

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

G. EXCEPTIONS TO JOHN DAY MINIMUM STREAMFLOW CONVERSIONS PROPOSED ORDER

The Commission directed that a contested case hearing be held on the conversion of minimum streamflows in the North Fork, Middle Fork and Mainstem John Day River. The purpose of the hearing was to determine whether the conversions would adversely affect the public interest or existing water rights and to determine what conditions, if any, should be placed on the instream water rights.

Following proper notice and admission of parties on petition, the hearing was held in John Day on December 12, 1989. Twelve environmental organizations under the representation of WaterWatch, Grant County, Oregon Department of Fish and Wildlife (ODFW), Oregon Department of Parks and Recreation (ODPR), Columbia River Intertribal Fish Commission (CRITFC), the Umatilla Tribe, the Warm Springs Tribe, and David Childs participated in the hearing.

A proposed order was issued by the Director on March 1, 1990. The parties were notified of the time in which to file exceptions and objections to the Proposed Order.

On March 30, exceptions were filed by David Childs. On April 3, exceptions were filed by Grant County. Parties were given until April 17 to file any written response and argument on the exceptions and were informed that the Commission's consideration of the exceptions would be limited to written argument and the staff report only. Written response and argument were filed on April 17 by ODFW and by WaterWatch on behalf of itself and the 12 other organizations it represents.

Director's Recommendation

The staff recommended that the Commission amend Finding of Fact #1 to reflect the flow level established in 1962 as 20 cfs on the John Day River above its mouth as measured at McDonald Ferry.

The staff further recommended that the Commission consider each objection made to the proposed Order and indicate its determination on each objection for inclusion in the Final Order.

The staff further recommended that the Commission approve the Order with the recommended correction and with additional discussion of proceedings following issuance of the Proposed Order as the Final Order in this proceeding.

The Commission decided to consider and approve or deny each objection or recommendation one by one.

- A. Objections and recommendations by David Childs: Objections or recommendations No. 1 through 11 were dealt with in the manner decided above. The Commission upheld the staff's recommendation on each of them, in turn.
- B. Objections or recommendations by Grant County: The Commission upheld the staff recommendations.

It was MOVED by Mike Jewett and seconded by Didi Malarkey to adopt the Director's recommendation. Jim Howland abstained. The motion passed.

L. CUMULATIVE IMPACT REVIEW OF APPLICATION 61243 OF THE FARMERS IRRIGATION DISTRICT FOR A PERMIT TO APPROPRIATE WATER FOR HYDROELECTRIC POWER

Farmers Irrigation District (FID) applied to appropriate up to 25 cfs from Gate Creek, Cabin Creek and North Fork of Green Point Creek in order to supplement appropriations under previously approved permits. FID filed the original application 61243 in February 1981 for a permit to appropriate surface water in the Hood Basin for hydroelectric generation at three powerhouses. The project would divert water from Dead Point Creek, Spring Camp 4, North and South Forks Green Point Creek, North and South Forks Pine Creek, Ditch Creek and the Hood River. From this application, three applications evolved to appropriate water for the operation of the three powerhouses.

The Water Policy Review Board approved application 62989 on November 9, 1981, for the diversion of 10 cfs from Ditch Creek to operate powerhouse one. Since 1986, FID has not operated this plant. FID surrendered its FERC exemption and the Water Resources permit was canceled. The Board approved application 64061 for powerhouse two and application 68131 for powerhouse three on February 23, 1983. These projects utilize up to 35 cfs from the Low Line Canal through powerhouse 3 and those 35 cfs plus 73 cfs from the mainstem of the Hood River through powerhouse 2.

The Water Policy Review Board, by interim order on November 14, 1983, continued the hearing on residual application 61243 until November 9, 1988. On November 1, 1988, FID filed an amendment to residual application 61243 to appropriate from Gate Creek, Cabin Creek, and North Fork and South Forks Green Point Creek. Revisions to this amendment were filed May 17, 1989, and again on December 1. The latter revision deleted South Fork Green Point Creek from the permit application amendment. FID will use these three diversions only when other permitted appropriations are insufficient to operate FID's two powerhouses at capacity.

