

Department proposed to develop an action program to restore streams by building on previous studies of a variety of state and federal agencies. A variety of actions were to be considered during development of the program. These included watershed enhancement, conservation and small storage. The report on the program was to include cost estimates and potential funding sources for each of the actions identified through the pilot program. The Middle Fork John Day River was selected as the focus of the program.

In October 1990, the stream coordinator started work in the Middle Fork Subbasin. The initial efforts of the stream coordinator were to contact landowners, organizations and agencies with interests in the Middle Fork. The purpose of the contacts was to identify the problems as perceived by each of the interests. After the initial contacts were made, the stream coordinator began preparation of a report detailing the problems and identifying proposals to address the problems. In particular, the stream coordinator has worked with the Bureau of Reclamation which, in September 1990, published a working paper for the Upper John Day Water Optimization project.

A preliminary draft report was circulated to resources agencies and a few environmental organizations for comment in January 1991. Based on the comments received, the report was revised. A second draft was circulated to approximately 150 interested parties in early March 1991. A copy of this draft was provided to the Commission at the March 7 work session.

A public meeting was held on March 22 in John Day to gather comments on the report. Approximately 40 individuals, primarily local landowners, attended the meeting. The comments received during the meeting were generally supportive of the report and the process. However, concerns were expressed about the effects on landowners of the stream restoration project and a lack of attention in the report to other causes of declining fish runs such as mortality at hydroelectric projects and over-fishing.

Staff completed the report on April 12.

After the Commission approves the report, staff will request endorsements from other natural resource agencies and organizations. The report and letters of endorsement will be presented to the Legislature. With completion of the report, the stream coordinator will focus activities on working with agencies to secure funding to implement the actions proposed in the report. The Department budget continues the position of the stream coordinator in the John Day Basin. The stream coordinator will initiate preparation of similar action plans in other John Day subbasins as the work load associated with implementation of the Middle Fork action plan allows.

## Director's Recommendation

The staff recommended approval of the stream restoration program report.

Tom Simmons, WaterWatch of Oregon, Inc., said that there was no issue in the state more important to WaterWatch than streamflow restoration. Because of that, they are seeking clarification of where the state can go and whether it has the statutory foundation to get there. Simmons said he thought that if the water recovered through the projects were protected by this program, the public would support it. He also wanted the Bureau to become involved in both structural and nonstructural cases. Simmons said wanted to know whether this program was increasing streamflow or protecting riparian areas, or whether it was a combination of both.

David Childs, The Dalles, said that the John Day Basin Council began as a local advisory group in the basin and recognized that most of the streams in the state have been dewatered. Because most of the tributaries are dry, dealing with the mainstems seems futile, he said. Childs offered to demonstrate with pictures those areas that he is concerned about. He emphasized the importance of enhancing the upstream storage capacity.

Jim Myron, Oregon Trout, said he thought that the plan was a good attempt at a watershed restoration plan. He urged the Commission to look at SB 1163, WaterWatch's proposal, as it goes through the legislative process. Oregon Trout supports WaterWatch's position. Chair Stickel emphasized the importance of beginning planning in other subbasins.

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

## H. DISCUSSION OF INSTREAM WATER RIGHT ISSUES AND REQUEST FOR AUTHORIZATION TO ISSUE 11 INSTREAM WATER RIGHT CERTIFICATES.

At the March 8, 1991, Commission meeting, staff described several instream water right issues and indicated that a decision would be proposed for each at the April 19, 1991 meeting.

Staff received several comments from the public and local governments. With the exception of the N. Umpqua filing, the comments focused on the flow levels or what effect the rights might have if they gained a senior priority date. On the North Umpqua,

Douglas County raised the issue of a conflict with their comprehensive land-use plan. Staff has notified each commenter of our evaluations and intentions. These entities were given until April 26 to provide additional arguments in writing.

ODFW and staff agree that in most situations, listing one level of flow on a certificate is appropriate.

Most new instream water rights will exempt future stockwater use where the stream resources benefit and domestic use. The extent and effect of these future uses will be monitored and reviewed annually. Staff and ODFW are preparing an MOU to guide our two agencies.

Of the 11 instream water rights carried through the negotiation process, all are recommended for issuance.

#### Director's Recommendation

The staff recommended that the Commission direct the Department to issue the instream water rights unless comments received by April 26, 1991, raise a significant public interest issue.

Randy Fisher, Director, Oregon Fish and Wildlife, introduced Jim Van Loan, Chairman, Oregon Fish and Wildlife Commission, who was attending this meeting as a member of the audience.

Fisher said that he was here to enlist support for the Water Resources staff's recommendation. He said he was particularly interested in arriving at levels of flow which would protect public rights and to determine what exemptions should be permitted, if any. Fish and Wildlife fully support those two concepts and hoped the activity could move forward from here. Many fish populations are at risk, Fisher said. He insisted that the state must take action now before it loses its ability to manage the resource.

Jill Zarnowitz, Oregon Fish and Wildlife, explained how their department arrived at the figures they had submitted to Water Resources as optimum streamflows.

Item H was interrupted to hear Item O, below. Further consideration of Item H was taken up after this next item.

#### O. STATUS REPORT: PROGRESS ON GRANTS PASS IRRIGATION DISTRICT WATER MANAGEMENT STUDY.

On April 13, 1990, a permit was issued to Grants Pass Irrigation District (GPID) to allow temporary use of water in excess to that allowed under the district's certificated right. The permit requires the district to perform a study of its system to: (1)

identify feasible improvements in the facilities and management of water, (2) identify areas in the district which could be better served from other sources, and (3) document how much water is needed to meet the district's requirements given improvements and changes in service area.

