

He's unclear on ODFW's standards. He asked for time to consider the questions in the rules advisory committee.

Lorna Stickel agreed with Kevin Hanway's comments. The staff recommendation is the most reasonable. The fish issues were adequately discussed. There was a question about the data; it is not clear. She supports the position the Department staff have taken. She expressed concern that rulemaking be done based on good and reliable rationale and that there be an understanding of the impact these rules would have on urban growth in the valley.

Commissioner Bentz asked Stickel about their plan and when it would be available to be brought before the Commission. Stickel said that they would be able to present it anytime before July.

Clark Balforth commented that they had earlier submitted comments that discussed the issue of consistency with the delegation of administration authority. This move toward the consideration language would solve that problem and put these rules in much better light. He is concerned that the proposed rule would be impermissible delegation.

Karen Russell, WaterWatch, said that they strongly support Oregon Trout's testimony. WaterWatch supports Alternative 3 with some additions and comments. The Department and ODFW must communicate. She would like to see a requirement of direct consultation with ODFW in the rules; and would prefer seasonal limitations. The exceptions in Alternative 3 are too broad. The rules are designed to set guidelines on how you allocate water rights based on a concern about fish that are going extinct. The rules should be requiring consistency with any recovery plan. They would like to see specific modifications to riparian area restoration where the proposed use is impacting riparian areas. Some language should be added regarding conservation and efficiency. Russell thinks that ODFW does have rules that set standards for their mitigation. She asked who is the burden going to be on when you look at a new water right. The burden should be on the applicant to show that they are not going to hurt the fish resource. Regarding when to review the rules, WaterWatch would agree to some kind of review process, but not a sunset provision. She supports Alternative 3 that says the Department would review the rules when new information is available. If a cap concept is adopted, rules should include that you would begin revisiting the rules before the cap is exceeded.

Commissioner Hansell asked which plan WaterWatch would recommend the Commission follow.

Russell said WaterWatch would recommend the NMFS recovery plan and the NPPC plan in the interim.

Commissioner Bentz asked what happens if the membership of Congress or the legislature changes and the folks making those plans change them and they're not consistent with what any of us consider might be right. The delegation issue then comes up. Why wouldn't we retain the ability to control our destiny? Why wouldn't we keep back some authority to say no?

Russell said the plan sets a baseline standard for the Commission to be consistent and that the Commission could go more stringent. She asked Steve Sanders if consistency is required with the plans, does it tie the Commission's authority to take more stringent action than what the plan calls for.

Steve Sanders, legal counsel, said no it would not.

Pagel commented that from a policy viewpoint and what came out of discussions with the Department of Fish and Wildlife and Governor's Office, the concern about consistency was more focused on the fact that the federal plans are in flux – we don't have a recovery plan to be consistent with.

Commissioner Frewing asked if the NMFS plan has direction to state water agencies for what they think are appropriate actions for their role in protecting the fish.

Russell said she cannot answer that question.

Commissioner Leonard asked about consistency versus consideration. Are the terms giving direction to the Commission or are they directed to the applications.

Sanders responded that they are directed to the applications.

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in the Willamette Valley should not be harmed by Alternative 3 because, as noted by the WRD staff, the basin plan prohibits further appropriation of natural surface water flow from the Willamette River for irrigation; 3) cities in the Portland metropolitan area should not be hurt by Alternative 3 because their proposed added use of water is at Wilsonville which is outside the path of the Snake River salmon; 4) Frewing would like the efficiency requirements of Alternative 2 inserted into Alternative 3; 5) Alternatives 1 and 2 don't have the provision that a water right can be transferred where there is a benefit to these fish – Alternative 3 includes this provision; and 6) he selected Willamette Falls as the boundary for this rule because it pertains to Snake River salmon and if fish go above Willamette Falls, it is likely that they are not headed for Idaho.

Tom Kline, Resource Management Manager, amended staff recommendation to include concurrence of the Commission to reopen the hearing record for the submission of comments until May 5, 1995, and allow staff to bring comments back to the Commission.

A motion was made by Commissioner Jewett and seconded by Commissioner Leonard to approve the Director's recommendation with addition that the hearing record is to be reopened until May 5, 1995, and allow staff to bring comments back to the Commission. The motion passed 5 to 1; Commissioner Frewing opposed.

Commissioner Frewing had to leave the meeting at this point to take care of personal business.

