

F.2 REQUEST FOR AUTHORIZATION FOR THE DIRECTOR TO SIGN THE LICENSE FOR HYDROELECTRIC PROJECT HE 303

HE 303 is a hydroelectric project located in Clackamas County on the Oak Grove Fork of the Clackamas River. The project will divert 250 cfs for the purpose of producing 17,756 theoretical horsepower.

The project was referred to the Commission at its October 26, 1990, meeting. The Commission approved an order that found there was no contribution to cumulative impacts and directed the matter to contested case hearing which was held on February 20, 1991. The record closed on March 8. No objections were filed to the preliminary order, and the final order was signed on May 9, 1991.

All the requirements of the order, by reference, were made a part of the proposed license. In addition, the proposed license requires an annual fee of \$3,571.20. The proposed license expires on September 1, 2039, which is the same expiration date as the FERC license for the project.

Director's Recommendation:

The staff asked that the Commission authorize the Director, on behalf of the Commission, to sign the license after obtaining the signature of the licensee.

F.3. REQUEST FOR AFFIRMATION OF ASSIGNMENT OF HYDROELECTRIC PROJECT HE 300

HE 300 is a hydroelectric project located in Wallowa County. The project allows diversion of 120 cfs from Big Sheep Creek for development of 13,419 theoretical horsepower. A license was issued September 22, 1983, to Wallowa Hydro Associates, Ltd. On October 30, the Director approved transfer of the license to Joseph Hydro Associates, Ltd. Annual license fees in the amount of \$2683.80 have been paid by Joseph Hydro Associates, Ltd., through 1990.

On January 15, 1991, Joseph Hydro Associates, Ltd., requested an assignment of the project to Joseph Hydro Company, Inc. Joseph Hydro Company, Inc., certified their intent to assume ownership and operate it within the requirements of the license.

On March 29, 1991, an order approving the assignment was signed by the Director. However, ORS 543.440 requires that the assignment be made by the Commission. The Commission has delegated to the Director authority to "administer provisions of ORS 543.410 to 543.560, relating generally to extensions of time for construction of permitted or licensed projects and to financing of projects..." There is some question if the delegation was intended to include assignments.

Director's Recommendation:

The staff asked that the Commission affirm the order approving the assignment to Joseph Hydro Company, Inc., dated March 29, 1991.

It was MOVED by Roger Bachman, seconded by Cliff Bentz, and passed unanimously to approve the Director's recommendations on both items above.

The Commission requested staff to return to its next meeting with an item on delegation.

G. CONSIDERATION FOR APPROVAL OF APPLICATION R-70455 AND 70456 TO STORE WATER FROM SHADY AND INDIAN CREEKS, TRIBUTARIES OF NORTH FORK OF CROOKED RIVER, TO BE APPROPRIATED FOR IRRIGATION, LIVESTOCK AND WILDLIFE ENHANCEMENT, CROOK COUNTY.

On July 2, 1990, Big Summit Prairie, Inc., submitted Applications R-70455 and 70456, proposing to store 490.0 acre-feet (af) of water in a reservoir behind a 32.5-foot-high dam and use the stored water for supplemental irrigation, livestock and wildlife enhancement.

The proposed use of water would be for storage of 490.0 af to be used for supplemental irrigation, livestock and wildlife enhancement. The applicant would appropriate water for storage from November 1 through April 30 of each year. The applicant would appropriate up to 440.0 af stored water only for irrigation and livestock. A minimum of 50.0 af would be maintained in the reservoir for wildlife enhancement. Water is available. This use of water would not have a significant adverse effect on the public interest or the water resources in the basin.

The question before the Commission was whether the issuance of permits would impair or be detrimental to the public interest. Administrative Rule 690-11-080 (2)(a)(C) specifies that dams with a height greater than 20.0 feet or impounding more than 100.0 af of water be referred to the Commission to make a public interest determination under Oregon Revised Statutes (ORS) 537.170.

