

It was brought to the Commission's attention that there was a concern regarding Work Session Item 2 (Request for Approval of the Stream Restoration Action Program for the Upper South Fork of the John Day River). See minutes of July 21, 1994.

Karen Russell, WaterWatch, commented. Mark 90, Tape 4.

G. REQUEST FOR ADOPTION OF PROPOSED AMENDMENTS TO OAR CHAPTER 690, DIVISION 19 (DROUGHT MITIGATION), TO IMPLEMENT SENATE BILL 92

Barry Norris, Technical Services Administrator, requested adoption of the proposed amendments to Division 19.

Norris discussed three issues that remain in controversy: Rulemaking outside SB 92; public interest review in options and agreements; and the absence of public interest review in transfers. Norris also reminded the Commission that throughout the rulemaking process there were two distinct sides of most issues, and consensus was definitely not obtained. In general, one side believes the rules are too strict, and the other side believes the rules are too lenient. Norris stated his belief that the proposed rules provide a balanced approach by considering the emergency nature of the situation while still providing adequate review for injury and public interest.

The Commission reviewed the rules and made the following changes:

690-19-040(4) - Should read as follows: "... approval by the Director. No hearing under ORS 537.170 is required."

It was moved by Commissioner Jewett and seconded by Commissioner Johnson to approve the new language. All approved.

690-19-040(4)(d) - change "can be mitigated" to "is mitigated to the satisfaction of the injured water right holder."

It was moved by Commissioner Jewett and seconded by Commissioner Johnson to approve the new language. All approved.

690-19-060 - New name and language. "Potential Liability - Issuance of an emergency use permit, temporary transfer or a grant of preference of use by order of the Commission may not protect the person receiving the permit, transfer or grant of preference from liability for use of the water under the permit, transfer or grant of preference."

It was moved by Commissioner Jewett and seconded by Commissioner Johnson to approve the new language. All approved.

690-19-080(7) - Line 31 - change "and" to "or."

It was moved by Commissioner Jewett and seconded by Commissioner Frewing to approve the change. All approved.

Todd Heidgerken, Water for Life, commented. Mark 795, Tape 2.

Kimberly Priestly, WaterWatch, commented. Mark 16, Tape 3.

A motion was made by Commissioner Jewett and seconded by Commissioner Johnson to adopt the Director's recommendation with amendments. All approved.

H. CONSIDERATION OF APPLICATION 72998 SUBMITTED BY THE PORT OF PORTLAND FOR USE OF SURFACE WATER FROM THE WILLAMETTE RIVER AND THE COLUMBIA RIVER FOR MUNICIPAL USE AND ENVIRONMENTAL ENHANCEMENT

Reed Marbut and Steve Brown, Water Rights and Adjudication Division, along with Mark Madison, CH2M Hill, and Gail Achterman, Attorney, briefed the Commission on this water use application.

Application 72998, filed by the Port of Portland (Port), proposes to use surface water from the Columbia and Willamette Rivers for municipal use and wetland enhancement. The Department issued a Satisfactory Report of Technical Review on October 21, 1993, to which WaterWatch of Oregon and Oregon Department of Fish and Wildlife (ODFW) objected. The Department accepted the objections filed by ODFW and addressed them through permit conditions related to fish screening. The Department denied the objections filed by WaterWatch. WaterWatch protested the denial of its objections but participated in ongoing discussions with the Port to resolve its concerns.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission find that the proposed water uses as described in Application 72998, modified by the addition of conditions as agreed to by the parties and distributed at the July 22, 1994, meeting, would not impair or be detrimental to the public interest, and authorize the Director to issue the permit.

Karen Russell, WaterWatch, commented. Mark 359 and 779, Tape 5.

Commissioner Frewing asked numerous questions of staff and the applicant and expressed concerns about the review process and standards applied.

Amendments were made to the proposed permit conditions:

Condition 5(A) - sentence two, line three, delete "or measuring device."

Condition 14 - The next to last sentence should be modified to include ", along with any conditions,". The complete sentence should read "After a 60-day public comment period, the Commission shall review and approve, along with any conditions, the Supply Plan."

It was moved by Commissioner Frewing and seconded by Commissioner Jewett to approve the amendments to the conditions. All approved.

WaterWatch and the Port disagreed on the following additional proposed condition regarding any request for extension of time limits under the permit:

"Department or Commission review for any requests for extension of time to perfect water use under this permit shall include a determination of consistency with applicable basin programs and regional water supply plans. If the use is inconsistent with any of these plans, the extension of time shall be denied."

A motion was made by Commissioner Frewing and seconded by Commissioner Johnson to include the above additional extension condition proposed by WaterWatch. The motion failed, with Commissioners Bentz and Jewett voting in the negative.

After further discussion, the applicant proposed to include the following condition in the permit:

"Pursuant to ORS 537.230(2) and ORS 539.010(5), the Department or Commission review for any request for extension of time to perfect water use under this permit shall consider consistency with applicable basin programs and regional water supply plans."

WaterWatch agreed to modify the extension condition as proposed by the Port.

It was moved by Commissioner Johnson and seconded by Commissioner Jewett to approve the Director's recommendation with the proposed extension condition. All approved.

## I. CONSIDERATION OF EIGHT WATER RIGHT APPLICATIONS

- I.1 Consideration of Approval of Applications R-73110 and 73111 to Store and Use Water from Two Unnamed Intermittent Streams, Tributaries to Pacific Ocean for Irrigation, Lincoln County
- I.2 Consideration of Approval of Applications R-73260 and 73261 to Store and Use Water from the North Yamhill River, an Unnamed Intermittent Drainage Ditch and an Unnamed Intermittent Stream, Tributaries of Yamhill River, for Agricultural Use and Wildlife, Yamhill County

- I.3 Consideration of Approval of Applications R-73432 and 73433 to Store and Use Water from an Unnamed Stream, Tributary of Luckiamute River, for Irrigation, Wildlife Habitat and Recreation, Polk County
- I.4 Consideration of Approval of Applications R-73446 and 73447 to Store and Use Water from an Unnamed Intermittent Stream, Tributary to Rock Creek, for Irrigation, Fish and Wildlife, Clackamas County

DIRECTOR'S RECOMMENDATION

The Director and staff recommended the Commission approve the applications as stated in the report recommendations.

It was moved by Commissioner Jewett and seconded by Commissioner Johnson to approve the Director's recommendation. All approved.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Cindy Smith  
Commission Assistant