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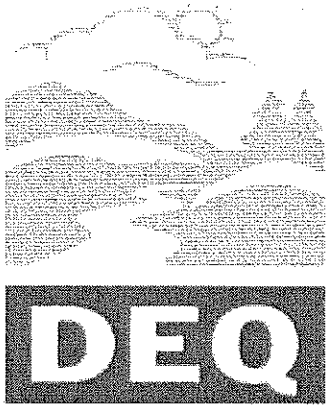
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS



State of Oregon
Department of Environmental Quality

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MINUTES OF A SPECIAL MEETING

BETWEEN

THE OREGON ENVIRONMENTAL QUALITY COMMISSION

AND

THE OREGON WATER POLICY REVIEW BOARD

May 8, 1981

On Friday, May 8, 1981, the Oregon Environmental Quality Commission and the Oregon Water Policy Review Board held a first-time joint work session in the State Department of Forestry conference room at 2600 State Street, Salem. Those present from the Environmental Quality Commission were Mr. Joe B. Richards, Chairman; Mr. Albert H. Densmore, Vice-Chairman; Mr. Fred J. Burgess, and Mr. Ronald M. Somers. Present from the Water Policy Review Board were Mr. Donel J. Lane, Chairman; Mr. George H. Proctor, Vice Chairman; Mrs. Ellen Lowe, Mrs. Jean Frost, Mr. William D. Cramer, Mr. Donald Butsch, and Mr. Jack A. Hoffbuhr. Each department has several staff members present.

The meeting was opened by Donel Lane, Chairman of the Water Policy Review Board. He first introduced the members of his Board. Chairman Joe Richards, of the Environmental Quality Commission, then introduced his fellow members.

The Commission and the Board had three topics of common interest to discuss:

1. Minimum flow regulation in the Willamette River.
2. Current agency efforts regarding groundwater.
3. Basin management program and plan up-date process.

A brief summary of each discussion follows:

Minimum Flow Regulation in the Willamette River

Mr. Lane commenced the discussion with a brief, general background statement on the reason for the dual agency meeting, and a history of the river's quality and quantity relationships over the last 30 or 40 years.

Roughly 50 percent of the Willamette River's regulated 6000 cfs minimum flow at Salem is made up of stored water releases from Corps of Engineers reservoirs in the upper drainage basin. Storage projects were authorized by Congress for a number of specific beneficial uses, but these did not clearly include fisheries and water quality maintenance. Fisheries and water quality maintenance benefits, therefore, have come from water volumes released for other authorized uses.

The purpose of the two agencies meeting was to discuss possible ways the augmented flows for fisheries and water quality could gain firm legal recognition.

The DEQ staff prepared an issue paper on this subject as background information for the two agencies and other interested parties such as the Corps of Engineers, Oregon Department of Fish and Wildlife, and Associated Oregon Industries.

Harold Sawyer, Administrator of the DEQ Water Quality Control Division, gave a detailed briefing of the issue paper contents, i.e., the low flow problem, authorized project purposes, nonauthorized benefits, previous state resolutions to the Corps on the subject of minimum flow maintenance, and concerns raised by the Corps relative to possible project reauthorization.

Board and Commission members from the respective agencies briefly discussed matters of the issue paper, then called upon Dave Geiger, Portland District Corps of Engineers, to identify his major concerns about the legal/political process needed to get fisheries and water quality maintenance fully and clearly recognized as project benefits. He named two outstanding concerns: (1) The local Corps District may lose its presently exercised flexibility of management over storage and release of waters. Project management may revert to only those narrower, rigid project benefits identified in congressional authorization. (2) Seeking project reauthorization to legally include fisheries and water quality maintenance benefits may lead to Congress requiring project cost sharing by the state.

Mr. Richards asked Mr. Geiger what are the conditions under which the Corps might refuse to maintain a minimum flow of 6000 cfs flow at Salem. The answer was, only during a drought condition when there would be a basinwide shortage of water would the Corps envision that 6000 cfs would not be met. Under those conditions the Corps would coordinate in advance with the state and federal fishery agencies for the best use of available water.

Mr. Sawyer went on to give a history of water pollution control accomplishments in the basin and how these have been and will be influenced by both normal and drought flows.

Mr. Tom Donaca, Associated Oregon Industries, discussed the problems and restrictions faced by industries during the 1977 drought.

Mr. Sawyer explained the very well coordinated program between fishery agencies, DEQ, Water Resources Department, and the Corps, that has allowed flexible river flow management up until this time. - - - Corps flexibility may be lost if challenged.

Mr. Pat Keough of the Corps commented on the fact that project reimbursement would not be required for anadromous fishery benefits that are in the "national interest" - like on the Rogue River. Discussion of the group then centered on the question whether fisheries in the Willamette River would qualify for "national interest" status.

Mr. Geiger said that most of the present minimum river flow augmentation now comes from waters authorized for irrigation and navigation. He stressed the point of interest that an agency move toward designating these presently "unused" supplies for fisheries and downstream water quality maintenance may very likely lead to hydro-power or recreational demands to hold the same water in summer storage. He also stated that present, flexible project operation practices cannot be used as reason to move away from the authorized project purposes. Thus, if the river's anadromous fish cannot be recognized as being in the "national interest", the maintenance of 6000 cfs to benefit fisheries would likely require reimbursement.

