

the issuance of permits while providing the necessary protection to the fish. No solutions have been found through this process that appear to be agreeable to all parties.

Unless the applicants suggest other acceptable alternatives, the staff recommended that the Commission authorize the Department to conduct contested case hearings to determine whether the applications raise substantial public interest issues.

Director's Recommendation

The staff recommended that the Commission find that the proposed uses may be detrimental to the public interest, and authorize the Department to conduct public interest contested case hearings as required under ORS 537.170.

Antone Minthorn, Umatilla Tribes, said that the federal project would restore the fisheries without destabilizing the economy. The tribes had two requests of the Commission: (1) not to lump the Umatilla Basin Project's water right applications together with the others from the Columbia River, and (2) to adopt Alternative 1 and provide additional time to negotiate a resolution of the protests to this application.

The tribes want to see the protests against the water rights application resolved quickly and believe that a contested case hearing process could significantly delay such a resolution.

Minthorn further asked for a time extension to February 1, 1992, and requested that a neutral third party be assigned to organize and chair these proceedings. The tribes will put together a list of candidates if the Department would pay the costs, he said.

Minthorn invited the Commission to meet sometime soon in Pendleton.

Anne Perrault, WaterWatch, asked for a delay of consideration of these applications to allow a plan to be developed. WaterWatch supports the Umatilla Basin Project and is willing to negotiate the issues in the protest.

Karen Russell, WaterWatch, said that any fish recovery plan like that of the Snake River sockeye will affect to a great extent the management of Columbia Basin water resources. She asked that the Commission direct the Department to gather more facts and initiate rulemaking before proceeding to process these applications.

Gary Neal, general manager of the Port of Morrow, said that they have no other alternatives to offer and asked for the Commission's help in this matter.

Ken Pedde, U. S. Bureau of Reclamation, asked (1) that Application No. 71309 for nonconsumptive use of water be processed on a schedule separate from the consumptive use applications submitted by the Port of Morrow and the Hermiston Development Corporation, and (2) that the Commission defer action on No. 71309 to

provide additional time for discussions with the parties who have expressed concerns with the application.

Pedde suggested that further action by the Commission regarding Application 71309 be deferred until the Commission's February 1992 meeting.

Stephanie Burchfield, Oregon Fish and Wildlife Department, believes that caution needs to be taken before proceeding with the contested case hearing. She wants to work forward to a February 1 deadline on the new negotiations and believes that the Bureau of Reclamation application should be considered separately from others on the Columbia River.

Chester Prior, Hermiston Development Corporation, described the use the requested water should be put to. He wants to see a negotiation process in lieu of a formal contested case hearing because of the expense and time involved with the latter. He doubts that negotiations would be fruitful in light of WaterWatch's most recent letter. Prior said that the use of these amounts could not be detected in the Columbia River at The Dalles.

Chair Stickel proposed that the Commission allow until February 1 for the applicants to negotiate and that the Commission retain a mediator who would be acceptable to all the parties and whose expenses would be financed by the parties.

It was MOVED by Mike Jewett and seconded by Anita Johnson that the Commission table the matter until the January 31 meeting to give the parties a chance to negotiate further.

Jewett withdrew his motion.

It was MOVED by Cliff Bentz and seconded by Mike Jewett to separate the Umatilla Basin Project from the other applications and review the situation 30 days from now at the December 20 meeting. Hadley Akins abstained. The motion passed.

It was MOVED by Cliff Bentz and seconded by Jim Howland to approve the Director's recommendation regarding applications #70734, 71110 and 71309.

Bentz withdrew his motion and Howland withdrew his second.

It was MOVED by Cliff Bentz and seconded by Jim Howland to table these applications until the July 17 meeting. The motion passed unanimously.

H. CONSIDERATION OF FORMAL PROTEST TO DIRECTOR'S PRELIMINARY DETERMINATION ON APPLICATION G12211 FOR IRRIGATION OF 6 ACRES IN THE SPENCER CREEK AREA, LANE COUNTY, OREGON.

Application G12211 was filed by Robert Reid on August 22, 1990, requesting the use of up to 36 gpm (0.06 cfs) for irrigation of 6 acres and maintenance of a fish pond.

Staff investigation of the Reid well and pump system determined that the maximum pumping capability was 27 gpm. On that basis, a permit for up to 27 gpm, rather than 36 gpm, would be permitted. Mr. Reid also has a domestic well, which he has used on occasion in the past for topping off the pond and watering the 6 acres, which he uses for horse pasture.

Formal protests against the Director's Preliminary Determination having been received, the matter was referred to the Commission to make a decision on whether Application G12211 should be approved, denied, or referred to contested case hearing.

Director's Recommendation

The staff recommended that the Commission Alternative 1, that the proposed use, with conditions, would not have a significant adverse effect on the public interest or harm existing uses and authorize the Director to issue the permit, including the revised conditions proposed by the Director on August 12, 1991, with the addition of specific reporting dates of March 15 and August 15.

