

The Water Resources Commission directed staff to present a report at its March 1992 meeting describing enforcement options on BLM stockwatering facilities. Also on February 14, 1992, an order withdrawing Whitehorse and Willow Creeks and tributaries was issued by the Commission. Some of the BLM unpermitted, stockwater reservoirs are located in these watersheds. Because of the order, it will not be possible to process any applications in these watersheds until a plan for the recovery of the Lahontan cutthroat trout is completed by the U.S. Fish and Wildlife Service (USFW). Only instream uses and limited off-stream stockwatering uses that are clearly a part of and/or consistent with the recovery plan will be allowed. The recovery plan is presently being reviewed internally by USFW and is not expected to be approved before the end of 1992.

Director's Recommendation

The staff recommended Alternative 3, which effectively defers regulation of water in the 1,600 BLM facilities so long as BLM maintains its schedule of filing about 400 applications per year and there is no injury to prior rights or fish and wildlife, as determined by ODFW or USFWS. Staff would regulate only for valid injury complaints and require BLM to submit maps showing the facilities scheduled for filing that are of sufficient accuracy for location purposes.

[Cliff Bentz declared a conflict of interest with this item because his firm represents ranchers with BLM allotments, and he holds an interest in a local ranch. Bentz also indicated a conflict with any discussion on the Whitehorse Creek matter.]

Mike Crouse, Bureau of Land Management, described his agency's position on this matter and made some suggestions for modifications to the order.

Jim Myron, Oregon Trout, urged adoption of Alternative #1, saying that how the Commission responds to this situation will set a precedent for how illegal water uses throughout the state are handled.

Karen Russell, WaterWatch of Oregon, Inc., urged adoption of Alternative #1, commenting that it was the only alternative consistent with Oregon statute and rules and with good public policy.

Polly Owen, cattle rancher and executive vice-president for the Oregon Cattlemen's Association, said that the Commission's actions today would greatly affect farmers and cattle ranchers in Eastern Oregon. Owen said the Commission should adopt Alternative #3 which was recommended by the Department and which would serve all interests.

Stephanie Burchfield, Oregon Fish and Wildlife Department, said her agency had a number of reservations about Alternative #1. ODFW prefers enforcement to be applied to those ponds that are causing fish and wildlife damage and wants to see no new ponds constructed. ODFW requested location maps of existing unpermitted facilities.

It was MOVED by Cliff Bentz and seconded by Hadley Akins to adopt the Director's recommendation, as amended. The Commission instructed the staff to return to the next meeting with an evaluation of the request for modification of the Willow and Whitehorse Creek withdrawal order. The motion passed unanimously.

K. REQUEST TO DELEGATE THE AUTHORITY OF THE COMMISSION TO THE DIRECTOR TO ACCEPT APPLICATIONS AND TO APPROVE, APPROVE WITH MODIFICATIONS OR REJECT HYDROELECTRIC APPLICATIONS FOR PRELIMINARY PERMITS AND TO ADOPT ORDERS ACCEPTING TWO PRELIMINARY PERMITS.

Oregon Revised Statute 543.210 now requires, "... anyone who proposes to operate a hydroelectric project in Oregon shall apply for a state preliminary permit." The language was made mandatory by the passage of Senate Bill 240 by the 1991 Legislature. Prior to SB 240, an applicant could apply for a preliminary permit but it was not required.

ORS 537.140 also was revised by SB 240 to read, "If the copy of the federal application is filed with the commission at the same time it is filed with the federal agency, at the commission's discretion such copy may fulfill the requirements for an application under subsection (1) of this section."

In the past, the applicant went through the federal preliminary permit and licensing process and then applied to the state for a license, avoiding the state preliminary permit process.

At the Commission's July 19, 1991, meeting, authority was delegated to the Director to issue a hydroelectric license for both minor and major hydroelectric licenses under certain circumstances. However, the action taken by the Commission at that time did not make specific reference to the issuance of a preliminary permit for a hydroelectric license or permit.

The purpose of a preliminary permit is to identify the site and establish a priority date for future consideration of a hydroelectric license for the applicant. Through rulemaking currently underway, many of the current state application requirements are proposed to be dropped because they request information that can be obtained only after formal study which must occur in the license phase of the application at some point further in the licensing process. This is consistent with the federal process.

Once the preliminary permit is issued, all consultation and studies are conducted and the draft license application is prepared. No construction can take place under a preliminary permit.

Regardless of the form of the preliminary permit application, the application would not be accepted if it were for water or at a location where the state is prohibited from issuing a license, such as a scenic waterway. Acceptance of the preliminary permit application does not ensure that the preliminary permit will be granted. A public hearing, local planning authority plus state and federal agency review is required prior to issuing or denying the preliminary permit application.

Director's Recommendation

The staff recommended the Commission delegate authority to the Director to:

- (1) Accept preliminary permit applications,
- (2) Process and approve preliminary permit applications, and
- (3) Approve with modifications or reject preliminary permit applications.

AND

The staff recommends that the Commission adopt the attached Orders accepting the information filed with the preliminary permit applications by Michael L. Keiser and Portland General Electric as sufficient to warrant processing of the applications.

