

WATER RESOURCES COMMISSION  
APRIL 6, 1995  
SALEM, OREGON  
MINUTES

MEMBERS

Cliff Bentz  
Mike Jewett  
Nancy Leonard  
Anita Johnson  
John Frewing  
Tyler Hansell

STAFF

Martha Pagel  
Steve Sanders  
Diane Reynolds  
Rick Bastasch  
Bev Hayes  
Dwight French  
Al Cook  
Doug Parrow  
Donn Miller  
Reed Marbut

OTHERS

Michael Robinson  
Kimberley Priestley  
Roger Bachman  
Karen Russell  
Stephanie Burchfield  
Karl Anuta  
William Holmes  
Cory Boswell  
Dan Shepard  
Paul Althale  
Tom McMurray  
David Moon  
Bob Hunter  
Dr. Gordon Anderson

In addition to the individuals listed above, report authors and other staff were present for particular agenda items.

The reports presented at this meeting, which contain the Director's recommendations mentioned in these minutes, are on file in the office of the Director of the Water Resources Department, 158 12th Street NE, Salem, Oregon 97310. Written information submitted at this meeting is hereby made a part of this record and is on file at the above address. Audiocassette recording tapes of the meeting are also on file in the Water Resources Department office.

1. CONSIDERATION OF PENDING WATER RIGHTS APPLICATIONS

Under existing Department rules, the Commission must review water right applications requesting amounts of water in excess of various thresholds, as well as applications that have been protested. At its February meeting, the Commission approved a Department proposal to use a more streamlined approach in developing and presenting pending applications for Commission's consideration.

Dwight French, Water Right Manager, and Beverly Hayes, Public Information Officer, presented the following applications.

S-71062, Oregon Department of Fish and Wildlife, Portland

The Oregon Department of Fish and Wildlife (ODFW) applied for a permit to divert 22.3 cubic feet per second (cfs) of water during the year as needed from three streams in the Columbia and Willamette Basins, Multnomah Channel, Gilbert River and the Narrows. The water would be diverted to maintain water levels in Grassy, Seal, Martin, Big Martin, Round and Mud lakes for wildlife habitat, fish population maintenance and recreation. These lakes are located in the Sauvie Island Wildlife area.

The ODFW application was before the Commission because Oregon Administrative Rules require Commission approval for applications diverting more than 10 cfs.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission issue a permit with conditions described in the draft permit.

Commissioner Frewing commented that the Lower Columbia River environment has been changed by the dams and its tributaries; this is an effort by ODFW to try to deal with those changes.

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

R-73063, U.S. Siuslaw National Forest, Corvallis

The Oregon Dunes National Recreation Area, part of the United States Siuslaw National Forest, applied in 1992 for a permit to construct two south jetty reservoirs in an unnamed drainage way, tributary to the Siuslaw Bay in Florence. The reservoirs will store 114 acre-feet of water, submerging 140.9 acres of land to a maximum depth of four feet. The reservoirs are for the purpose of providing year-round water for waterfowl, shorebirds and other wildlife. Runoff water will be stored from December 1 through June 30. The maximum height of the dam will not exceed 10 feet.

The application came before the Commission because the Mid-Coast Basin Program requires Commission review of reservoir applications proposing to store more than 9.2 acre-feet of water.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission issue a permit with conditions described in the draft permit.

A motion was made by Commissioner Leonard and seconded by Commissioner Johnson to approve the Director's recommendation. Steve Sanders asked if the motion includes filling in the blank on page two of the draft permit with the date of one year after the permit is signed to comply with the law. Commissioners agreed that would be included in the motion. The motion passed unanimously.

R-72926 and S-72927, Dong Kuen Chaey

Mr. Chaey applied for a permit to construct 10 reservoirs in Polk County and a permit to divert 1 cfs of water from the reservoirs to irrigate a golf course during the summer. The reservoirs will collect water from runoff and an unnamed stream tributary to Salt Creek in the Willamette Basin near Dallas. The reservoirs will store a total of 409.25 acre-feet of water for irrigation, recreation and aesthetics.

The applicant will create nine of the 10 reservoirs by excavating soil and creating pools. These reservoirs will store a total of 164.25 acre-feet. The tenth reservoir will store 245 acre-feet and will have an earthfill dam 45 feet high. This last reservoir will be located across an unnamed tributary of Hoekstre Slough, a tributary of Salt Creek, which is a tributary of the South Yamhill River. The site is located due north of the junction of Salt Creek Road with Highway 22.

The Chaey application came before the Commission because the Department's administrative rules require Commission review of applications for reservoirs that impound more than 100 acre-feet of water or are over 10 feet high. As noted above, one of the 10 reservoirs would store 245 acre-feet of water and is 45 feet high.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission issue the permits with conditions described in the draft permits.

Commissioner Frewing asked if the use of the water was limited to the fairways and greens or does it include the entire owned property of the golf course.

Jerry Groff, Project Engineer, said that the water will be used strictly for tees, greens and fairways.

Commissioner Hansell asked how many acres are being covered behind the dam.

French said that when the dam is full, 10.0 acres; the proposed maximum depth of water in feet is 43.0; the maximum height of the dam shall not exceed 45.0 feet.

A motion was made by Commissioner Frewing and seconded by Commissioner Jewett to approve Application R-72926 to construct reservoirs. Steve Sanders asked that Frewing's motion include directing staff to fill in the permit with appropriate dates. Frewing and other Commissioners agreed this would be a part of the motion and would apply to all other applications considered in this docket item. The motion passed unanimously.

A motion was made by Commissioner Frewing and seconded by Commissioner Hansell to approve Application S-72927 to use the water from the reservoirs in Application R-72926. The motion passed unanimously.