There was some discussion by the group whether the Northwest Power Bill might be an avenue to pursue for flows to aid fish. Mr. Lou Fredd, Fish and Wildlife Department, commented on the bill's fishery protection requirements, but did not yet know whether, or to what extent, they would apply to the Willamette River.

After several rounds of re-hashing the pros and cons of the issue, the group generally agreed that resolution of the problem may best get off to the next step through political channels. The major question would be whether the anadromous fishery could qualify for "national interest" status and whether such status would qualify them for a minimum flow of 6000 cfs without the stigma of state reimbursement for the release of stored water.

It was moved by Chairman Richards, seconded by Commissioner Somers, and unanimously carried by the Environmental Quality Commission, to have Ray Underwood, state's general counsel, explore the various routes by which the state could seek an opinion from the Corps of Engineers' general counsel in Washington, D.C. whether the Corps could make a legal declaration, commitment, or enter into a state/federal agreement to maintain a minimum flow of 6000 cfs in the Willamette River (Salem). The inquiry would be

based on a determined need of such flow to guarantee water in quantity and quality for anadromous fish stocks that are declared to be in the "national interest." In short, what's the best way to legally achieve the state goal of a minimum flow of 6000 cfs in the Willamette River? - preferably, without congressional reauthorization and without reimbursement.

It was further agreed, in discussion by the EQC, that the question to the Corps' counsel could best be delivered through an Oregon Senator's office - implication being Senator Hatfield. If, in the early discussions with Corps' counsel, it appears that their opinion would be adverse to the state's goal, further pursuit of the opinion shall be dropped - at least temporarily.

Note: The Water Policy Review Board took no formal action on the matter.

Current Agency Efforts Regarding Groundwater

Mr. Sawyer opened the discussion with an appeal for closer cooperation between DEQ and the Water Resources Department on water quality and quantity factors in groundwater management. He stressed the need for a preventive program rather than dealing with problems after they are created.

He gave the group a briefing on the Environmental Quality Commission's recently adopted interim groundwater protection policy. Some Water Policy Review Board members felt the policy language inferred a DEQ takeover of Water Resources Department responsibility. The difference of language interpretation was apparently resolved by Mr. Sawyer's explanation of its meaning and citing of field examples.

Mr. Al Petska, from the Water Resources Department staff, gave a briefing on the various elements of their groundwater management program.

The matter of closer coordination between the two agencies was left rather in the position of status quo. It will be pursued further at the staff level.

Basin Management Program and Plan Update Process

Mr. Sawyer expressed a need for closer coordination of the basin planning activities conducted by each agency. The DEQ has flexibility that would allow a certain amount of adjustment to Water Resources Department schedules for hearings on beneficial uses and standards.

Ellen Lowe, Water Policy Review Board, explained that current budget restrictions would greatly hinder and limit their department's ability to coordinate satisfactorily with the DEQ.

Darrell Learn, WRD, told how difficult it would be to adjust the longer time spans of their planning process to the DEQ's shorter time frames.

Mr. Lane suggested that budgeting for better coordination could possibly get support in the next biennium.

There being no further topics for discussion, the joint meeting was adjourned.

GDC:l
TL355 (1)
6/25/81

File

bcc: Ray Underwood
HLSawyer/GDCarter
WHYoung
EQC

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 S.W. 5th AVENUE, BOX 1760, PORTLAND, OREGON 97207

July 7, 1981

The Honorable Mark O. Hatfield
463 Russell Senate Office Building
Washington, D.C. 20510

Attention: Mr. Steve Hickok

Dear Senator Hatfield:

The Oregon Environmental Quality Commission met on May 8, 1981 in a joint work session with the Oregon Water Policy Review Board to consider minimum flow regulation on the Willamette River.

Roughly 50% of the Willamette River's regulated 6,000 cfs minimum flow at Salem is made up of stored water releases from Corps of Engineers reservoirs in the upper basin. Storage projects were authorized by Congress for a number of specific beneficial uses, but these clearly did not include fisheries and water quality maintenance. Fisheries and water quality maintenance benefits, therefore, have come from water volumes released for other authorized uses.

The purpose of the meeting of the two agencies was to discuss possible ways the augmented flows for fisheries and water quality could gain from legal recognition.

The Oregon Department of Environmental Quality staff prepared an issue paper on this subject as background information for the two agencies and other interested parties such as the Corps of Engineers, Oregon Department of Fish and Wildlife and Associated Oregon Industries. A copy of the issue paper is enclosed.

The purpose of this letter is to seek the assistance of your office to informally obtain for us an indication of the probable answer of the Corps of Engineers and its legal counsel to the following question:

> Since anadromous fish production has been declared "in the national interest," can the Corps of Engineers make a legal declaration or commitment to maintain a minimum Willamette River flow of 6,000 cfs, for fishery benefits (i.e., sufficient volume of good quality water), without seeking Congressional reauthorization of the project or requiring project cost sharing by the State of Oregon?

Your aid in this matter will be greatly appreciated.