Karen Russell, WaterWatch of Oregon, Inc., said that they remain opposed to the delegations and oppose the staff's current proposal for even further delegation of authority relating to the acceptance, processing, approving, and rejecting preliminary permits for hydroelectric projects. They urged the Commission to deny the request to delegate preliminary permitting authority to the Department and to not adopt the proposed orders.

Larry Tuttle, director of the Wilderness Society, encouraged the agency and the Commission to retain their roles in the policy of reviewing preliminary permits.

After discussion with the Assistant Attorney General, the Commission directed the Department to bring this item back for clarification at its next meeting.

L. REQUEST FOR APPROVAL OF GRANDE RONDE, WALLOWA, MINAM, AND OWYHEE RIVERS SCENIC WATERWAY FLOWS FOR DIACK FINDINGS

The Department staff has completed the seventh in a series of eight reports on streamflows in state scenic waterways. The Commission

has approved scenic waterway flows for the McKenzie, Little North Santiam, North Fork of the Middle Fork of the Willamette, Waldo Lake, Rogue, Illinois, Elk, Clackamas, Sandy, Deschutes, Metolius, John Day and Klamath Scenic Waterways.

The Commission directed staff to hold public meetings in areas affected by scenic waterway flow assessments. An interagency briefing was held in La Grande on January 21, 1992 to review the assessment process, and discuss any issues and concerns. Commissioner Akins and representatives of the US Forest Service, Oregon Parks and Recreation Department, Oregon Department of Fish and Wildlife, and Wallowa County attended the interagency meeting. To gather public comment, public workshops were held on January 21 in La Grande and January 22 in Ontario. State Representative Chuck Norris attended the La Grande workshop and State Representative Denny Jones and Commissioner Bentz attended the workshop in Ontario. Agency and public comments were used in revising the assessment.

Director's Recommendations

The staff recommended that the Commission approve the Grande Ronde, Wallowa, Minam and Owyhee 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 Cliff Bentz to adopt the Director's recommendation. The motion was passed unanimously.

M. REQUEST FOR APPROVAL OF A PROPOSED PROCEDURE FOR ACCEPTING LATE TESTIMONY IN RULEMAKING HEARINGS.

The Commission has been discussing procedures for late public testimony on non-contested case matters since its November 1991 meeting in Bend. Approaches range from paralleling a stringent contested case process to actually conducting a hearing at the Commission meeting. Advice from legal counsel suggests the process is largely discretionary. The major concerns center on providing adequate notice to interested parties, allowing equitable opportunities for participation and establishing a manageable process at Commission meetings.

At its last meeting, Commission discussion generally focused on two options: 1) Allowing limited testimony on substantial changes and 2) Allowing submission of written comments after the staff report becomes available. The Commission asked staff to put together a recommendation along those lines.

Director's Recommendation

The staff recommended the Commission approve both suggested

options for accepting late testimony. If application of the process creates problems, further refinement may be necessary.

The Commission concurred with the recommendation and asked staff to return with proposed language for the agenda and hearing notices. The Commission took no formal action on this item.

N. CONSIDERATION OF THE WITHDRAWAL OF GROUNDWATER FROM FURTHER APPROPRIATION AT PARRETT MTN., YAMHILL, WASHINGTON AND CLACKAMAS COUNTIES

In May 1991, the Friends of Parrett Mountain (FOPM) presented information to the Water Resources Commission (Commission) which indicated that groundwater levels in some wells on Parrett Mountain had declined dramatically, while others declined modestly and still others were stable. FOPM is a local organization which represents the views of some citizens on Parrett Mountain. This information, with associated charts, was offered as testimony to the Department in consideration of the agency's Willamette Basin Planning activity. FOPM suggested that a prohibition on new groundwater use and a critical groundwater area designation were needed.

As a technical base, the FOPM information included groundwater level data which were collected by water well constructors per well reports, Water Resources Department staff, U.S. Geological Survey staff, and well owners. FOPM sought to include information from representative wells over the entire mountain but highlighted well deepenings and matched original well reports to the deepening reports. FOPM used local knowledge and assistance from Department staff in the matching process. The data tabulation report covered approximately the area currently featured in the proposed Parrett Mountain groundwater withdrawal area (~28 sq. miles). Although the data display water level declines on the mountain, their complete extent and causes were not clear.

In October 1991, FOPM wrote to the Department, requesting technical assistance in measuring water levels in some wells on the mountain. About the same time, FOPM hired a hydrogeologist to help it better understand groundwater conditions on the mountain. Being interested in more knowledge of local groundwater, the Department suggested a number of wells for measuring and committed to one week of staff time to collect data designed to help the hydrogeologist's investigation. Department assistance awaits well access scheduling from FOPM on the effort.

FOPM has appealed to the three counties where the mountain is situated in efforts to promote land use actions which reflect groundwater adequacy. The Department has participated in discussions on this with the three counties in December and January. The Department has taken the assignment of drafting groundwater protection measures which the three counties (initially) may wish to use in making land use decisions.

Formulation of the conditions continue by staff.

