

E. DIRECTOR'S REPORT

1. INFORMATIONAL REPORT: OPTIONS FOR WRC CONSIDERATION REGARDING CONTESTED CASE HEARINGS

Some time ago, the Commission expressed frustration with the manner in which exceptions to contested case proposed orders were presented to it. Staff was asked to investigate possible alternatives which would relieve the frustration and confusion experienced by participants, including the Commission, in the contested case exceptions process.

The staff identified options for delegation of contested case matters. The first three involve variations on full delegation; the four following discuss variations on partial delegation. The several options range from complete delegation, relieving the Commission of the need to hear exceptions and objections, to retaining status quo.

Director's Recommendation

The staff recommended that the Commission consider the options and provide further direction at a work session in February or March.

2. Watermasters: The Director told the Commission that Tom Paul, manager of the Northwest Region, has restructured the boundaries of the watermaster districts so as to form a district coincident with the Tualatin basin. A watermaster will soon be appointed for that district.

3. Governor's Watershed Enhancement Board: The Director reported that 250 people had already registered for the watershed enhancement conference in Corvallis on January 11 and 12.

4. Governor's boards and commissions meeting: The Director reminded the Commission that the Governor had called a meeting with members of state boards and commissions to be held on Tuesday, February 13. The Commission decided to hold its next meeting on Monday, February 12, instead of February 16, in Portland, so that it would not be necessary to make two trips to the Valley in one week. The March 29-30 meeting will be held on the South Coast, probably in Coos Bay.

F. CONSIDERATION FOR APPROVAL OF APPLICATION 69841 TO USE WATER FROM THE WILLAMETTE RIVER, TRIBUTARY TO THE COLUMBIA RIVER FOR MANUFACTURING, LONE STAR NORTHWEST, MULTNOMAH COUNTY

On February 27, 1989, an application was filed by Lone Star Northwest proposing to use up to 9 cfs of water from the Willamette River for the manufacturing of concrete. The application identified the maximum amount of water that could be used at the site. Maximum use would occur during the summer construction season. Average use, however, is between 4 and 6 cfs.

The point of diversion is located adjacent to Ross Island on the west side of the Willamette River. About 80% of the water diverted is consumed in the manufacture of the product. After the plant was purchased by Lone Star in January 1989 and upon review of the plant's operation by the new owner, it was found that a water right permit was required. The company submitted the application in February.

The question before the Commission was whether the issuance of this permit to use up to 9 cfs for industrial use would impair or be detrimental to the public interest. Administrative Rule 690-11-080 (2)(a)(A) specifies that appropriations for greater than five cubic feet per second, except from the Columbia River, be referred to the Commission to determine the need to make a public interest determination under ORS 537.170.

Director's Recommendation

The staff recommended that the Commission find that the project would not impair or be detrimental to the public interest and authorize the Director to issue the permit for the use of water as outlined in the application.

It was MOVED by Lorna Stickel, seconded by Didi Malarkey, and passed unanimously to approve the Director's recommendation.

H. PROPOSED ADOPTION OF RULES TO CHANGE DEPARTMENT WATER RIGHT RECORDS TO MATCH ACTUAL USE WITHIN IRRIGATION DISTRICTS (CHAPTER 690, DIVISION 13)

Many irrigation districts and companies were issued water right certificates years ago. The districts have attempted to keep a proper record of the changes by filing transfer applications. Several thousand transfer applications have been submitted to the Department and approved, but numerous changes have occurred within districts without following proper transfer procedures.

Chapter 1000, Oregon Laws 1989, HB 3111, allows districts to petition the Commission to issue new certificates of water rights to match the actual use being made of the water. The right cannot be enlarged by use of this act. This is a housekeeping activity to amend the recorded location and must be completed by July 1, 1992. After then, the transfer process resumes as normal. The law was requested and promoted by the Oregon Water Resources Congress (OWRC) for this purpose.

Rules must be adopted to ensure that a standard is established for district petitions. Individual transfer applications are also authorized when the district either fails or refuses to file a petition. The rules should provide for either a district or an individual to present a complete and accurate petition to the Department to amend the record. The rules must include safeguards so the right cannot be enlarged or violate the law in any other way.

