

Budget preparation is an exhaustive process which requires meeting strict time lines. In the past, the Commission had been kept informed about the status of the budget development through informational reports at regular Commission meetings.

Director's Recommendation

This was an informational report and no action was required. However, as the schedule pointed out, the budget process moves along at a rapid pace. Staff wanted to provide the Commission with every opportunity to participate in the development of the budget.

Lorna Stickel agreed that she could attend at least one meeting with the Department staff at a stage further along in the budget process. Jim Howland also offered to be involved in the discussions as they proceed.

4. Biennial Water Program Activities: Becky Kreag reported the pace of this program has accelerated in the last few months. The document format has been improved, she said, and the issues now focus on development. The Department and a committee of representatives from the agency members of the Strategic Water Management Group have drafted the 1991-93 Biennial Water Program. A workshop on the program will be held in Salem on April 24.

5. Water systems: Tom Paul described problems with various water systems in Polk County. Current water supplies and distribution systems are not meeting the needs of the county. Polk County is looking at other means of attaining water.

6. The Director said that the Commission had received an invitation from irrigation districts in the Owyhee area to conduct a future Commission meeting there. The Director asked the Commission members if they would like to begin meeting in other areas of the state, now that the weather is better for travel. They agreed and decided that their next meeting would be in Pendleton, in some part because of the serious water management problem area proposal and the Butter Creek hearing. In the fall, the Commission planned to meet on the South Coast in connection with the Tenmile issue in that area.

H. REQUEST FOR APPROVAL OF WORKSHOPS ON THE PROPOSED CONSERVATION POLICY AND A NEW RIPARIAN POLICY

During the January 4 work session on statewide policies, Commissioners Akins and Stickel were designated to work with staff in revising the conservation policy and principles. Staff was directed to work with the Department of Forestry and other agencies to resolve concerns about the riparian policy which were expressed by some agencies and members of the public, particularly the timber industry.

A revised conservation policy was prepared and staff again requested authorization for hearings during the February 12 Commission meeting. Several Commission members noted the continuing public concern and misunderstanding regarding the policy. Instead of authorizing hearings, the Commission directed staff to develop a proposal for conducting eight to ten workshops throughout the state and advise the Commission of the work activities which would have to be delayed to accommodate this activity. In addition, the Commission suggested that discussion of the riparian policy could be included in the workshops.

Staff held four meetings on the riparian policy, attended by representatives from the Departments of Forestry, Agriculture, Fish and Wildlife, and the Division of State Lands. Contact was also made with the DEQ regarding revisions to the draft riparian policy. The Director and Gail Achterman (Governor's Assistant for Natural Resources) also met to discuss the revised draft policy. Representatives from the Departments of Forestry and Agriculture attended that meeting. The revised riparian policy more clearly focuses on protecting the water-related functions of riparian areas, ties management requirements to constitutional and statutory provisions relating to public lands, and establishes a preference for relying on natural processes in riparian area rehabilitation, where appropriate.

Achterman endorsed the joint review of the conservation and riparian policies in a workshop format. She was also satisfied that significant progress has been made in modifying the policies. She recommended that the Department ask specialists from Oregon State University to review the riparian policy from a technical standpoint and ask the Justice Department to determine if it would disadvantage the state in relation to federal land management decisions. The Agriculture and Forestry representatives offered to participate in the workshops.

Director's Recommendation

The staff recommended that the Commission approve the general workshop schedule and direct the staff to proceed with scheduling and conducting workshops on the conservation and riparian policies.

It was MOVED by Didi Malarkey and seconded by Lorna Stickel to approve the general workshop schedule, with the addition of Lakeview and Hermiston. The motion passed unanimously.

The Chair urged Commission members to attend as many of the workshops as possible.

The Commission asked the Department to mail them copies of the conservation and riparian policies.

I. REVISED LIST OF 1991 LEGISLATIVE PROPOSALS

In February, the Department submitted to the Commission for review a list of possible legislative proposals. From the Commission's comments and another internal review, the Department reduced the original list of 13 to 9. However, two new proposals were added. One deals with the management of effluent and the other corrects drafting errors made last session in Senate Bill 261 on spring regulation. In addition, the Department recommended that some ideas in the remaining proposals be dropped.

