storage. Staff also recommended the Commission provide further direction on the formation of one or two advisory committees including designation of Commission member(s).

Roger Bachman and Mike Jewett offered to act as members of the group on allocation.

Jim Howland and Cliff Bentz offered to work on storage.

Jan Boettcher, Oregon Water Resources Congress, said that they have been working on this issue for a long time and wanted to be included on the committees. They are also supporting legislation introduced by Rep. Chuck Norris (HB 3373) which sets priorities for storage as a development concept for the state. Norris is supportive of moving forward on this process that the Department has proposed.

The Department said that the time line for this process may slip. The two committees are to be made up of 8-12 citizens each and with representation from among the Commission members.

Chair Stickel said that the final membership of the two committees should be reviewed by the Commission, before the workshops, possibly during a Monday morning conference call.

I. PROPOSED ADOPTION OF SANDY BASIN PROGRAM (OAR CHAPTER 690 DIVISION 503) AND APPROVAL OF SANDY BASIN PLAN

The waters of the Sandy River Basin are extensively protected in favor of instream, recreational and scenic values. The protection is achieved through legislative withdrawals, state scenic waterway and national wild and scenic river designations, and the Columbia Gorge legislation. About 70 percent of the Sandy Basin is in federal ownership. As a result, land and water resource development in the basin remains limited. Population in the basin is sparse. The city of Sandy, which straddles the Willamette-Sandy Basin boundary, is the largest population center. A number of small unincorporated communities are located in the upper Sandy Basin.

Agricultural development is limited and projected to remain that way into the next century. The major consumptive use of water from the Sandy River Basin is for municipal purposes in the Portland metropolitan area. The state Legislature granted the city of Portland exclusive rights to the Bull Run and Little Sandy Rivers in 1909. A number of other streams are also withdrawn from further appropriation by statute to protect fisheries and scenic values in the basin.

For management purposes, the Sandy River Basin has traditionally been considered part of the adjacent Willamette River Basin. The proposed Sandy Basin program and plan will be the first such documents dealing with the Sandy as a separate basin.

Director's Recommendation

The staff recommended that the Commission:

1. Review the hearing transcript and summary of oral and written comments and staff response.
2. Approve the proposed Sandy Basin plan.
3. Adopt the proposed Sandy Basin program (OAR Chapter 690 Division 503.)

(Lorna Stickel withdrew from consideration of this item because of her employment with the Portland Water Bureau. She turned the meeting over to the vice-chair and left the room.)

Jim Howland MOVED to make a change on Page 3 of the report. The motion was seconded by Cliff Bentz. Hadley Akins, Roger Bachman, Cliff Bentz and Mike Jewett voted no. The motion failed.

(Lorna Stickel entered the meeting room at this point but sat at the rear and took no part in the deliberations.)

It was MOVED by Jim Howland and seconded by Roger Bachman to adopt the Director's recommendation. The motion passed unanimously.

(Chair Stickel returned to the meeting table at this point.)

J. PROPOSED ADOPTION OF AMENDMENT TO THE NORTH COAST BASIN PROGRAM (OAR CHAPTER 690 DIVISION 501)

On January 15, 1990, the Department received a petition from George N. Lammi of Lammi Sand and Rock seeking a change in the existing stream classification for OK Creek, a tributary to Westport Slough in the Columbia Subbasin. 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 Commission considered Lammi's petition at its meeting on February 12, 1990. The Commission rejected Lammi's petition but directed staff to determine if there was sufficient demand for sand and gravel washing to broaden the classification for the entire subbasin.

Staff's findings indicated there was no pressing need to open the classification in the Columbia Subbasin to allow additional uses for sand and gravel operations. ODFW strongly recommended against opening streams in the subbasin to sand and gravel uses and recommended that streams on which use of water for sand and gravel is already allowed be evaluated for water availability before additional permits are issued. ODFW suggested that tighter restrictions were needed on a number of streams in the Columbia Subbasin to protect populations of fish that are on the state sensitive species list or proposed for federal threatened and endangered status.

DEQ and Columbia County also believed broadening the classification was unnecessary. Columbia County supports environmental protection, but it has indicated that a more restrictive classification of streams could be detrimental to the economy of the county. The county prefers that potential water users be given the opportunity to use water, provided they meet the resource protection standards established by various agencies. Staff presented its findings to the Commission at its December 7, 1990, meeting.

At the December 7 meeting, the Commission authorized staff to conduct a public hearing on a limited amendment to the North Coast Basin program. The amendment would be limited to protecting water quality in OK Creek.

Commissioner Bachman presided over the rulemaking hearing held January 17, 1991, at the Columbia County Courthouse in St. Helens. Attendance was light, and no testimony was offered on the proposed amendment.

Only ODFW and WaterWatch of Oregon submitted written comments on the proposed amendment by the deadline.

Director's Recommendation

The staff recommended that the Commission amend the North Coast Basin program as proposed.

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

K. REQUEST FOR APPROVAL OF A PROPOSED CONDITION FOR ALL NEW INSTREAM WATER RIGHTS; AND, REQUEST FOR GUIDANCE REGARDING A PROCESS FOR REVIEWING OREGON DEPARTMENT OF FISH AND WILDLIFE INSTREAM WATER RIGHT APPLICATIONS

At its October 26, 1990, meeting the Commission expressed concern over instream water right applications which appeared to request excessive flow levels. Staff was directed to describe the procedure used when processing instream water right applications.

