



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 I, May 5, 2006
Water Resources Commission Meeting

Public Interest Review of Application G-16510, Charles and William Kik

I. Issue Statement

Under OAR 690-507-0070(3)(d)(D), the Commission must review and consider the public interest for certain ground water uses within a five-mile radius of the City of Hermiston. The Department has a pending application for ground water use that falls within these rule requirements. In order for the use to be consistent with the Umatilla Basin Program, the Commission is asked to review and consider the public interest for the application.

II. Background

Under OAR 690-507-0070(3)(d)(D), the Commission must review and consider the public interest for applications for uses other than municipal, group domestic and statutorily exempt ground water uses from basalt wells within a five-mile radius of a municipal well of the City of Hermiston (Attachment 1). The Commission may permit other uses if 1) there is a documented barrier to ground water movement between a proposed well and the municipal wells, 2) there will be no interference with municipal wells, and 3) the city has an approved water management and conservation plan.

Since the Umatilla Basin Program was adopted in 1988, the Commission has not generally been asked to review and consider the public interest under these rules for a number of reasons. The primary reason is that the water right application process was overhauled by statutory changes adopted in 1995 (Senate Bill 674, Oregon Laws 1995). The changes significantly modified how and when applications go before the Commission for a public interest review. With the adoption of SB 674 in 1995, the Department believed that basin program rules requiring the Commission to review an application for the public interest such as OAR 690-507-0070(3)(d)(D) were overruled by the statutory changes in 1995. However, on August 18, 2004, the Department of Justice (DOJ) advised the Department that the Umatilla Basin Program rules require the Commission to make a public interest review of ground water applications for uses other than municipal, group domestic and statutorily exempt ground water uses from basalt wells within a five-mile radius of municipal wells identified in the basin program. A copy of this DOJ advice is provided in Attachment 2. There are 14 municipalities in the Umatilla Basin Program with

similar provisions. However, this request deals strictly with an application within a five-mile radius of the City of Hermiston.

III. Discussion

Application G-16510 in the name of Charles and William Kik proposes to use 0.09 cubic foot per second (cfs) of water from a well in the Columbia-Umatilla Plateau Subbasin for irrigation on 7.2 acres. The well is located within a five-mile radius of the City of Hermiston's municipal wells, as shown on Attachment 3, and develops water from the basalt ground water reservoir. The Department has documented that a barrier to ground water movement separates the proposed well from the municipal wells, and that there will be no interference with municipal wells. The City of Hermiston has an approved water management and conservation plan. Therefore, the application meets the criteria under OAR 690-507-0070(3)(d)(D).

A. Review and Consideration of the Public Interest

The Umatilla Basin Program requires the Commission to review and consider the public interest for the application. OAR 690-310-0130 instructs the Department on how to determine whether the public interest presumption is met for a proposed ground water use. Specifically, subsection (1) of this rule states:

“The Department shall presume that a proposed groundwater use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525 if:

- (a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);
- (b) Water is available;
- (c) The proposed use will not injure other water right; and
- (d) The proposed use complies with the rules of the Commission.”

A review of the four criteria for the pending ground water application follows.

(a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12):

Notwithstanding rules related to the public interest determination conducted by the Commission, the use is consistent with the Umatilla Basin Program because the Department has documented that a barrier to ground water movement separates the proposed well from the municipal wells, there will be no interference with municipal wells, and the City of Hermiston has an approved water management and conservation plan. Preference considerations under ORS 536.310(12) are not applicable to the application.

(b) Water is available:

For ground water applications, two separate water availability determinations are made. The Department first determines whether ground water is available within the capacity of the resource. The Department also determines whether there is the potential for substantial interference with nearby surface water sources. If the potential for substantial interference is found, then a review of the nearby surface water availability is conducted.

In this case, the Department has determined that ground water is available within the capacity of the resource and that there is no potential for substantial interference with surface waters.

(c) The proposed use will not injure other water rights:

The Department has determined that the proposed use will not injure other water rights. As part of this determination, the Department found that the proposed use will not interfere with any municipal well or other well.

(d) The proposed use complies with the rules of the Commission:

The Department has determined that the proposed use is not in conflict with any rule, beyond the requirement in the Umatilla Basin Program that the Commission conduct a public interest review.

B. Review and Consideration of the Preservation of the Public Welfare, Safety and Health

In addition to determining whether the public interest presumption is met, the Department has also considered whether the proposed use will preserve the public welfare, safety and health using the criteria described in ORS 537.625(3), shown in italics below.

(a) The conservation of the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

The proposed use will provide water for irrigation of a golf course, thus providing a new site for public recreation.

(b) The maximum economic development of the waters involved.

The golf course will have a beneficial economic impact to the local economy by attracting tourists and improving the livability and desirability of the local community.

(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

The Department is not aware of any impediments to the proposed use relating to water drainage, sanitation, flood, or other control issues.

(d) The amount of waters available for appropriation for beneficial use.

The Department has determined that ground water is available within the capacity of the resource for this beneficial use.

(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

If the application is approved, it will be conditioned so that wasteful, uneconomic, impracticable or unreasonable use of the waters involved is prevented. It will include water use measurement and reporting conditions commensurate with the amount of water use allowed.

(f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.

The Umatilla River basin has been adjudicated, resulting in the confirmation of certain water rights. The pending application's priority date, conditioning that makes the use subject to senior rights, and the Department's existing system of regulation are the means necessary to protect existing vested and any inchoate rights.

(g) The state water resources policy.

The Department has determined the proposed use is consistent with the state water resources policy formulated under ORS 537.505 to 537.534. ORS 536.295 to 536.350 relate to surface water and are not relevant to this application.

IV. Conclusion

The Department has determined that it is appropriate for the Commission to review and consider the public interest for the application because:

1. The well in the application is located within a five-mile radius of the City of Hermiston municipal wells;
2. There is a documented barrier to ground water movement between the proposed well and City of Hermiston municipal wells;
3. There will be no interference with municipal wells; and
4. The City of Hermiston has an approved water management and conservation plan.

With regard to the review and consideration of the public interest, the Department has found that all of the elements of the public interest presumption, besides the basin program element, have been satisfied. With regard to the review and consideration of the preservation of the public welfare, safety and health, the Department has found that the proposed use will ensure the preservation of the public welfare, safety and health.

V. Alternatives

The Commission may consider the following actions:

1. Determine that the application as identified is consistent with the public interest and allow the Department to continue processing the application with an affirmative finding regarding the basin program element of the public interest presumption.
2. Require the Department to conduct further review of the application and report to the Commission at a future meeting.

VI. Recommendation

Staff recommend Alternative 1 that the Commission determine the application is consistent with the public interest and allow the Department to continue processing the application with an affirmative finding regarding the basin program element of the public interest presumption.

Attachments:

1. OAR 690-507-0070(3)(d)(D)
2. DOJ Advice Received on August 18, 2004
3. Map of the City of Hermiston Area

Dwight French
(503) 986-0819

OAR 690-507-0070(3)(d)(D)

Subject to the more strict controls imposed by the existing State Gulch Proclamation or issuance of a critical area order for the Stage Gulch Ground Water Study Area, ground water from the basalt reservoir in a five-mile radius around any municipal well of the cities of Echo, Hermiston, Pendleton, Stanfield, and Umatilla is classified for municipal, group domestic and statutorily exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of ground water within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that is in favor of the proposed appropriation. This classification applies only when the affected city has a full-time conservation program in effect.