

the Lower Columbia Basin; or..."

A motion was made by Commissioner Jewett and seconded by Commissioner Johnson to adopt the rules with the amendments proposed by Commissioners Bentz and Jewett and by legal counsel Steve Sanders. The motion passed 4-2. Commissioner Hansell and Commissioner Frewing opposed.

G. PUBLIC COMMENT

Roger Bachman, Oregon Trout, commented on the proposed rulemaking for the Lower Columbia Basin below Bonneville Dam. Three years ago when the Commission made the decision to enter into this rulemaking they met in Hermiston and discussed the water use on the Washington side. The Commission decided to do the right thing and put pressure on the state of Washington. It's time to put pressure on Washington again. Cost effectiveness is not the issue. Regarding instream leasing, being able to lease late season flows rather than the entire season would be helpful to Oregon Trout. Tape 5, mark 170.

Becky Kreag explained that the work group discussed the issue of mid-season instream leasing for the current rules, but decided it might be best to first test this out through the transfer process which has more procedural protections for other water rights in the system.

H. CONSIDERATION OF REQUEST FOR EXCEPTION TO THE WILLAMETTE BASIN PROGRAM DUE TO EXTREME HARDSHIP (ORS 536.295(1)(E) BY PLEASANT VALLEY GOLF COURSE

The Willamette Basin Program, OAR 690-502-160(2)(b), classifies the Damascus Groundwater Limited Area for exempt use only. Pleasant Valley Golf Club, which applied for an irrigation water right, requested an exception to the basin program under ORS 536.295. Under the statute the Commission may accept the application if certain statutory conditions are met. Adam Sussman, Northwest Region, summarized information provided by the applicant and offered an evaluation of the proposal against the statutory criteria.

Commissioner Frewing asked Sussman what kind of review and testing was done on the applicant's information submitted regarding hardship.

Sussman said he took the information provided by the applicant on good faith that it was truthful. He noted that he concentrated on the areas of his expertise, such as questions about alternative water sources, etc. He did

confirm with the manager of Mt. Scott Water District the information provided by the applicant regarding the possibility of obtaining water from them.

Commissioner Bentz asked if an audit has been done of the area and if this type of request might recur in the basin.

Sussman responded that this application did prompt staff to look closer in this area for other historic unpermitted uses. As these users are discovered staff will work with them in any process that might be appropriate, such as a transfer, the Division 82 process, or purchasing water from a district.

Steve Sanders commented that the criteria for granting this use could be considered on the issue of extreme hardship along with whether it would result in injury to existing uses and whether it fits with the general policies.

Commissioner Frewing asked if Sussman is satisfied that the applicant was not knowingly and willfully breaking the law.

Sussman answered that the applicant seemed surprised that this was an unpermitted use.

Commissioner Frewing said he was told by the Clackamas County Assessor's office that the value of the golf course is \$1,200,960 and the improvements are valued at \$400,000 - \$430,000. The applicant said he put in over \$1 million of improvements in the golf course with a maturity value of over \$2 million.

Sussman said we could ask the applicant to provide more specific information to the Commission.

Martha Pagel commented that the evaluation was not so much that of an economic hardship but was focused on hardship with respect to the availability of water and alternatives for getting water.

Commissioner Frewing asked Sussman if he had contacted the Department of Revenue to ask about the financial income of Mr. Beall or the income of the 500 members.

Steve Sanders said the Department would not be legally entitled to get that information from the Department of Revenue.

Kimberley Priestley, WaterWatch, asked the Commission to deny this request and urged the Commission to be cautious in granting exceptions to their policies. The golf course could afford to consider other options such as purchasing water. Tape 5, mark 508.

Commissioner Bentz asked Ms. Priestley what WaterWatch considers as an extreme hardship.

Priestley responded that financial investments could be a part of an extreme hardship argument, but there is not sufficient data here to show that this is as extreme as is being put forth. That extreme hardship has to be weighed against the extreme hardship on the resource.

Commissioner Johnson asked if Priestley knew what would it cost to buy water from Mt. Scott or dig a well outside the limited area.

Priestley responded she does not know how much it would cost to dig a well. The staff report indicated it would cost \$60,000 - \$100,000 a year to purchase water.

Roger Bachman, Oregon Trout, commented that he is disappointed in the lack of staff analysis of alternative supply even though that would occur in the permitting process. The additional cost of purchasing water from Mt. Scott Water District should be considered. An exempt well for the nursery could also be considered. There are several options that could be considered by the applicant. Bachman urged the Commissioners to consider Alternative 2 with a different set of findings. Tape 6, mark 35.

Gail Achterman, attorney for the Pleasant Valley Golf Club, spoke in support of the staff recommendation. When the application was filed in December 1993 for a hardship, there were no rules – there are still no rules in terms of what the applicant should submit to support a hardship exemption. At the time the application was submitted there was a time limit to work within. If the court were looking at the term "hardship," it would look at the dictionary definition which doesn't refer to finances; it means suffering or privation. When the property was purchased and developed in the 1960's, it was irrigated property and had been irrigated out of this well since the 1890's. In working with the Clackamas County Planning Department in 1967, nothing was said about needing a water right. Even though there was publicity about the development of the golf course, there was no contact made by the Water Resources Department indicating a necessity to apply for a water right. Until the watermaster received a complaint in the Damascus area in the fall of 1993