Sincerely,

Michael Downs
for
William H. Young
Director

RPU:cs
Enclosure

DEQ-1

Issue Paper
MINIMUM FLOW REGULATION IN THE WILLAMETTE RIVER
prepared by
Department of Environmental Quality
with advice from
Department of Resources
Department of Fish and Wildlife
U.S. Army Corps of Engineers
January 12, 1981

I. Background

The Willamette Basin programs of the Department of Environmental Quality (DEQ), Department of Water Resources (DWR) and Department of Fish and Wildlife (DFW) have been developed over the last two decades in reliance upon a minimum flow of 6000 cfs at the Salem gage.

These programs may face an uncertain future, however, unless a guaranteed minimum flow of 6000 cfs at Salem (except under extreme drought conditions) can be secured through releases from the storage reservoirs in the basin constructed and operated by the U.S. Army Corps of Engineers.

Oregon's presently recognized beneficial water uses for fisheries, recreation, and water quality control in the Willamette River may face an uncertain future due to dual but unequal water resource management authorities exercised by the Oregon Water Policy Review Board and the U.S. Army Corps of Engineers.

Oregon's Water Policy Review Board fully recognizes and supports the need for a legally based minimum flow of 6000 cfs in the Willamette

River. By resolution dated November 30, 1979, the Board requested that the Corps of Engineers initiate necessary studies to accomplish an allocation of water for the desired minimum flow (copy attached). On December 14, 1979, the Environmental Quality Commission sent a letter to the Corps of Engineers which supported the Water Policy Review Board's resolution (copy attached). The Corps acknowledged receiving the DEQ letter on January 18, 1980, and stated that they were exploring methods by which a water quality allocation could be obtained. As of December, 1980, the Corps of Engineers is still pursuing the matter.

The Oregon Department of Fish and Wildlife has generally supported the Water Policy Review Board and Environmental Quality Commission requests for Corps of Engineers special studies.

There have been a number of meetings and discussions on this issue between the Water Policy Review Board, and the staffs of the Department of Environmental Quality, Department of Fish and Wildlife and the U.S. Army Corps of Engineers, since the latter part of 1979.

By letter dated October 30, 1980, to Joe Richards, Chairman of the Environmental Quality Commission, Donel Lane, Chairman of the Water Policy Review Board, suggested a joint meeting of the Commissions to discuss the issue and develop a unified position for subsequent discussions with the Corps.

The purpose of this paper is to display additional information on the issue to facilitate this joint meeting.

II. Water Policy Review Board - - Authority and Program

Oregon's Water Policy Review Board is charged with responsibility for formulation of an integrated, coordinated program for the use and control of all the water resources of the state.

Oregon water law declares public ownership of all waters (ORS 537.110), establishes a list of beneficial uses (ORS 356.300), and specifies management by a single state agency which through an integrated and coordinated program "shall give proper and adequate consideration to the multiple aspects of the beneficial use and control of such water resources with an impartiality of interest except that designed to best protect and promote the public welfare generally" (ORS 536.220). Two sections of ORS 536.310 further emphasize the matters of public interest in water resources policy:

> "It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the State as a whole."

> "Competitive exploitation of water resources of this State for single-purpose uses is to be discouraged when other feasible uses are in the general public interest."

The Oregon Water Policy Review Board's adopted program for the Willamette River is based upon a minimum flow of 6000 cfs at Salem, and includes water uses for domestic, livestock, municipal, irrigation, power, industrial, mining, recreation, wildlife, and fish life. The 6000 cfs flow is expected to be achieved by 1300 cfs or more from natural flows and up to 4700 cfs from storage releases.

III. Environmental Quality Commission - - Authority and Program

The Enviromental Quality Commission is charged by ORS 468.020 to set rules and standards that are necessary and proper to carry out its legally vested functions in pollution control. Relative to water pollution, the regulations (i.e., rules and standards) fall into two major categories: (1) those that apply to waste treatment or control and (2) those that apply to receiving streams--the public waters.

ORS 468.710, the guiding policy for the Water Quality Program, reads as follows:

> 468.710 Policy. Whereas pollution of the waters of the state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution in this state is closely related to

the problem of water pollution in adjoining states, it is hereby declared to be the public policy of the state:

(1) To conserve the waters of the state;

(2) To protect, maintain and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses;

(3) To provide that no waste be discharged into any waters of this state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters;

(4) To provide for the prevention, abatement and control of new or existing water pollution; and

(5) To cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives.

As used in this policy statement, the term "waters of the state" is defined as follows:

468.700 (8) "Water" or "the waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland

or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

The setting of water pollution control rules and standards starts with a list of beneficial uses that are to be protected and provided for in the stream. The basic list of beneficial water uses for each basin is determined by the Water Policy Review Board. Water quality standards are then set at levels that will allow those recognized beneficial uses to continue unhindered by poor water quality.

Waste treatment and control rules and standards are set to prevent resulting effluents or other diffuse runoff from violating in-stream standards.

In actual practice, the EQC has adopted water quality standards to protect the production of salmon and trout in the Willamette River. High quality water for these fish automatically and adequately serves the other water quality dependent beneficial uses--recreation, municipal water supplies, industrial water supplies, agriculture, livestock water, irrigation, and aesthetics.

