

case" and a temporary rule. The temporary rule by its nature could last only until mid-September 1992.

At the same meeting, the Commission adopted a temporary rule which prescribed special-area well construction standards for Parrett Mountain in its entirety. This rule addressed the fact that the construction of some wells on Parrett Mountain was resulting in the draining of groundwater from "perched" groundwater zones to deeper zones within open well bores. That construction practice aided the depletion of upper zones which are sometimes the groundwater source of wells. A permanent rulemaking record for the special-area standards will result in an agenda item for the Commission's consideration in August.

DIRECTOR'S RECOMMENDATION

The staff recommended that the Water Resources Commission follow Alternative 2, to deny the stays on the actions of March 13, 1992, regarding the Northern Parrett Mountain Basalt Groundwater Withdrawal Order and temporary rule and the Special-Area Standards Well Construction temporary rule, and adopt the proposed findings. This action would be accomplished by adopting findings that substantial public harm will result by allowing the stays. That harm is based on the risk of damage to the resource through water level declines from expanded resource use and draining by new well construction.

It was MOVED by Mike Jewett and seconded by Roger Bachman to deny the stay. The motion passed unanimously.

6. REQUEST TO ESTABLISH A PUBLIC HEARING DATE FOR PRELIMINARY PERMIT APPLICATION HE 535 - CASCADE RANCH HYDROELECTRIC PROJECT, AND, HE 536 - PGE CLACKAMAS CREEKS HYDROELECTRIC PROJECT

The Department has three major hydroelectric preliminary permit applications, two of which are ready for a public hearing. A public hearing is required prior to taking action to approve or deny a preliminary permit application pursuant to ORS 543.225. Notice is required to be published for four consecutive weeks prior to the required hearing. The purpose of the hearing would be to identify issues which must be addressed if a future license application is to be considered.

Oregon Administrative Rule 690-51-140 states, "The time and place for holding the hearing shall be fixed by the Commission." The Commission needs to either direct the department to hold a hearing or select a date, place, and a Commission member to hold each of the hearings.

DIRECTOR'S RECOMMENDATION:

The Department recommended that the Commission direct the department to select a time and place for the hearings and to hold the hearings on these two preliminary permit applications.

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

7. Drought: Barry Norris and Beverly Hayes brought the Commission up to date on the drought conditions throughout the state.

Hayes described a statewide action plan for dealing with the drought. The Drought Council will meet again next week in a brainstorming session, and more will be coming out of this and subsequent meetings.

Separate from the Governor's drought declaration, the Commission can declare drought areas, Hayes said, and can require municipalities to prepare and submit curtailment plans. The Commission asked to be kept abreast of conditions and offered to work with the Department on this effort.

G. REQUEST FOR APPROVAL OF NORTH UMPOUA AND NESTUCCA RIVERS SCENIC WATERWAY FLOWS FOR DIACK FINDINGS

The Oregon Supreme Court decision, Diack vs. City of Portland, requires that the Commission must find that recreation, fish and wildlife uses in the scenic waterway will not be impaired before issuing new water rights in areas above or tributary to a scenic waterway.

Staff has completed the final in a series of eight reports on streamflows in state scenic waterways. The Commission has approved scenic waterway flows for the Grande Ronde, Wallowa, Minam, Owyhee, 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. Accordingly, public workshops were held on April 8 in Tillamook and April 9 in Roseburg. Representatives from the "Friends of the Nestucca" and Tillamook County Soil and Water Conservation District attended the Tillamook workshop, and representatives from the Steamboaters, the Western Oregon Livestock Association, the Oregon Farm Bureau, Douglas County, US Forest Service and Pacific Power and Light attended the workshop in Roseburg. In addition, interagency briefings were held in Tillamook on April 8 and Roseburg on April 9 to review the assessment process and discuss any issues and

concerns. Representatives of the Bureau of Land Management, US Forest Service, Oregon Parks and Recreation Department, Oregon Department of Fish and Wildlife, McMinnville Water and Light, Tillamook and Douglas Counties, and OSU Extension attended the interagency meetings. Agency and public comments were used in revising the assessment.