Director's Recommendation

The staff recommended that the Commission find that the project would not have a significant adverse effect on the public interest and authorize the Director to issue the permit with appropriate conditions.

It was MOVED by Jim Howland, seconded by Mike Jewett, and passed unanimously to approve the Director's recommendation.

H. CONSIDERATION FOR APPROVAL OF APPLICATION G-12023 TO USE WATER FROM 11 WELLS, IN THE PISTOL RIVER DRAINAGE, FOR SALMON PROPAGATION, CURRY COUNTY.

In the spring of 1985, the Oregon Pacific Salmon Ranch, Inc., began a salmon-rearing operation on the banks of the Pistol River. The operator's original intent was to hold approximately 10,000 pounds of fish during the peak production period from September to October of each year.

FBC Salmon Farms, Inc., (FBC) bought out the Oregon Pacific Salmon Ranch in March of 1989. FBC began construction to increase the production of the operation to approximately 400,000 pounds per year with up to 200,000 pounds on hand at any time. At the time of the purchase, the hatchery had been pumping a total of 2,500 gallons per minute (gpm) from three wells for over two years.

The application was for the use of 10,000 gpm of water from eleven wells in the Pistol River drainage for salmon propagation. Concerns about the effect this use would have on streamflows and water quality were raised by Oregon Trout and WaterWatch. The ODFW has delayed a hearing on the issuance of a fish propagation license until all other federal state and local permits are acquired. The DEQ is evaluating the water quality impacts associated with the facility and has scheduled a hearing on the issuance of a waste discharge permit.

The effects that pumping these wells will have on streamflows have been analyzed. The Department has developed mitigation measures to ensure that the existing instream water rights are not impacted by the use of hydraulically connected groundwater. These measures require:

1. Measuring and reporting the quantity of water appropriated;
2. Returning the facility's discharge to the river upstream of the reaches affected by the pumping of groundwater when the 1980 instream water right is not met.

Waterwatch recommended that 11 totalizing flow meters be required as a condition on the permit; Department staff feels this is unnecessary.

The mitigation required may be lessened if the permittee submits additional documentation of the extent of groundwater/surface water interference.

Director's Recommendation

The staff recommended that the Commission find the conditional use of the eleven wells would not have a significant adverse effect on the public interest and authorize the Director to issue the permit with conditions.

ADDENDUM:

On May 28, 1991, WaterWatch submitted additional comments on the staff report. Based on these comments, staff modified the proposed permit to specify that:

1. Mitigation would be dependent on the amount of water pumped from the ground;
2. The completion date would be August 1, 1992;
3. Groundwater pumpage and discharge must be measured daily and reported monthly May through September;
4. Should the permittee desire a reevaluation of the mitigation or measuring requirements, a consultant's report must be submitted to the Department, ODFW, and DEQ.

WaterWatch indicated that they would submit a letter for the file requesting that they be notified if reevaluation is ever requested.

Additionally, the local watermaster expects to monitor the flows of Pistol River monthly, June through September.

These modifications were satisfactory to the applicant and ODFW.

It was MOVED by Hadley Akins and seconded by Cliff Bentz to approve the Director's recommendation as amended in the addendum to the original staff report. The motion passed unanimously.

I. CONSIDERATION OF APPLICATION G-12269 TO APPROPRIATE GROUNDWATER FOR MUNICIPAL USE AT SUBLIMITY, MARION COUNTY.

One of the elements of the proposed Willamette Basin rules is to restrictively classify groundwater in the basalt aquifers of the Stayton-Sublimity area for exempted uses only. The Department is holding pending basalt groundwater applications in the area until the basin rules are adopted. This area is one of several in the basin planning process for which Department data reveal water level declines with use.

