

staff that, though the format and substance of the agreement comply with the statutory and rule requirements, the Commission has not clearly delegated authority to the Director to enter such agreements on behalf of the Commission.

The intent of the statutes and rules is to provide timely decisions on emergency permits and agreements during drought emergency situations. The lack of delegation of authority to participate in drought agreements would defeat this purpose if decisions had to be delayed until the Commission could review them.

Director's Recommendation

The staff recommended that the Commission reaffirm the agreement with Metro and TID and delegate to the Director the authority to sign future drought agreements of this type on behalf of the Commission.

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

3. Columbia River states: The Director told the Commission that the Columbia River states had been meeting to examine streamflows, endangered species, and other things in common. A more formal record of those meetings will be published soon.

The state of Washington recently said that it would not process any more water right applications, at least out of the mainstem Columbia and Snake Rivers, after the December 1991 listing of the sockeye salmon as endangered. Washington is holding 1,500 pre-dated permits and is agonizing over how to administer them.

The states might be able find common ground for preparing a reply to the Northwest Power Planning Council on this matter.

The Idaho legislature has removed certain impediments in connection with water in the Columbia and Snake systems which would allow setting aside some statutes while they study the problem.

H. WATER RIGHT APPLICATION BACKLOG

The Department has accumulated a backlog of approximately 2770 unprocessed water right applications because of a significant increase in new application filings, increased application review requirements and reduced opportunity to borrow staff. This backlog breaks down as follows:

1. Out-of-stream and groundwater (consumptive).....	1800
(approximately 120 of these will require Commission review)	
2. Instream (ODFW, DEQ, Parks).....	700
3. Transfers.....	270

As of January 1, 1990, the Department's total backlog of pending applications stood at 1272. However, the rate of application filings for water use permits under category 1 above during the last two years has increased from a ten-year average of 400 per year to the current rate of 1000 per year. During the same period, instream water right filings have averaged more than 300 per year. The statutes do not provide for collection of fees for instream water right applications; thus, processing of instream applications is essentially unfunded.

Director's Recommendation

The staff recommended that the Commission declare that reduction of the backlog be a high-priority matter, direct staff to develop a revised strategy for addressing the backlog, announce a processing freeze for applications received after April 1, 1992, and direct implementation of the proposed strategies identified in 2 through 4 of the staff report.

Stephanie Burchfield, ODFW, supported the Department's recommendation.

Karen Russell, WaterWatch, expressed concern about the priorities of managing instream water rights.

Martha Pagel, director-appointee, said that the Department must develop a plan for dealing with its backlog, including immediate, short-term and long-term planning, and contemplate going to the Emergency Board for help with this problem. Pagel said she thought that a freeze on processing applications was not the way to handle the situation.

Chair Stickel directed the Department to continue on the same course but to combine recommendation Number 1 with Number 2 in a new proposal in time for the next Commission meeting.

The three Commission members who were working on the agency budget should include this as a part of that discussion and consider taking the matter to the E-Board.

J. CONSIDERATION OF FORMAL PROTEST TO DIRECTOR'S PRELIMINARY DETERMINATION ON APPLICATION G-12550, CONSIDERATION OF FORMAL PROTEST AGAINST APPLICATION 69976 AND CONSIDERATION OF

COUNTY.

On June 29, 1989, Application 69976 in the name of Mt. Hood Meadows, Oregon Ltd., was filed in the office of the Water Resources Department (WRD), proposing the use of 1.1 cubic feet per second (cfs) of water from two springs for fire suppression and recreational resort facilities. On May 24, 1991, a superseding application was submitted, reducing the original request to the use of 0.48 cfs from two springs for quasi-municipal use. A protest on behalf of the Friends of Mt. Hood (FMH) was submitted, objecting to the issuance of a permit in approval of the application on August 1, 1989. Crystal Springs Water District (CSWD) submitted a protest against the approval of the application on September 1, 1989, and the Oregon Department of Fish and Wildlife (ODFW) submitted a letter of concern on December 1, 1989.

On May 23, 1991, Application G-12550, in the name of Meadows Water Company (MWC), was filed with WRD, proposing the use of up to 0.48 cubic foot per second of water from one well for quasi-municipal use. Formal protests against the Director's Preliminary Determination were received from FMH and ODFW.

The matter is being referred to the Commission to make a decision on whether the protests should be denied and Applications 69976 and G-12550 should be approved, or whether the applications should be referred to contested case hearing.

On June 5, 1991, Application R-71657 in the name of MWC was filed with WRD, proposing to store 2.48 acre-feet (af) of water in two concrete reservoirs for quasi-municipal use.

MWC proposes to use water for the existing development and for a proposed expansion of a destination ski resort. A final environmental impact statement was prepared for the Forest Service and released on January 18, 1991. On May 10, 1991, the Mount Hood National Forest supervisor signed a record of decision (ROD) approving an expansion of the existing facilities. The ROD was successfully appealed and the FEIS returned to the Forest for additional review. Final resolution may be delayed for a period of up to two years.