The Executive Department's schedule requires the Department to submit legislative proposals by May 1. All Governor-approved proposals must be submitted to Legislative Counsel for drafting by June 1.

Department staff members recommended that the legislative proposals be submitted to the Governor's Office for approval.

Director's Recommendation

The Department recommended that the Commission review the proposed concepts and give direction to staff members on which ones to submit to the Governor's Office for review.

Cliff Bentz asked to be included in the subcommittee meetings on Proposal #10. The first meeting of that group is scheduled for April 13.

No formal action was taken on this item. Bev Hayes will forward to the Commission the legislative concepts as they are finished. The Commission was invited to phone or fax their comments.

V. STATUS REPORT: PROGRESS ON GRANTS PASS IRRIGATION DISTRICT WATER MANAGEMENT STUDY

A certificate to irrigate 7,755.01 acres was issued to the Grants Pass Irrigation District (GPID) in 1982. The certificate allows a diversion of 96.94 cfs and is further limited to 1/80 cfs per acre not to exceed 4½ acre-feet per acre each irrigation season. In 1987, GPID filed an application to increase by about 90 cfs its certificated rate of diversion. The application also was intended to increase the annual duty of water.

After extensive discussions and negotiations with the applicant and other interested parties, the Commission approved a draft permit for additional water. The permit would require GPID to perform a study of its system. Purposes of the study include: (1) identification of feasible improvements in the facilities and management of water, (2) identification of areas in the district which could be better served from other sources, and (3) documentation of how much water is needed to meet the district's needs given improvements and changes in the service area.

The draft permit which was approved by the Commission has not been issued because the proposed diversion above a state Scenic Waterway. To issue the permit, the Department must find that the use will not result in a reduction of flows below the levels needed to support the purposes of the Scenic Waterway. The Department is working with the Parks and Recreation Department to identify the flows needed in state Scenic Waterways. Determination of the flows needed in the Rogue River is scheduled for December 1991.

Although the permit has not been issued, GPID has initiated the required study. A committee has been organized to advise in the study and data collection has begun. GPID has submitted an annual progress report as required in the draft permit.

A copy of the draft permit was included in GPID's progress report. Since the draft permit was approved, some changes have been made to incorporate the standardized permit conditions which were reviewed by the Commission in September 1989. Staff does not believe that the changes are substantive; however, GPID has not had an opportunity to review the revisions.

Director's Recommendation

This was a status report only and no Commission action was required. However, the Commission was asked to offer suggestions or comments to GPID regarding the conduct and progress of the study.

No formal action was taken on this item.

J. PROPOSAL FOR DELEGATION OF CONTESTED CASE AUTHORITY

At its February 12, 1990 meeting, the Commission considered several options proposed for reforming the manner in which exceptions and objections to proposed orders are brought before the Commission. Under the option selected, the Commission would delegate to the Director the authority to conduct all contested case proceedings and issue proposed and final orders unless the Director elected to refer the matter to the Commission for consideration of a policy issue. Staff was directed to develop a process for implementation of this option in consultation with Commissioner Bentz.

Upon in-depth investigation, staff determined that the Administrative Procedures Act (APA) and principles of due process and fairness would not support development of a policy issue referral as originally conceived. Staff developed a modified referral process that would be workable in the event the Commission elected to adopt it.

Commissioner Bentz reviewed the proposal and suggested that the opportunity for requesting rehearing or reconsideration be expressly referenced. Commissioner Bentz also noted that the division on delegated and retained contested-case categories may not result in a perceptible decrease in the number of exceptions being ultimately heard by the Commission.

Director's Recommendation

The staff recommended that the Commission approve the policy-referral process as described. The staff recommended further that the Commission take immediate action toward adoption of the draft rule establishing this process.

It was MOVED by Lorna Stickel, seconded by Mike Jewett, and passed unanimously to approve a procedure whereby the Commission would see final orders only on which objections and exceptions have been filed.

