

Mapping statutes resulting from the adoption of Senate Bill 494 in the last legislative session. Under HB 3111 and SB 129, the Commission had authority to issue final orders approving petitions and maps submitted under ORS 541.329. Amendments to the District Water Rights Mapping statutes resulting from SB 494 now give that authority to the Director. Although the Director has the authority to issue final orders on district mapping petitions, staff intend to keep the Commission involved in the process. Where new policy issues are raised by petitions, staff intend to report to the Commission and request input before a final decision is made. The Department will also provide a periodic report to the Commission on the status of the program.

Sussman reported that final orders for HB 3111 petitions from Eagle Point Irrigation District, Crook County Improvement District #1, and LaPine Cooperative Water Association have been signed by the Director since the last Commission meeting.

G. Request for an Exception to the Willamette Basin Program Under ORS 536.295(1)(c)

Chair Bentz excused himself from consideration of this request since the applicant is his uncle. Vice-chair Jewett presided.

Adam Sussman presented this report explaining that if an applicant proposes a use that is not specifically classified in a basin program, the applicant has an opportunity to request that the Commission grant an exception and accept the application under the provisions of ORS 536.295. The Willamette Basin Program classifies Thomas Creek and its tributaries year-round for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cubic feet per second, livestock, and public instream uses. The Bentz application is for out-of-stream fish culture use. Pursuant to ORS 536.295(1)(c) staff have found the use to be largely non-consumptive and unlikely to be regulated for other water rights. Department staff have also found the proposed use to be consistent with the relevant general policies of the Willamette Basin Program.

Sussman said that if the Commission would choose to grant the exception, the application will be merged into the SB 674 water rights process.

Public Comment

Karen Russell, WaterWatch, said her organization does not oppose continuing to process this application, but asked that condition 12 in the proposed permit (Attachment D of report) be modified to include screening of the raceways and ponds; that staff add a condition that there is no dam to be constructed in the channel and add language that would guarantee that the use be non-consumptive. (tape 4, mark 240)

Ron Bentz, applicant, said the conditions proposed by Russell would be acceptable to him. (tape 4, mark 324)

Commissioner Hansell moved, and Ron Nelson seconded, approval of the request for basin program exception as recommended by staff with the addition of language to proposed permit condition number 12 that the diversion and screening would refer not only to fish passage facilities but also to the raceways and ponds; that a condition would be added that no dam would be constructed in the channel of Neal Creek; and that the use would be largely non-consumptive. All voted in favor.

H. Public Comment

Roger Bachman, Oregon Trout, commended the Department staff who worked on the SB 674 rules. (tape 4, mark 390)

I. Update on Implementation of SB 674

Steve Applegate, Water Rights and Adjudication, gave this update to the Commission, responding to their questions and comments. He distributed a basic water rights production report showing the monthly progress being made on the backlog. Applegate reported he is very pleased with the progress made by staff. The Legislative Emergency Board recently approved release of the funding for the continuation of the backlog project.

J. Request for Adoption of OAR Chapter 690, Division 300 (Definitions), 310 (Water Right Application Process), 320 (Permits), 330 (Certificates), 340 (Other Water Use Authorizations), and Amendments to Divisions 05 (Land Use) and 77 (Instream Water rights)

Beth Patrino, Tom Byler, and Jeannette Holman offered this item to the Commission. Since Commissioners had discussed these rules at the work session the previous day, they agreed to begin consideration of this item with public comments. Comments were allowed only on the portion of the rules that were changed since the public hearings.

Public Comment

Gail Achterman, attorney representing Oregon Water Resources Congress, urged the Commission to adopt the proposed rules as recommended by staff. (tape 5, mark 338)

Roger Bachman, Oregon Trout, expressed disappointment that the staff did not respond to the "standing" problem, and the \$50 fee. There are several hundred instream water right applications that Oregon Trout will likely want to support if any are challenged by a protest. (tape 5, mark 359)

Karen Russell, WaterWatch, commended staff for their hard work. She expressed concern regarding the Division 300 rules, page 8, subsection 58, which defines "water is available." The rules should say that the Department must find that the applicant has obtained an alternate source. Russell suggested that subsection iii be deleted and "or" added to the end of line 31 in the draft, page 8. Under ii on page 9, change the language to read "The applicant has obtained, or the applicant has shown they can obtain, authorization to use water from an alternate source...". Add to the end of that sentence, "If the applicant has shown they can obtain authorization to use water from an alternate source to provide water needed during a period of use in which the source is over appropriated, the Department shall condition the approval of the application to require that prior to diversion of water, the applicant obtain authorization for use of water." (Tape 5, mark 488)

The Commissioners reviewed and discussed the following amendments to the draft rules presented in this report.

OAR 690-02:

After much discussion regarding whether to delete the word "not" on page 4, line 5 of the draft rules, Hansell moved, seconded by Leonard, that the word "not" be retained. The motion passed 6-1, with Jewett opposing.

The Commissioners agreed to the following changes:

Page 4, line 12, delete "reasonable."

Page 5, line 32, insert: "(4) If no protest is filed, and the department does not change the proposed final order, the director shall refund the standing fee."

Page 16, line 24, delete: "Exceptions may be filed with the Commission by any party..." and insert instead: "Any party may file exceptions with the Commission by filing the exceptions with the department...".

