

has been proposed so that staff could be informed of any likely injury prior to execution of an agreement.

Steve Sanders, Legal Counsel, came up with suggested amendments as follows:

690-77-077(17) A lessee has the same standing as the lessor for all purposes regarding management and enforcement of the instream water right.

690-77-077(20) Except as provided in subsection (9), lease agreements shall only be terminated by a superseding agreement of all parties or by specific provision of the lease agreement.

Gayle Killam, Oregon Environmental Council, expressed concern with added language to 690-77-015(7). This could reduce or eliminate any benefit to instream uses in the lease transaction, perhaps to only the point of diversion. The department should attempt to maintain the instream water right to the mouth of the stream until any injury claim is reviewed, and then the adjustment is made at that point. Regarding 690-77-077(7), the priority for an instream right should be respected in the same way as it would be respected for an out-of-stream right. Regarding 690-77-077(10), she expressed concern about mid-season injury claims which may halt the process. The department should stand behind this streamlined process for the full season, opening up the 60-day public review period at the season's end and address the injury claims with a full season's information in hand. This would be an opportunity administratively stop any negative activity affecting other parties in a timely way. Mark 417, Tape 6.

Reed Benson, WaterWatch, asked that in 690-77-077(14), the original language be returned as proposed. There are limits of renewability. According to ORS 537.348, certain kinds of leases are supposed to go through the transfer statute and other kinds of leases don't have to go through the transfer statute. The role of short term leases: 1) allow people to experiment getting water instream; 2) meet periodic needs to get water instream as for a particularly dry year; 3) get water instream quickly while there is a transfer application pending.

ORS 690-77-015(7) Line 22-24. Not clear why this is necessary. New language should not be added. This could be built in as a lease condition.

ORS 690-77-077(7) Line 38-40. He does not agree with department staff on this. It was not discussed in detail with the Advisory Committee. New language could be deleted.

ORS 690-77-077(2)(b) Line 38. Take out underlined language.

ORS 690-77-077(9)&(10) Line 12-17. Concerned this is not adequate. The owner's right is not protected. Less certain than short term approvals given for out-of-stream uses. Mark 561, Tape 6.

Roger Bachman, Oregon Trout, stated that he disagreed with WaterWatch. Renewability is very important. The language that has been added is adequate. He commended staff for their work. Mark 188, Tape 7.

Jan Boettcher, Oregon Water Resources Congress, agreed with Roger Bachman. ORS 690-77-077(2) language needs to be there. The Bureau paid for leasing water rights from the people in the Deschutes Basin this year.

Commissioner Frewing suggested adding language to ORS 690-77-077(7) to reflect the concern brought forward by the Oregon Environmental Council. New language on Line 38 could read:

"users, especially, downstream of the original point of diversion; potential issues related to priority date of instream water rights; whether a ..."

A motion was made by Commissioner Jewett and seconded by Commissioner Hansell to adopt the Director's recommendation with the proposed amendments from staff and counsel. The motion passed unanimously.

I. REQUEST TO REOPEN THE HEARING RECORD ON PROPOSED RULES AMENDING OAR 690. DIVISIONS 09 AND 11. DESCRIBING HOW TO PROCESS GROUNDWATER APPLICATIONS IN AN ABOVE STATE SCENIC WATERWAYS

Fred Lissner, Groundwater Section, presented this item.

Groundwater that is hydraulically connected to surface water can, depending upon specific hydrologic and geologic conditions, interfere with surface water supplies in scenic waterways. Existing statutes and rules do not give guidance to the Water Resources Department for determining whether any particular

new use of groundwater will result in reduced flows within scenic waterway reaches. The proposed rules, which were the subject of a rulemaking hearing on January 24, 1995, would establish guidance for the department in making appropriate findings relative to processing groundwater applications within and above scenic waterways. Hearing testimony disclosed several major concerns about the proposed rules.

DIRECTOR'S RECOMMENDATION

The Director and staff recommend pursuit of a legislative change to resolve the issue and at the same time reopen the hearing record on the rules in an attempt to reach consensus on remaining issues. Staff plan on coming back at the April meeting with a more refined set of rules.

Kimberley Priestley, WaterWatch, stated that she supports the department recommendation but disagrees with the legislative change to resolve the issue, which might weaken the Scenic Waterway Act. It is not acceptable that subsection 3 places the burden on the resource to show that there will be a reduction of flows. The burden should be on the applicant. Sand and gravel standards in subsection 3 appear to be artificial. She expressed concern with the proposed legislative changes because they seem to go against many of the issues that were resolved during the rulemaking process. The department should be making sure through rulemaking that the groundwater withdrawals won't interfere with the established scenic waterway flows. Mark 387, Tape 7.