At the April 19, 1991, Water Resources Commission meeting, Mayor Sam Brentano and City Attorney Jack Hammond of Sublimity spoke to Commissioners about the City's pending application. They expressed

an urgent need for the water from two wells for municipal purposes and fire protection. The city currently has two permitted wells (#1 and #2) which are in use, one unpermitted well (#3) in use, and one unpermitted well (#4) which has not yet been placed into service. Without water from wells #3 and #4, the city will face rationing this summer. A hook-up with the City of Stayton was presented as a costly alternative for Sublimity. Mayor Brentano suggested that there may not be a decline in his area since a local irrigator, Bob Schumacher, has a high-capacity well which appears to remain strong over time. In response to the appeal, the Commission directed the Department staff to review the application and the groundwater information for the area and return to the Commission in May with a recommendation.

Director's Recommendation

The staff recommended a finding that the use may be detrimental to the public interest and to wait for the determination to be developed through the Willamette Basin rules and judge the application accordingly.

Jack Hammond, mayor of Sublimity, said that Sublimity appreciated the responsiveness and effort of both the Commission and the staff in attempting to address Sublimity's serious water needs. Hammond made the following points:

The existing Stayton distribution system is substantially deficient in its ability to provide the needs of the city of Stayton. It would cost more than \$600,000 to serve the city of Sublimity.

The Sublimity fire department suggests that the water production capacity and not water storage is the problem. This points clearly to the necessity for placing Well No. 4 on line as quickly as possible.

The Marion Retirement Center, filled to capacity, could be severely affected from the standpoint of fire protection and domestic water supply if the wells are not permitted.

The City of Sublimity, through the Willamette Basin Plan process, will request an exception for the City to appropriate surface water from the Santiam River sufficient for its municipal needs.

It was MOVED by Roger Bachman and seconded by Cliff Bentz to defer action on Item I and take it up again at the Commission's next meeting. At that time, the Department would expect to see a plan from the City of Sublimity for replacing this source of water. The motion passed unanimously.

L. REQUEST TO INITIATE RULEMAKING TO WITHDRAW WHITEHORSE CREEK AND WILLOW CREEK, HARNEY COUNTY

Earlier this year, Oregon Trout requested the Water Resources Commission to withdraw Whitehorse and Willow Creeks from further appropriation. Both streams contain a rare species of Lahontan cutthroat trout. This unique species of trout is found only in Whitehorse, Willow and possibly McDermitt Creeks in southeastern Oregon. The Department of Fish and Wildlife (ODFW) estimates that the number of trout has declined 90 per cent since 1985. Habitat degradation resulting from prolonged drought and over-grazing is blamed by ODFW for the decline, along with hybridization in other streams.

Lahontan cutthroat trout are designated on the state list of threatened species. The trout are also listed as threatened under the federal act.

Director's Recommendation

The staff recommended that the Commission direct staff to initiate proceedings for the withdrawal of Willow Creek and Whitehorse Creek in Harney County from further appropriation.

Cliff Bentz declared a conflict and took no part in the discussion or consideration of this item.

It was MOVED by Roger Bachman and seconded by Mike Jewett to approve the Director's recommendation. Cliff Bentz abstained. The motion passed without dissent.

N. PROPOSED ADOPTION OF AMENDMENTS TO UMATILLA BASIN RULES FOR REGULATION OF THE STAGE GULCH CRITICAL GROUNDWATER AREA.

At its October 25, 1990, work session, the Commission reviewed groundwater management strategies for the Stage Gulch area of Umatilla County and directed staff to follow the course of action that was pursued in the Butter Creek Critical Groundwater Area determination. That was a two-part process in which a contested case hearing was initially held. The first part of the process resulted in a Director's order which established the external boundaries of the area and the internal subarea boundaries. The order also prevented the issuance of new permits to appropriate water from the basalt groundwater reservoir in the area. The second part of the process, a rulemaking hearing, was held to identify proposed management strategies for each subarea. The adopted rules amend the Umatilla Basin rules (program).

At the October work session, the Commission authorized staff to conduct a contested case hearing on the question of whether the basalt groundwater reservoir in the Stage Gulch area should be a

critical groundwater area. A hearing on this matter was held in Hermiston on February 14, 1991. A proposed order was issued on March 7, following analysis of the hearing record. Parties to the proceeding had until April 8, 1991, to file exceptions or objections to the proposed order.

