

schedule. The Commission instructed Department staff to hold a public meeting to seek comments about the enforcement schedule and to report to the Commission at its December 20 meeting. Staff held the public meeting December 3, 1991, in Pendleton.

Based on an analysis of the testimony received, the Department proposed an amended enforcement schedule that was consistent with the Management Plan recommended by the users' task force, approved by the Commission in July 1991.

Staff considered three alternatives and recommended that the Commission approve the proposed amended enforcement schedule shown in its report.

Director's Recommendation

The staff recommended that the Commission approve alternative 1, approve the proposed enforcement schedule, and instruct staff to carry it out.

Anne Perrault, WaterWatch, acknowledged that the Department's staff has worked hard to resolve the issues in the Umatilla Basin but pointed out several areas where WaterWatch did not agree with the Department's conclusions and recommendations.

Tom Simmons, WaterWatch, pointed out that the federal act states that funds shall be available for the Bureau of Reclamation to do its job in carrying out the purposes of the water exchange. Regarding enforcement, he stated that the Commission is responsible to uphold the act. This requires the Department to not harm the project by its actions or its failure to act. Mr. Simmons also expressed concerns that the Department's certification process is closed to public notice, evaluation and input.

It was **MOVED** by Roger Bachman and seconded by Jim Howland to approve the proposed enforcement schedule, as amended. Language changes made by the Commission provided opportunity for the public to review the Department's findings and provide factual information on the draft Umatilla irrigation district certificates. The motion passed unanimously.

Kent Madison wanted to advance another public interest consideration which would favor off-stream storage in the form of irrigation return flow.

K. PROCESS FOR DEVELOPING LEGISLATIVE PROPOSALS

At its November 14 work session, the Commission reviewed and ranked a preliminary list of legislative concepts. The Commission requested that Department staff members return to the December meeting with a refined list and recommendations on the process to be used in developing each legislative proposal.

The Governor's Office may decide to incorporate some or all of the proposals in legislation to be developed next year. Martha Pagel, the Governor's senior policy advisor for natural resources, has decided that some water-related legislation will be developed in a process

using the Strategic Water Management Group (SWMG) and subcommittees of the group and that all water-related legislative concepts will be reviewed by SWMG before they are drafted.

Pagel will form three major work groups under SWMG to develop legislation. These include groups on program development, natural resource agency structure and funding. She wants to include on each work group Commission members of the affected agencies and make all meetings open to the public.

Director's Recommendation:

The staff recommended that the Commission approve the list of nine legislative proposals and assign Commission members, where appropriate, to work with the Department in developing the proposals.

Martha Pagel, the Governor's senior policy advisor for natural resources, spoke to the Commission about new plans for the Strategic Water Management Group (SWMG) and said she would ask for representation from certain boards and commissions. She also intends to invite some interim committee members to participate in the study of water management. SWMG will begin meeting monthly instead of quarterly, Pagel said.

Pagel plans to form three subcommittees of SWMG. They would be (1) program development and policy; (2) funding; and (3) structure. The subcommittees will first meet in January.

Chair Stickel appointed Roger Bachman as the Commission's representative on the funding subcommittee. Stickel will work with the policy committee, and Anita Johnson volunteered to participate in the structure subcommittee.

Beverly Hayes asked the Commission to designate members to help the agency on water measurement and reporting. Mike Jewett offered to work with that group.

Jim Howland will work with the group on water right applications, permits and certificates, and Chair Stickel will act as an ex officio member of SWMG.

Reed Marbut, WRD adjudications manager, reported on the activities of the new marketing and transfers committee. They have met three times with two more meetings scheduled.

The Commission went through each proposed legislative concept in order and offered their views on each one.

No other formal action was taken on this matter.

[Jim Howland disqualified himself from the next two matters, Items O and M, and left the meeting table.]

O. INFORMATIONAL REPORT AND RECOMMENDATIONS REGARDING REJECTION OF APPLICATIONS R-39276, 39277, R-40720, 40721, 49401 AND 49404; AND LOSS OF PRIORITY FOR APPLICATIONS 49402, 49403, 49405 AND 49406 IN THE NAME OF COOS BAY-NORTH BEND WATER BOARD, COOS COUNTY.

