

It was MOVED by Mike Jewett and seconded by Cliff Bentz to accept Alternative 4 of Agenda Item E. The motion passed unanimously.

Pagel stated that the staff recommendation for Item F would be to follow Alternative 2 as described in Agenda Item F and adopt the revised Special Area Standards as described in Attachment 1 of the addendum.

It was MOVED by Mike Jewett and seconded by Jim Howland to accept the staff recommendation offered in the Addendum to Item F. The motion passed unanimously.

G. PROPOSED ADOPTION OF AMENDMENTS TO THE WILLAMETTE BASIN RULES (OAR 690-502) RELATING TO AGRICULTURAL AND MUNICIPAL RESERVATIONS OF WATER

On June 5, 1992, the Commission adopted Division 79 rules that govern the reservation of water for future economic development. These rules establish contested case proceedings as the sole method for establishing reservations of water for future economic development. They grant pending reservation requests filed after June 30, 1989, and processed and approved according to the provisions of Division 79 rules, a June 5, 1992, priority date. During consideration of the Division 79 rules, the Commission voted to retain rule 690-79-010(2) and rely upon the contested case proceedings to ensure equity between the Willamette Basin agricultural and municipal reservations. During Commission consideration of the rules counsel noted that the Willamette Basin reservations may have been adopted improperly; counsel suggested repealing the reservation elements of the Willamette Basin rules and proceed to process reservation requests under the Division 79 rules. A rulemaking hearing was held on July 15, 1992, with Commissioner Bachman presiding. Staff evaluated the testimony and proposed rule amendments.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission amend the Willamette Basin rules as shown in Attachment 1 of the agenda item.

Susan Schneider, City of Portland, and Tom O'Connor, Eugene Water and Electric Board. Ms. Schneider suggested the following language to 690-502-030(6): Consider reservations for future uses within the context of planned and reasonably expected mixes of land uses and economic development in the basin or sub-basin(s) consistent with the public interest. Establish reservations that provide for appropriate mix(es) of future uses as established by local or regional plans; for example, comprehensive plans, water supply plans, economic development plans, urban reserves, and other relevant resource development and protection plans. Generally, design, condition, or subordinate reservations such as that water

can be allocated to meet future municipal and irrigation needs without disadvantaging either use in a way that is consistent with the public interest. Schneider also suggested eliminating "through assignment of priority dates."

Ladd Henderson, Oregon Water Resources Congress, reported that the Department of Agriculture applied for a reservation in 1989 and has followed the Commission rules. He expressed concern that now another set of new rules is being considered without any priority given to agriculture. Suggested that the Commission review the record of the original agricultural reserve and give it priority.

Commissioner Howland asked Greg Nelson for clarification about the priority arrangement. Greg explained that Steve Sanders, Assistant Attorney General, had suggested that in the new rules the Commission should grant all pending reservation requests a June 5 priority date to clear up any inconsistencies.

Martha Pagel explained that in the process of developing the Willamette Basin plan there was a desire to reflect the full range of economic needs, attempting to bring water planning closer together with land use planning and other types of long-range management and resource management. This couldn't be accomplished through the planning process because of requirements to go through a contested case process. Up until that point, the Department of Agriculture did not have a priority superior to a municipal reservation. The Commission's intention as reflected in the planning process was to treat those and any other economic needs and interests equally.

Chair Stickel and Martha Pagel agreed that the department would assist municipalities and other state agencies in developing a formal reservation request that meets the standards.

It was MOVED by Jim Howland and seconded by Anita Johnson to accept the staff recommendation plus the proposed revised language to OAR 690-502-030(6) offered by Susan Schneider. Hadley Akins, Cliff Bentz, and Mike Jewett voted no. The motion passed.

#### H. PUBLIC COMMENT

Bill Porfily, Manager of Stanfield, Westland & Hermiston Irrigation Districts, spoke to request a six-month extension of time to review the mapping of water rights in the Hermiston area. Of the 1,500 people in his three districts, 115 came in to review the maps; several of these people identified needed corrections. He urged the staff to relax the stringency adopted in the McKay/Umatilla Water Management plan to allow for more time to review the maps.

John Borden stated he felt it premature for the Commission to be asked to modify the enforcement compliance schedule for the Umatilla Basin.

Chair Stickel suggested that after the certificates are mailed out in mid September, the permittee could then request a time extension.

Steve Applegate said that the final Commission review of the proposed certificates for Stanfield and Westland is scheduled for over a year from now. There will be an opportunity in the future for consideration of an extension of time.

