

K. RECOMMENDATION ON PROPOSED CHANGES IN WATER RIGHTS PROCESSING TO FACILITATE WATERSHED ENHANCEMENT PROJECTS.

At the Commission's meeting on October 4, Carol Whipple, Environmental Quality Commission member and Vice-Chair of the Governor's Watershed Enhancement Board, discussed some water rights permitting problems which have delayed or prevented the implementation of watershed enhancement projects.

GWEB provides two types of grants. The major grant program is open to anyone wishing to apply. The small grant program provides a set amount of funds to soil and water conservation districts for small projects. The Department of Agriculture manages the small grant program for GWEB. Both programs include projects which apparently have been impacted in some way by water rights processes. ORS 541.375 (8) requires that no GWEB money be released until all necessary permits have been received.

GWEB staff will propose changes in the GWEB application guidebook to help applicants understand the water rights processes; review the potential relief which may occur through processes already underway in the Department and, after determining the water rights needs of the new applications in February, notify applicants that water rights may be needed if the project is funded.

The staff will report to the Commission on the status of the investigations after the February project evaluation period.

Director's Recommendation

The staff did not ask the Commission to take any action at this time.

No formal action was taken on this item, other than the following:

It was MOVED by Mike Jewett and seconded by Jim Howland to designate Anita Johnson as a new representative on the GWEB, with Mike Jewett acting as substitute. The motion passed unanimously.

L. REQUEST FOR APPROVAL OF UPPER WILLAMETTE SCENIC WATERWAY FLOWS FOR DIACK FINDINGS.

The Department has completed the sixth in a series of eight reports on streamflows in state scenic waterways. The Commission has approved scenic waterway flows for eight scenic waterways: The Rogue, Illinois, Elk, Clackamas, Deschutes, Metolius, John Day, and Klamath. A public meeting and an interagency briefing were also held to review the assessment process and to discuss any issues and concerns. The public meeting was held on August 29, 1991, in Eugene. Representatives of the Oregon Department of Fish & Wildlife and Lane County attended the interagency meeting. Agency and public comments were used in revising the assessment.

## Director's Recommendation

The staff recommended that the Commission approve the Little North Santiam, McKenzie, South Fork McKenzie, North Fork of the Middle Fork of the Willamette, and Waldo lake scenic waterways flow assessment and the use of the recommended scenic waterway flows for making findings pursuant to the Scenic Waterway Act.

It was MOVED by Jim Howland and seconded by Anita Johnson to approve the Director's recommendation.

David Moon, Water for Life, said that some of the recommended flows exceed the 50% exceedance flows. It seems as if, he said, the Department is ignoring reality. Moon asked what criteria the staff used in determining these flows.

At the vote, the motion passed unanimously.

### M. PROPOSED ADOPTION OF AMENDMENTS TO THE BUTTER CREEK CRITICAL GROUNDWATER AREA, MORROW, AND UMATILLA COUNTIES (OAR 690, DIV. 507).

Administrative actions by the Water Resources Department to curtail pumpage in the Butter Creek Critical Groundwater Area (C.G.A.) have been continuing for twenty years. The Department ran an aquifer test in March 1991 to determine if an existing boundary effectively separated water users in two subareas. Analysis of the data shows that a water user (Frank Mader, Sixty-Six Ranch) in the Echo Junction Subarea closest to the boundary (Well T.2N./R27E.-7aab) does not impact water users in the Est Subarea. In addition, the analysis indicated that irrigation wells to the east of the Mader well were not affected. Under the current order and rules, Frank Mader's ability to pump well T.2N./R27E.-7aab would be gradually cut back in deference to the more senior water users in the Echo Junction Subarea. In 1995, no water would be allocated to the water right connected to the well.

At its May 31, 1991 meeting, the Water Resources Commission authorized the Department to conduct a rulemaking hearing to modify the allocation rules adopted in 1990. Modifications to the rules being considered include a new area boundary and new sustainable annual yields for the newly created subarea and the remaining portion of the Echo Junction Subarea.

The Water Resources Commission, at its October 4, 1991 meetings, rejected the staff's recommendation to create the Fourmile Canyon Subarea with a sustainable annual yield of 1300 acre feet while leaving the sustainable annual yield at 2700 acre feet for the remaining portion of the Echo Junction Subarea until 1995. The staff was directed to gradually reduce the sustainable annual yield for the Echo Junction Subarea of the Butter Creek C.G.A. from 2700 acre feet in 1992 to 1260 acre feet in 1996.

### Director's Recommendation

The staff recommended that the Commission adopt Alternative 3 with the proposed modifications to the rules that amend the Umatilla Basin Program to create the Fourmile Canyon Subarea with a sustainable annual yield of 1300 acre feet and Option III which would allow time for the recharge project to be developed.

No further action was taken on this item. (See Commission action at Public Comment, above.)

