

ADDENDUM:

On May 23, 1991, Department staff met with Representative Sowa, Representative Shiprack, Commissioner Hammerstad and other representatives of Clackamas County to discuss the Sandy River scenic waterway flow assessment.

Clackamas County was concerned that approval of flows for the scenic waterway at this time would complicate solution of the problems in the Hoodland corridor area. The County also believed that the assessment was not adequate in view of the possible effects in the county; notification during the public process was incomplete; and approval of the flows would be inconsistent with the efforts proposed under HJR 61. Representatives Sowa and Shiprack felt there was a public perception that the data for the Sandy flows was inadequate. Commissioner Hammerstad was also concerned that approval of the flows could become a factor in initial discussions between the County and the City of Portland on water supplies.

Commissioner Hammerstad, Representative Sowa and Representative Shiprack requested that the Water Resources Commission delay action on the Sandy River flows.

The flows identified in the Sandy report suggest that it would be difficult to make necessary findings for new diversions in the basin during at least the months of July, August and September.

Addressing the problems of the Hoodland corridor will likely be a formidable task. The number of small water systems in the drainage not covered by appropriate permits and the expected increase in population in the area from 7,500 to 20,000 are issues that need to be addressed within the context of requirements of the Safe Drinking Water Act, legislative withdrawals and the downstream requirements of the scenic waterway.

There are fewer pending permit applications in the Sandy Basin than in other drainages affected by the Diack decision. Clackamas County suggests that delaying decisions on those applications would not be adverse to its interests.

Action by the Commission on the Sandy flows on May 31, 1991, was not mandated by statute or rule. However, the Department made a commitment to the Legislature to complete the assessment of all state scenic waterways by June 1993. Although adequacy of the data was raised by a number of interests during the process, staff believed there was sufficient supporting information for the flows identified in the report. If the Water Resources Commission elected to defer action on the Sandy flows to foster cooperation in the solution of the water supply problems in the Hoodland corridor, additional staff effort on the recreational component was not anticipated. The Department, however, expected some staff

commitment to work with Clackamas County and others to address the issues in the Hoodland corridor over the next biennium.

(Lorna Stickel excused herself from consideration of this item and Item K in connection with the Sandy River. She did, however, say she would take part in the discussions on the Clackamas.)

The discussion proceeded with the Clackamas River portion of the report.

It was MOVED by Jim Howland and seconded by Roger Bachman to accept the staff's recommendations on the Clackamas River flows. Chair Stickel abstained. The motion passed without dissent.

(Chair Stickel left the meeting table at this point.)

Rep. Bob Shiprack, District 23, Sandy Basin, asked the Commission to delay action on adoption using only the data before them today and appealed to the Commission to allow the citizens group to work on the public perception question. The action today, he said, appeared to "jump-start" the activity regarding the problems in that area. Shiprack also asked that the data be double-checked before any action was taken.

Rep. Larry Sowa, representing citizens of portions of Clackamas County, asked the Commission to delay action on this matter until HJR 61 is adopted by the Legislature. That bill would "get people working together." Sowa requested more time for an in-depth look at the studies for low-water summer-season use and for time to work through the House in protecting the scenic waterway. Sowa said he did not want people to be put into a position where they might bargain away their rights. He said he wanted all parties to work together on the solutions.

Judie Hammerstad, Clackamas County commissioner representing the commission and the residents in the corridor, requested a delay in adopting the flows on the Sandy River. She supported the Department's work and was not looking to subvert that work; but, she said, HJR 61 offered better opportunities. She asked for time to work with those interested residents in the basin so that they can secure legal water and so that they are not diverting more water than the Sandy can handle.

John Borge, Clackamas County, talked about land-use planning in the corridor, illustrating his remarks with a large map. Borge claimed that the area had been the subject of comprehensive land-use planning involving a number of state and federal agencies. Adopting flow assessments at this point, he said, would be untimely. He said he hoped the Commission would postpone the adoption of the recommended flow assessments in order to provide reliable flows for the residents in the area by way of a fresh infrastructure. He sought a delay in adoption of the flow

assessments in order to resolve the problem without further difficulties.

Jerry Schmidt, president of the Oregon Association of Water Utilities and general manager of the only public entity in the Mt. Hood corridor, offered to answer any questions on water service in that area. Schmidt said that water systems in the area have been operated for years in cooperation with recognized groups and there are not "thousands," as someone had said, of illegal users there. There is no central provider in the area.

Joe Glicker, water quality and environmental policy director for the Portland Water Bureau, said the City wanted to work with the Hoodland corridor citizens on the solution of the problem of providing water for them. He is confident that a solution can be found with the cooperation of other water purveyors in the area.

Charlie Ciecko, director of county parks for Multnomah County, thought that the flows listed in the assessment as recommended were fair. It is clear, he said, that natural flow variations and existing consumptive uses have an impact on scenic water values. The challenge of this process should be to determine the extent of the impact and how to avoid further impacts associated with the granting of future water rights. Only then will a program emerge which is responsible to the intent of the Scenic Waterways Act and the supreme court's Diack decision.

Bill Hutchison, representing the Oregon Rivers Council, concurred with the testimony of Mr. Ciecko. Hutchison claimed that HJR 61 would be limited in its use to the corridor citizens. As the Commission members prepared to adopt these flows, he said, they needed to make decisions that would be good for the future and which would protect the well-being of everyone.

Karen Russell, WaterWatch of Oregon, Inc., concurred with Hutchison's and Ciecko's comments. These flows need to be developed and protected, and people must be educated about their responsibilities in using water, she said.