Up to 35 cfs can be diverted from Dead Point, South Pine, North Pine and Ditch Creeks and conveyed by the Low Line Canal to operate powerhouse 3. The quantity of water available from these diversions is not sufficient to operate at maximum capacity. The shortfall of water has been up to 25 cfs. FID proposes to divert up to 5 cfs combined from Cabin and Gate Creeks and up to 20 cfs from North Fork Green Point Creek until the balance of the previously approved 35 cfs has been diverted or until minimum flows of the sources are reached.

Director's Recommendation

The staff recommended that the Commission approve for the Chairman's signature the Findings of Fact, Conclusions of Law and Interim Order which directs the Department to reconvene the hearing on application 61243, as amended, as a public interest contested case hearing.

Kip Lombard, attorney, entered into the record a letter from Peter Paquet of the Northwest Power Planning Council to the effect that they have essentially withdrawn their preliminary concerns.

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

H. CONSIDERATION FOR APPROVAL OF APPLICATION R-69753 TO STORE WATER FROM HORSE CREEK, TRIBUTARY TO DEEP CREEK FOR RECREATION, VERLE EMERY, LAKE COUNTY

On November 10, 1988, Verle Emery submitted Application R-69753, proposing to store up to 30 acre-feet of water from Horse Creek behind an existing dam that is 20 feet high.

The question before the Commission was whether the issuance of a permit for up to 30 acre-feet of storage behind a 20-foot dam 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 and or dams greater than 10 feet in height be referred to the Commission to make a public interest determination under ORS 537.170.

Director's Recommendation

The staff recommended that the Commission find that the use of water would not have a significant adverse effect on the public interest and authorize the Director to issue the permit.

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

I. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-69168 AND 69169 TO STORE AND USE WATER FROM AN UNNAMED STREAM, TRIBUTARY TO THE TUALATIN RIVER, FOR IRRIGATION, ELDON L. WILLIAMSON, WASHINGTON COUNTY

On October 27, 1989, Eldon L. Williamson submitted Applications R-69168 and 69169. Application R-69168 proposed to store up to 38 acre-feet of water behind a 12-foot dam for irrigation, and Application 69169 proposed to use up to 0.62 cfs for irrigation. The reservoir was built in 1952 to serve as a storage reservoir for irrigation waters. The structure was built without benefit of a permit. The structure impounds water from a small unnamed stream that drains an area of 1700 acres on the slopes of Cooper Mountain. The area above the dam site is located in steep terrain.

The question before the Commission was whether the issuance of a permit for up to 38 acre-feet of storage behind a 12-foot dam 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 and or dams greater than 10 feet in height be referred to the Commission to make a public interest determination under ORS 537.170.

Director's Recommendation

The staff recommended that the Commission find that the use of water would not have a significant adverse effect on the public interest and authorize the Director to issue the permit.

It was MOVED by Jim Howland, seconded by Hadley Akins, and passed unanimously to approve the Director's recommendation.

J. REQUEST FOR ADOPTION OF AMENDMENTS TO OAR 690-250-130 RELATED TO REGULATION OF EXEMPT USES OF GROUNDWATER UNDER ORS 537.545

The Commission authorized public hearings on a proposed amendment of the administrative rule regarding regulation of exempt groundwater uses on January 5, 1990. Public hearings were held on the rule, along with proposed rules on civil penalties for violation of the water laws. Hearings were held during the month of February in Pendleton, Baker City, Bend, Salem and Grants Pass.

Director's Recommendation

The staff recommended that the Commission adopt the rule as submitted.