DIRECTOR'S RECOMMENDATION

The staff recommended that the Commission approve the North Umpqua, Nestucca and Walker Creek scenic waterways flow assessment and the use of the recommended scenic waterway flows in Attachment 1 for making findings pursuant to the Scenic Waterway Act.

Les Helgeson, Friends of the Nestucca, complained about advice contained in "Soggy Sneakers, Second Edition," published by the Willamette Kayak & Canoe Club. That edition advises river runners to use Helgeson's private property to scout and portage a portion of the Nestucca River. Letters to the Willamette Kayak & Canoe Club have been sent on Helgeson's behalf by the law offices of Green, Elliott & Ehrlich and from the office of the Tillamook County District Attorney, recommending that the club change its advice and warning them that persons using private property to scout or portage on the Nestucca could face a civil suit for trespass.

Kenneth Lane, property owner on the Nestucca River, said that if the proposed flows are adopted, it could deny residents surface water rights for domestic use. He wanted to build on his property with one domestic water permit.

It was MOVED by Anita Johnson and seconded by Mike Jewett to approve the Director's recommendation. The motion passed unanimously.

H. PROPOSED ADOPTION OF AMENDMENTS TO RULES GOVERNING THE RESERVATION OF WATER FOR FUTURE ECONOMIC DEVELOPMENT (OAR 690, DIVISION 79).

ORS 537.356 grants any state agency the authority to request that the Water Resources Commission reserve water for future economic development. The Commission now may reserve water through a two-step process. The process involves both rulemaking to amend the appropriate basin program and the issuance of an order approving a reservation. The issuance of an order approving a reservation is dependent upon a public interest determination that shows that the reservation is in the public interest. This process generally requires two sets of hearings.

In January 1992, the Oregon Department of Agriculture (ODA) petitioned the Water Resources Commission to amend the rules that govern the reservation of water for future economic development.

The ODA proposed, among other things, that the Commission adopt reservations by order only rather than additional rulemaking and set the priority date as the date the Department receives the request rather than the effective date of rulemaking. The Water Resources Commission accepted the petition and authorized staff to conduct a public hearing on ODA's proposed rule amendments. A hearing was held on March 25, 1992. Six people attended the hearing and three offered oral testimony.

The Draft 2 rules and Comments and Questions were made available at the hearing. They identify several issues staff had concerns about. The Draft 2 rules incorporate staff suggestions and clarifications into the amendment process. Staff received several comments addressing both the Comments and Questions and the Draft 2 rules.

DIRECTOR'S RECOMMENDATION

The staff recommended the Water Resources Commission:

- * Adopt the proposed rules on Reservations of Water for Future Economic Development (OAR 690, Division 79) arrayed in attachment 1.
- * Authorize staff to make minor technical changes and conforming corrections to the rules.

Kip Lombard thought that the rule should go to a contested case process.

Karen Russell, WaterWatch, said that the Department should not continue processing applications for consumptive water use if there is no water available for appropriation subsequent to establishment of the reservation. She urged a conservative approach as recommended by the Department.

Joe Hobson, representing the Oregon Farm Bureau Federation, submitted new language to be added to the proposed rule.

It was MOVED by Roger Bachman and seconded by Mike Jewett to accept the language in subsection (2) of OAR 690-79-010 as drafted by staff in the staff report. Cliff Bentz and Chair Stickel voted no. The motion passed 5-2.

By unanimous consent, the Commission accepted an amendment of OAR 690-79-050 by adding the following after the first sentence, "Prior to termination of the approved term of reservation, the applicant may apply for a time extension of up to 20 years. The proposed time extension shall be subject to all rule requirements and standards governing review of initial reservations. An approved time extension shall retain the priority date of the original reservation."