F. PUBLIC COMMENT

The recorder malfunctioned during this part of the meeting so there is no tape available for Commissioner Boswell's Comments or Mr. Shumway's; however, both gentlemen supplied written comments which are on file and available to the public.

Ben Boswell, Wallowa County Commissioner, discussed objections to the Department's technical reviews and public interest determinations of ODFW's applications for instream water rights. He represented Baker, Grant, Malheur, Umatilla, Union and Wallowa Counties. Mr. Boswell expressed concern that the 900 ODFW applications are adding to the backlog and delaying processing of the applications of citizens. The technical reports in the ODFW applications

contain insufficient information to allow for the public to determine the benefits of the proposed instream flows in relation to the costs to the public and seem to rely on outdated or unrealistic information. There is no documentation of review and approval by local governments. The full appropriation of stream flow does not reserve water for future agricultural, industrial and residential development. The flow rates and conditions of approval are unrealistic. He asked that ODFW withdraw their applications and resubmit those that can be justified; or that the Water Resources Department deny the requests for instream water certificates because of inadequate information.

Lynn Shumway, Baker County, spoke in support of Mr. Boswell's testimony and asked the Commission to consider it.

Roger Bachman, Oregon Trout, said that when he was a member of the Water Resources Commission he discussed with Jasper Coombes his calculations that said that 100,000 acres would need to be dried up which would be 40 percent of the irrigated acreage. These calculations would not be good to use. He would like to have a conversation with Lynn Shumway regarding this.

G. WATERSHED HEALTH STATUS REPORT

Mary Lou Soccia, Watershed Health Manager, briefed the Commission on the Watershed Health Program.

Since the Watershed Health Program started 15 months ago, 100 miles of streambank restoration have been put in place. Seventy-five miles of fence have been erected in the Grande Ronde, South Coast and Rogue Basin; approximately 16 fish screens have been installed and 15 more are pending installation. There are hundreds of citizens now involved in defining a future for their watershed. These citizens are participating in the 13 watershed councils that have entered into partnership with the state to work together in a process which defines a future for the watershed. The watershed councils are working to better access and understand their watersheds, develop a strategy for watershed restoration and protection on a ridge top to ridge top basis, and implement various restoration and protection processes through creative financial leveraging.

There has been some tremendous progress in the basins. A lot of credit goes to the local people who have really made this work and the state employees who have worked with the local people to make it happen.

The program has 13 watershed action plans which have been recognized by the Strategic Water Management Group.

The legislature approved HB 5541 which allows expenditures beyond June 30, 1995, to give the program the 1995 field season. The watershed councils are currently putting together projects and developing contracts for about \$5 million worth of work that will be happening by September or October of 1995.

The Governor has proposed to combine the Watershed Health Program and the Governor's Watershed Enhancement Board Program with approximately \$4.6 million in funding.

Commissioner Leonard said that the work that has been done is marvelous. It is important that so many people have been involved and that there has been money available for them to use.

Commissioner Bentz asked what the overall matching impact was.

Soscia said that there is approximately a 30 percent match of funding coming from a variety of sources.

Commissioner Hansell asked if they are planning on going into other basins or areas.

Soscia said yes, the Governor is proposing, during the next biennium, a statewide program.

Director Pagel stated that Representative Chuck Norris has been a real advocate of this program from the beginning.

Commissioner Bentz asked how many new employees were added for the program.

Soscia said 23 state positions were created with the Watershed Program within the nine partnership agencies. There were also some contractor positions.

Commissioner Bentz asked how many positions there will be with the combination of the Watershed Health Program and the Governor's Watershed Enhancement Board.

Soscia said the number of positions will be going from 26 to 6 in the next biennium.

H. INFORMATION REPORT ON ALTERNATIVE DISPUTE RESOLUTION
ACTIVITIES RELATED TO APPLICATIONS IN THE CROFT LAKE BASIN

Al Cook, Southwest Region Manager, briefed the Commission on the Department's efforts to identify and resolve issues involving a number of water right applications pending in the New River drainage south of Bandon.

Cook used a map to display the applications and permitted water rights in the New River drainage.

The Bureau of Land Management manages land mainly shoreward and east of New River. This area has been designated an area of critical concern.

The Department currently has 78 pending applications in the general area from 41 different parties. Fifty-eight applications have had technical reviews issued on them – 54 of these were objected to.

The main issue is growth potential in the cranberry industry versus the water necessary for resource protection. The concern of Croft Lake residents is water sufficient to maintain recreational values on Croft Lake and the ecological and fishery habitat values.