(Chair Stickel withdrew from consideration of this item because she had not been able to review the staff report.)

Hal Reed, Eugene, related questions from area residents about this application. He urged the Commission to read carefully certain sections of the Oregon Administrative Rules as they pertain to this situation. Reed advocated that the Commission delay any decision on issuing this water right permit until all parties are convinced that such action is appropriate.

Paul Riedell, Eugene, declared a number of concerns in connection with (1) technical errors; (2) permit conditions; (3) selective use of information; and (4) conservation in a water-limited area.

Carol Scherer, asked for denial of the water right permit and requested that the Commission find that the proposed use may have a significant adverse effect on the public interest and could harm existing and future beneficial uses.

Gordon Barron, Eugene, asked the Commission to reject the requested permit.

Joyce Riedell, Eugene, spoke of a number of problems she sees in connection with this application: (1) lack of monitoring for interference between wells; (2) appropriation of water in a water-limited area; (3) issuing a permit before adoption of basin rules; (4) not ensuring adequate and safe supplies of groundwater; (5) unreliable well tests; and (6) lack of a coordinated program.

Gunnar Schlieder, hydrogeologist from Eugene and a resident of the area, had concerns as follows: (1) staff conclusions were inconsistent with pump test data;

(2) conditions are insufficient; (3) timing of pump test was poor; (4) extraction of groundwater from water-limited area was not addressed by staff.

Dan McKenna, property owner in the Spencer Creek area, asked that the Commission use a sound and scientific basis for making their decision. He requested that the Commission find that the proposed use may have a significant adverse effect on groundwater in the area. McKenna further requested that the Commission table this matter until more information is available or that the Commission conduct a contested case hearing.

It was MOVED by Mike Jewett and seconded by Anita Johnson to approve Alternative 3 in the Director's staff report to conduct a contested case. Chair Stickel did not vote. The motion passed.

I. CONSIDERATION OF PROTEST TO DIRECTOR'S PRELIMINARY DETERMINATION ON APPLICATION G11984 FOR IRRIGATION OF 4.5 ACRES IN CLACKAMAS COUNTY.

Application G11984 was filed on November 7, 1989, by George Walker for use of groundwater from a well located in Clackamas County. The proposed use is for irrigation of 4.5 acres. The amount proposed to be appropriated is 86 gallons per minute (gpm). In the event the application is approved, the maximum amount that would be allowed for irrigation of 4.5 acres is 25.25 gpm. The well was drilled in December of 1988.

The proposed well is within a quarter-mile of Foster Creek, a tributary to a state scenic waterway, the Clackamas River. Based on a review, staff determined that the Walker well does not have the potential for substantial interference with Foster Creek and will not interfere with the Clackamas scenic waterway flows.

Protests against this application were filed by Robert Nielsen and by Aron Eastberg. Shortly after the filing of these protests, the applicant submitted a statement in response, which included survey responses from 8 nearby residents indicating that they had had no problems with their wells since use of the Walker well began in 1989.

Following completion by staff of an aquifer test, the Director issued a Preliminary Determination, finding that the application should be approved.

Mr. Nielsen did not renew his objection to the Walker application. A formal protest against the Director's Preliminary Determination was filed by Mr. Eastberg.

Division 11 rules prompt Commission review when a formal protest against the Director's Preliminary Determination is filed. The matter was referred to the Commission to make a decision on whether an application should be approved, denied, or referred to contested case hearing.

Director's Recommendation

The staff recommended that the Commission find that existing rights and the public interest would not be harmed by approval of application G19984, and direct that a permit for use of up to 25.25 gpm from this well be issued.

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

J. INFORMATIONAL REPORT ON WETLANDS WATER RIGHT ISSUES.

At its last meeting, the Commission expressed interest in water right issues that pertain to wetlands mitigation. Two questions encompassing a range of issued warranted consideration:

- (1) When does a wetlands project require a water right?
- (2) When a water right is required, can the application be processed before the applicant loses state or federal funding for the project?

State and federal laws require mitigation for any wetlands diminished or destroyed by development. Wetland mitigation may involve a use of water requiring a water right. The function and design of wetlands projects can be very different from traditional water uses. Wetlands can be created or expanded in a number of ways, including through impoundments which raise the water table; diversions which flood low area; with ponds supplied by groundwater; by installing headgates on culverts; by depending stream channels; by increasing the number of stream meanders; or with levees and berms which trap stream overflow. Clearly, some of these activities may affect water availability and use. A water-use permit or a transfer is required in many cases in order to protect existing water rights and to ensure that the project's use of water is protected by law.

A Wetlands Advisory Group was formed within the Department in 1988 to consider water rights issues relating to wetlands mitigation. The group outlined several alternative strategies and recommended criteria for determining whether a water right was required for a particular project. Since that time, the Department has revised the criteria.

Director's Recommendation

No action was requested of the Commission. The Commission was asked for concurrence with the proposal to continue researching wetlands mitigation water rights issues or otherwise direct the staff regarding the issue.

No formal action was taken on this item.