A committee was established to formulate the proposed Division 13 rules. The committee included two Commissioners, two Department employees, the executive director of OWRC, and six OWRC members. Draft rules prepared by the committee were presented to the Commission at the November 17 meeting in Salem. A minor modification was made at that time.

A hearing was held December 15. Two people testified in support of the rules and two written responses were received.

Director's Recommendation

The staff recommended adoption of Chapter 690, Division 13 rules as proposed.

The following changes were made to the proposed rules:

Page 1:

690-13-010(1): "...written request by [an] individuals to change..."

690-13-010(9): "...which will include changes within districts."

Page 2:

690-13-030(1): "The following are eligible to petition:

(a) [(1)] A perfected water right which has been assessed by a district in at least one of the last five years, [is eligible for inclusion in a petition for change of record.] It is not necessary for the water right to be in the name of the district.

(b) [(2)] Transfers which have been assessed by a district in at least one of the last five years but are not recognized as complete by the Department [are eligible].

(c) [(3)] A permit for supplemental supply [is eligible to] which move with the perfected primary right.

(2) The following are not eligible to petition:

(a) [(4)] A permit which is a primary supply of water [authorized by a permit is not eligible].

Page 3:

690-13-070(1): "...submitting its petition which will include this change, the..."

690-13-070:(1)(b) "...A completed [application] interim transfer notice on a form..."

690-13-070(3): "...For a change..."

690-13-100(1): "...A [descriptive] listing..."

690-13-100(1)(b): "...section quarter-quarter, [the entire] all water rights in the..."

690-13-100(4): "...of the land to which [the] each water right is..."

Page 4:

690-13-100(6): "...description of the type(s) of use made..."

Page 6:

690-13-300(4): "...the Director shall [recommend] order certification of the water rights adjusted by the petition and map, or identify..."

690-13-300(6): "When a petition is accepted, the Director, shall provide notice of that acceptance by inclusion in the Departments periodic notice of water right applications."

((Bracketed language to be deleted; underlined language to be added.))

David Hunter, WaterWatch of Oregon, Inc., asked for clarification of some points in the rules.

It was MOVED by Jim Howland and seconded by Didi Malarkey to approve the draft rules, as amended. The motion passed unanimously.

(Cliff Bentz and Didi Malarkey declared that they are both served by water from an irrigation district.)

J. STATUS REPORT #10: WILLAMETTE-SANDY BASINS PLANNING

Nine previous status reports have described Department staff's progress in research issues in the Willamette and Sandy basins. At its November meeting, the Commission asked that future status reports focus on the discussion papers staff has prepared. This report conveys two of those discussion papers. Both are related to the Willamette Basin. Future Commission meetings will focus on other Willamette and Sandy basin issues as time permits. The two papers covered by this report are Ground Water Management and Protection and Coordination of Corps of Engineers Reservoirs.

Director's Recommendation

This was an informational report and no action was required by the Commission. However, staff sought the Commission's thoughts on the discussion papers and the remainder of the planning process.

Marjo Nelson, Willamette Basin Ground Water Committee, asked the Commission to take a look at the education portion of the document and asked that the Commission assign the document the weight that the study committee, the communities and the Department have given it.

David Getzendanner, from Polk County and chairman of Water Concerns for Darrow Rocks Community Association, commended the Commission and Department for the present study of ground water in the Willamette basin and their

efforts to develop ground water management procedures. He said they strongly support the Commission's efforts to (1) prevent water level declines; (2) prevent mining or overdrawing of water; (3) prevent commingling of water from different aquifers; (4) protect existing water rights and wells; and (5) encourage local, county, and state governments to coordinate management procedures for water use.

The Commission took no further action on this matter.

(Didi Malarkey left the meeting at this point.)

K. INFORMATIONAL REPORT ON THE GROUND WATER RESOURCES OF THE ONTARIO AREA

The purpose of this staff report was to inform the Commission of the results of the Department's resource assessment project in the Ontario area.

Between 1983 and 1986, the DEQ tested water from 107 wells in the Ontario area. Nitrate concentrations exceeded the federal drinking water standard in 35% of the wells tested. Nitrate contamination can be caused by leaching of fertilizers or septic tank effluent or by infiltration of runoff from feed lots. Two-thirds of the wells tested had detectable levels of Dacthal, a pesticide commonly used in the area.

