



Oregon

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Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item I, November 30, 2007
Water Resources Commission Meeting

Request for an Exception to the Willamette Basin Program by Greenberry Irrigation District (GID) pursuant to ORS 536.295

I. Issue Statement

Under ORS 536.295, the Water Resources Commission may, under certain circumstances, allow the Department to consider an application to appropriate water for a use not classified as an allowable use by the applicable basin program. Greenberry Irrigation District (GID) has requested an exception (Attachment 1) to the Willamette Basin Program based on one or more criteria provided in the statute. (ORS 536.295 is provided in Attachment 2)

This report summarizes the information provided by the applicant, 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 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 allowable uses 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 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 or more of the criteria in ORS 536.295 (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 allows the Department to consider an application to appropriate water for a purpose not classified as allowable by the subject basin program. This does not guarantee that a water right will be issued, or if it were issued, how it would be conditioned. In approving a basin program exception, the Commission allows the Department to consider the application, notwithstanding the basin program

classification. All other aspects of the application review process remain the same. 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.

In February of 2003, the Commission approved an exception for GID that led to the Department issuing a permit for live flow irrigation for up to seven years while the district pursued a contract for stored water. That permit, S-54059 will expire no later than April of 2011.

III. Discussion

A summary of Application S-87035, in the name of GID, and an evaluation of their request for an exception to the Willamette Basin Program are provided below.

A. Application summary and basis for consideration

GID has applied for a permit to divert 50 cubic feet per second for supplemental irrigation on 7,373 acres. A copy of the application is provided as Attachment 3. The area to be irrigated is generally located on the south end of Corvallis near the airport as shown in Attachment 4.

Use of live flow from the Willamette River for irrigation or supplemental irrigation is not a classified use. When developing the Willamette Basin Plan, the Commission did not allow irrigation from live flow in this section of the Willamette River because stored water, in the name of Bureau of Reclamation (BOR), totaling over one million acre-feet was available for contract for irrigation purposes. The stored water remains available in various Willamette Project reservoirs to meet irrigation needs. However, the BOR is not issuing long term contracts for the use of the stored water.

GID has two applications pending (Files S-84426 and S-87034) that propose to use stored water from Willamette Project reservoirs for irrigation of the same acreage as requested under the application. Permits to use stored water will be issued after an executed contract with the Bureau of Reclamation has been received by the Department. The use of stored water for irrigation is allowable under the Willamette Basin Program.

B. Exception request evaluation

GID asserts that a basin program exception is warranted on the basis that two criteria are satisfied. A review of each of the criteria along with staff analysis for each follows below.

1) Summary of information provided by the applicant under ORS 536.295 (1)(e) extreme hardship

Field burning limitations imposed by the Oregon Department of Agriculture has caused GID members to look for other disease control methods. GID states that the best way to control weeds and disease in grass crops is through crop rotation. A dryland crop option has not been developed. Fallowing the land is not economically feasible.

GID has been aggressively pursuing a long term water service contract from the Bureau of Reclamation (BOR) for several years. In 2003, the BOR announced that the issuance of contracts could move forward as long as requestors could successfully address environmental issues through the National Environmental Process Act (NEPA). Subsequently, GID spent two years of staff time and over \$500,000 and gained NEPA approval.

Recently the BOR told GID that the BOR could only issue a five year contract with language that allows the BOR to interrupt deliveries under the contract. Because the infrastructure for the GID irrigation system will be financed over a 25-30 year period, GID will not build the system without a backup water supply.

GID states that they will be in a worse situation than present as soon as the permit is issued to use interruptible contract water and their existing live flow water right is cancelled unless they obtain a backup water supply permit for the use of live flow.

Staff analysis: Staff believes that failure to allow the exception to the basin program would cause extreme hardship. GID had reason to expect that a long term contract would be issued if GID could successfully maneuver through the expensive NEPA process. Now the best they can hope for, for at least the near future, is an interruptible five year contract. If GID is able to get a permit issued for use of the contract water, as well as for use of live flow, then they will be able to develop the irrigation infrastructure for their district. Even if a permit is issued, the live flow water may never be used.

In 2003 the Commission approved an exception to the Willamette Basin Program for GID based on "extreme hardship" because a long term contract was currently not available. A long term contract is still not available.