Staff discussed several issues at the December 6, 1990, and the February 1, 1991, Commission meetings. The issues included the effect instream water rights have on the development of storage facilities. Staff concluded that instream water rights could, but would not always, preclude future storage projects. A statutory provision also exists which provides for establishing precedence of future multi-purpose storage, municipal use or municipal hydroelectric projects over an instream water right.

Also discussed was the absence of any exceptions for future stock or human consumption needs on streams where instream water rights are issued. Staff suggested that allowing the development of off-stream watering facilities would, in most cases, be in the public interest. The Oregon Department of Fish and Wildlife (ODFW) does not oppose the development of stock watering facilities outside of riparian areas. However, they are opposed to any standard or special conditions which are not proven to be warranted.

Staff proposed a method to identify where stock exceptions may be warranted. The method relies on the Soil and Water Conservation Districts to identify applications where livestock watering may be a concern. The Department sent a questionnaire to each district office. Those individuals willing to evaluate instream water right applications will be notified of new applications within their districts.

Staff has not identified a clear need to condition future instream water rights for domestic use or human consumption. When public comments convince the Department it is appropriate, draft certificates containing the exception could be presented to the applicant (ODFW). If the applicant agrees to the exception, the certificate would be issued as such. If not, a recommendation to hold a contested case hearing could be made to the Commission.

Since the February 1 meeting, staff worked with ODFW to resolve instream water right applications requesting more than the average natural flow.

The Commission requested staff to evaluate the following concepts:

--The ability of the Commission to make off-stream stock watering an exempt use. The intent would be to make off-stream facilities exempt from having to file an application and from regulation to satisfy senior instream water rights.

--The ability of the Commission to establish different standards than are currently used when evaluating instream water right applications. Could the Commission use something other than "estimated average natural flow" as a standard?

--The authority of the Commission to establish instream water rights at two levels, one level to identify and protect the actual flows present today, the other to establish a management objective to be achieved through conservation, riparian area enhancement, storage or other methods.

Should this last concept prove feasible, staff was instructed to examine the Commission's ability to establish instream water rights in such a manner that should legislation ever be adopted which would move instream water rights ahead of all other water rights, only the portion which described the actual flows present today would gain this precedence.

Director's Recommendation

The staff recommended that:

1. The Department continue to rely on public comments to identify where exceptions for livestock and human consumption are necessary;
2. The Department continue using the existing standards when evaluating instream water right applications; and
3. The Commission approve the proposed "boiler plate" instream water right certificate condition pertaining to prior rights.
4. Staff return at next meeting with thorough analysis of 10 ISWR applications and recommendations on their disposition.

Kip Lombard, Oregon Water Resources Congress, said that generally the process appears to be workable and that they would support it. They will be tracking this matter closely, he said.

Lombard suggested that the Department exercise caution and recommended classifying streams rather than withdrawing them. He urged the Department to look at storage and at other means for enhancing streamflows.

David Moon, Water for Life, made several charges, as follows:

- .The ultimate standard for instream water rights is being ignored.
- .ODFW applications ignore reality and actual flow levels available.
- .Requests are for optimum flows rather than minimum flows necessary to support the public use.
- .There is a lackadaisical attitude by WRD and ODFW in connection with instream water rights and streamflow restoration.

Moon said that the valuable water resources of Oregon demand thorough review of all instream water right applications as opposed to uncontrolled discretion being granted to ODFW, DEQ or Parks.

Jill Zarnowitz, Fish and Wildlife Department, said she thought that the Department's rules were good rules but that they needed to be tested. The agency needs to work through some of the instream water right applications as they have been submitted.

Zarnowitz claimed that their rules reflected proven scientific methods and are reliable.

Audrey Simmons, WaterWatch of Oregon, Inc., began her comments by reviewing some of the history of the minimum streamflow program. She thought that it was not necessary for WRD to be second-guessing other state agencies who have been charged with certain protections of the state's water resources.

Jim Myron, Oregon Trout, handed out Fish & Wildlife's list of sensitive fish species. Oregon Trout recommended, he said, that the Commission consider each water right submission on a case-by-case basis.

Ambrose McAuliffe, Water for Life, began his remarks by describing the fish-screening issue and said much time had been spent to resolve this issue. He said that from the point of view of a landowner and a water user, he sees the possibility of losing his rights to use water. McAuliffe invited the Commission to visit his area so he could "walk them through" his individual situation.

Chair Stickel polled the Commission members on whether they saw more work before them to reach a resolution of this issue. Hadley Akins, Jim Howland and Mike Jewett said they did.

There was some discussion of whether Fish & Wildlife should submit instream water right applications with conditions already attached.

The Commission agreed with the Department's recommendations in this matter, except for Recommendation #3 which should not be pursued.

(Cliff Bentz left the meeting at this point.)

The Commission returned to a discussion of their work session item, the Willamette Basin program and plan.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Jan Shaw
Commission Assistant

JS:jz

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