

F. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-70144 AND 70145 TO STORE AND USE AND WATER FROM AN UNNAMED STREAM, TRIBUTARY TO ANTELOPE CREEK FOR WILDLIFE, JIM STEWART, LAKE COUNTY

On December 14, 1989, Jim Stewart submitted two Applications, proposing to store up to 39.5 acre-feet of water from an unnamed stream, tributary to Antelope Creek, and the other to use up to 50 gpm (0.11 cfs) from Antelope Creek and the springs at the reservoir site to maintain the reservoir for wildlife habitat and stockwater. The proposed development would impound water for wildlife habitat. The project is located in the Goose and Summer Lakes Basin.

The question before the Commission was whether the issuance of a permit for up to 39.5 acre-feet of storage behind a seven foot dam would have a significant adverse effect on the public interest. Administrative Rule 690-11-080 (2)(a)(C) specified 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 permits.

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

G. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-70276 AND 70277 TO STORE AND USE WATER FROM SUTHERLIN CREEK, TRIBUTARY TO THE NORTH UMPQUA RIVER, FOR IRRIGATION, SUTHERLIN WATER CONTROL DISTRICT, DOUGLAS COUNTY.

On April 5, 1990, the Sutherlin Water Control District submitted two applications, one proposing to store up to an additional 450 acre-feet of water behind an existing dam that will be enlarged and one to use up to 450 acre-feet of stored water only for irrigation and supplemental irrigation. The reservoir was built under Permit R-4751 in 1966-1967 by the Soil Conservation Service to serve as an impoundment for flood control and irrigation. The permitted structure impounds 880 acre-feet of water from Sutherlin Creek. The enlargement would allow for a total storage capacity of 1330 acre-feet.

The question before the Commission was whether the issuance of a permit for up to an additional 450 acre-feet of storage behind an existing dam that will be enlarged 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 permits.

John Castle, Sutherlin Water Control District, spoke on behalf of his district.

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

H. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-69704 AND 69705 TO STORE AND USE WATER FROM OAKS BOTTOM WILDLIFE REFUGE RESERVOIR AND UNNAMED STREAM, TRIBUTARY TO THE WILLAMETTE RIVER, FOR WILDLIFE HABITAT AND WETLAND ENHANCEMENT, CITY OF PORTLAND, MULTNOMAH COUNTY.

On September 2, 1988, the City of Portland submitted two applications proposing to store up to 451.6 acre-feet of water from an unnamed stream, tributary to the Willamette River, for wildlife habitat to use up to two cfs of water from the unnamed stream to maintain Oaks Bottom Wildlife Refuge Reservoir for wildlife habitat and wetland enhancement. The site is located in the City of Portland, north of the Sellwood Bridge.

The question before the Commission was whether the issuance of a permit for up to 451.6 acre-feet of storage behind a ten 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 permits.

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

I. PROPOSED ADOPTION OF OAR 690-01-041 PROCEDURAL RULE

At its March 30, 1990, meeting, the Commission authorized taking draft procedural rule OAR 690-01-041 to hearing. This was a new rule which specified categories of contested cases on which the Commission would consider exceptions and issue final orders, and delegated to the Director the final decision-making authority in all other contested cases where exceptions are filed. The rule also delegated to the hearings referee the authority to issue proposed orders and to issue final orders where no exceptions are filed. The rule specifically referred to the right of parties to request reconsideration or rehearing on any final order, and to the ability of any commissioner to move for reconsideration or rehearing.

At the March meeting, the Commission determined that all final orders issued by the Director after hearing exceptions should be forwarded to the Commission for its information and review.

A rulemaking hearing was held on May 22 and May 23 at the Department of Water Resources office in Salem. No one, other than the presiding officer, attended the hearing. No written comments were received by the May 24, 1990, comment deadline.

Director's Recommendation

Staff recommended adoption of OAR 690-01-041, as proposed.

After this report had been sent to the Commission members, the Department staff proposed a minor amendment to the language forwarded in the report. The change would be as follows:

(1)....the Hearings Referee shall issue the proposed order. If no exceptions are filed by the parties, and if a different final order is not issued by the Director or the Commission within the time period allowed for exceptions, the proposed order will become the final order.

It was MOVED by Cliff Bentz and seconded by Mike Jewett to adopt the Director's recommendation, adding the suggestion of the staff but restricting the review to the Director. The motion passed unanimously.

J. PROPOSED ADOPTION OF FOUR STATEWIDE POLICIES (OAR CHAPTER 690, DIVISIONS 400 AND 410)

On May 26, 1989, the Commission directed staff to develop statewide water resource policies for groundwater management, hydroelectric power, instream flows, interstate cooperation, riparian-area management and conservation. The Commission expressed its intent to adopt the policies as rule to become part of the Oregon Water Management Program. These policies represent statements of the Commission's coordinated, integrated water resources policy.