A local ground water management committee has been appointed by the Strategic Water Management Committee according to procedures outlined in HB 3515. This local committee has the responsibility to develop and promote an action plan to address the ground water contamination problem in the area.

In July 1988, the DEQ contracted with the Department to characterize the ground water hydrology in the Ontario area. Specific tasks were to identify individual aquifers and determine their hydrologic properties, to determine rates and directions of ground water flow, to determine sources of recharge, and to work with other state agencies and the local ground water management committee seeking a solution to the problem.

The Ontario area is in the far eastern part of Oregon near the confluence of the Snake and Malheur Rivers. The rivers occupy a broad valley ranging in width from less than two to over five miles. The valley floor is relatively flat. The valley is bounded by uplands which range from fairly flat benches to relatively dissected rolling hills with little or no flat area. The Ontario area is desert country with mean annual precipitation of just under 10 inches.

The major towns in the study area are Ontario, Nyssa and Vale. Over half the people in Malheur County live in the study area. Agriculture and related industries are the main economic base of the area. Major crops include onions, potatoes, sugar beets, corn, wheat, barley, mint and hay. Most crop production occurs in the valleys and flat portions of adjacent uplands.

Almost all crops grown in the area are irrigated. Irrigation water is supplied by a number of large, gravity irrigation systems. A number of irrigation projects were built in the early 1900s which now deliver water to over 200,000 acres of farmland. Water for these projects is supplied primarily from Owyhee Reservoir, as well as reservoirs on the Malheur River and Bully Creek. Irrigation water is also pumped or diverted from the Snake and Malheur Rivers.

Virtually all irrigation in the study area is by surface spreading methods. In these methods water is applied to the ground directly into furrows or rills and allowed to spread across the field by gravity. Very little sprinkler irrigation is practiced in the area.

Although contamination of ground water with nitrate and Dacthal was documented as early as 1983, very little was known about how the contamination was getting into the system. There was virtually no information available on the hydrogeology prior to this study. Little was known about the geology of the ground water system and about directions and rates of ground water flow. In order to understand and solve the ground water problem, a basic understanding of the ground water flow system was needed.

Director's Recommendation

The Director recommended that the Commission concur with staff intentions to continue working with the DEQ and the Malheur County Ground Water Management Committee in developing an action plan to address the ground water contamination problem.

The Commission took no formal action at this time.

L. INFORMATIONAL REPORT ON THE STATUS OF PUMP TEST RULE IMPLEMENTATION

In their December 9, 1988 meeting, the Water Resources Commission adopted rules requiring holders of ground water rights to submit the results of a pump test to the Department. According to the rules, the Department will start requiring pump tests on January 1, 1990.

The Department considered two approaches to implementing these rules. One approach identified was to send out general notices of the pump test requirements to the public and rely on voluntary compliance. The other approach was to send notice of the requirement to the individual ground water right holders. The problem with the second approach was that the agency did not know who currently owned the water rights. Agency management decided to try the second approach and identify the current owners of all the wells covered by the pump test requirements.

After considerable evaluation, staff developed a process to determine current ownership of ground water rights. Point of diversion locations in the water rights files were located on county tax lot maps. Tax lot numbers were determined from these maps. The current tax lot owners' names and addresses were obtained from individual county records.

The process of developing and testing this procedure and determining ownership of wells requiring tests in 1990 has taken longer than originally estimated. Staff anticipates having all the owner information and mailing materials together for a mailing in mid-January.

According to the rules, pump test results must be submitted to the Department on the next ten-year anniversary of the water right priority date. Therefore, there may be individuals with pump tests due to the Department before they are notified or in an unreasonably short amount of time after notification. When the specifications for the pump tests were developed, it was assumed that people would have several months to plan for them and that they could be conducted during the irrigation season.

Director's Recommendation

The staff recommended that the Director allow water right holders with tests due in the first half of 1990 to have until July 1, 1990 to submit test results.

It was MOVED by Cliff Bentz, seconded by Lorna Stickel and passed unanimously to approve the Director's recommendation.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Jan Shaw
Commission Assistant

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