Gail Achterman, representing Government Camp Recreation Association, urged approval of the association's request to delay action on the adoption of the proposed flows. She said she thought there was a serious procedural problem in the hearing process, and information was not available for analysis in time for any meeting, including this one. She urged support of the recommendations of the two Clackamas County legislators.

Alan Jensen, Salmon Valley Water Company, near Welches, concurred with Clackamas County. They would be pleased to see a delay in this matter in order to wait for passage of HJR 61 in order to have the opportunity to work within that bill's framework to resolve this situation.

It was MOVED by Jim Howland and seconded by Hadley Akins to table any decision on the Diack findings for the Sandy Basin and to ask Clackamas County to return to the Commission's August 23 meeting. At that time, the Commission would expect that the County would provide a plan for proceeding. Chair Stickel was absent from the meeting table and abstained from voting. The motion passed without dissent.

(Chair Stickel continued her recusal and took no part in the consideration of the next item.)

K. CONSIDERATION OF PETITION TO AMEND THE SANDY BASIN PROGRAM, OAR CHAPTER 690 DIVISION 503.

On May 8, 1991, the Department received a petition from attorney Gail Achterman on behalf of the Government Camp Recreation Association. The petition sought to reconsider and amend the Sandy Basin Program. Specifically, the petition requested a number of changes in the basin program, including recognition of recreation-oriented economic development and revitalization in the Upper Sandy Basin, inclusion of irrigation and group domestic in the surface water classification, change in the rule provision relating to the scenic waterway, and changes in the groundwater classification. Proposed changes in the groundwater classification include domestic use and elimination of the provision considering groundwater in hydraulic connection within 1/4-mile of surface water. Proposed modifications were included in the petition.

In addition to requesting changes in the basin program, the association filed a petition for judicial review with the Court of Appeals which contended that improper administrative procedures were followed in the adoption of the Sandy Basin program. The petition listed the following deficiencies in the procedure:

Inadequate fiscal impact statement

Failure to conduct a hearing in the Sandy Basin

Land-use compatibility findings

Rules contrary to the public interest which will prevent implementation of the Clackamas County Comprehensive Land Use Plan

Rules, as adopted, which may cut off long-established municipal, domestic, group domestic and commercial water uses

Rules which may preclude any future development in the Sandy Basin

## Director's Recommendation

The staff recommended the Commission deny the petition to reconsider and amend the Sandy Basin program and direct staff to notify the petitioner accordingly.

The above report was inadvertently distributed to the Commission without a few corrections, which were displayed in a follow-up report. The substance of the staff report was not changed significantly by those corrections.

Gail Achterman, representing petitioners, spoke on behalf of her clients.

John Borge, Clackamas County, supported the petitioners' request. Borge said he thought that the staff report represented a conflict with the County's comprehensive plan.

Bill Hutchison, Oregon Rivers Council, thought that the petitioners wanted the Commission to permit their use and then prepare its plan afterward. Hutchison said that the Commission should plan independently and should not abrogate its responsibilities. He recommended that the Commission reject the petition.

Charlie Ciecko, Multnomah County, said that Multnomah County had participated in this process and had submitted earlier comments. Generally speaking, he said, Multnomah County supported the plan and hoped the petition would be rejected. Ciecko said he "concurred 100%" with what Mr. Hutchison had said before him.

Karen Russell, WaterWatch of Oregon, Inc., concurred with Mr. Hutchison's testimony to the Commission and urged that the petition be denied.

It was MOVED by Mike Jewett and seconded by Hadley Akins to adopt the Director's recommendation. Chair Stickel abstained. The motion passed.

(Chair Stickel returned to her place at the table.)

## M. DISCUSSION OF THREATENED AND ENDANGERED SPECIES AND WATER MANAGEMENT OPTIONS

Issues concerning threatened and endangered (T & E) species have been discussed at several recent Commission meetings. Designated species have been used to justify instream water right applications. The Oregon Department of Fish and Wildlife (ODFW) raised the issue of listed species in conjunction with the recent modification of the North Coast Basin program for a gravel operation. Oregon Trout has suggested withdrawal of streams to protect designated species.

During a recent discussion on proposed legislation to withdraw streams with resident endangered species, the Senate Water Policy Committee recommended that the Commission discuss whether permits should be issued on streams with T & E species and decide on a course of action.

T & E species may be listed under state law, federal law, or both. With a few minor exceptions, both lists currently contain the same species.

A number of water management options have been suggested to address designated and proposed endangered species. The T & E lists include a variety of fish, wildlife and plant species. Some of the listed species are found only in a few locations while others have more widespread distribution. Also, some species are dependent upon flow levels while others, such as wildlife or ocean species, may not be affected by streamflows or water appropriations. Plants, depending on the variety, may or may not be dependent on specific flows.

It is not clear that either state or federal laws mandate specific action by the Water Resources Commission. It is clear, however, that the public policy under both acts is to promote agency actions that protect and enhance listed species.

All of the suggested management options could be expanded to include proposed listings or sensitive and candidate species. The degree of involvement of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service is another issue applicable to all options.

Director's Recommendation:

The staff recommended that the Commission direct the staff to work with the Oregon Department of Fish and Wildlife to develop a program to address designated and sensitive species.

It was MOVED by Mike Jewett and seconded by Jack Delay to approve the Director's recommendation. The motion passed unanimously.

O. PROJECT SUMMARY: INVENTORY OF STREAM, RIPARIAN AND WATERSHED IMPROVEMENT PROJECTS.

Chip Andrus, Resource Management Division, presented his final stream inventory report, illustrated with a comprehensive and engaging slide show.

The Commission commended Andrus for a fine presentation. The Commission took no formal action on this item.

There being no further business to come before the Commission, the meeting was adjourned.

Respectfully submitted,

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

Jan Shaw  
Commission Assistant

JS:jz  
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