Pursuant to the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500), the state's Water Quality Standards, once approved by the Environmental Protection Agency, become federal standards. Oregon's

Water Quality Standards for the Willamette River have been approved by EPA and are thus Federal Standards.

Willamette River water quality standards, excepting coliform bacteria limits, have been met through a program of treatment of point sources of waste and flow augmentation to a minimum of 6000 cfs at Salem. Diffuse sources of coliform bacteria are not yet effectively controlled.

Oregon's present criteria and requirements for the treatment and control of waste sources in the Willamette River Basin are more stringent than the U.S. Environmental Protection Agency's national minimum waste treatment standards for both municipalities and industries.

This treatment program evolved to its present high level of efficiency prior to 1970. Since then, the program has been in a maintenance mode to keep pace with population and industry growth.

Oregon's present population numbers about 2.6 million. Roughly divided, two-thirds of these people reside within the Willamette River drainage basin, mostly on the valley floor bordering the main-stem river. Likewise, Oregon's major elements of manufacturing, agriculture, food processing, and trade are located in the same area.

Population projections show that another 800,000 people will take up residence in the basin over the next 20 years. Most expansions will occur at existing cities. Thus, local waste production is expected to expand proportional to population growth.

DEQ staff further expects irrigation of agricultural lands in the Willamette basin to increase significantly in the future. Increased irrigation use of water can lead to reduced stream flows, reduced stored water available for flow maintenance, and increased generation of food processing wastes to be treated and disposed of.

Even with a continuous minimum flow of 6000 cfs in the Willamette River, waste treatment and/or control more stringent than presently required will be necessary to meet the needs of recognized beneficial water uses.

DEQ staff estimates that capital investment for waste treatment/ control works leading to the clean-up of the Willamette River exceeds $300,000,000 (1965 values). At today's values, the staff estimates that on the order of $10,000,000 per year are spent to operate and maintain those facilities.

Proportionally expensive waste treatment and control facilities will be needed to serve wastes from the next 800,000 people. Planning for future waste treatment and control is proceeding from the assumption that the existing minimum river flow of 6000 cfs will be maintained, and meeting current water quality standards will be the goal.

IV. Fish and Wildlife Commission - - Authority and Programs

The Fish and Wildlife Commission is responsible for managing Oregon's fish and wildlife to provide optimum recreational, commercial, and aesthetic benefits for the public. They function pursuant to authorities contained in ORS Chapters 496 and 506.

Based on the fact that (1) Oregon's Willamette River standards were met in the late 1960s, through a combination of 6000 cfs flow maintenance at Salem and stringent treatment of wastes, and (2) a new fish ladder over the Willamette Falls was completed, substantial monies were spent to establish a fall run of Chinook salmon. Up-graded spring Chinook salmon, steelhead and coho salmon programs were, likewise, instituted. The Willamette basin is thus a very significant salmonid production area.

The Department of Fish and Wildlife is also in the process of initiating a new effort to enhance natural salmonid fish production in the basin.

V. U.S. Army Corps of Engineers - - Authority and Program

The Corps of Engineers is responsible for planning, design, construction and operation of the reservoirs authorized by the Willamette Basin Project.

In 1950 the National Congress, via enactment of House Document No. 531, authorized the Willamette Basin Project. The voluminous project documents recognized that project development could result in benefits from navigation, power, irrigation, domestic and industrial water supply, pollution abatement, recreation, and fishlife. However, the authorized purposes of the project were limited to Flood Control, Navigation, Irrigation, and Power Generation.

A total of 17 dam sites were initially identified and evaluated. To date, 13 dams/reservoirs have been constructed--8 include power generation facilities.

There is an apparent distinction between "authorized purposes" and "benefits" of projects. It appears projects are primarily justified based on the major benefits derived from the "authorized purposes." Construction costs are allocated to these purposes and are generally subject to reimbursement unless exempted by congressional action, either in authorization documents or by separate statute. "Benefits" appear to be recognized as somewhat incidental to the "authorized purposes." They thus become added justification, but are not apparently subject to the "allocation of costs" or "reimbursement."

A specific statement in the authorization documents for the Willamette Basin Project provides: "Allocation of construction costs to pollution abatement, salinity control, recreation, and sediment control are not approved at this time."

There is some uncertainty as to how this statement should be interpreted or how it applies to the present flow management program.

Flood Control and Power Generation continue to be very significant purposes and play a major role in the management of water storage and release at reservoirs.

Water stored for irrigation remains largely unused for that purpose today.

Project authorization documents establish a minimum flow of 6500 cfs at Salem as necessary to support Navigation. In recent years minimum flows have been maintained above 6000 cfs during all but extreme drought periods. These flows have been relied upon in the programs to restore and enhance the anadromous fisheries in the basin. These flows have been relied upon by the public as river recreation use has increased. The development of the Willamette Greenway is evidence of this. These flows have also been relied upon in conjunction with the very stringent waste water controls to achieve the water quality improvements necessary to support the various water uses.

In the mid 70's, the Corps ceased maintaining the Willamette navigation channel above Newberg due to a lack of commercial navigation use justifying such maintenance. They have continued the navigation based minimum flow maintenance program however. The recognized lack of actual commercial navigation removes a major part of the justification for the minimum flow maintenance and leaves the state with increased uncertainty about the ability to rely on at least 6000 cfs at Salem in future years.

