

## Director's Recommendation

The staff recommended that the Commission adopt the proposed rules, as modified.

The Commission asked staff to author and include language in both Divisions 11 and 15 requiring that copies of easements be supplied with any applications where water works cross land not owned by the applicant.

It was **MOVED** by Roger Bachman and seconded by Didi Malarkey to adopt the rules as amended. The motion passed unanimously.

It was **MOVED** by Didi Malarkey and seconded by Hadley Akins that the motion just adopted and the Division 11 regulations amended by the statewide agency coordination process be coordinated and preserved. The motion passed unanimously.

### L. PROPOSED ADOPTION OF ADMINISTRATIVE RULES FOR THE FILING AND PROCESSING OF SPRING REGISTRATIONS, OAR CHAPTER 690 DIVISION 26

SB 261 of the 1989 legislative session provided for persons to register to establish water rights for the use of spring waters that were at one time exempt from permit requirements. Persons who use spring waters that do not flow off their property are not required to file for water rights. However, if those persons have divided their property or intend to divide it so that the spring does flow off the property, then they need a water right. This law provides them the opportunity to claim a priority date from the time the use of the spring waters first began.

The legislation required the Commission to address four issues:

- 1) **Fees** - The Department proposed to use the same fee schedule as for the filing of other surface water registrations. That schedule was set by ORS 539.081.
- 2) **Forms** - The Commission was to determine the information required on the registration statement. The form would be adopted by reference. The rules require a map prepared by a Certified Water Rights Examiner as is required for other surface water registrations.
- 3) **Estimates of spring flows** - Through these rules the Commission delegates to the regional manager the responsibility to determine what is a reasonable estimate of spring flow for the Department's purposes. The Department has a greater interest in estimates of actual water use than in an estimate of total flow from the spring.
- 4) **Times for filing** - The Department recommended that those persons who have developed a spring right and have already subdivided their properties be required to claim their earlier priority date by December 31, 1994. Those persons who partition or subdivide their property after January 1, 1991, must file a registration statement before they subdivide in order to claim an earlier priority date.

The Commission authorized a public hearing on the proposed administrative rules for spring registrations, and the hearing was held in Salem on May 4. Approximately two dozen people attended the hearing, but no formal testimony was offered.

## Director's Recommendation

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

#### O. 1991-93 BUDGET AND DECISION PACKAGES

The Department is nearing the final stages of developing its budget request for the 1991-93 Biennium. Its "agency-requested" budget document must be submitted to the Executive Department by August 28, 1990, for their review.

In May, the Commission reviewed nine decision packages. After that, the Department made significant changes in the decision packages in order to scale down the total dollar amounts and the number of new positions. The comments and suggestions from the Commission were also taken into consideration as the changes were made.

In June, the Department presented the revised decision packages to the Commission. The revisions included the elimination of two decisions packages and the addition of one.

The Commission requested more descriptive information on the Department's current base budget (1989-91) and the total budget (base and decision packages) proposed for the 1991-93 biennium.

The Department ranking of the decision packages was not changed since the June report.

##### Director's Recommendation

This was an informational report and no action was required. However, the Department invited Commission discussion and direction.

Chair Stickel suggested a change on Page 3. The Department will establish methods to protect appropriate portions of the streamflow gained through projects to provide instream benefits.

No action was taken on this item.

Commissioners Bachman and Howland offered to work with staff to redraft the budget narratives.

#### P. STATUS REPORT: WATER AVAILABILITY PROGRAM AND TEST BASIN REPORT FOR THE ROGUE AND JOHN DAY RIVER BASINS

The 1989 Legislature mandated that the Department establish a database of water availability. This database was to be used for instream flow evaluations, basin planning, and evaluating individual water rights. The water availability program was established to provide tools to determine water availability and to evaluate water availability for streams throughout Oregon. The development of the water availability program has been in progress since July 1989, and this was the first presentation of program findings to the Commission. The report covered the development of the water availability program and the results for water availability evaluation and model development on the Rogue and John Day River Basins. The purpose was to inform the commission and to get direction on any areas of the program that should be changed.

##### Director's Recommendation

The staff recommended that the Commission adopt the administrative rules as proposed.

Cliff Bentz offered to work with Steve Applegate to add some clarifying language to the purpose section of the rules. He also offered to work on a legislative concept responsive to comments made by Representative Denny Jones regarding whether the rules should also apply to springs that flow off the property upon which they arise.

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

M. PROPOSED ADOPTION OF A STATEWIDE POLICY ON INSTREAM FLOW PROTECTION (OAR CHAPTER 690, DIVISION 410, SECTION 030)

At its June 22, 1990, meeting, the staff requested the Commission to adopt statewide policies on four topics. With minor amendments, the Commission adopted a purpose and authorization section and statewide policies covering three topics: groundwater management, hydroelectric power development, and interstate cooperation.

The proposed instream flow protection policy was not adopted. The Commission raised several concerns with the proposed policy. These included:

- Misgivings over the use of terms which are not currently defined in the purpose and authorization section.
- The opinion that this policy represented a significant departure from past policy and additional public exposure is warranted.
- The view that the instream flow protection policy is closely related to the conservation policy and that these policies should be considered together.

The Commission considered sending the instream flow protection policy out to the public for another review before adopting it. This could have been done with the conservation and riparian management policies, on which the Department expects to hold a hearing in October, and which will likely be proposed for adoption in December. However, a different approach was agreed upon.

The staff was instructed to meet with Commissioners Bentz and Bachman in an attempt to resolve concerns with the draft policy. Staff was then to return with a revised version of the instream flow protection policy at the August Commission meeting. The Commission could then either adopt the proposed policy or send it out for another public review with the draft conservation and riparian management policies.

