

MEMORANDUM

TO: Water Resources Commission

FROM: Paul R. Cleary, Director

SUBJECT: Agenda Item G, April 18, 2003
Water Resources Commission Meeting

Request for an Exception to the Willamette Basin Program by Weyerhaeuser under ORS 536.295(1)(f)

I. Issue Statement

Under ORS 536.295 the Water Resources Commission may, under certain conditions, allow the Department to consider an application to appropriate water for a use not “classified” as an outright allowable use by the applicable basin program. Weyerhaeuser, Application S-84780, has requested an exception to the Willamette Basin Program because the proposed use “will provide a public benefit such as riparian or watershed improvement” as provided for in ORS 536.295(1)(f). This report summarizes the information provided by Weyerhaeuser and evaluates the request against statutory criteria and rules of the Commission. The question before the Commission is whether to allow the Department to consider the application even though the use is not “classified” under the Willamette Basin Program. If the exception is granted, the application will then be reviewed in the same manner as any other water right application.

II. Background

Basin programs are administrative rules adopted by the Commission that prescribe future allowable use of water. The act of specifying the allowable future beneficial uses is called “classification” and is authorized under ORS 536.340. Classifying beneficial uses in a basin program involves an analysis of basin-specific data and substantial public involvement. However, under ORS 536.295, the Commission may allow the Department to consider an application for a use not “classified” in a basin program if the use meets one of the criteria under subsection (1) of ORS 536.295 (Attachment 1). The Commission also must evaluate whether the proposed use is consistent with the general policies of the applicable basin program.

Commission approval of a request for an exception to a basin program does not guarantee that a water right will be issued, or if it is issued how it would be conditioned. The Commission is not making a public interest determination on the application, but is only allowing staff to complete the application review process where issues such as water availability, injury to existing water rights, and any other rules of the Commission will be considered. Public notice and comment opportunities will be provided in the same manner as any other water right application. If the Commission does not grant the request, the application will continue to be processed but will likely be denied due to the fact that the proposed use is not a classified use in the basin program.

III. Discussion

A summary of Application S-84780 in the name of Weyerhaeuser and an evaluation of their request for an exception to the Willamette Basin Program are provided below:

A. Application summary and basis for consideration

Weyerhaeuser has applied for a permit to divert 3.18 cubic feet per second (cfs) from an aeration settling basin filled by industrial waste for irrigation of 254.6 acres. Aeration settling basins use aerator pumps and microorganisms to clean water before it can be reused, returned to a natural stream channel, or used for another type of use such as irrigation. The application (S-84780) is provided as Attachment 2. The area to be irrigated is between Interstate 5 and the Willamette River in Millersburg as shown in Attachment 3. The Willamette Basin Program classifies the applicable reach of the Willamette River (down-stream from the west line of Donation Land Claim 55 in T11S, R4W, upstream from the mouth of the Calapooia River near Albany, except as otherwise specified) for domestic, livestock, municipal, industrial, agricultural, commercial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement, and public instream uses (OAR 690-502-050[1][b]). Aeration settling ponds filled by industrial waste are not classified for any uses in the Willamette Basin Program.

B. Exception request evaluation

- 1) Summary of information provided by the applicant under ORS 536.295(1)(f)

Weyerhaeuser has been discharging water from its aeration basins into the Willamette River in accordance with a wastewater discharge permit they have from the Department of Environmental Quality (DEQ). DEQ has issued a permit to Weyerhaeuser that allows them to land apply this water from the aeration settling ponds. To be consistent with the laws regarding irrigation and beneficial use a permit from the Water Resources Department is needed which would require an

exception to the Willamette Basin Program. Attachment 4 is a copy of the applicant's exception request. Under Weyerhaeuser's present operations, the discharge water entering the river is often warmer than the Willamette and has undesirable nutrients in both quantity and quality. Therefore, land application of industrial wastewater instead of discharging the water into the Willamette River would result in a cleaner and healthier river. Because of the water quality benefits of the proposed use, staff believe that granting this request will provide the public benefit of watershed improvement meeting the requirement for a basin program exception under ORS 536.295(f).

2) Evaluation of whether the use is consistent with the general policies of the Willamette Basin Program

In determining whether to allow Weyerhaeuser's request, the Commission is required to evaluate the proposed use for consistency with the general policies of the Willamette Basin Program (ORS 536.295[4]). Those policies are set forth in OAR 690-502-0020.

Staff believe that the use is consistent with the general policies because the use would not contribute to over-appropriation; would allow irrigation for the longest period possible between March 1 and October 31 provided sufficient water is available; and would seek to improve instream values (from a water quality perspective).

For these reasons, staff believe this request is consistent with the general surface water policies for the Willamette Basin Program.

IV. Conclusion

To approve a basin program exception request under ORS 536.295, the Commission must find that the request meets statutory criteria and the proposed use is consistent with the general policies of the applicable basin program. Weyerhaeuser has demonstrated that approval of this request will allow for consideration of a proposed use that would result in an improved watershed and that the request is consistent with the general policies of the Willamette Basin Program.

V. Alternatives

The Commission may consider the following actions:

1. Approve the request by Weyerhaeuser for a basin program exception because the proposed use will provide the public benefit of watershed improvement; recognizing that a permit, if ultimately issued, may be conditioned to address public interest concerns.
2. Deny the request by Weyerhaeuser for a basin program exception.
3. Take no action and direct staff to continue to work with the applicant.

VI. Recommendation

Staff recommend Alternative 1, that the Commission approve the request by Weyerhaeuser for an exception to the basin program because the proposed use will provide the public benefit of watershed improvement; recognizing that a permit, if ultimately issued, may be conditioned to address public interest concerns.

Attachments:

1. ORS 536.295
2. Copy of Application S-84780
3. Map of Area
4. Weyerhaeuser Request

ORS 536.295

ORS 536.295 Conditions for consideration of application for use not classified in basin

program. (1) Notwithstanding any provision of ORS 536.300 or 536.340, the Water Resources Commission may allow the Water Resources Department to consider an application to appropriate water for a use not classified in the applicable basin program if the use:

- (a) Will be of short duration during each year;
- (b) Will be for a continuous period of no longer than five years;
- (c) Is largely nonconsumptive in nature and not likely to be regulated for other water rights;
- (d) Is necessary to ensure public health, welfare and safety;
- (e) Is necessary to avoid extreme hardship;
- (f) Will provide a public benefit such as riparian or watershed improvement; or
- (g) Is of an unusual nature not likely to recur in the basin, and unlikely to have been within the uses considered by the commission in classifying the uses presently allowed in the applicable basin program including but not limited to:

- (A) Exploratory thermal drilling;
- (B) Heat exchange;
- (C) Maintaining water levels in a sewage lagoon; or
- (D) Facilitating the watering of livestock away from a river or stream.

(2) A permit granted on or before January 1, 1993, for a quasi-municipal use of water shall be considered a permit for a classified use under ORS 536.340 if at the time the application was submitted or the permit was granted, the basin program identified municipal use as a classified use.

(3) The commission by rule may determine the specific uses permitted within a classified use.

(4) In making the determination under subsection (1) of this section, the commission shall evaluate whether the proposed use is consistent with the general policies established in the applicable basin program.

(5) The Water Resources Department shall process and evaluate an application allowed by the commission under subsections (1) to (4) of this section in the same manner as any other water right application, including determining whether the proposed use would result in injury to an existing water right. [1989 c.9. 1; 1993 c.591. 1; 1999 c.703. 1]