It was MOVED by Lorna Stickel and seconded by Cliff Bentz to approve the Director's recommendation and go to a rulemaking hearing. The motion passed unanimously.

The next six agenda items -- Items K, L, M, N, P, and R -- were acted on in a single motion, reported below.

K. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-70181 AND G-12024, FOR FISH REARING AND IRRIGATION FROM GARRET CREEK, A TRIBUTARY TO ROCK CREEK (PUDDING RIVER), LAKE ENTERPRISES, CLACKAMAS COUNTY

On January 29, 1990, Lake Enterprises submitted Applications R-70181 and G-12024. The applicant proposes to store up to 74.9 acre feet of water from Garret Creek, a tributary of Rock Creek, in an off-channel reservoir behind a dam that is 7 feet high. The project would divert up to 50 gallons per minute (0.11 cfs) of water from a well to maintain the reservoir for fish rearing and use water for irrigation in the dike area. The project is located near the Woodburn area.

The question before the Commission was whether the issuance of a permit for a reservoir that would store up to 74.9 acre-feet would have a significant adverse effect on the public interest. Administrative Rule 690-11-080 (2)(a)(C) specifies that reservoirs that store more than 9.2 acre-feet be referred to the Commission to make a public interest determination under ORS 537.170.

L. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-68696 AND 69777 TO STORE AND USE WATER FROM LAWRENCE CREEK AND LOVE RESERVOIR, TRIBUTARY TO BURNT RIVER FOR SUPPLEMENTAL IRRIGATION, RALPH W. BYRNE, BAKER COUNTY

On April 2, 1986 and December 9, 1988, Ralph W. Byrne submitted Applications R-68696 and 69777. Application R-68696 was submitted to cover the reconstruction of Love Reservoir and proposed to store an additional 350 acre-feet of water for supplemental irrigation. Love Reservoir was originally constructed under Permit R-610 in 1928 to store 800 acre-feet. Application 69777 proposed to use the additional 350 acre-feet of stored water for supplemental irrigation. The project is located near Baker City.

The question before the Commission was whether the issuance of a permit to enlarge a reservoir and store an additional 350 acre-feet of water behind an existing dam would have a significant adverse effect on the public interest. Administrative Rule 690-11-080 (2)(a)(C) specifies that dams greater than 10 feet in height or impounding more than 9.2 acre-feet of water be referred to the Commission to make a public interest determination under ORS 537.170.

M. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-69872 AND 69868 TO STORE AND USE WATER FROM HAY CREEK, TRIBUTARY TO DREWS CREEK FOR IRRIGATION, EDWARD L. GARRETT, LAKE COUNTY

On April 10 and April 14, 1989, Edward L. Garrett submitted Applications R-69872 and 69868. Application R-69872 proposed to store up to 815.8 acre-feet of water from Hay Creek behind an existing dam that is 19.2 feet high. Application 69868 proposed to use up to 4.93 cfs from direct flow and storage for irrigation on 45.1 acres of primary lands and on 151.9 acres of supplemental lands. The project is located near Lakeview.

The question before the Commission was whether the issuance of a permit for up to 815.8 acre-feet of storage would have a significant adverse effect on the public interest. Administrative Rule 690-11-080 (2)(a)(C) specifies that appropriations for greater than 9.2 acre-feet of storage be referred to the Commission to make a public interest determination under ORS 537.170.

N. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-69995 AND 69996 TO STORE AND USE WATER FROM CHRISTIANSEN CREEK, TRIBUTARY TO THE TUALATIN RIVER FOR IRRIGATION, JOHN KOEHNKE, WASHINGTON COUNTY

On July 13, 1989, John Koehnke submitted Applications R-69995 and 69996. Application R-69995 proposed to reconstruct a reservoir to store a total of 100 acre-feet of water for irrigation. Application 69996 proposed to use up to 0.95 cfs for irrigation for 76.3 acres. The old dam was approved under Permit R-4663 to store 11.7 acre-feet. The old dam would be completely