The permit requires the district to submit an annual progress report on the study to the Commission beginning in 1992. The district initiated work on the study prior to issuance of the permit and, in March 1990, submitted an annual progress report. Since then, work on the study has continued.

#### Director's Recommendation

This was a status report only and no Commission action was required. However, the Commission was asked to offer suggestions or comments to GPID regarding the conduct and progress of the study.

Dave Newton, consultant for GPID, made a presentation using several maps and overlays.

No formal action was taken by the Commission.

H. (continued)

Ambrose McAuliffe, Water for Life, spoke about the Oregon Water Management Program, published in 1990. He stressed the need to continue to make cooperative opportunities available.

McAuliffe also said he appreciated the professional manner in which the Department had treated him and his organization.

He urged that a contested case hearing be held for a representative instream water right in each area at the initiation of the Department or the Commission so that people can understand what is happening in their areas.

Jan Boettcher, Oregon Water Resources Congress, said that of the proposed policy options for preparing certificates, they favored Option C, as listed in the staff report. She suggested, however, applying one figure to stand for a minimum flow amount and one for a target streamflow. Boettcher said she hoped that the Commission would travel out to some of the trouble areas to give the people a chance to understand the Department's process.



David Moon, attorney, said he appreciated the time the Commission had spent on this issue. He made some general comments before getting into specifics.

Moon objected to the term "test cases" because there is no opposing party and potential problems might not be exposed. Moon said that the Department should not be looking at optimum flows but at minimum flows. He claimed the "Oregon Method" is not being followed by ODFW and thought that a thorough review should be made of their requests. Moon said he hoped that the Commission would utilize their power to examine these applications in detail.

David Childs, The Dalles, said that there are 150,000 miles of roads in Oregon, 50,000 of which are Forest Service roads with a sophisticated runoff system, causing widespread destruction. The streamflow methodologies were followed from the beginning but have never been reviewed. We need to balance the natural flow, he said, with the natural water course profile.

Karen Russell, WaterWatch of Oregon, Inc., said she was speaking for Oregon Trout, as well as for WaterWatch, who both support the recommendations of both Fish and Wildlife and Water Resources. They support Option A, she said, and agree that it is a reasonable compromise with instream and out-of-stream interests. They feel that the public education element is missing, but that should not slow down the process for instream water rights. To be fair, Russell said, if hearings are held for instream water rights, then there should be hearings for out-of-stream uses, as well. Russell urged the Commission to adopt the recommendations.

Mike Jewett MOVED to accept the Director's recommendation. The motion was seconded by Roger Bachman.

Before a vote was taken, Cliff Bentz MOVED to amend Jewett's motion to suggest that they insert Option C and propose it as "prospective" which would not apply to the 400 other requests. Mike Jewett seconded the motion. Chair Stickel, Mike Jewett, Hadley Akins and Roger Bachman voted no. The motion failed.

Chair Stickel paraphrased the original motion: The motion would direct that the Director continue along the course already outlined by the Commission and continue to process these requests.

Hadley Akins and Cliff Bentz voted no. The motion passed.

I. REQUEST FOR APPROVAL OF STRATEGY FOR CONVERSION OF WILLAMETTE BASIN MINIMUM PERENNIAL STREAMFLOWS AND AUTHORIZATION TO CONDUCT A PUBLIC HEARING ON PROPOSED AMENDMENT OF THE RULE ON MANAGEMENT OF STORED WATER (OAR 690-250-150).

The instream water rights legislation passed in 1987 requires conversion of all minimum streamflows existing on the effective date of the law to instream water rights. Minimum streamflows must be converted without change unless the conversion to instream water rights would impair other rights, the flows exceed those needed for the public use, or the conversion is not in the public interest. If changes in a minimum streamflow are contemplated, a contested case hearing must be held to determine if any of these criteria are met.

During the March 3, 1989 meeting, the Commission directed staff to evaluate 28 minimum streamflows in the Willamette Basin. Most of these minimum streamflows include a stored water component. The purpose of the evaluation was to study opportunities to use stored water to meet instream flow needs and to identify any potential modifications or conditions in the minimum streamflows.

The Department's administrative rules currently provide that stored water released in excess of the needs of water rights calling on the source shall be considered natural flow. (OAR 690-250-150 (4)) Based on this rule, the Department currently does not regulate in the Willamette Basin for the stored water component in the minimum streamflows. The rule would have to be amended if the Department is to begin regulating to protect uncontracted water released from Corps of Engineers projects.

During the March 7, 1991, work session, the Commission directed staff to prepare a recommended strategy for review and, if appropriate, conversion of the Willamette Basin minimum streamflows.

Director's Recommendation

The staff recommended that the Commission authorize the Department to (1) hold contested case hearings on the conversion of two minimum streamflows on the Calapooia River; (2) convert without modification the two flows in the upper North Santiam River drainage for which hearings were requested; (3) authorize a hearing on the proposed amendment of OAR 690-250-150; and (4) postpone action on conversion of the remaining minimum streamflows until a decision is made on amendment of the rule.

It was MOVED by Cliff Bentz to retract the notice and not go to hearing pending going through the contested case hearings and to table Parts 3 and 4 of the staff recommendation. The motion failed for lack of a second.