Page 16, line 30, insert, after "(3)": "The Commission may form a subcommittee to review and act on the exceptions filed under subsection (2) of this rule.", and renumber the section currently numbered (3) to (4).

OAR 690-77:

Holman pointed out two typographical changes -- on page 10, strike through lines 1 and 2; on page 33, line 15, restore the bracketed "or". The Commissioners agreed to these changes.

Frewing moved that line 27, page 27, through line 8, page 29, be included in lieu of lines 10-20 on page 23. The motion failed without a second.

OAR 690-300:

The Commissioners agreed to the following changes:

On page 8, line 25, after the word "Available", insert: ", when used in OAR 690-310-080, 690-310-110 and 690-310-130,".

On page 9, line 1, delete "attained" and insert "obtained". In line 5, delete "attain" and insert "obtain".

On page 9, line 4, delete the first "The" and insert, instead: "If the applicant has shown they can obtain authorization to use water from an alternate source during the time water is unavailable, and if the".

On page 9, delete lines 5 through 7, and insert instead: "prior to diversion of water the applicant obtains authorization for use of water from the alternate source."

OAR 690-310:

The Commissioners agreed to the following changes:

On page 4, line 24, delete "390-" and insert "690-"

On page 7, line 24, after the comma, insert "in addition to any other information required,". In line 27, after the comma insert "in addition to any other information required,".

On page 8, in line 4 and line 9 after the comma insert "in addition to any other information required,". In line 20 after the comma insert "in addition to the information required under this section,".

On page 22, line 2, delete "Fishlife" and insert "Fish or wildlife".

On page 23, line 10, delete the comma. In line 11, after "that" insert "a".

On page 30, line 10, delete "-200" and insert "-220".

On page 32, line 4, bracket and italicize "690-310-210".

Frewing moved the following change in 690-310-040(1)(a)(E): After the words "the nature of the proposed use", add "including a statement of design conditions which indicate the magnitude of processing output and expected return flows." The motion failed for lack of a second.

Frewing moved the following change in 690-310-040(1)(a)(K): Delete "any" where used in this section; seconded by Jewett. All voted in favor.

Frewing moved the following change in 690-310-040(1)(a)(K): Delete the phrase "the applicant has"; seconded by Jewett. The motion failed 5-2.

Frewing moved the following change in 690-310-120(3)(b)(F): Add the words, "including the value of the proposed use to the state economy relative to other possible uses"; seconded by Leonard. The motion failed 4-3.

Frewing moved the following change in 690-310-170(2)(a)(B): After the word "water" add "including but not limited to a. disagreement on policy issues that a proposed use raises, b. conflicting assertions of fact, or c. disputes about the effect of the proposed use on the resource or other water users. The motion failed for lack of a second.

Frewing suggested the following change in 690-310-020(2): Delete "section (1) of this rule" and insert instead "OAR 690-310-040(1)(a)(F)". Holman agreed that this would be corrected.

Frewing moved the following change in 690-310-030(2): Delete the phrase "subject to cancellation" and insert "canceled". The motion failed for lack of a second.

Frewing moved the following change in 690-310-070(3): Add the word "complete" between "the" and "application". The motion failed due to no second.

Frewing suggested the following, and Holman agreed, that in 690-310-090(1), page 13, line 12 of the draft rules, delete the word "and", and insert, following the word "may": "view or". On page 13, line 14, after the word "order" insert: "and information about how an interested person may review the application or obtain a copy of the application."

Frewing suggested that other information about an application be included in the public notice. Patrino responded that there is not time before these rules must be filed to consider the necessary computer programming. Pagel said that staff will look into this and report back to the Commission.

Frewing moved the following change in 690-310-120(2) and (3), lines 4 and 16 in the draft rules: After the words "proposed use" insert "as found in the application". The motion failed for lack of a second.

Frewing moved the following change in 690-310-150(2): Add as (f) and renumber the other items: "A listing of all consultations made with the applicant and local, state and federal entities and where the record of same can be located and reviewed." The motion failed for lack of a second.

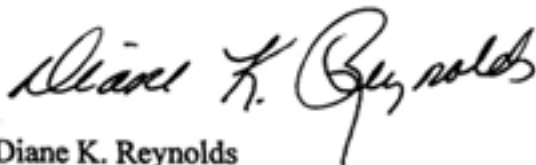
Frewing moved the following change in 690-310-240(1), page 32, lines 5 and 6 of the draft rules: The words "wasteful use" and "substantially interfere" be clarified by adding after the words "wasteful use", "(such as not using the best practicable technology as of the date of the application)", and after the words "or substantially interfere" insert "(such as making measurable difference in water available to other existing rights)". The motion failed for lack of a second.

Frewing suggested the following change in 690-310-260(11), line 17, page 37 of the draft rules: After the word "flow", insert "by month". Commissioners and staff agreed with this addition.

After discussion, staff and the Commission agreed to the following addition to 690-310-240: Insert "(3) The Department may issue a permit for a water use that is conditioned or modified from the use originally proposed in the application only if the conditioned or modified use does not change the source of the water, increase the amount of land appurtenant to the water use or enlarge the proposed use of water in any way."

Jewett moved that the rules be adopted as amended and recorded, including corrections to any internal references to Division 11 in Divisions 320 and 330; Hansell seconded the motion. All voted in favor.

There being no further business, the meeting was adjourned.



Diane K. Reynolds
Commission Assistant