On September 29, 1989, staff presented the Commission with an initial draft of statewide water resources policies in rule format. The proposal provided sections describing statutory guidance, a policy discussion, and implementing strategies for each policy topic, to be included with the policies in the Oregon Water Management Program.

The Commission held five hearings in November 1989, in the cities of Grants Pass, Bend, Pendleton, Baker City, and Salem. The hearings were well attended and the Department received written comments from about 120 individuals, organizations, and agencies.

At its November 17 meeting, the Commission directed staff to revise the initial draft, taking into consideration the comments received at the public hearings. Staff returned a revised draft to the Commission at its January 5, 1990, meeting. The Commission then instructed staff to hold another round of rulemaking hearings on the revised draft policies covering groundwater management, hydroelectric power, instream flows and interstate cooperation. Staff was also instructed to hold a series of workshops on the proposed policies for conservation and riparian area management.

The Commission held five evening hearings on March 19, 20, 21 and 22, 1990, in the cities of Grants Pass, Baker City, Pendleton, Salem and Bend. The hearings were well attended by interested parties in those regions. A total of 68 people provided oral testimony. The Department accepted written comments on the proposed policy draft until April 13, 1990. The Department received comments from about 85 individuals, organizations, and agencies. Hearing summaries and written comments totalled about 255 pages.

At the March 30, 1990, meeting, staff requested, and the Commission informally approved the carrying of proposed definitions to the workshops on conservation and riparian-area management, as items subject to further discussion. Definitions not used in the revised policies were deleted. All of the remaining terms were used either in the draft conservation or the riparian policy. Therefore, no definitions were currently proposed for adoption.

At the Bend hearing, two petitions were submitted to the Department requesting that hearings be held in Klamath Falls and Lake County. The petitions request that the hearings be held on the four statewide policies now proposed for adoption and the definitions not currently proposed. The petitions requested the hearing in Klamath Falls contained 281 signatures and the Lake County petition contained 391. These petitions were submitted before the public was informed of the Department's intent to hold workshops in Lakeview and Klamath Falls on both the definitions and the conservation and riparian policies before proposing to adopt them as rule. Contacts with the petitioners indicated that the scheduled workshops satisfactorily responded to their concerns. Their views, and those of the rest of the state, were considered when revising these items prior to seeking Commission approval for a rulemaking hearing.

Director's Recommendation

The staff recommended that the Commission adopt the proposed statewide policies and principles as part of the Oregon Water Management Program.

It was MOVED by Jim Howland and seconded by Hadley Akins to adopt the groundwater management policies. The motion passed unanimously.

It was MOVED by Jim Howland and seconded by Mike Jewett to adopt the hydroelectric section with the proposed changes in language on page 13. The motion passed unanimously.

It was MOVED by Mike Jewett and seconded by Jim Howland to adopt the interstate cooperation section. The motion passed unanimously.

It was MOVED by Cliff Bentz and seconded by Hadley Akins to add the instream flow protection policy to the conservation and riparian policies. It would be (1) reviewed by the staff along with other workshop comments, (2) brought back to the Commission's September meeting as a package, and (3) approved for public hearing. Vice-chair Stickel and Mike Jewett voted no, resulting in a failed motion.

After some discussion, Mike Jewett offered to forward the same motion that Bentz had just made and to change his vote to "yes."

The Vice-chair asked Bentz if, as an alternative, he would review his concerns and bring back another draft for the next Commission meeting. Bentz agreed with the understanding that if there was no resolution, the policy could still be sent to hearing again. The Vice-chair asked Roger Bachman to be the second Commission member to meet with Bentz and the staff on June 30 to incorporate their changes in the draft document.

It was MOVED by Jim Howland and seconded by Mike Jewett to approve the authorization statement. The motion passed unanimously.

L. REQUEST FOR ADOPTION OF DROUGHT MITIGATION RULES, OAR 690-19-010 THROUGH OAR 690-19-100

On March 30, 1990, the Water Resources Commission authorized a public hearing on the proposed rules. A public hearing was held on May 1, 1990, at the Oregon Water Resources Department offices in Salem, and written comments were accepted through May 4. Staff analyzed the comments and modified the proposed rules. The proposed rules as recommended for adoption were submitted to the Commission.

Prompted by an analysis by Steve Sanders, John Borden recommended that subsection 030(2) be deleted because it set up a conflict with the protest procedure currently described in Division 11 rules.

Director's Recommendation

The staff recommended that the Commission adopt the proposed rules absent subsection 030(2).

(Cliff Bentz left the room at this point in the meeting.)

It was MOVED by Jim Howland and seconded by Mike Jewett to adopt the drought rules as proposed by the staff, but deleting 030(2). The motion passed unanimously.

There being no further business, the meeting was adjourned.

Respectfully submitted,



JAN SHAW
Commission Assistant

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