The Corps has sought multi-agengy cooperation in development of its actual flow management program. Each spring the Corps calls a meeting of all other interested governmental bodies and publics and explains to them what water supplies are in storage. Upon advice from those

present, the Corps then plans the manner and timing of subsequent summer water releases to best serve the public interest. This process has effectively balanced and served all interests in normal precipitaion years. In low precipitation years, like 1977, all uses have shared the deficiency. This flow management system has survived, so far, primarily because of the Corps of Engineers' determination to best serve the public interest despite areas of uncertain meaning in project authorization documents.

Thus, the Corps has substantial discretion to manage the project and storage releases, consistent with the Authorized Purposes.

VI. Conclusions

From the preceding discussion, the following points are particularly significant:

A. The Congressionally Authorized Purposes of the willamette Basin Project storage reservoirs are Flood Control, Power Generation, Irrigation and Navigation.

B. Benefits for fish, recreation, water supply and water quality improvements (Pollution Abatement) are recognized as incidental to the Authorized Project Purposes.

C. To the citizens of the State of Oregon, these incidental benefits are extremely important and their continuation must be assured.

Substantial monies have been and are being spent to enhance fishery production, provide for recreation, and assure water quality to support these and other uses--all in reliance on continuation of a minimum flow at Salem of 6000 cfs.

D. Augmented Flow for Navigation, one of the Authorized Purposes of the Willamette Basin Project, has, at the same time, provided the flow to support the extremely important incidental benefits noted above.

E. Continued justification for the navigation flow maintenance can be questioned since channel maintenance has been terminated due to lack of sufficient commercial navigation above Newberg. Navigation remains an Authorized Purpose unless the Project Authorization is changed by Congress.

F. The State of Oregon needs legal assurance of continuation of the present minimum flow at Salem of at least 6000 cfs to provide a basis for future planning and program implementation,

particularly in the areas of quality maintenance for all uses and fishery enhancement. The legal basis for continuation of such a minimum flow, substantially provided by augmentation from Willamette Basin Project Reservoirs, is unclear and far less certain than the state needs.

VII Alternatives for 6000 cfs Flow Assurance

Discussion with the Department of Water Resources, Department of Fish and Wildlife and Corps of Engineers suggest the following as potential alternatives for increased legal security for a 6000 cfs minimum flow at Salem. Each is presented below with discussion of potential concerns, risks, or uncertainties.

A. Project Reauthorization by Congress

1. This alternative would include "clarification" and "modernization" of the intended management basis for the reservors in the Willamette Basin Project.

2. It is assumed that reauthorization documents would have to be submitted to Congress by the Corps to secure the necessary reauthorization legislation.

   The documents would have to present a complete reanalysis of benefits to be derived from the project. Extensive public involvement would be required. Preparation of an Environmental Impact Statement would be required.

3. In short, this would require a major study effort by the Corps, taking perhaps 4 years to complete after funding (and authority to proceed) are secured.

4. Funding could possibly come from:

   a. Direct congressional appropriation (FY 83 at the earliest).

   b. Funds appropriated for technical assistance to the states.

   c. Funds appropriated for continuing studies for the Columbia River and Tributaries.

5. Reauthorization would presumably add to or take away from the "Authorized Purposes." The Corps staff maintains that addition of a benefit to the authorized purposes brings with it the allocation of construction costs and reimbursement provisions. They caution that specific recognition of Water Quality Maintenance (pollution abatement) or recreation (in light of the earlier language specifically prohibiting allocation of costs to these benefits) would necessitate reimbursement.

6. Reimbursement has not been required for a benefit which is deemed in the "national interest." Anadromous fish have apparently been declared by Congress to be a national interest resource by separate action. Thus it is assumed that specific recognition of fishery benefits would be unlikely to carry with it a requirement of reimbursement.

7. Reservoir Recreation was authorized as an add-on benefit by Public Law 89-72. A cost share requirement is apparently included. This has been utilized to develop facilities with counties and perhaps the state contributing to park development and operation.

8. Congress authorized the Corps by separate act, to administratively add water supply to the authorized purpose of projects. Any other changes to authorized purposes requires congressional action.

9. Section 102(b) of Public Law 92-500, as amended, contains specific language regarding water quality aspects of federal water projects. This section:

   a. Requires consideration of storage for regulation of stream flow in all project studies undertaken.

   b. Prohibits storage and release of water as a substitute for adequate treatment and control of wastes at the source.

   c. Requires evaluation by project sponsor, of the need for and value of storage for flow regulation to benefit navigation, salt water intrusion, recreation, aesthetics, and fish and wildlife.

d. Requires the EPA administrator to determine the need for and value of storage for water quality control.

e. Requires that costs of stream flow regulation features be determined and beneficiaries be identified and "if the benefits are widespread or national in scope, the costs of such features shall be nonreimburseable."

Thus, reauthorization would require a study by the EPA administrator as well as the Corps.

