

OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE REQUEST FOR)
WAIVER OF THE ACCURACY REQUIREMENT)
FOR REPORTING ANNUAL WATER USE ON)
WATER RIGHT CERTIFICATE 67132 HELD BY) O R D E R
BEAVER SLOUGH DRAINAGE DISTRICT AND)
WATER RIGHT PERMIT S-41158 HELD BY)
FAT ELK DRAINAGE DISTRICT)

BACKGROUND

Pursuant to ORS 537.099, all governmental entities holding water rights are required to submit annual water use reports to the Oregon Water Resources Department. The Water Use Reporting Rules at OAR Chapter 690, Division 85, require water use to be reported within 15 percent accuracy. The rules also allow the Water Resources Commission (Commission) to consider and approve requests from governmental entities to waive compliance with this accuracy requirement.

In order for the commission to approve a request for waiver of compliance with the accuracy standard, OAR 690-085-0090(6) requires the governmental entity to show that complying with the rule(s) would cause an economic hardship on the governmental entity and the information to be collected would not materially aid water management.

The Beaver Slough Drainage District and the Fat Elk Drainage District, located near Coquille in Coos County, Oregon, are required to submit annual water use reports. Both Districts filed accuracy waiver requests with the Commission as allowed by OAR Chapter 690, Division 85.

In order to determine whether the information collected would not materially aid water management, the Commission must find that the regulation for or of the use is unlikely due to the absence of other water rights, that use of water is unlikely to materially affect water availability from the source since the quantity of water allowed by the right in relation to the quantity of water available from the source is *de minimis*; or that another similar situation exists. OAR 690-85-90(6).

The Commission must also find that complying with the rule would cause an economic hardship on the governmental entity. Economic hardship is defined in OAR 690-85-008(7) to mean a financial burden of an extraordinary nature. Examples of situations causing such a burden include, but are not limited to, the following: the entity is required to report on an unusually large number of diversions or locations, the costs of measuring and reporting for a diversion or location greatly exceed the normal costs associated with a similar volume of water, or the costs of measuring and reporting threaten the entity's fiscal ability to continue operating.

FINDINGS OF FACT

I. Economic Hardship

1. The Beaver Slough and Fat Elk Drainage Districts use atypical inlet structures in which tidal fluctuations are used to force water into their drainage ditches for irrigation use. Initial costs for installation of monitoring systems would be \$19,000 for Beaver Slough Drainage District and \$20,000 for Fat Elk Drainage District.
2. Large annual costs are associated with maintenance and measurement of the gages and analysis of the data collected. Annual costs for data analysis alone under a cooperative agreement between the districts and the U.S. Geological Survey are estimated to be a minimum of \$3,000 for each district. For a tidally-influenced gage currently operated by the U.S. Geological Survey, total instrumentation cost is \$50,000 and total annual costs are \$15,000.
3. The Beaver Slough and Fat Elk Drainage Districts had annual budgets of about \$12,000 and \$18,000, respectively, last year.
4. The cost associated with measuring and reporting on this type of structure greatly exceeds that of a traditional irrigation canal or ditch conveying a similar volume of water.
5. The districts' annual budgets are insufficient to manage regular costs and install and maintain measurement and reporting systems to meet the 15% accuracy requirement. The cost of reporting in comparison to the districts' annual budgets would impose a severe fiscal burden.

II. Water Management

The potential for distribution for prior out-of-stream rights on the affected reach of the Coquille River is extremely low because of tidal influence. Both districts' water rights have priority dates of 1976, pre-dating all existing instream water rights. Due to the method of operation, there is not a concern that the Districts are exceeding their water rights. If these lands were not diked and gated, water would regularly flow into the drainage ditches with the fluctuation of the tides. Accurate measurement is not required for management purposes at the present time.

Accuracy in measurement for open channels in tidal influence is extremely difficult to achieve. The best that could be obtained in these situations is an accuracy of +/- 20%, outside the +/-15% prescribed by the Division 85 rules.

Accurate measurement of these diversions is not necessary for fishery management purposes at the present time.

CONCLUSIONS OF LAW

The cost associated with measuring and reporting would cause the Beaver Slough and Fat Elk Drainage Districts economic hardship as defined by the Water Use Reporting rules [OAR 690-85-008(7), 690-85-010(6)(a)].

Achieving a 15% measurement accuracy in the districts' unique tidally-influenced diversion systems would be unlikely. In addition, the potential for distribution on the affected reach of the Coquille River is extremely low. The Districts' measurement data would not materially aid water management for distribution purposes [690-85-010(6)(b)].

Beaver Slough Drainage District and Fat Elk Drainage District qualify for a waiver of compliance with the 15 percent accuracy requirement of the Water Use Reporting rules for Permit S-40791, Certificate 67132 and for Permit S-41158.

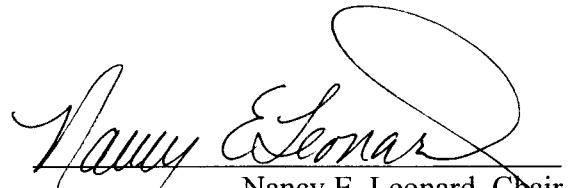
ORDER

NOW, THEREFORE, it is ORDERED that the requirement to report annual water use within 15 percent accuracy, as established by OAR 690-85-010(3), for Permit S-40791, Certificate 67132 and for Permit S-41158 is hereby waived.

It is FURTHER ORDERED that Beaver Slough Drainage District and Fat Elk Drainage District will submit annual water use reports in compliance with OAR 690-85-010 (4).

It is FURTHER ORDERED these waivers shall be reviewed every five years in order to determine whether local conditions have changed to the extent that economic hardship no longer exists and/or the data collected would materially aid water management for either District.

Dated 7/10/1998.


Nancy E. Leonard, Chair
Water Resources Commission