A report at the Commission's October 4, 1991, meeting discussed the status and recommendations regarding ten pending applications in the name of Coos Bay-North Bend Water Board (CBNB). Applications R-39276, 39277, R-40720, 40721, and 49401 through 49406 were filed between December 1963 and June 1972.

The Commission modified the staff's recommendation and allowed CBNB 60 days to submit a work plan that would outline the board's timetable and funding commitment for developing the information needed to complete the applications. The proposed order to reject the applications would be entered only if the applicants failed to provide the work plan.

The Commission received a submittal from WaterWatch of Oregon pointing out that the statutes require that some of the applications be rejected and that all have lost their priority date. Staff also reviewed the matter with our Assistant Attorney General. Advice of counsel is that the statutes and rules of the Commission do not allow the action taken at the October meeting.

Director's Recommendation

The staff recommended that the proposed order be entered, providing for the rejection of Applications R-39276, 39277, R-40720, 40721, 49401 and 49404; and providing further that Applications 49402, 49403, 49405 and 49406 have lost their tentative dates of priority; and that new priority dates may be established for these four applications at such time as the information requested in the Department's November 1, 1989, letter is received.

Phil Matson, general manager of the Coos Bay-North Bend Water Board, and Bill Blosser, CH2M Hill, presented the information requested by the Commission. Submitted was a report on the scope of work and a timetable that Coos County had developed with CH2M Hill to complete a comprehensive water supply study for Coos County, including the Coos Bay-North Bend Water Board service area.

The County is currently working on contract language with CH2M Hill for development of this project. As soon as that is completed, the applicants will be ready to proceed with the full implementation and funding of the project.

Karen Russell, WaterWatch, supported the Commission's position.

It was **MOVED** by Roger Bachman, seconded by Mike Jewett, and passed unanimously to approve the Director's recommendation.

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

Investigations by the Water Resources Department in the Butter Creek Critical Groundwater Area (C.G.A.) have been continuing for twenty years. Most recently, 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 use (Frank Mader, Sixty-Six Ranch) in the Echo Junction Subarea closest to the boundary does not impact water users in the West Subarea. In addition, the analysis indicated that irrigation wells within the Echo Junction Subarea to the east of the Mader well were not affected. Under the current order and rules, Frank Mader's ability to pump his well would be gradually cut back in deference to the more senior water users in the Echo Junction Subarea. By 1995, no water would be allocated to the water right connected to the Mader 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 subarea boundary and new sustainable annual yields for the newly created subarea and the remaining portion of the Echo Junction Subarea.

The Commission, at its October 4 meeting, 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. Staff was directed to gradually reduce the allowable pumpage for the Echo Junction Subarea of the Butter Creek C.G.A. to 1260 acre feet in 1996.

At its November meeting, the Commission reopened the hearing record for two weeks to allow additional testimony.

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. The amendments would create the Fourmile Canyon Subarea with a sustainable annual yield of 1300 acre feet and set the sustainable annual yield in the Echo Junction Subarea at 1260 acre feet but would allow 2700 acre feet to be pumped through 1995, provided that a recharge project is pursued.

It was **MOVED** by Roger Bachman and seconded by Hadley Akins to adopt Option 3 in the Director's recommendation.

Before the vote was taken, Bachman withdrew his motion and **MOVED** to adopt Option 4. Mike Jewett seconded. Chair Stickel and Hadley Akins voted no, and the motion failed.

It was then **MOVED** by Roger Bachman and seconded by Anita Johnson to approve Option 1. The motion passed unanimously.

[Jim Howland returned to the meeting table at this point.]

P. PROGRESS OF NEGOTIATIONS ON APPLICATION 71293 AND T-6621E, BUREAU OF RECLAMATION UMATILLA BASIN PROJECT, UMATILLA COUNTY.

The negotiating parties have agreed to attempt to settle the issues by January 31, 1992. At the first meeting, they reached consensus on identification of 13 issues to be addressed, which were reduced to three general categories.