One exception to the proposed order was filed by Mr. Lloyd Piercy.

A final order was issued on May 15, 1991, following complete review of Mr. Piercy's exception and supporting material. It established that a critical groundwater area existed, defined both the external boundaries and internal subarea boundaries, and addressed the status of applications for new permits to appropriate groundwater from the basalt groundwater reservoir. However, it did not restrict the pumpage of groundwater by existing appropriators. Pumpage in most of the proposed subareas of the Stage Gulch area must be restricted in order to bring about reasonably stable groundwater levels.

At its March 8, 1991, meeting, the Commission authorized a public hearing to be conducted on proposed amendments to Division 507 Umatilla Basin rules. The proposed rules would allow for the controlled use of the available groundwater supply in the proposed subareas of the Stage Gulch Critical Groundwater Area. The principal elements of the rules include the methods for initial determination of sustainable annual yield, the means of allocation of the available water, reporting requirements and other duties of water users, and the process for periodic review and update of the sustainable annual yield.

Director's Recommendation

The staff recommended that the Commission adopt the proposed amendments to the Umatilla Basin rules. The proposed rules seek to phase in a reduction in pumpage of water from the basalt reservoir in the Stage Gulch Critical Groundwater Area. The staff also recommended that the Commission authorize staff to hold a meeting in the basin following the irrigation season to determine the public interest in formation of a local committee to address water-related issues.

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

J. REQUEST FOR APPROVAL OF CLACKAMAS AND SANDY RIVER SCENIC WATERWAY FLOWS FOR DIACK FINDINGS

The Clackamas and Sandy Scenic Waterway Assessment was the fourth in a series of reports on streamflows that support recreation, fish

and wildlife uses in state scenic waterways. The Commission has identified flows for scenic waterway purposes in the Deschutes, John Day and Klamath River Basins. The Commission directed staff to hold public meetings in basins affected by scenic waterway flow assessments. Staff held a public workshop on April 16, 1991, in Oregon City.

The Department also sponsored an interagency briefing to review the assessment process and discuss any issues and concerns. Representatives of the U.S. Forest Service, Bureau of Land Management, State Parks and Recreation Department, Oregon Department of Fish and Wildlife, Clackamas County, and Portland Water Bureau attended. Other agency interest was high because part of the Clackamas Scenic Waterway and the entire Sandy Scenic Waterway are also designated national wild and scenic rivers. The Mount Hood National Forest and the Salem District of the Bureau of Land Management are formulating management plans for the national wild and scenic rivers. Agency and public comments were used in developing the assessment. Fish, recreation, and recommended scenic waterway flow figures were revised based on additional information obtained since the draft was distributed.

There are many issues dealing with the Sandy River that are related to the Scenic Waterway. Clackamas County estimates many of the 7,500 residents in the Hoodland corridor operate without benefit of water rights or outside terms of permits. The County also projects the area's population may soon grow to 20,000. The County and residents are very concerned that actions taken by the Commission may preclude citizens from obtaining water rights for existing uses and may adversely affect future economic development. Their concern has resulted in two initiatives to address water supply questions in the basin. First, Hoodland-area residents have submitted a petition to amend the Sandy Basin program (presented to the Commission as Agenda Item K). Second, House Joint Resolution 61 has been introduced which would create a Hoodland-area Water Supply Task Force. The task force would include representatives from the County, the Department, the Health Division, special districts and citizen planning organizations who would attempt to identify options for meeting the area's water supply needs. In addition, there is also a bill under consideration (HB 2677) which would allow outright domestic and livestock uses in and upstream from scenic waterways.

Director's Recommendations

The staff recommended that the Commission approve the Clackamas and Sandy Rivers scenic waterways assessment and the use of the recommended scenic waterway flows for making findings on water rights applications pursuant to the Diack decision.