Gayle Killam, Oregon Environmental Council, supports the reopening of the rulemaking record due to the complexity of the issues and would like to be involved. Mark 435, Tape 7.

Commissioner Frewing expressed concern about the nature of the input received. Perhaps the rules advisory committee needs to be expanded beyond the Ground Water Advisory Committee.

A motion was made by Commissioner Hansell and seconded by Commissioner Jewett to approve the Director's recommendation. The motion passed unanimously.

J. DISCUSSION OF ADDITIONAL OR LONG-TERM LEGISLATIVE DIRECTION

Beth Patrino, Director's Office, led this discussion on legislation.

The department has filed bills for the 1995 Legislative Session, most proposing relatively modest statutory changes. In light of the water management and budgetary issues facing the state, the Commission has expressed interest in further discussion of short and long-term strategies for changes to existing law.

The Commission will be holding teleconference calls during the legislative session. It was decided that these calls will be on a bi-weekly basis to be held on Tuesdays at 10:00 a.m.

Patrino pointed out that the House Committee on Water Policy has a member change. Representative Watt will be replaced by Representative Tarno.

Status on bills of interest:

HB 2184 - Received four hearings.

SB 196 - Not yet up for hearing. The department will be proposing the start card fund to partially support some of the hydrogeologists within the agency. The Ground Water Advisory Committee and the well drillers are opposed to this amendment.

SB 197 - Extension of the basin program exceptions bill from last session, passed through the Senate and moving to the House.

SB 198 - Clarifies that pump and treat projects do not require a water right - one hearing in the Senate. Concerns have been raised by the Groundwater Association about potential affects of this bill on other water right holders. Staff are working with that organization on amendments.

There are two bills that have been introduced so far on the ponds issue, HB 2422 and HB 2376. Two hearings have been held. There is a lot of confusion on what the bills would do. Water for Life has put forward a proposal; doesn't yet have a bill number. All issues will be considered by a work group.

SB 55 - Passed out of Senate.

HB 2395, HB 2375, and HB 2471 to be heard this week in the House.

The other bills heard so far in the Senate address the withdrawal process, retroactive rulemaking, the classification process, public interest standards, and statewide water management plans.

The House deadline for filing is coming up this week. The Senate deadline for filing will come a few weeks later.

A motion was made by Commissioner Frewing and seconded by Commissioner Leonard to support HB 2395 in concept, leaving room for the Commission to evaluate the exact quantity of exempt use that would be allowed and leaving the department room to address other legal questions that may arise. The motion passed unanimously.

Commissioner Frewing expressed opposition to HB 2545 (scenic waterways).

Director Pagel asked for Commission guidance on the Diack concept and the application processing.

Commissioner Bentz says it is really too soon to take positions this early in the process.

Director Pagel stated that the department needs operating principals from the Commission to help at this stage of the negotiations and developing proposals. We would want to maintain a solid base of preserving surface water flows in scenic waterways. We would also want to look at ways to deal with the need to make groundwater decisions, and to be able to accept some imperfect knowledge in doing so as long as we have some provisions for a safety net in dealing with cumulative impacts over time.

Commissioner Frewing asked if there might be Commission support for a public interest review added to the current transfer process that is in statute and rules.

Commissioner Bentz responded that he did not think any restrictions on transfers would make it through this legislative session. Pagel said the Commission did discuss a transfer tax and a public interest standard last summer. A decision was made to propose a budget line item to be able to acquire instream water rights as opposed to using the transfer devise.

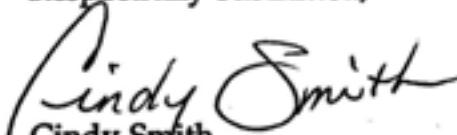
Commissioner Frewing asked about cost recovery for staff work. Director Pagel said that an increase in the fee bill was not submitted. Commissioner Frewing would like a discussion on fees to be brought up at the next Commission retreat.

Commissioner Frewing asked what has been done about time-limited permits. Beth Patrino responded that the issue of time-limited permits is covered in the Strategic Plan. Staff have identified this as a priority to consider in the next biennium.

Pagel said the Commission should be proud of the leadership shown in the Strategic Plan and the work put into it. The plan lays out a vision for the future realizing that we are limited in the present.

There being no further business, the meeting was adjourned.

Respectfully submitted,

  
Cindy Smith  
Commission Assistant