

It was MOVED by Roger Bachman and seconded by Mike Jewett to approve the Director's recommendation. Cliff Bentz voted no. The motion passed.

K. REQUEST FOR APPROVAL OF DESCHUTES AND METOLIUS RIVER SCENIC WATERWAY FLOWS FOR DIACK FINDINGS.

The Department staff has completed the third in a series of eight reports on streamflow needs in state scenic waterways. The Commission has approved scenic waterway flows for the John Day and Klamath Scenic Waterways. The Commission also directed staff to hold public meetings in basins affected by scenic waterway flow assessments. To gather public input for the Deschutes Basin Scenic Waterways Flow Assessment, workshops were held January 9 at The Dalles and Madras, and January 10 in Bend. Staff used public comments in developing the assessment.

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 assessment documents flow ranges to support current scenic waterway uses and values. The Commission should use this information to make findings on pending and future water right applications in or upstream from scenic waterway reaches. Pending applications will need to be judged against these flows as part of the regular permit process. There are presently pending 31 groundwater, 22 reservoir, and 69 surface water use applications in the Deschutes basin. Fifty-seven of these applications involve use of water on federal lands.

The flows for recreation, fish and wildlife in the Deschutes Basin scenic waterways vary by use and season. The major flow-dependent uses are recreation and fisheries. By overlaying flow needs, staff identifies flow ranges which support recreation, fish and wildlife. This process is similar to the method for determining instream water right values in rules proposed by the Oregon Parks and Recreation Department. Flows supporting existing levels of recreation were identified through literature review and interviews with experts. Flows identified for fish life were taken from Oregon Department of Fish and Wildlife studies or instream water rights.

The Deschutes National Forest is formulating management plans for the national wild and scenic river reaches in the upper Deschutes Basin. As part of this planning process, forest staff plan to begin detailed flow studies this summer. Results of these studies may be available in a year or more. The Bureau of Land Management in conjunction with a citizen advisory group is developing a management plan for the wild and scenic reach of the lower Deschutes. This study may be completed this summer.

Director's Recommendations

The staff recommended that the Commission approve the Deschutes Basin Scenic Waterways Assessment and the use of the recommended scenic waterway flows for making findings pursuant to the Diack decision and direct staff to explore other options, to support the scenic waterways through the scheduled basin planning.

Bill Gauvin, who works for a large grazing operation on the Crooked River in Eastern Oregon, said that operation has been adversely affected by the Diack decision. He thought that there should be clear guidelines for who will be affected in the basin because of the Diack case. The only way to learn that now, he said, is to apply for a water right and to be rejected. Gauvin thought that the flow assessment process would impose an onerous process on users.

it was MOVED by Roger Bachman and seconded by Mike Jewett to approve the Director's recommendation. Jim Howland voted no. The motion passed.

- L. PROPOSED ADOPTION OF AMENDMENTS TO COMMENT AND EXCEPTION PROCEDURAL RULES OAR 690-01-041 (1), -11-080 (1), -15-080 (1) & 2, -18-050 (3), -76-020 (2), -77-025 (4) AND 030 (1) (B), AND -82-040.

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.

The Commission discussed another procedural matter relating to time frames for public comment on water use applications at the December 6, 1990, Commission work session. Following discussion of concerns raised by Water for Life and others regarding notice and opportunity for public involvement in instream water right applications, the Commission directed staff to prepare draft rule amendments to extend the comment period for all water use applications from 30 to 60 days.

At its February 1, 1991, meeting, the Commission authorized staff to hold a rulemaking hearing on draft rule amendments to address these two issues.

A public hearing was held on March 15, 1991 in the Department's offices. No one attended. Written comments were received from the National Wildlife Federation and the Oregon Water Resources Congress.

Director's Recommendation

The staff recommended that the Commission adopt the rule amendments as proposed.

It was MOVED by Cliff Bentz and seconded by Hadley Akins to approve the Director's recommendation. The motion passed unanimously.

M. UPDATE OF SCENIC WATERWAY ACTIVITIES AND INSTREAM WATER RIGHT RULES BY OREGON STATE PARKS AND RECREATION DEPARTMENT.

Under the Scenic Waterway Act (ORS chapter 390), the Water Resources Commission is required to concur on:

- 1) Administrative rules relating scenic waterway management
- 2) Condemnation of private property
- 3) Recommended additions to the scenic waterway system

The Parks and Recreation Commission is currently developing a management plan for the Nestucca Scenic Waterway and considering an interim classification for the rivers added in 1988. The Parks and Recreation Department is also expected to adopt administrative rules for instream water rights this year. This is required by Water Resources Department administrative rules (OAR 690-77-020) to apply for instream water rights. Later this year, the Commission will formally requested to concur on two scenic waterway administrative rules.