Borden suggested that staff and the Director could examine the schedule but would recommend against considering a revision of the enforcement compliance schedule at this time. Chair Stickel agreed this was a reasonable response and asked staff to meet with the districts to work out the details before bringing the matter before the Commission.

Kip Lombard, Oregon Water Resources Congress, said that the minutes from the July meeting in Hermiston were not clear as to action taken. He suggested that alternatives voted upon be explained clearly in the minutes. Commissioner Bachman agreed.

Barbara Bean, Jackson County Citizens' League, commented that rather than direct her questions to the Commission she would contact local staff.

I. Follow-up Report on Processing Applications for Water Use from the Columbia and Snake Rivers and their Tributaries above Bonneville Dam

Director Pagel explained that this item offers a follow-up on how the Department intends to deal with the processing of pending applications. Item J relates to the rulemaking process that will deal with new applications. Pagel suggested listening to the staff presentation of both Items I and J before public testimony.

Reed Marbut reported that staff initiated processing of all pending applications for appropriation of water from the Columbia and Snake Rivers and their tributaries which were filed on or before July 17, 1992, on a case-by-case basis. Staff proposed to initiate processing of those applications received after July 17, 1992, that fall within Categories 1, 2 and 3 of Section II.B of this agenda item. These categories cover 1) applications which propose water uses that are compatible with or are designed to facilitate salmon recovery, such as water quality improvement projects, instream water rights, off-stream livestock watering or riparian improvement projects; 2) applications for water use essential for public health and safety, including critical needs for human consumption; and 3) applications requesting limited licenses and drought emergency permits. Processing of all other applications received after July 17, 1992, on the Columbia and Snake Rivers and their tributaries would be delayed until the outcome of the basin hearings is known and applicable basin programs are amended.

Marbut reported that the Confederated Tribes of the Umatilla Indian Basin wrote with a concern about case-by-case consideration of applications. Pagel responded in writing that staff will review each application carefully under the standard permit review process using a cumulative impact analysis as a part of the mandated public interest review of each proposed water use.

J. Request for Approval of Proposed Language to Amend the Basin Programs of the Columbia and Snake Rivers and Tributaries above Bonneville Dam and Proposed Public Hearing Schedule.

Beth Patrino explained that this is a proposed basin program amendment which would modify the classifications of the Columbia and Snake Rivers and their tributaries. The purpose of the amendment would be to maintain options for implementing the final salmon recovery plan. The amendment would apply to applications received by the Department after July 17, 1992. It has been designed to act as an overlay classification. If this amendment is adopted in the basin programs, an application for water use that comes into the agency would have to pass through two classification screens. This amendment would be the first screen. The second screen would be to determine whether the water use is an existing classification in the basin program.

Patrino reported on an addition to the amendment based upon comments received since the staff report was circulated. In addition to the amendment applying to surface water, it would also be applied to hydraulically connected groundwater within a quarter-mile of the surface water so that groundwater applications would also be affected by this classification.

The proposed amendment under consideration establishes three categories of water use classification: 1) uses designed to promote the recovery of the anadromous fish; 2) domestic livestock and instream uses; and 3) uses essential for public health and safety. The amendment does not apply to limited licenses, permit applications for emergency drought permits, or the use of stored water from a reservoir that was given a priority date prior to July 17, 1992.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission approve the proposed basin program amendment language with the groundwater addition for the purpose of public hearing.

The following is public testimony on Item I only:

John Freeman, representing Freeman Cattle Company, spoke in opposition to Item I. He expressed concern that his 1990 application has never been considered and disagreed with the procedure for processing pending applications.

David Moon, representing Water for Life, expressed concern about delaying permit applications. People who have had their applications delayed for a length of time often find themselves faced with new rules at the time their application is considered, and could have their permit denied by someone who has a later priority date.

The following is public testimony on both Items I and J:

Laura Schroeder, representing Blue Mountain Potato Growers and a member of Oregon Water Coalition, expressed concerns with Item I -- dividing applicants by sub-basins affects water rights; the Commission will be setting a priority of use systems. She said that Item J proposes a rule that has no basis since the proposed classification system hasn't been proven to help anadromous fish. She expressed concern that Commission authorization to go to rulemaking was never given and that public notice was inadequate. Schroeder asked that staff present this item at the next meeting with a new rulemaking notice with hearing dates.

Stephanie Burchfield, representing Oregon Department of Fish and Wildlife, spoke in support of the staff recommendation in Item I and the staff recommendation plus groundwater amendment in Item J.