Summer irrigation of the ski slopes for stabilization of the soils is being done near the development. This use is not clearly allowed under the existing water right (Certificate 48445) for the facility. The applications were submitted for uses of water needed for the existing development as well as to provide additional water for the proposed expansion of the facility. Any expansion must be approved through the federal review process.

In August 1991, the Water Resources Department was asked by ODFW to join in a motion to intervene in the appeal of the ROD. WRD had commented extensively on both the draft and final environmental impact statements (EIS). In the motion, WRD reiterated its concerns that the process by which the Forest Service made its decision was flawed. WRD identified several

shortcomings in the EIS, including lack of site-specific hydrologic analysis and lack of consideration of water conservation measures.

A memorandum of understanding (MOU) between WRD and ODFW regarding the application review process includes the agreement that WRD will recommend a contested case hearing if ODFW does not agree with the proposed conditioning of a water use permit. Because of this provision in the MOU, the Department is recommending that a contested case hearing be initiated.

Director's Recommendation

The staff recommended Alternative 1, that the Commission find that the proposed use of water described in the draft permits for Applications 69976, G-12550 and storage described by Application R-71657, for quasi-municipal use may have a significant adverse effect on the public interest, and schedule a hearing to assist the Commission in making its determination.

Charles "Jody" Calica, General Manager of Natural Resources, Confederated Tribes of the Warm Springs, said that the tribes wanted to protect their interests and authorities granted by federal statutes and acts. They felt that there was insufficient information to make a decision and that any action to authorize a permit was premature. Calica suggested that the Department err on the side of the fish and go to a contested case hearing.

Tom Hachtell, manager of Crystal Springs Water District, stated that the Department did not have sufficient information on streamflows and hydrology in the area.

Karl Anuta, Friends of Mt. Hood and 1,000 Friends of Oregon, said that both groups fully supported sending this matter to a contested case hearing. Anuta read into the record a letter submitted by 1,000 Friends of Oregon which urged the Commission to order contested case hearings to air all the issues in this case because of potential threats to the public interest.

Stephanie Burchfield, ODFW, supported the Department's recommendation and believed that a contested case hearing would allow a number of peripheral issues to be addressed.

John Weber, Port of Hood River, read into the record a letter from the Hood River County Board of Commissioners which urged the Commission to formally approve the Meadows application.

Ken Davis, Mt. Hood National Forest, spoke on behalf of his organization.

Tom Walker, engineer representing Mt. Hood Meadows, stated that available well log data confirmed that the groundwater was from a confined aquifer. He further stated that nearly all of the water used would be returned to the stream.

Richard Whitman, attorney representing Mt. Hood Meadows, spoke in support of his clients' position. He requested that the Commission approve the groundwater application and schedule a contested case hearing on the other two applications. He stated that he did not believe the MOU was binding on the Commission.

Beth Peters, Portland-Area Ski Group Council, urged the Commission to grant the requested water rights applications.

Clay Simon, Mt. Hood Meadows, reiterated Mr. Whitman's request.

Keith Petrie, Mt. Hood Recreation Association, requested approval of the applications.

It was **MOVED** by Cliff Bentz and seconded by Jim Howland to grant a permit under groundwater Application G-12250 and send the other surface water applications to a contested case hearing, including the changes made by the applicants.

Chair Stickel and Commissioners Jewett, Bachman and Johnson voted no. The motion failed.

It was **MOVED** by Mike Jewett and seconded by Roger Bachman to follow the staff's recommendation and send all three applications out to a contested case hearing. The motion passed unanimously.

L. **REQUEST FOR RECONSIDERATION OF ACTION ON RULE ON MANAGEMENT OF STORED WATER (OAR 690-250-150) AND STRATEGY FOR CONVERSION OF WILLAMETTE BASIN MINIMUM STREAMFLOWS**

The instream water right legislation passed in 1987 requires conversion of minimum streamflows to instream water rights. Minimum streamflows must be converted without change unless the conversion to instream water rights would impair other rights, the flows exceed those needed for the public use, or the conversion is not in the public interest. If changes in a minimum streamflow are contemplated, a contested case hearing must be held to determine if any of these criteria are met.

The remaining unconverted minimum streamflows in the Willamette Basin each include a stored water component. The minimum streamflows were adopted by the Water Resources Board in 1964. It is not clear what was intended by inclusion in the minimum streamflows of specified quantities of water from storage. Historically, the Department has not regulated water use based on the stored water components. In 1988, the Commission adopted OAR 690-250-150 which defines as natural flow any water released from storage in excess of that needed to meet water rights calling on that source. Adoption of the rule reaffirmed the historic method of regulation. The Department has not recognized access to stored water unless the water right holder had ownership in the reservoir or had contracted to receive the water.