Director's Recommendation

This item was for information only; no action was required.

The representative from the Parks and Recreation Department could not attend this meeting. Bill Fujii made himself available for questions from the Commission. Chair Stickel submitted to him questions to be passed on to the Parks Department and answered at a later date.

N. INFORMATIONAL REPORT: PROGRESS REGARDING A WATER MANAGEMENT PLAN FOR MCKAY CREEK AND THE UMATILLA RIVER.

Staff presented a report to the Commission at its February 12, 1990, meeting in Portland which recommended that the Commission instruct staff to conduct a hearing to determine the need for

declaring the Umatilla River and McKay Creek a serious water management problem area pursuant to ORS 540.435. The Commission unanimously approved the recommendation.

Staff presented an informational report to the Commission on May 11, 1990, which described the progress in preparation for a public hearing. The hearing would have been to determine if the Umatilla River and McKay Creek should be declared a serious water management problem area. The Commission unanimously agreed to try a different approach and instructed staff to hold a workshop rather than a public hearing. The aim was to give the local users and residents an opportunity to comment and propose alternative solutions to the water management problems on the Umatilla River and McKay Creek.

Regional manager Mike Ladd reported that the McKay and Lower Umatilla River Water Users Task Force had been formed. They are nearing completion of a water management plan as an alternative to declaring the area a serious water management problem. They plan to seek the Commission's approval at its July 19, 1991, meeting.

DIRECTOR'S RECOMMENDATION

This report was informational only and required no Commission action. Staff asked for the Commission's comments or suggestions.

Hadley Akins said this process is a testament to how productive a local cooperative education and problem-solving approach can be. He expressed his hope that the Department would use this approach more often and rely less on Commission directives.

The Commission took no formal action on this matter.

P. REVIEW OF THE DEPARTMENT'S CIVIL PENALTY ACTIVITY UNDER ORS 536.900 AND REQUEST FOR COMMENTS REGARDING THE REVIEW COMMITTEE'S SUGGESTIONS FOR PROGRAM IMPROVEMENT

The civil penalty authority under ORS 536.900 was enacted by the 1989 Legislature, and the Water Resources Commission adopted administrative rules to implement the civil penalty program in May 1990. At the same time, the Commission instructed staff to formulate a review committee to evaluate the Department's civil penalty activity within one year. The Commission gave this direction in response to testimony at the rules hearings which included recommendations that local committees be established to review and approve civil penalties before assessment.

The committee to review civil penalty activity was formed and met on March 20, 1991. Membership consisted of a person from each Water Resources Department region, two representatives of environmental organizations and two legislators.

Director's Recommendation

This report was for the purpose of informing the Commission, in a timely manner, of the review committee's comments and suggestions. Staff requested the Commission's views regarding the formation and duties of review groups, amendment of the administrative rules, and any other observations.

Staff said that they would return to a subsequent meeting with more specific recommendations.

The Commission took no formal action on this item.

Q. INFORMATION REPORT: MID-PROJECT SUMMARY; INVENTORY OF STREAM, RIPARIAN, AND WATERSHED IMPROVEMENT PROJECTS.

Stream, riparian, and watershed improvement projects in Oregon have increased greatly in number during the last decade. Probably over \$100 million have been spent and even more will be spent in the 1990's.

Keeping track of the various projects has taxed the collective memory of the agencies and groups involved in initiating projects. In response, the Water Resources Department began last fall to take inventory of these projects. The inventory is part of the restoration program approved by the Emergency Board in July 1990.

Director's Recommendation

This was a status report. No action by the Commission was required.

Since the hour was late and the final version of this report would be prepared in time for the next Commission meeting, the staff offered to defer the presentation.

R. INFORMATIONAL REPORT: WATER AVAILABILITY FOR OREGON'S RIVERS AND STREAMS 1989-91.

The 1989 Oregon Legislature mandated that the Oregon Water Resources Department establish a water availability database. This database is to be used for instream flow evaluations, basin planning, and in evaluating individual water right applications. The program was established to evaluate water availability for all streams throughout Oregon.

Since 1989, streamflow modeling and water availability analyses have been conducted statewide. A database of streamflows, basin characteristics, and water availability results is in the process of being established. This report summarized some of the key points of this effort.

Director's Recommendation

The staff recommended that the Commission concur with the overall direction the water availability program is taking and make recommendations on specific areas of the program that the Commission feels can be improved.

The Commission took no formal action on this item.

There being no further business, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jan Shaw".

Jan Shaw
Commission Assistant

JS:jz
A:0019J