



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item F, May 5, 2006
Water Resources Commission Meeting

Reservation Request – OAR Chapter 690, Division 518

I. Issue Statement

The question before the Commission is whether to authorize initiation of a formal rulemaking process concerning three reservations requested by the City of Lincoln City. The reservation requests are for multipurpose storage for future economic development in three waterways in the Mid Coast Basin.

II. Background Information

Reservations of Water under ORS 537.356

Reservations of water for multipurpose storage for future economic development are allowed by ORS 537.356. Any local government, local watershed council, or state agency or any other individual cooperating jointly with a local government, local watershed council, or state agency may request the Commission reserve unappropriated water for multipurpose storage for future economic development. Reservation requests are processed as basin program amendments through the rulemaking process.

Reservations establish a priority date for reservation water based on the date the Commission takes action to initiate the rulemaking process. Reservations establish limited classification of use of reservation water (e.g., multi-purpose storage). Once established in rule, reservations are also reflected in the Department's water availability model.

A reservation is not a water right application or permit. For example, approval of a reservation does not mean that any water right application will be approved, or that a reservoir may be constructed. Rather, a reservation merely sets aside water for a certain use with a specific priority date. If a water user wishes to appropriate reserved water, they must submit a water right application to the Department. The Department would then review that water right application based on the applicable public interest review standards.

Lincoln City Reservation Request

On September 20, 2005, the Department received a request by Lincoln City for three reservations of unappropriated water for multipurpose storage for future economic development on two waterways tributary to Devils Lake and a tributary of the Salmon River north of Lincoln City. The reservation request is provided in Attachment 1 and a map of the area is provided in Attachment 2. Specifically, Lincoln City requests:

- A reservation of 374 acre-feet of unappropriated water in Rock Creek, tributary to Devil's Lake, for multipurpose storage for future economic development.
- A reservation of 1,350 acre-feet of unappropriated water from an unnamed stream (locally referred to as "Side Creek"), tributary to Devil's Lake, for multipurpose storage for future economic development for future application exclusively by the City of Lincoln City.
- A reservation of 1,250 acre-feet of unappropriated water from Treat River, tributary to Salmon River, for multipurpose storage for future economic development.

Lincoln City's reservation request results from a "Supplemental Settlement Agreement" resolving a number of water right protests concerning Drift Creek. The reservation request was included in the Supplemental Settlement Agreement as an attachment. Lincoln City agreed in the Supplemental Settlement Agreement to withdraw six pending protested applications for storage and secondary diversion of stored water on Side Creek, Rock Creek, and Treat River if the three proposed reservations are approved as requested. This will effectively terminate any pending contested case hearings on those six applications, and thereby resolve a number of additional protests.

Lincoln City's reservation request is accompanied by a "Letter of Support" signed by:

- WaterWatch of Oregon
- Oregon Council of Trout Unlimited
- Northwest Environmental Defense Center
- Confederated Tribes of Siletz Indians of Oregon
- Salmon Drift Creek Watershed Council
- Midcoast Watersheds Council
- Paul Katen
- Wayne Hoffman
- Diane Henkels

III. Discussion

The Department has identified quantities of unappropriated water that are available for the reservations, provided that Lincoln City withdraws its six pending protested water right applications on Side Creek, Rock Creek, and Treat River upon approval of the reservations. These amounts of unappropriated water are reflected in Lincoln City's reservation request.

On September 29, 2005, pursuant to ORS 537.356(2), the Department issued a public notice to local governments, watershed councils, tribes, and certain interested individuals and entities within the geographic area or basin affected by the request. A copy of the notice is provided as Attachment 3. The public comment period closed on January 16, 2006. Lincoln City's reservation request and the public notice were described for the Commission in the October 2005 Director's Report. The Department received one comment during public comment period. The comment was submitted by the Miami Corporation, which owns timberlands within the Treat River watershed, and is provided as Attachment 4. The Miami Corporation opposes the proposed reservations. In particular, the Miami Corporation opposes the proposed reservation on Treat River. Lincoln City's response to Miami Corporation's comments is included as Attachment 5.

The Department has considered Miami Corporation's comments. Miami Corporation's comments express concerns that are applicable to the public interest review for water right applications, as opposed to reservation request. Miami Corporation also expressed concern that the Department agreed in the Supplemental Settlement Agreement to recommend that the Commission initiate and approve the reservation requests. The authority to approve the reservation request lies with the Commission. The Department agreed in the Supplemental Settlement Agreement to recommend that the Commission initiate and approve the reservations as requested by Lincoln City. In undertaking that obligation, the Department has not "tied its hands" as to the rulemaking process or restricted its ability to consider all public comments. If a formal rulemaking is authorized by the Commission, the Department will carry out the normal rulemaking process, continue to fully consider all comments, and provide a final recommendation to the Commission based on consideration of all available information.

IV. Summary

The question before the Commission is limited to whether to authorize initiation of a formal rulemaking process concerning the three reservations requested by Lincoln City. If authorized by the Commission, the Department would initiate a rulemaking to consider amendments to the Mid Coast Basin Program (OAR Chapter 690, Division 518) concerning the three reservations requested by Lincoln City.

If the Commission authorizes initiation of a rulemaking process, and if the three reservations are subsequently approved as requested by Lincoln City, six existing water right applications, being R-73408 and S-73406 (Rock Creek), R-73970 and S-73971 (Side Creek), and R-73407 and S-73409 (Treat River), will be withdrawn by Lincoln City, thereby resolving all protests and any associated contested case hearings on those applications.

V. Recommendation

Staff recommend that the Commission authorize initiation of a formal rulemaking process to modify the Mid Coast Basin Program (OAR 690 Division 518) by consideration of the three reservations as requested by Lincoln City.

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Attachments

1. Lincoln City's Reservation Request
2. Geographic Reference Map
3. Notice to Local Governments
4. Miami Corporation's Comments
5. Lincoln City's Response to Miami Corporation's Comments

Bill Fujii (reservations; basin program rulemaking)

503-986-0887

Mike Reynolds (protests)

503-986-0820