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

K. REQUEST FOR ADOPTION OF ADMINISTRATIVE RULES FOR ASSESSMENT OF CIVIL PENALTIES FOR OTHER THAN WELL CONSTRUCTORS

The Commission authorized public hearings on the proposed administrative rules for civil penalties on January 5, 1990. Public hearings were held in Pendleton, Baker City, Bend, Salem, and Grants Pass between February 6 and February 14. A total of 485 persons attended the hearings. In all, 65 written and 65 oral comments were received on the proposed rules.

A Hearings Summary was to the Commission, which included the written comments received and responses to both written and oral comments by subject matter.

Director's Recommendation

The staff recommended that the Commission adopt the amended civil penalty rules as submitted.

It was MOVED by Lorna Stickel and seconded by Jim Howland to remove the words "or Director's designee" everywhere it appears in the rules. The motion passed unanimously.

It was MOVED by Lorna Stickel and seconded by Didi Malarkey to approve Stickel's additional amendment, which was to add "in the notice of violation to 690-260-050(3)." The motion passed unanimously.

It was MOVED by Lorna Stickel and seconded by Mike Jewett to approve Stickel's further amendment to add "(f) Incorrect identification of the responsible party to 690-260-090(3)." The motion passed unanimously.

It was MOVED by Didi Malarkey and seconded by Cliff Bentz to add the language "...Notice may be given, if reasonably possible, by personal delivery to the responsible party " to (1) of 690-260-030. The motion passed unanimously.

Representative Chuck Norris, welcomed the Commission to the Pendleton area. He commented on some general concerns with the rules but did concede that the Commission was doing what the Legislature had charged them with.

It was MOVED by Mike Jewett, seconded by Didi Malarkey, and passed unanimously to adopt the rules as amended.

It was MOVED by Lorna Stickel and seconded by Jim Howland that the Director appoint, and hold at least one meeting with one year from now, of an advisory body of broad geographical representation to assess the effectiveness of the civil penalty procedures and that the Commission receive quarterly reports from the Department staff of the progress of the committee. The motion passed unanimously.

M. STATUS REPORT #13 OF WILLAMETTE-SANDY BASIN PLANNING

This was #13 in a series of status reports advising the Commission of planning progress in the Willamette and Sandy basins. The purpose of this report was twofold. First, it conveyed to the Commission draft water allocation discussion papers for the two basins. A separate discussion paper was presented for each basin. Attached were the Willamette Basin and the Sandy Basin allocations papers. Second, this report advised the Commission of a revised schedule for completion of the Willamette planning process.

Director's Recommendation

This was an informational report only and required no Commission action. The staff suggested that Commissioners Stickel and Howland share with the other Commissioner their thoughts about the allocation approach staff discussed with them. Staff asked for other suggestions the Commission had for improving the allocation papers.

Didi Malarkey pointed out that one workshop would conflict with the June Commission meeting.

Jim Howland suggested letting the staff work out the schedule of meetings so that Commission members could attend.

N. INFORMATIONAL REPORT: PROGRESS REGARDING A PUBLIC HEARING TO DETERMINE IF THE UMATILLA RIVER AND MCKAY CREEK SHOULD BE DECLARED A SERIOUS WATER MANAGEMENT PROBLEM AREA

The staff presented a report to the Commission at its February 12 meeting in Portland. The report recommended that the Commission instruct staff to conduct a hearing to determine if a serious water management problem area should be declared for the Umatilla River and McKay Creek. The Commission unanimously approved the recommendation.

The request to hold a hearing to determine the need for a serious water management problem area was the first in the state. This report and its attachments outlined material that the Department will present as testimony at the hearing. Staff sought comments from the Commission regarding these materials.

Director's Recommendation

This report was informational only and required no Commission action. The staff asked for the Commission's comments or suggestions for improvement of the materials to be taken to hearing.

It was MOVED by Hadley Akins, seconded by Lorna Stickel and passed unanimously to proceed to convening a "workshop" instead of a "hearing."

There being no further business, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jan Shaw".

Jan Shaw
Commission Assistant

JS:dkh

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