and contacted the golf club regarding the source of their water, the club had no idea that they needed a water right. The choices the golf club faced when they chose to proceed with a hardship application were, 1) a hardship application; 2) a Division 82 proceeding; and 3) a petition to amend the basin plan. The extreme hardship application seemed to be the superior proceeding. She explained that the two questions facing the Commission are: 1) Is there extreme hardship; 2) Is this application consistent with the general policies of the basin plan. Achterman talked further about the criteria for hardship. The golf club was not asked to submit an appraisal of the property. Recently during the course of estate planning the property was appraised at approximately \$4,000,000. Achterman mentioned alternatives for water that could be considered. In meetings with the Mt. Scott Water District, it was found that purchasing water from them would cost approximately \$60,000 annually for treated drinking water, which the golf course doesn't need. There would also be a one-time \$40,000 capital investment to extend the water district line to serve the golf course. That water would not be immediately available – it would take time to acquire the easement and construct the pipe line. One of the two alternative water suppliers was the Damascus Water District which takes from the same aquifer as this well. Mt. Scott Water District water supply comes primarily from the Clackamas River – the District is stretched to the limit to supply its existing customers because of the population increase. Another alternative would be to dig a well in another location, but that groundwater permit application would prompt as much need for a determination of public interest and impact on the aquifer as would processing the hardship exemption and the application for this well. Achterman stated the hardship criteria clearly is met and the application is also consistent with the basin plan. Tape 6, mark 118.

Commissioner Leonard asked about the 1993 legislation which established the basin plan exemption process.

Pagel responded that during development of that bill, the Oregon Nurserymen Association testified that they were aware of existing historic uses by people unaware that they were using water illegally.

Commissioner Frewing asked Achterman what is at risk if this application is denied.

Achterman responded that it would be the investment in landscaping, the irrigation system, and the construction of the golf course itself.

Commissioner Frewing asked Achterman and her client George Beall for the profit on the golf course and nursery operation each of the last five years both in dollars and percentage.

Achterman responded it is not the function of the Water Resources Commission to get into means-tested determinations on hardship exemption requests. If the Commission collectively decides that what they want to do is to defer this and ask Mr. Beall to supply financial information, she could then negotiate with the Attorney General's office on the confidentiality of the financial information and how the Commission would protect it. But that would not be a good idea given what the legislature meant when it said hardship.

Commissioner Bentz asked Achterman if there would be an objection if the permit were restricted to use on the golf course.

Achterman replied that the application is for irrigation use only, not for municipal use. The golf club plans to continue as a golf club and run a nursery stock operation. Getting the water right for the golf course and nursery is the goal; if that's the condition for getting a hardship exemption, she thought it would be agreed to. However, it might be better to look at this application in the context of the Mt. Scott water recharge project and develop use limitations in the permit conditions rather than the exemption.

Commissioner Bentz asked if the golf course would close if the exemption is not granted.

Achterman responded that, based on her understanding of the economics of the operation, a \$60,000 a year water bill to Mt. Scott would likely make it uneconomic to continue the golf course operation, and converting the use of the golf course and nursery would be considered.

John Thomas, Manager of Mt. Scott Water District, commented that the aquifer storage and recovery (ASR) project is a critical portion of their long-range plans. The Pleasant Valley Golf Course well is a key component to the ASR. It would take over 2,000 feet of pipeline from the Mt. Scott facility to serve the golf course. Tape 7, mark 239.

A motion was made by Commissioner Hansell and seconded by Commissioner Jewett to approve the request by Pleasant Valley Golf Club for a basin program exception, and accept Application G-13591. The Department would

then continue to process the application under OAR Chapter 690, Division 11. The motion passed 5-1, with Commissioner Frewing opposing.

I. LEGISLATIVE AND BUDGET UPDATE

Director Pagel updated the Commission on several bills, including SB 1033 (scenic waterways) and SB 1006 (Grants Pass Irrigation District/Savage Rapids Dam).

Pagel said the Governor intends to veto SB 1005 (Grants Pass Irrigation District water right).

Beth Patrino distributed a list of the most recent status of the water-related bills indicating which bills have an emergency clause. She commented on the bills and responded to Commissioners' questions.

Commissioner Frewing asked about the funding of the Willamette Reauthorization study. Pagel responded that we have \$350,000.

Rick Bastasch updated the Commissioners on the final version of SB 674. Bastasch and Steve Applegate described the Department's plans to implement the bill.

Ken Weese, Administrative Services Administrator, gave a brief update on the agency budget. Our general fund budget was reduced from \$13.6 million to \$11.7 million. The budget for the GWEB/Watershed Health program has \$2.6 million in lottery dollars, staffing for six positions, and spending limitation for the \$5.5 million from the previous biennium for use during the next two-year period. One of the Department's five option packages dealt with the financing of SB 674 and was granted about \$1.3 million in lottery dollars. \$40,000 is to be converted to general funds for Emergency Board approval of applications for general obligation bonds by irrigation districts for fish screening.

Pagel mentioned that included in the additional lottery moneys approved as part of the option package is \$1 million for the Willamette Basin groundwater study, \$350,000 for the Willamette reauthorization study, and \$650,000 for information system upgrade.

Pagel mentioned two budget notes. One relates to the backlog and authorizes half the money up front and calls for an Emergency Board

report for release of the other half. The other budget note says that the Department cannot spend money to remove a dam.

There being no further business, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Diane Reynolds". The signature is written in black ink and is positioned above the typed name.

Diane Reynolds
Commission Assistant