Karen Russell, representing WaterWatch of Oregon, reviewed their petition for withdrawal or temporary emergency rulemaking filed with the agency on Item J. The petition asked for withdrawal or immediate closure of all unappropriated waters of the Columbia River System from uses which do not provide a net gain to flows of the Columbia River and its tributaries.

Stephanie Burchfield, representing Oregon Department of Fish and Wildlife, spoke to Karen Russell's concerns. The Bureau of Reclamation has been asked by the Northwest Power Planning Council to study storage opportunities for winter water that could be used to supply the Snake River to help juvenile salmon get downstream in the spring or early summer. However, if someone would apply for a stored water right for irrigation that could preclude this opportunity.

Jan Boettcher, representing Oregon Water Resources Congress, suggested that storage sites where augmented stream flows could occur and reservations for future storage sites should be included in Section B of Item I. She asked that the record include discussion of exemption of all types of transfers including 3111 and water marketing and transfers for point of delivery that would not have an adverse impact. Boettcher distributed written comments

on Item J which included a request for a 30-day extension before the basin hearings are scheduled so that technical data and cost/benefit analysis could be developed. She questioned whether the closure is really necessary considering the management plans currently in effect. The Bureau of Reclamation is considering the purchase of 1 million acre feet of existing rights or non-structural storage and is also considering 12 reservoir sites in Oregon which would augment stream flow. Boettcher expressed concern about the economic impact of closure.

Kip Lombard, representing Oregon Water Resources Congress, commented on Item I. He was concerned with the proposed order in which pending applications would be processed. If the applications are considered in the order they are filed, each applicant would at least have the opportunity for a public interest hearing. If the applications are taken out of order, the instream and public health applications are considered first, then the water availability test would preclude consideration of the later considered/but earlier filed applications -- those applicants would get no opportunity to argue public interest. The door would be closed because of the water availability criteria. Lombard expressed concern that the hearing schedule in Item J was not authorized by the Commission, and that the public was not given an opportunity to comment on the fiscal impact. He asked for a 30-day extension before the basin hearings are held.

Bill Brewer, representing Blue Mountain Potato Growers, distributed written testimony on Item J asking for an extension of time prior to the basin hearings.

Ron Yockim, representing Grant County, spoke on the withdrawal's affect on land use plans and encouraged the Commission to consider the cost benefit. Yockim urged the Commission to compile and release economic impact information to the public prior to the hearings.

Page1 said that several comments that have been heard today reflect issues that the Commission will want to consider at the time of final adoption of the rules, following the public hearings process. What staff are proposing in Item J is an interim strategy for temporary limited rules until a final recovery plan is in place. Comments should be directed at what is a two-year hold on certain types of applications, not for a permanent withdrawal of the basin.

It was MOVED by Jim Howland and seconded by Cliff Bentz to defer action on Item I and return to the next meeting with another report on the strategy, reflecting comments and issues raised at this meeting. The hearing schedule in Item J is to be revised giving an extra 30 days, the fiscal impact statement is to be revised, and the hearing notice should include consideration of hydraulically connected groundwater. The motion passed unanimously.

It was MOVED by Cliff Bentz and seconded by Mike Jewett to deny the petition filed by WaterWatch for withdrawal or temporary emergency rulemaking. Bachman and Anita Johnson voted no. The motion passed 5-2.

The Commission confirmed that the agency is authorized between now and the October Commission meeting to publish a hearing schedule with the Secretary of State based on an additional 30 days from the previous schedule.

It was MOVED by Cliff Bentz and seconded by Jim Howland with respect to Item I to authorize the department to process drought emergency permits, limited license permits, and permits contingent upon public health and safety, during this 30-day period and longer if necessary. Mike Jewett voted no. The motion passed 6-1.

K. CONSIDERATION OF PROTEST TO THE DIRECTOR'S DENIAL OF OBJECTION OF THE DETERMINATION OF THE PUBLIC INTEREST ON APPLICATION G-12823, FLORENCE RESORT COMMUNITY, INC., (LANE COUNTY), FILED PURSUANT TO OAR 690-11-175(5)

The proposed use of water described by application G-12823 is from five wells. FLORECO would use up to 2.5 cfs for the irrigation of 230.5 acre and maintenance of landscape ponds for recreation. Water is available. Staff found that the proposed use will not have a significant impact on surface water in the area. The use of water should not have a significant adverse effect on the public interest or the water resources in the basin.