The staff met with Commissioners Bentz and Bachman to resolve concerns with the draft instream flow protection policy and developed the revised policy.

Director's Recommendation

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

The staff recommended that the Commission concur with the overall direction the water availability program was taking and make recommendations on specific areas of the program that the Commission felt could be improved.

Commissioner Bachman opined that the analytical methodology is subject to challenge. Chair Stickel asked that the reports be made available in each basin as they are completed.

No action was taken on this item.

Q. STATUS REPORT: JOHN DAY RIVER SCENIC WATERWAY RECREATIONAL FLOW NEEDS ASSESSMENT

This was the second in a series of recreational flow needs assessments on State Scenic Waterways. The report on the Scenic Waterway was created using the same method presented to the Commission on March 3, 1990.

The John Day River Scenic Waterway is comprised of four segments which total over 345 miles within the basin.

The two major flow-dependent recreation activities documented in the John Day River Scenic Waterway recreation assessment are boating use and fish habitat. The North Fork and Mainstem sections of the Scenic Waterway have flow values that can be identified by both the Oregon Method (ODFW) for fish habitat and the Oregon Recreation Method (Parks) for recreation needs. The Middle Fork and the South Fork sections do not have sufficient documentation for boating uses. The Oregon Recreation Method defaults to fish habitat flow values in this case. Both Parks and ODFW have reviewed flows identified in the report.

Both Parks and ODFW will apply for instream water rights consistent with the quantities outlined in the report. In order to make findings on pending and future consumptive water right applications and utilize the findings of the Recreation Assessment, the Commission must take action.

Director's Recommendation

The staff recommended that the Commission approve the John Day River Scenic Waterway Assessment for distribution and as a basis for making "Diack" findings on pending water use applications.

WaterWatch of Oregon, Inc., commended the Department for the good job it did in establishing water availability calculations.

It was MOVED by Cliff Bentz and seconded by Mike Jewett to delay action on this item until a future Commission meeting pending further workshops with the local residents in the John Day Basin in a workshop setting.

Before the vote was taken, the Commission heard from Kevin Campbell, Grant County judge. Judge Campbell asked to have the cubic feet per second (cfs) modified to realistic levels, and he offered to work with the staff on this. Campbell asked the Department to hold town hall meetings, hearings, or workshops and design them to be "as interactive as possible."



Jill Zarnowitz, ODFW, supported the Commission in taking this issue to the people in the John Day Basin in order that the misunderstandings about information in the basin plan can be resolved.

The Commission unanimously approved the above motion.

Roger Bachman requested that Al Cook from parks send him a copy of the recreation survey referenced in the report.

#### R. STATUS REPORT: TENMILE LAKE WATER SUPPLY PROJECT, COOS COUNTY

At its November 17, 1989, meeting the Commission initiated rulemaking on a petition to amend the South Coast Basin program. The Coos County Urban Renewal Agency (CCURA) and the Coos Bay - North Bend Water Board (CB-NBWB) petitioned the Commission to reclassify Tenmile Lake. The co-petitioners sought the inclusion of municipal use in the classification of allowable water uses for the lake. Currently, the basin program limits water use from the lake to domestic and livestock uses, irrigation of lawns and noncommercial gardens and in-lake use for recreation, fish life and wildlife. The Commission tentatively set a fall 1990 date for a public hearing on the petition.

The petition to amend the basin program was prompted by plans of the co-petitioners to develop additional municipal water supply. The co-petitioners proposed constructing a control structure at the mouth of the lake. The control structure would artificially regulate the level of the lake and create a reservoir. Outflow and water released from the lake would be diverted at a downstream location and piped to a treatment facility for distribution.

There were several important steps that must occur before the proposed project could proceed. 1) The Commission must amend the basin program to allow the municipal use of water from the lake; 2) A federal Environmental Impact Statement (EIS) must identify potential impacts and alternatives; and 3) The Department must issue a reservoir permit to store water and a permit to appropriate (divert) water before the proponents can proceed.

After a series of public meetings, the co-petitioners proposed to step back from actively pursuing the project. Instead, the co-petitioners propose shifting their emphasis to an assessment of alternative water sources and examining a mix of options that would allow them to meet future water needs. They will continue to analyze the feasibility of developing surface water sources, including Tenmile Lake, but they also will look at the cost and benefits associated with desalinization and water conservation to name but a few. This coincided with the Commission's stated desire that the co-petitioners examine the opportunities for water conservation. An assessment of alternatives also paralleled the Commission's desire to be presented with a development plan describing how existing applications and permits would be developed or canceled.

Since the focus of the co-petitioners shifted to an assessment of alternative water sources, it appeared unlikely a public hearing should be scheduled for September in the South Coast Basin.

#### Director's Recommendation

This status report was for informational purposes and required no action by the Commission.

Chair Stickel said the Department should encourage the petitioners to study water availability and plan for any potential growth on the north spit were to become a reality. Stickel said that the Department staff should encourage the residents more specific about the types of water uses that they foresee.

Commissioner Howland also encouraged the petitioners to describe the status of their requests.

No further action was required.

#### OTHER BUSINESS

Chair Stickel asked the Department to set aside time on the Commission's next agenda for election of a vice-chairman for the Commission.

Oregon Trout submitted written comments on several items on the Commission's agenda. They were distributed to the Commission members and have been placed in the Commission files.

There being no further business, the meeting was adjourned.

Respectfully submitted,



JAN SHAW  
Commission Assistant

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