By unanimous consent, the Commission accepted an amendment of 690-79-060 (5) to read, "If the reservation is to be provided by existing storage, agreement to the proposed reservation by the party in charge of disposition of the stored water or evidence of authorization or allocation consistent with the proposed reservation."

By unanimous consent, the Commission accepted an amendment of OAR 690-79-070 to read, "Within 30 days of receiving a request for reservation that is deemed complete by the Director, the Director shall notify:..."

By unanimous consent, the Commission accepted an amendment of OAR 690-79-120 to read as follows, "If, after the Department performs a review of the reservation request, the Director does not find that the proposed reservation will impair or be detrimental to the public interest..."

The Commission accepted the request by staff that authorization of a rulemaking hearing to amend the Willamette Basin program to rescind the reservations approved in January be included as a part of the Director's Recommendation.

By unanimous consent, the Commission accepted an amendment of OAR 690-79-130 by adding the following, "(4) Notwithstanding OAR 690-01-045, the Commission shall issue the proposed order, hear exceptions, and issue the final order on all reservations on which a contested case hearing is held."

It was MOVED by Mike Jewett, seconded by Roger Bachman, to adopt the rule as amended and to authorize a hearing on amendment of the Willamette Basin program. The motion passed unanimously.

I. PROPOSED AMENDMENT OF WATER RIGHT APPLICATION PROCESSING RULES (OAR 690-11, 690-77), PROCEDURAL RULES (OAR 690-01, 690-02), ADOPTION OF PROCESSING TIMELINES (OAR 690-03) AND REPEAL OF CONTESTED CASE RULES (OAR 690-75 [MOVED TO OAR 690-01]).

At its February 1, 1991, meeting, the Commission directed staff to undertake evaluation and, as appropriate, amendment of the Department public involvement rules for water right application processing. This rule revision effort was encouraged by various public interest groups.

A citizen task force was organized, and four meetings were held during which an application processing outline was developed. Staff added new concepts for public interest issue evaluation, including several new rule sections clarifying standards for public interest assessment.

On February 14, 1992, the Commission authorized staff to give

official notice of Commission work session and rulemaking hearing. The work session was held March 12 and Chair Stickel conducted the official rulemaking public hearing on March 26. Five individuals testified at the public hearing.

DIRECTOR'S RECOMMENDATION

The staff recommended that the Commission adopt the proposed rules for Divisions 1, 2, 3, 11, 75 and 77 as revised. Staff further requested authority to make conforming, technical or minor non-substantive editorial revisions and corrections to the proposed rules as necessary.

[Mike Jewett declared a conflict and withdrew. Steve Sanders also declared a conflict and withdrew. Meg Reeves took Sanders' place at the table.]

David Moon, Water for Life, commented on some of the contemplated rule changes and on several other sections of the proposed rule language.

Karen Russell, commented on Division 11 definitions (#20 on Page 3). She recommended striking the word "incorporated" because of impacts it causes elsewhere in the rules.

Russell said that language about referral to the Commission of issues surrounding threatened and endangered species should be narrowed because it could raise more policy issues in the future.

It was MOVED by Roger Bachman, seconded by Anita Johnson, to keep the stricken language shown in proposed rule 690-11-185(2) (f) relating to the presence of threatened and endangered species and to add "may be adversely affected by the use of water in the application" at the end of the rule. Mike Jewett had excused himself from the discussion and did not vote. The motion passed 6-0.

It was MOVED by Cliff Bentz and seconded by Roger Bachman to add the term "incorporated" back into the definition of Municipal Use, with the caveat that this issue will be revisited by the Commission. Mike Jewett did not vote. The motion passed 6-0.

Staff proposed to have "unless the testimony relates to an issue that could not have been identified in an objection or protest" added to 690-11-185(5) pertaining to when the Commission may allow public testimony during the review of an application on which there had been no objection or protest.

Staff also proposed the Commission approve the striking of proposed 690-01-045(2) (b) (H) to make it consistent with the new Division 79 rules pertaining to reservations for future economic development.