A protest to the issuance of the permit was submitted by WaterWatch. Staff believe that the issues have been addressed according to Commission rules and policy.

Steve Applegate reported that water has been used on the golf course to test the well. If staff find this testing is not an appropriate use, enforcement actions will be taken.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the permit be issued with appropriate conditions.

Mike Jewett expressed concern about pesticide effect on the groundwater. Jerry Lidz, Assistant Attorney General, responded that there are two or three agencies that have overlapping jurisdiction. Statutes authorize Water Resources Department to consider groundwater quality, but it is not the agency's exclusive responsibility. Nor does the agency regulate application of pesticides.

Karen Russell, representing WaterWatch of Oregon, referred to their written comments and those from the Oregon Environmental Council and Northwest Environmental Defense Center expressing groundwater pollution concern. She encouraged denial of the permit unless it is conditioned to protect the groundwater resource. She stated there are good water quantity requirements in the permit. Russell suggested replacing the last two sentences in paragraph three of the second page of the permit with, "The applicant shall submit the annual report prepared for the city of Florence to the Department and shall submit monthly quantity and water level reports to the watermaster." Water quality reporting requirements should be made a part of the permit. The permit should also consider siting of the wells to eliminate water quality concerns. WaterWatch did not receive a technical report from the department and felt one should be issued prior to approval of the permit.

Steve Applegate agreed that staff would work with the suggested sentence change that Karen Russell offered.

Ralph Christianson, Consultant, and Ken Lanfear, Public Works Director, City of Florence, spoke in support of issuing the permit. Mr. Christianson pointed out the location of the golf course on an aerial photograph of Florence. He pointed out the aquifer and explained the location of the wells. Recent tests on the wells were done by the Siuslaw Soil and Water Conservation District and nitrates were below test levels. Christianson told the Commission that regular testing for pesticides occur and the results show no contamination. Ken Lanfear said that a technical report was provided as part of the application.

Jerry Lidz stated that the Commission does have the authority to condition the permit by saying the permittee shall not apply any pesticide if those activities would likely contaminate the groundwater supply.

Pagel explained that existing Department policy calls for a role in water quality analysis and monitoring, working cooperatively with other agencies to share expertise. WRD staff responsibility is to identify whether there is a connection between the proposed use and groundwater, and whether the physical characteristics of the area are such that the proposed use could lead to contamination of groundwater. The department prescribes well construction and monitoring standards that will prevent future contamination if those findings are made. The department works with DEQ to determine whether the proposed activities are consistent with the law with respect to chemicals, etc.

It was MOVED by Mike Jewett and seconded by Anita Johnson to send this to contested case hearing. The motion failed 4-3. Lorna Stickel, Roger Bachman, Hadley Akins and Jim Howland voted no.



It was MOVED by Roger Bachman to accept Alternative 2 which calls for finding that the proposed use of water does not have the potential to adversely affect the public interest and authorizes the Director to issue the permit as appropriately conditioned. The motion was seconded by Hadley Akins. The motion passed 4-3. Mike Jewett, Anita Johnson and Cliff Bentz voted no.

Chair Stickel announced that agenda Items L and M relating to hydroelectric applications will be held for consideration at the next meeting to allow for more public review time. The following public testimony was offered on these two items:

JACK GOLDWASSER, representing Mountain Energy Inc., asked the Commission to let agencies do the job they are now empowered to do. He agreed that in matters that are not contested, the department should be allowed to handle them. If problems arise, the Commission should be consulted. Goldwasser commented on inadequacies in OAR Chapter 690, Division 51, especially in the licensing and consultation process. A joint effort between the applicant and appropriate state agencies seems to be lacking. Goldwasser suggested that "consultation" be carefully defined and timelines of the consultation be established in OAR 690-51-060. There is no adequate definition of who would address cumulative impacts and in what manner they are to be addressed. He would like to see the rules reflect this information. He would also like to see the effects of hydroelectric projects on anadromous fish included in the rules.

JULIE KEIL, representing Portland General Electric, submitted written comments on Items L and M.

N. STATUS REPORT AND PROPOSED REVISION OF THE AGENCY RULE-  
MAKING SCHEDULE

This was an informational item to update the Commission on modifications to a previously-approved rulemaking schedule. The staff's recommendation to the Commission was to officially concur with the modifications proposed.

It was MOVED by Roger Bachman and seconded by Mike Jewett to accept staff's proposal. The motion passed unanimously.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Diane K. Reynolds  
Commission Assistant