### N. INFORMATIONAL REPORT ON THE DEPARTMENT'S PREPARATION OF RULE AMENDMENTS FOR DIVISIONS 01,02, 11, 75, AND 77.

On February 1, 1991, the Commission approved a plan to examine Department rules related to the public involvement process in the review of water right applications. The intent of the review is to increase the clarity of our rules. An important aspect of this task is to ensure that identical or similar words are used consistently in related rule divisions.

Part of the Commission-approved process included the formation of a work group to review proposed rule changes which would be crafted by staff. The initial focus of this effort was limited to improving and clarifying the public involvement opportunities.

Staff shared proposed rule amendments for the applications and permits and for the instream water right rules (Divisions 11 and 77) with the work group.

A separate subcommittee of the work group reviewed and made recommendations for the procedural, non-attorney representation and contested case hearing rules (Divisions 1, 2, and 75). Work on these draft rules is essentially complete. To maintain consistency among different rule divisions, the Department is delaying a formal request to amend Divisions 1, 2 and 75 pending the final proposals for Divisions 11 and 77.

### Director's Recommendation

This was an informational report only, and no Commission action was required. However, the Commission was asked to offer suggestions or provide additional direction to the staff.

Chair Stickel and Cliff Bentz agreed to attend the Task Force meeting on December 13 and review the draft rules prior to the next Commission meeting. After that, the two members, acting as a subcommittee of the Commission, could make a judgment as to whether the draft rules should go to hearing without bringing it back before the full Commission for a decision at a later meeting. The rest of the Commission concurred.

O. STATUS REPORT ON HE 303, OAK GROVE FORK/STONE CREEK, CLACKAMAS COUNTY, AND CONFIRMATION REQUEST OF DIRECTOR'S ACTION ON HE 404, NORTH FORK SPRAGUE RIVER, KLAMATH COUNTY

Background

At the October 4, 1991, Commission meeting, all past actions by the Director in connection with issuing, transferring, canceling and the withdrawing of hydroelectric licenses were approved with the exception of two projects. The Commission requested a status report on the two projects.

The staff did not recommend that the Commission reopen these two projects based upon staff's and legal counsel's precautionary advice given to the Commission at its October 4 meeting. A rehearing or alteration of the final orders would likely result in litigation.

Director's Recommendation

The staff recommended that the Commission confirm the Director's action to issue the license for hydroelectric project HE 404.

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

P. PETITION TO AMEND THE UMATILLA BASIN RULE FROM WATERWATCH OF OREGON

Prior to the Commission's October 4, 1991, meeting, the Department received a petition from WaterWatch of Oregon to amend the Umatilla Basin Program (rule). The proposed amendment directs the Department to take certain enforcement actions relating to existing water rights in the Umatilla River basin.

Staff said that a quick review suggested that the proposed rule was not appropriate as a basin rule. However, it was in fact very similar to elements of the 1988 basin plan, which is non-rule guidance to the Department and other entities on means and actions needed to carry out rule policies. Staff recommended that the Commission either reject the petition or ask WaterWatch for agreement to postpone action until the November 15 meeting to provide additional time for analysis and discussion. Ann Perrault, speaking for Water Watch, agreed to postpone consideration and asked the Commission not to take action at this meeting.

Following the October 4 meeting, staff drafted outlines of the existing actions and proposed enforcement schedule for the Umatilla River. The Department met with Water Watch to make sure it understood the factual basis for the allegations in the petition.

## Director's Recommendation

The staff recommended that the petition be denied but that the Commission reaffirm the basin plan and McKay and Umatilla River Water Management plan and approve the work plan. The regional manager should hold a meeting in the area to describe the enforcement plan.

The CTUIR proposed some change of language to the enforcement plan, and the Assistant Attorney General suggested some modifications of the tribe's language based on a recent decision by Judge Frye.

Antone Minthorn, Umatilla Indian Reservation, did not agree with the recent decision of Judge Frye which he thought did not answer the question of jurisdiction on the reservation. They did not disagree with the language changes proposed, however.

Anne Perrault, WaterWatch, wanted an attainable enforcement plan in the basin which would not jeopardize the Umatilla Basin Project. WaterWatch does not think that current enforcement measures are successful. Perrault urged the Commission to take another look at the enforcement measures and adopt them by rule. They want to see enforcement of the law.

Chair Stickel proposed that the Commission (1) Resolve not to adopt anything by rule and deny the petition as presented; and (2) Direct the staff to take the suggested enforcement schedule and proposed language changes submitted by WaterWatch or others to the citizens in the basin for their reactions.

The staff was directed to review WaterWatch's proposal and return to the Commission's December meeting with recommended changes and a report on the local response.

Chair Stickel said that she feels some of the changes that WaterWatch is suggesting look reasonable and that she thinks that the parties are not as far apart as it might appear.

It was MOVED by Jim Howland and seconded by Anita Johnson to reject the petition and to ask staff to take the proposals to meetings in the basin and report back to the Commission at its December 20 meeting. The motion passed unanimously.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Jan Shaw  
Commission Assistant