10. Since anadomous fish are a "National Interest" resource, and the benefits of water quality control in the Willamette could be considered widespread, and flow regulation is not being provided as a substitute for treatment and control of wastes, formal recognition of a 6000 cfs minimum flow at Salem through storage releases to support anadromous fish and assure suitable water quality seems unlikely to produce a reimbursement requirement.

11. Concern that EPA might require the state to provide higher levels of waste treatment, while a possibility, seems unlikely since treatment already provided is more stringent than EPA national standards, and will have to become even more stringent over the next 20 years to accommodate population growth.

12. Reauthorization discussion will undoubtedly carry with it a demand by fishery agencies for mitigtion of adverse impacts to the fishery in the Willamette which were unaddressed at the time of Willamette Basin Project construction.

13. The end result of a reauthorization effort cannot be predicted. The Corps staff is concerned that opening up the subject of project reauthorization may very well lead to their agency's loss of present river flow management flexibility, and that project operation and flow management could end up restricted to rigid regimentation for only the initially authorized uses.

B. Congressional establishment of a 6000 cfs minimum flow at Salem, consistent with present authorized purposes and established "incidental" benefits of the Willamette Basin Project.

1. This alternative would envision a simple bill or amendment added to some piece of "in process" legislation.

2. Such action wwould be based on recognition that:

   a. 6000 cfs flow at Salem is presently provided, thus status quo would not be changed.

   b. Substantial investment of federal, state and local monies has been made in public facilities in reliance on this regulated flow level.

c. This level would not be inconsistent with the Authorized Purposes of the Willamette Basin Project.

d. This action would provide a basis for sound planning for future investment in public facilities and anadromous fishery resource management.

3. The potential for success of this approach is unknown.

C. Formal administrative action by Corps to acknowledge a management objective of 6000 cfs minimum flow at Salem.

1. This alternative would envision summary documentation of the status quo in Willamette Basin Project flow management with particular note of the significant benefits which rely on the navigation flow.

2. The appropriate oversight committees in Congress would th be notified of the Corps' decision to recognize a 6000 cfs flow at Salem as a major management objective, consistent with Project Authorization. Unless the committees acted to require some change, this would then become a more formally recognized management objective (implied consent).

3. The potential for this alternative is unknown. Corps staff are not aware of any precedent for this type of action.

4. Reimbursement could be an issue if this were pursued.

D. Maintain Status Quo (i.e., Don't Rock the Boat)

1. The Corps staff feels most comfortable with this alternative. They believe their present stream flow management practices, exercised under current project authorization language, give them the greatest flexibility to serve public interest in Oregon and the Northwest Region. They can select water releases for the greatest advantage to downstream fisheries, recreation, and water quality needs. They can elect to hold or release waters from different reservoirs based on local recreational use. They can hold or release waters to produce hydroelectric power in harmony with seasonal energy needs. They can manipulate flows to the greatest public benefit in years of drought. They have the flexibility to make mid-season adjustments in water releases to meet downstream special needs.

2. The strength of the present program is also its weakness. While flexibility is essential and highly valued by the state agencies, the lack of a legal management objective to maintain 6000 cfs at Salem to protect the "incidental benefits" could leave them in jeopardy in the future. The intent and efforts of the Corps to meet the public interest are not doubted. However, factors beyond their control could "cut the rug" out from under state and local investment and programs.

3. The practical value of public reliance (adverse possession) in supporting continued flow augmentation to a 6000 cfs minimum is difficult to assess.

E. Use Northwest Power Bill Provisions.

1. The recently passed Northwest Power Bill requires that programs be developed "to protect, mitigate, and enhance fish and wildlife, including relating spawning grounds and habitat on the Columbia River and its tributaries." This Act offers a program for fishery enhancement that could very well lead to greater stored water allocations for fisheries in the Willamette River Basin.

2. The potential for this bill to support a minimum flow on the Willamette is good, but the mechanisms, timetable and extent of protection are not understood at this time.

F. Construction of Additional Storage Projects

1. Construction of new storage projects would require congressional authorization (including all the studies) if federal funds were involved.

2. One option for additional storage would be to go ahead and develop one or more of the 8 remaining sites identified in the initial Willamette Project authorization documents, but temporarily set aside. These generally larger projects on major streams would provide the usual multiple benefits for hydroelectric power production, water supplies, recreation, fisheries, and flood control. Authorization could recognize other benefits, allocate costs accordingly and require reimbursement. State or local cost share of at least 20 percent would be required under present administration policies (not a congressionally enacted requirement).

3. Another option is to develop numerous small water storage projects on lesser tributaries. Water from small projects could be used to offset certain consumptive uses. Outflow from numerous small storage basins would benefit fishery habitat and production in many miles of streams that currently suffer summer deficiencies. Expanded fishery production would, of course, allow expanded recreation outlets. Such projects could either be state funded or supported with federal funding if congressional authorization could be obtained.

4. Storage project construction approval may be difficult to obtain at this time as a result of a significant public attitude of blanket opposition to such projects.

VIII. Recommended Action

The foregoing information and listing of potential alternatives for securing a guaranteed 6000 cfs minimum flow in the Willamette at Salem need to be discussed by the involved agencies, commissions and boards, and affected organizations.

A strategy needs to be agreed upon and the necessary actions by each agency identified, and progress monitored.