2) **Summary of information provided by the applicant under ORS 536.295 (1)(f) watershed improvement**

GID asserts in their exception request that the development of their irrigation district infrastructure will have a beneficial affect on naturally occurring water bodies in the district. The district uses natural oxbow lakes as a conveyance. The health of these oxbow lakes is improving as a result of incorporating them in the district's delivery system.

In addition, the GID has had discussions with the Oregon Department of Fish and Wildlife (ODFW) about using future GID infrastructure to improve stream flow in Muddy Creek during dry summer months.

The district has also had discussions with the Finley National Wildlife Refuge, which is located to the south of GID, regarding transporting water to the refuge to augment their water supply. Water will improve goose habitat, especially when fall rains arrive late, by enhancing and creating wetlands and creating waterfowl feed to keep geese on the refuge. This can only occur if the district can develop irrigation system infrastructure.

GID and the City of Corvallis are currently pursuing a joint venture which would take treated effluent from the Corvallis Waste Water Treatment Plant and mix it with irrigation water to irrigate within GID. Using the warm water from the City would allow GID to decrease the pumping of cooler water from the Willamette River.

Treated effluent from Corvallis is discharged into the Willamette River. The treated effluent currently exceeds the Total Maximum Daily Load temperature limitations. Using treated effluent with GID is one possible alternative to bring Corvallis into compliance. The joint venture will not go forward unless the district can invest in needed irrigation system infrastructure.

Staff Analysis: Staff agree that the use, supplemental irrigation, “will provide a public benefit such as riparian or watershed improvement” if GID continues to pursue cooperative projects with ODFW, regarding the augmenting of stream flows in Muddy Creek, Finley National Wildlife Refuge and the City of Corvallis.

All three of these potential projects require that GID have an irrigation infrastructure that is only going to be pursued, if a back-up water supply can be obtained. GID also states that their stewardship policy includes beneficially affecting naturally occurring water bodies in the district where possible.

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

In determining whether to allow GID’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.

Granting this exemption would be consistent with the general basin program surface water policies to protect instream uses, to balance appropriation and instream uses on streams already significantly developed for out-of-stream purposes, and to minimize the likelihood of over-

appropriation (OAR 690-502-0020(1)). The Department's water availability data demonstrates that sufficient water is available. Consistent with the Commission's water allocation policy, water is available at an 80% exceedance level from natural flows in the Willamette River mainstem to meet this request. In addition, the application must proceed through the public interest review process, which considers protection of streamflow and water quality as well as fish habitat.

The Commission policies under the Willamette Basin Program also instruct the Department to preserve opportunities for future economic development. Granting this request would allow the Commission to provide an opportunity for economic development in Benton County, Corvallis, and Greenberry. Additionally, approving GID's request would provide an opportunity for the Commission to better accomplish its policy objective of allowing irrigation uses for the longest period between March 1 and October 31, provided sufficient water is available (OAR 690-502-00209(1)(f)). At this time, because irrigation using "live flow" is not a classified use and Bureau long term contracts are not available, no irrigation is allowed from this portion of the Willamette River mainstem even though water is available at an 80% exceedance level.

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

IV. Conclusion

To grant an exception to a basin program under ORS 536.295, the Commission must find that the request meets at least one of the statutory criteria and that the proposed use is consistent with the general policies of the applicable basin program. GID has demonstrated that there will be extreme hardship. In addition there will be some watershed improvement to naturally occurring water bodies within the district. Obtaining a backup water supply will allow GID to build the infrastructure that may lead to three separate projects that would provide additional watershed improvement. 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 Greenberry Irrigation District for a basin program exception due to extreme hardship; recognizing that a permit, if ultimately issued, may be conditioned to address public interest concerns.
2. Deny the request by Greenberry Irrigation District for a basin program exception.

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3. Take no action and direct staff to continue to work with the applicant.

VI. Recommendation

The Director recommends Alternative 1, that the Commission approve the request by Greenberry Irrigation District for a basin program exception due to extreme hardship and watershed improvement; recognizing that a permit, if ultimately issued, may be conditioned to address public interest concerns.

Attachments:

1. Greenberry Irrigation District Request
2. ORS 536.295
3. Copy of Application S-87035
4. Map of Area

Dwight French
503-986-0819

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]