Approximately eight of the original issues fall into the enforcement category, on which the group is close to resolution. The group has roughed out the beginnings of a process to be followed on the remaining issues which fall into the other two categories involving BOR actions. The goal of the group is to agree by January 31 on the specific conditions to recommend for inclusion in the water right and exchange order and on a process to resolve issues which cannot be resolved by January 31.

At the December 16 session, the parties also agreed to recommend to the Commission that it begin a contested case hearing process for the purpose of giving notice to and defining other interested parties, in anticipation of resolving the contested case with a stipulated order (and possibly other agreements among the parties), resulting from this process. This group has attempted to identify the interested parties, but any additional parties would be folded into the negotiating process, if feasible.

It was **MOVED** by Roger Bachman and seconded by Mike Jewett to move ahead to a constested case hearing for the purpose of indentifying parties.

Don Armstrong, Hermiston 2000, supported the basin project and submitted a petition signed by residents from the Hermiston area, asking the Commission to grant the water rights for the project.

At the vote on the above motion, Hadley Akins abstained from voting. The motion passed, 5-0-1.

J. REQUEST FOR CONCURRENCE ON DIACK-RELATED PUBLIC INFORMATION MATERIALS

The 1988 state Supreme Court ruling in Diack v. City of Portland interpreted the Scenic Waterways Act to require that before the Commission issues water rights in or above scenic waterways, it must first find that any such diversions are necessary to a beneficial use and would meet the requirements of the Scenic Waterways Act. The principal requirement of the Act is that the free-flowing character of the waters be maintained in quantities necessary for recreation, fish and wildlife. Accordingly, in 1990 the Department began a program to determine flow needs in all 18 state scenic waterways. To date, flow assessments have been completed on 12. The remaining assessments are scheduled for completion within six months.

The Department's focus during this effort has been on collecting and analyzing existing data on flows needed to support fish and recreation. Now that flow data have been compiled and approved by the Commission for most scenic waterways, the Department has begun to use this information for findings in its permitting process. How the Department uses "Diack flows" in preparing findings has interested, and at times concerned, the public and interest groups. Staff has produced a draft public information fact sheet to clarify what "Diack flows" are and how the Department will use them.

Director's Recommendation:

The staff recommended the Commission concur with the proposal to produce and distribute public information on scenic waterway flow assessments.

David Childs, Oregon Wheat, expressed concerns about varying views on consumptive use.

The Commission requested a statement that existing water rights would not be affected. Bachman suggested simplifying the language.

No formal action was taken on the item.

L. PROPOSED ADOPTION OF RULES FOR APPLICATIONS AND PERMITS FOR WATER USE FOR CHEMICAL PROCESS MINING (OAR 690, DIV. 78).

The 1991 Oregon Legislature passed a comprehensive law to regulate chemical process mining, otherwise known as heap-leach mining. The law requires the Department of Geology and Mineral Industries (DOGAMI) to coordinate processing of all permits by state agencies for chemical process mining. The law specifies a time frame for processing applications and includes opportunities for public comment and protesting of the applications or permits. The time frame and opportunities are different from that described in Chapter 690, Division 11 for processing water rights. The law also requires the Department to adopt rules necessary to implement the law by December 31, 1991. The Department drafted rules and held a hearing on them on November 13, 1991. Written comments were accepted through November 20. Staff reviewed the comments and proposed adoption of the revised rules.

Director's Recommendation

The staff recommended that the Commission adopt the proposed rules for applications and permits for water use for chemical process mining.

Karen Russell, WaterWatch, submitted three proposals dealing with public notice or comment:

- (1) Rules should allow for public notice during the certification process;

- (2) Requests for any modification of permits should be noticed to the public; and
- (3) Public comments should be added to significant public issues going to the Commission.

It was MOVED by Mike Jewett and seconded by Hadley Akins to adopt the rules as submitted. The motion passed unanimously.

Agenda Items N and Q were deferred to the January meeting.

There being no further business, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in black ink that reads "Jan Shaw". The signature is written in a cursive, flowing style.

Jan Shaw
Commission Assistant