GDC:l
TL192 (1)
1/13/81

Coordination w/ DPARC of Oregon

CF: PLAN FORMULATION SECTION FILE COPY

NPPEN-FL-1

18 January 1980

Mr. Joe B. Richards, Chairman
Environmental Quality Commission
522 S.W. Fifth Avenue
Portland, OR 97204

Dear Mr. Richards:

Thank you for your recent letter, addressed to Colonel Connell, in which you stated your support for the Water Policy Review Board's resolution of 30 November 1979, concerning water quality control in Willamette River.

In response to the Board's resolution, we are now exploring methods by which a water quality allocation could be obtained. As soon as we have determined the most expedient approach to securing an allocation, we will outline to you what further steps will have to be taken.

We appreciate your interest in the matter. Should you have any further questions, please contact me at your convenience.

Sincerely,

PATRICK J. KEOUGH
Chief, Planning Branch

Tab Willamette Basin

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

December 14, 1979

Colonel Terence J. Connell
District Engineer
U. S. Army Engineer District, Portland
CORPS OF ENGINEERS
P. O. Box 2946
Portland, OR 97208

Dear Colonel Connell:

We have been advised that you have received a resolution of the Oregon Water Policy Review Board dated November 30, 1979 which requests initiation of studies to accomplish the allocation of sufficient upstream storage to assure flows in the Willamette River of 6000 cubic feet per second measured at Salem, Oregon, for the purpose of water quality control.

The Environmental Quality Commission has primary responsibility for water quality control in Oregon. Our Water Quality Management Plan for the Willamette Basin, adopted in December 1976, is based on a flow of 6000 cubic feet per second (cfs) at Salem as necessary for water quality maintenance and protection.

Waste treatment levels in the Willamette Basin are already more stringent than the national federal minimums of Secondary or Best Practicable Treatment. We are acutely aware of the costs to cities and industries of even more stringent treatment levels that would be necessary if flows were reduced below 6000 cfs.

We therefore wish to fully support and join with the Oregon Water Policy Review Board in their resolution of November 30, 1979 requesting the Willamette Basin Study. We further offer the assistance of this Commission and the staff of the Department of Environmental Quality.

Sincerely,

Joe B. Richards, Chairman

Honorable Albert H. Densmore, Vice Chairman

Ronald M. Somers

Fred J. Burgess

Mary V. Bishop

MLE:ek

cc: Governor Atiyeh
Members of the Oregon Congressional Delegation
Water Policy Review Board

VICTOR ATIYEH
GOVERNOR

Water Resources Department

MILL CREEK OFFICE PARK
555 13th STREET N.E., SALEM, OREGON 97310 PHONE 378-3671

December 6, 1979

Colonel Terence J. Connell
District Engineer
U.S. Army Engineer District, Portland
Corps of Engineers
P.O. Box 2946
Portland, OR 97208

Dear Colonel Connell:

House Document 544, 75th Congress, and subsequent legislation, set forth a general plan for flood control and water storage in the Willamette Basin. Although specific uses vary from project to project, the system of reservoirs was authorized to generally serve flood control, navigation, irrigation, and power.

Besides the authorized purposes, the operation of the Willamette Basin Project has provided important incidental benefits for water quality enhancement, water-based recreation and other uses. While water quality enhancement is mentioned in the authorizing documents, this use is not a specific authorized function of any of the existing Corps of Engineers' reservoirs in the Willamette Basin.

The Board, by formal action, has adopted water resource programs for the Willamette Basin which include a minimum flow of 6,000 cubic feet per second at Salem. This flow is composed of 1,300 cfs of natural flow, with the balance provided by storage releases. Oregon has also adopted water quality standards for the Willamette approved by federal agencies in compliance with federal regulations. In developing programs to meet water quality standards, cities, communities and industries have constructed sewage treatment facilities predicated on the assumption that sufficient flows will be maintained in the river for dilution and conveyance of treated waste discharges.

The Water Policy Review Board recognizes that the Corps of Engineers has been able to achieve the desired flows in most years.

As far as we can determine, however, navigation is the only authorized purpose encompassing the release of stored water for downstream flow augmentation. In view of decisions to discontinue annual dredging for navigation along most of the river, the Board is concerned

that reliance on these flows or incidental project purposes does not provide satisfactory assurance for water quality management. Willamette Valley communities and industries face the prospect of constructing expensive, new sewage treatment facilities if sufficient flow augmentation is not available in the future.

For these reasons, the Water Policy Review Board believes that necessary studies should be initiated to secure the allocation of sufficient stored water for water quality purposes in the Willamette Basin Project. You may be assured that the Water Policy Review Board is prepared to support the actions necessary to achieve this objective.

The enclosed resolution on the Willamette Basin Project was adopted by the Water Policy Review Board on November 30, 1979.

Sincerely,

Donel J. Lane, Chairman
Water Policy Review Board

cc: Governor Atiyeh
Members of the Oregon Congressional Delegation
Members of the Water Policy Review Board

DJL:vt
Enclosure

bcc: Director, Department of Environmental Quality
Director, Department of Fish and Wildlife
Director, Department of Agriculture
Director, Soil and Water Conservation Commission

RESOLUTION

WILLAMETTE BASIN PROJECT

ADOPTED BY THE WATER POLICY REVIEW BOARD

ON NOVEMBER 30, 1979

WHEREAS a general plan for flood control and water storage was authorized as the Willamette Basin Project in H.D. 75-544 and subsequent legislation.

