

MINUTES
WATER RESOURCES BOARD MEETING
July 10 and 11, 1993

June 10, 1993

The meeting convened in the conference room at 1615 Washington Street East at 9:00 AM on June 10. Board members present were Dave Samuel, Sarah Lee Neal, Ed Snyder and Bob Jenkins. Staff members present were Britt Bernheim, legal counsel and Libby Chatfield, technical advisor.

Appeals

Attached is a summary of all status reports and motions heard by the Board on June 10 prepared by Britt Bernheim.

Administrative Matters

Upon completion of the appeal related matters, the Board members and Ms. Chatfield met to discuss completion of the probationary status of Britt Bernheim, legal counsel hired by the Board in January. The Board members agreed that Britt's job performance has been excellent during her first six months of employment. The Board agreed to send a letter to Secretary Ranson to that effect along with a recommendation that Ms. Bernheim's salary be increased to \$35,000 per year.

The Board approved the hiring of a temporary administrative assistant to work during the week of June 14-18. Fran and Libby are both scheduled to be out of the office during that week.

June 11, 1993

The meeting convened at the Water Resources Board Office at 8:30 AM on June 11. All members listed above were in attendance.

Water Quality Standards

The Board met with Libby Chatfield to discuss draft comments submitted by Region III EPA regarding the Board's recently passed water quality standards (hereinafter "standards"). Ms. Chatfield began the discussion by describing a telephone conversation she had had with Evelyn McKnight and Kathleen Stager of the Region III EPA office. In that discussion, Ms. McKnight had indicated that there were deficiencies in the standards which must be remedied by amendments adopted in the 1994 state legislative session; they indicated that if corrections were not made by that date, EPA would have to consider promulgating rules for the state.

Several comments and questions were raised by Board members with regard to the seriousness of the deficiencies as well as the seriousness of

EPA's intention to promulgate. Ms. Chatfield identified the mixing zone policy and the lack of acute aquatic life criteria as two of the deficiencies of greatest concern to EPA. She also indicated that while EPA is not inclined to promulgate state water quality standards for a state unless absolutely necessary, that in fact they had done so for 15 states in December of 1993. It was suggested that Libby contact all of the interested parties for comments with regard to the mixing zone and acute aquatic criteria issues. It was also suggested that in the upcoming review of the rule that a summary of each section of the rule be prepared for an issue-by-issue discussion by the Board.

The Board briefly reviewed the draft wetlands water quality standards before reconvening at the Office of Air Quality Building for a public meeting scheduled to discuss those rules.

Wetlands Standards

The public meeting scheduled to discuss the draft wetlands water quality standards convened at the Office of Air Quality, at 9:30 AM. Present at that meeting were the Board members listed above, Libby Chatfield, Barbara Taylor from Office of Water Quality, DEP, Norris Angus from Division of Highways and Mike McThomas and David Yaussey, attorneys from the law firm of Robinson and McElwee. Copies of the draft standards and attachments were distributed.

Ms. Chatfield began the discussion by explaining that all states have been directed by EPA to develop wetlands standards which ensure protection of wetlands by using the same framework used in other surface waters; ie, by designating uses and developing criteria and narrative standards sufficient to protect those uses. The new provisions in this draft include a classification system for the wetlands of the state, a list of designated uses for wetlands and a list of potential wetlands for designation as Outstanding National Resource Waters.

Questions were raised regarding the issue of the stormwater ponds created by the state Department of Highways during road construction, which are subsequently abandoned and develop into wetlands. It was generally agreed that wetlands created in this manner would not be considered constructed wetlands for the purposes of the proposed rule, and would therefore be subject to the requirements of the rule. A question was raised as to the identification of boundaries of the potential national resource waters. Mr. Yaussey was concerned that without clearly identified boundaries that the designation of wetlands might be of concern to landowners adjacent to the designated areas. The Board agreed that both of the issues raised warranted further consideration. Ms. Chatfield agreed to look into both matters and report back to the Board at the next meeting.

Aluminum Standard

The Board met with representatives of 3-M Company, at the request of Ann Spaner, Deputy Director of the DEP, regarding the aluminum standard recently adopted in the water quality standards. The standard was changed from .5 mg/L to 78 ug per liter in the troutwater category. 3-M was concerned because they operate under a permit on Opequon Creek, which is

classified as a trout stream. 3-M indicated that they would be unable to meet the new standard, and requested assistance from the Board in either considering a variance request or considering amending the new standards to provide a less stringent aluminum criteria in troutwater. The Board responded that changing the standard could be done only through the legislative rule-making process, but that they would be willing to consider a request for a site-specific aluminum criterion or variance from the current standard if such was filed by 3-M.

Consolidation of Environmental Boards

The Board met with Tom Gillooly of the Department of CLER and Ann Spaner of the DEP to discuss the potential consolidation of the WRB, Air Pollution Control Commission (APCC) and the Reclamation Board of Review (RBR). Also present at that meeting were Britt Bernheim and Libby Chatfield. Tom Gillooly began the discussion by indicating that even though the DEP bill, which had included provisions for such consolidation, had not passed in the last session, Secretary Ranson was still interested in working toward consolidation of the three boards through administrative action.

There was discussion of the possibility of Tom Pendleton's office assuming some of the administrative tasks currently carried out by the Board's executive secretary Fran Hunter, such as preparing payroll and other budget related work, in order to free Ms. Hunter's schedule to take on some of the secretarial work for the APCC. Because Ms. Hunter is currently on sick leave, Chairman Samuel agreed to call her to discuss the possibility of such an arrangement with her.

All board members except chairman Samuel departed, and the remainder of group was joined by Newton Thomas, chairman of the APCC. Discussion then focused on the issue of how to provide for equitable contribution by the WRB and APCC toward the payment of the salary of Britt Bernheim, who serves as legal counsel for both boards. The DEP, the agency which has been responsible for her salary since her hiring, has recently requested that she be switched over to the Board's payroll. Ms. Spaner agreed to look into finding funds in the DEP budget to be contributed to the Board to cover Britt's APCC work.

The meeting adjourned at approximately 3:00 P.M.