The Department has held five public meetings; representatives of the Cranberry Growers Alliance, ODFW staff, and residents of Croft Lake were regular attendees. The Department has also met with cranberry growers in the area north of Bandon focusing on concerns raised in technical reviews.

At the request of the Cranberry Growers Alliance and the Bandon Water District, the Bureau of Reclamation has been working on a memorandum of understanding to conduct a surface water study in the Croft Lake/New River area and the drainage to the north. The Cranberry Growers Alliance is also planning to have a ground water

study done. Results from these studies probably won't be available for 18 months.

Cook said he intends to call a meeting of the major stakeholders using a facilitator in May to affirm the nature of the issues and to reach a consensus on an approach to resolving the primary issues.

DIRECTOR'S RECOMMENDATION

This was an information report only. No Commission action was needed.

Commissioner Johnson said that during previous visits to the area, there were growers that were using dry land. She asked if there was any development on this.

Cook said that most of the dry land cranberry growers do not belong to the Cranberry Growers Alliance. There is not a lot of progress in this area.

Commissioner Bentz asked how big an economic impact a cranberry bog might have.

Cook said that Oregon is the third largest producer of cranberries in the United States, but he doesn't know what the acre value is.

Commissioner Bentz asked how the Department can proceed without the instream need studies.

Cook said that is certainly one of the challenges before them – some applications for use may have to be held until those studies are completed.

Pagel commented that by getting all interested parties together, and laying out the whole picture, it might get people focused on storage options or cooperatively working together on a collaborative approach to how they use water.

Commissioner Bentz expressed concern about how the hearings officer is going to apply standards not yet developed.

Director Pagel said there is a need to formalize some standards right away and give the Commission a chance to develop new ones. In the

meantime, in considering applications we could list what we ordinarily consider such as priority date and water availability as the chief factors in whether one gets a satisfactory or unsatisfactory technical review. If the Commission wants to have a specific direction when there is a junior instream water right pending or if there is a listing, we could try to develop some consideration we would routinely apply in that fact situation.

I. INFORMATION REPORT ON 1994 FIELD REGULATION AND ENFORCEMENT ACTIVITIES

Dave Jarrett, Acting Enforcement Manager, and Rick Lusk, Watermaster of District 6 in La Grande, described the activities of the Department's field and central office enforcement staff and the results of those activities in 1994.

Rick Lusk reported to the Commission on activities in the Grande Ronde Basin during 1994.

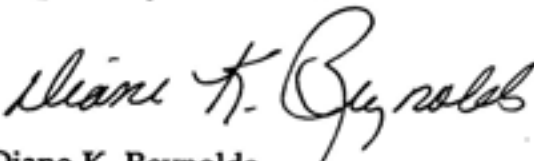
Commissioner Johnson asked what would be the top item on a watermaster's wish list.

Lusk said it would be more field staff. He would like an additional 3 FTE in District 6, which has a population of approximately 32,000 people.

Jarrett said he has 700,000 people in District 16 (Salem office, covering six counties). He explained that field staff are trying to work closer with water users in the community and be more pro-active rather than reactive.

There being no further action, the meeting was adjourned.

Respectfully submitted,



Diane K. Reynolds
Commission Assistant

*Approved at the July 1995
WRC meeting.*

The following information/comments were provided by Commissioner Frewing to elaborate upon and clarify points he made at the April 7, 1995 meeting, as reflected in the minutes of that meeting:

SUPPLEMENT TO WRC MEETING MINUTES OF APRIL 7, 1995

Commissioner Frewing has requested the following clarification to the minutes:

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Commissioner Frewing suggested five areas of concern that might be considered in rulemaking:

1. Staff should not use a single process for public interest review for all applications. Staff should define criteria for more significant applications from a public standpoint and differentiate these applications and their public interest review from others.
2. The three permit conditions which staff use regarding measurement, recording and reporting for small, medium and large water uses. Frewing was particularly concerned that a simple distinction based on application amount or streamflow ignores the fraction of streamflow in the application or whether the stream is a fish bearing stream. An alternative definition for use of the three permit conditions should be developed.
3. (no changes)
4. Complete action committed in the prior triennial rule review regarding the problem of commingling of groundwaters not only in specific areas of the state, but statewide. The prior review indicated that the GWAC would advise the WRC on this matter, but it has not been done.
5. (no changes)

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