WHEREAS certain elements of the Willamette Basin Project have been constructed and are operated by the Corps of Engineers.

WHEREAS the Willamette Basin Project is authorized for flood control, navigation, irrigation, and power.

WHEREAS water quality is not an authorized purpose of the Willamette Basin Project.

WHEREAS waste water treatment facilities have been constructed and are operated by public and private entities in the Willamette Basin based on the premise that certain releases will remain in the river for dilution.

WHEREAS under ORS 542.110 (2), the Water Policy Review Board is authorized to act for the State in all matters necessary or advisable in the promotion, construction, and maintenance of the Willamette Basin Project.

NOW THEREFORE be it resolved that the Water Policy Review Board requests that the Corps of Engineers initiate necessary studies to accomplish the allocation of sufficient upstream storage to assure flows in the Willamette River of 6,000 cubic feet per second measured at Salem, Oregon, for the purpose of water quality control.

DEPARTMENT OF THE ARMY
PORTLAND DISTRICT, CORPS OF ENGINEERS
P. O. BOX 2946
PORTLAND, OREGON 97208

NPPEN-PL-3

30 DEC 1980

To All Interested Parties:

Inclosed is the Record of Decision for Operation and Maintenance of the Willamette Reservoir System in Oregon. It has been prepared under 1978 Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1505.2).

Questions or comments concerning the Record of Decision should be directed to Mr. Dennis Berry at (503) 221-6438. Collect calls should be directed to (503) 221-6990; leave a message, and your call will be returned.

Sincerely,

TERENCE J. CONNELL
Colonel, Corps of Engineers
District Engineer

1 Incl
as stated

DEQ NOTE 1-13-81

This document was received the same day that DEQ completed the Willamette River minimum flow issue paper.

Thus, it is not referenced, but included herewith for your information. We expect Corps personnel will explain the document's full meaning at our scheduled meeting on January 29, 1981.

RECORD OF DECISION

Operation and Maintenance of

The Willamette Reservoir System

in Oregon

Decision: Based on my review of the Draft and Final Environmental Impact Statement (EIS) and correspondence received during coordination of the documents, I have decided to continue current operation and maintenance of the Willamette Reservoir System for multiple benefits, according to authorizing legislation and established agency coordination procedures.

Environmentally Preferable Alternative: The present method of operating the system is the environmentally preferable alternative. A wide range of alternatives was considered in order to identify and evaluate the significant underlying issues and specific trade-offs involved in formulating a balanced operating plan. These alternatives ranged from system discontinuance to a number of single-purpose alternatives designed to enhance one particular project purpose or benefit: flood control, power production, irrigation, water quality, navigation, minimum flow maintenance, municipal and industrial water supply, recreation, fish, and wildlife.

Basis for Decision: The Willamette Reservoirs System consists of an approved plan for 17 multi-purpose dams and reservoirs on the Willamette River and its tributaries. Thirteen of the projects have been constructed and are operational; the remaining four, while authorized, have not been funded for construction. The authorized purposes for which the reservoirs were constructed are flood control, power production (at eight of the projects), irrigation, navigation, and stream purification.

"Incidental" purposes are those interests not specifically authorized for the Willamette Reservoir System but which benefit from current reservoir operations and are stated as national goals. These interests include recreation, wildlife, fish, and municipal and industrial water. The distinction between authorized and incidental purposes is important, because in case of conflict, operation for authorized purposes must be given higher priority.

The Willamette reservoirs are operated as a system, with flow regulation varying by season and from year to year, as determined by variations in precipitation, runoff, and stream flow. Day-to-day decisions about water releases are made by the Reservoir Control Center (RCC) located in the Corps' North Pacific Division headquarters in Portland. The RCC balances demands for stored water and regulates releases of water to satisfy as many needs as possible without jeopardizing authorized project purposes. Coordination with other agencies concerned with the effects of reservoir operation and stream flow regulation occurs in daily briefings within the RCC and through other special meetings as needed.

Unresolved Controversy: There are no unresolved controversies that would affect the decision to continue current reservoir operation and management.

Means to Minimize Adverse Impacts: Most of the adverse environmental effects associated with the Willamette Reservoir System stem directly from original reservoir construction and consequent inundation of fish and wildlife habitat. Minimization of adverse construction-caused impacts has occurred through constructing fish hatcheries and fish passage facilities. Coordination with State and Federal resource agencies also occurs on a continuing basis; such coordination is supplemented by a Corps-funded fisheries research program.

The effects associated with operation and maintenance of the reservoirs themselves are relatively minor and are minimized through on-going coordination with agencies, interest groups, and individuals.

In summary, I find that the continued operation and maintenance of the Willamette Reservoir System, in accordance with legislative authority and agency coordination procedures established over time, provides the most preferable environmental alternative in combination with the most feasible operational program.

DATE: 17 Dec '80

Richard M. Wells

RICHARD M. WELLS
Brigadier General, USA
Division Engineer