Eric Lemelson of FOPM addressed the Commission at the December 1991 work session. At that time, the Willamette Basin Proposed Plan included an implementing action to cooperate with local Parrett Mountain parties on a groundwater study to determine if pursuit of a critical groundwater area designation were warranted. At his urging, staff revised the proposed plan to say that if warranted, the Department would schedule a critical groundwater investigation of the Parrett Mountain Area. Staff was directed to provide more information on a study for the Commission at the January meeting.

At the January 1992 meeting, the Commission adopted the Willamette Basin rules that classified eight groundwater areas for exempt uses only, including two for basalt aquifers that make up the Parrett Mountain area. The Commission also approved the Willamette Basin plan which directs staff to work with local parties and schedule a study, as needed, on Parrett Mountain. The plan also indicates that the Department will declare a Serious Water Management Problem Area which would allow the Department to require reporting on water use (and possibly groundwater levels) from existing and new wells in the area.

During consideration of adoption of the Willamette Basin Rules and Plan at the Commission's January 1992 meeting, staff described a possible Parrett Mountain groundwater study. The study would take 18 months and a staff commitment of two person-years. The staff report also described the delays that such a study would place on previously contemplated activities. Karl Anuta, attorney for FOPM, appealed to the Commission for administrative controls on new uses of groundwater on Parrett Mountain during the study period. The Commission directed staff to perform the administrative details, hold a hearing, and generate the record on a proposal to withdraw the unappropriated groundwater of Parrett Mountain from further appropriation for two years. Staff was instructed to return to the Commission at its March 13, 1992, meeting with a staff report on the proposal.

The Commission indicated that shifting staff resources to complete an analysis of Parrett Mountain groundwater was appropriate. At the urging of FOPM, the Commission also proposed to withdraw Parrett Mountain groundwater from all new uses by order for a period of two years. This action was proposed because it appeared the potential risk to the resource and existing users from additional development of exempt uses may be substantial. Two years would provide the Department time to complete its study and determine the appropriate controls needed. Although the dominant aquifers in the proposed withdrawal area are basalt, there are also sedimentary and alluvial aquifers overlying the basalt. It is unlikely that there are potable aquifers below the basalt. The directions to staff regarding the withdrawal aquifers were not

specific so the proposal reflected a temporary withdrawal of all groundwater within the Parrett Mountain area. Pursuant to ORS 536.410, the notice of hearing was published (with map) in the Newberg Graphic, Wilsonville Spokesman, and Tualatin Times. About 500 notice "packages" were also sent to individuals upon request, county officials, state officials, local well constructors and others. A group that formed in opposition to the proposal (Citizens Allied for a Rural Environment, C.A.R.E.) reported that it sent notice of the hearing to 1500 people. The hearing drew about 350 attendees and the Department received 6-1/2 hours of oral testimony from about 60 people. In addition, the Department received some 200 written comments. Oral testimony opposing the proposal was estimated about 75% of total, while written testimony opposing the proposal was estimated about 60%.

Director's Recommendation

The staff recommended that the Water Resources Commission direct staff to follow Alternative 2, to dismiss the withdrawal proposal but adopt temporary Special Area Well Construction Standards for Parrett Mountain and to work with the State of Oregon (Dammach State Hospital property) so that its use of water does not result in excessive decline.

Donn Miller, WRD hydrogeologist, described the current situation and handed out a draft temporary rule which he proposed for adoption today. He then introduced the panel which had worked with the Department on bringing this matter back to the Commission.

Each of the panel members took a few minutes to speak to the Commission. The members were

John Borge	Clackamas County
Rob Hallyburton	Yamhill County
Kevin Martin	Washington County
Jim Rapp	City of Sherwood
Marjo Nelson	Groundwater Advisory Committee

Steve Schneider, well driller, spoke then, representing his position in this matter, and saying he supported Alternative 4 in the staff report.

David Craig, Citizens Allied for a Rural Environment, spoke on behalf of his group and disputed claims made by the Friend of Parrett Mountain.

Karl Anuta, Friends of Parrett Mountain, presented his group's views. He asked for a halt to new wells after telling the Department about dropping well water levels.

It was MOVED by Hadley Akins and seconded by Lorna Stickel to approve Alternative #2 from the Department's staff report.

Before a vote could be taken on that motion, Roger Bachman made a SUBSTITUTE MOTION to approve Alternative #3 (as cited below), including the well construction standards. Jim Howland seconded the substitute motion.

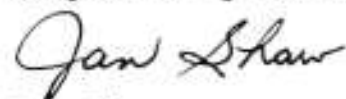
"Alternative 3. Withdraw basalt groundwater on Parrett Mountain within "hot spots" from futher appropriation for two years and adopt the same features as a temporary rule (Attachment 16 without order item 4). Also, work with the State of Oregon (Dammasch State Hospital property) so that its use of water does not result in excessive decline."

On the vote on whether or not to consider the substitute motion, Hadley Akins voted no. The motion passed 6-1.

On the vote on the substitute motion itself, the motion passed unanimously.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Jan Shaw
Commission Assistant

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