S-71161, Clifford and Geraldine WorthyLake, Mapleton

The WorthyLake family applied for a permit to divert water from a spring and Deadwood Creek in the Mid-Coast Basin. Deadwood Creek is a tributary of Lake Creek, tributary to the Siuslaw River in Lane County. These streams support a variety of fish life, including coho and fall Chinook salmon and winter steelhead. The WorthyLakes applied for a total of 0.33 cfs for domestic use to irrigate 25 acres of pasture and to water stock. The Department proposed to issue the permit for 0.01 cfs from a spring for livestock watering year round; 0.01 cfs for domestic use from a spring from November 1 through July 31 and for human consumption only from August 1 through October 31; and 0.31 cfs for irrigation from Deadwood Creek March 1 through July 31.

The WorthyLake application came before the Commission because WaterWatch of Oregon filed a timely formal protest to the proposed use on July 21, 1994. Oregon administrative rules require the Commission to review all protested applications before the Department issues any permits.

In its protest, WaterWatch argued that the proposed withdrawal from Deadwood Creek would reduce flows below levels essential to the survival of threatened stocks of salmon and steelhead. The organization claims that the Department's water availability analysis is defective, its technical report is faulty and the stream's natural flow is too low to safely permit the proposed use. WaterWatch also suggested that the Department failed to take into account a pending instream water right application when the Worthyake application was being studied.

DIRECTOR'S RECOMMENDATION

The Director and staff recommended that the Commission deny the protest and issue the permit with conditions as described in the attached draft permit.

Commissioner Jewett asked staff what was written in the allocation policy about considering filed but not yet granted instream water rights.

Becky Kreag, Resource Management Administrator, responded that the allocation policy was revised to allow water availability consideration of 50 percent for those filed before adoption. It also said that water needs for applications filed after the application receiving technical review could be considered within the public interest review. They would not be part of the water availability calculation.

Commissioner Frewing asked about the cumulative effects of the various instream water right applications that have been filed.

French responded that water availability takes into account all uses that have been permitted, as well as all uses that have been proposed for permit issuance in the technical reviews; not taken into consideration in the calculation of water availability are new or future applications that have not been issued a technical review or permit.

Commissioner Jewett asked about considering as competent evidence the opinion of the Department of Fish and Wildlife staff that withdrawals are a problem.

French said that the rules of objection review require facts that would indicate that the proposed use is detrimental to the public interest.

Commissioner Frewing asked if a requirement to fence the stream would help the temperature concern.

Stephanie Burchfield, Oregon Department of Fish and Wildlife (ODFW), said she didn't ask their district biologist about this but generally if you can improve the riparian habitat, it will have a big effect on producing shade to lower water temperatures. She described the pending instream water right application that ODFW has filed with the Department; and explained that ODFW did not protest the Worthylake application because of a misunderstanding in communication with the Department.

Karen Russell, WaterWatch, believes that the pending ODFW application should be considered when making a final decision. There should be no irrigation use during June through October. The use should be limited to human consumption and livestock June through October. Measurement and reporting of rate and duty should be mandatory, and should be monthly. There should be some sort of fencing conditions to help minimize the impact on the resource. Mark 140, Tape 2.

A motion was made by Commissioner Frewing and seconded by Commissioner Jewett to find that issuing the permit would impair or be detrimental to the public interest, and so propose to reject the application and schedule a contested case hearing as required by rule.

Pagel asked if there were specific issues the motion was based on.

Commissioner Frewing said that perhaps with additional conditions and information, the permit could be issued. Fencing the stream would be beneficial. Strengthening the measuring and reporting provisions would be appropriate. The question of water availability during June and July needs to be determined in a contested case.

Pagel said the Commission might want to consider Alternative 3, noting that further information is needed to determine whether the proposed use should be allowed and schedule a contested case hearing to gather the facts.

Commissioner Frewing withdrew his motion.

Pagel stated that the Commission may add specific conditions. The applicant can choose to accept them, and if not, go to a contested case.

As a result of the discussion, Dwight French summarized the additional concerns of the Commissioners and what they'd like staff to consider and report back to them: To modify the permit to require mandatory annual reporting of the rate; to further limit the period of domestic use and irrigation expanded during July but allow human consumption only during July; fencing as an option; and efficiency of the irrigation system.

Commissioner Johnson said she would like to see further consultation with ODFW staff.

Karen Russell, WaterWatch, asked that the Department work with them when discussing the information with ODFW and the applicant.

A motion was made by Commissioner Jewett and seconded by Commissioner Hansell to have the Department report back at the next meeting that staff have negotiated positions with the affected parties, and, if not, offer a recommendation for further action to the Commission. The motion passed unanimously.

S-74072, Pumpkin Ridge Partners, Cornelius  
This item was dropped from the meeting agenda.

G-13353, Manke Lumber Co., Parrett Mountain  
Manke Lumber Company applied for a permit to pump groundwater from two existing wells for group domestic use in a proposed housing development about 15 miles southwest of Portland in Washington County. The company plans to pump up to 125 gallons per minute of water to serve 66 new housing lots.

The proposed development is in the Parrett Mountain groundwater study area which is located in rural portions of Washington, Clackamas and Yamhill counties in the northern Willamette Valley. Currently, about 4,500 people live in the area. However, population growth has been increasing for several years.

In 1992, the Commission directed staff to conduct a study of groundwater conditions in Parrett Mountain in response to public concerns about the adequacy of groundwater supplies to meet new development demands. At the same time, the Commission adopted temporary rules to restrict new uses in areas of suspected declines and set new well construction standards for Parrett Mountain. The Department completed its study in 1994, concluding that water levels indeed were declining in some parts of the study area. Declines were not observed in the area of the Manke wells.