

Director's Recommendation

This item of the Director's report was provided for the Commission's information and discussion, if needed. No action was necessary.

The Commission gave general concurrence with the process outlined in Attachment 1 to the staff report. Chair Stickel commented on the use of the phrase "local government official" in the Discussion portion of the staff report, urging that staff interpret this broadly enough to include any local government personnel.

4. Polk County: Deputy Director John Borden distributed a letter of invitation to the Commission from Polk County to hold its October 26 meeting in Dallas. Three counties--Polk, Yamhill and Lincoln--continue to look for short- and long-term resolutions for municipal and industrial water supplies, the letter said. Rural water associations, they contended, are providing water to an increasing population, but the associations cannot continue to carry the burden individually.

The County believes that the regionalized water supply concept promoted by the Commission as part of its planning efforts could be an effective mechanism for their communities.

The County believes that a WRC meeting in Polk County would allow members of the public from the three counties to participate and would pull all interests together to achieve a common goal, setting a model for the state.

The Commission asked the staff to shift their meeting locations for the next two meetings from Coos Bay to Eugene in September and From Salem to Dallas in October.

5. Statewide policies: The Commission discussed the statutory guidance, discussion, and implementing strategies associated with the statewide policies adopted as rules at the last meeting. Staff said they intended these to accompany the policy rule as information and guidance. The Commission agreed that the implementing strategies were to be included with the Groundwater Management, Hydroelectric, and Interstate Cooperation policies last adopted, but made it clear that they can revise the strategies at any meeting.
6. Vassios (Little Pine Creek and Dog Creek): Some questions remain about the record in this case, and the Department staff recommended that the Commission authorize a supplemental hearing on some limited additional issues.

It was MOVED by Jim Howland and seconded by Didi Malarkey to withdraw the order and allow additional fact finding on a limited number of issues. The motion passed unanimously.

It was MOVED by Cliff Bentz and seconded by Roger Bachman that the hearings officer hear the matter again on some specific issues and that the Commission would examine only exceptions and objections to such rulings. The motion passed unanimously.

- F. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-70178 AND 70179 TO STORE AND USE WATER FROM WILDHORSE CREEK, TRIBUTARY TO BUCK CREEK (LOST RIVER) FOR IRRIGATION, RITTER RANCH, KLAMATH COUNTY

On January 26, 1990, Ritter Ranch submitted Applications R-70178 and 70179, proposing to store up to 195.3 acre-feet of additional water in Ritter Reservoir from Wildhorse Creek, tributary to Buck Creek (Lost River) and proposing to use up to 6.2 cfs from the reservoir and Wildhorse Creek for the primary irrigation of 14 acres and supplemental irrigation of 234.3 acres. The project is located in the Klamath River Basin.

The questions before the Commission were whether the issuance of a permit for storage of up to 195.3 acre-feet of storage behind a dam that is 29.7 feet high and whether the issuance of a permit for use of up to 6.2 cfs of water from storage and direct flows would have a significant adverse effect on the public interest. OAR 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. OAR 690-11-080 (2)(a)(A) specifies that appropriations for greater than 5.0 cubic feet per second be referred to the Commission for the same reason.

Director's Recommendation

The staff recommended that the Commission find that the proposed 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 Didi Malarkey, seconded by Mike Jewett, and passed unanimously to approve the Director's recommendation.

G. WITHDRAWAL OF PROTEST BY ODFW AGAINST CONVERSION OF 3 MINIMUM STREAMFLOWS ON THE APPLIGATE RIVER TO INSTREAM WATER RIGHTS

On March 3, 1989, the Commission directed that a contested case hearing be held on the conversion of three Rogue Basin minimum streamflows to instream water rights. The hearing was ordered by the Commission in response to a request by the ODFW.

The primary concern of ODFW was that conversion without conditions might prevent continued negotiated modifications of storage and release schedules out of Applegate Reservoir to meet fisheries needs. In the past, ODFW, the Corps of Engineers, and WRD have annually agreed to storage and release schedules. Frequently, this included reductions in spring flows in order to store more water for flow augmentation during the fall. While all involved in the negotiations agree that this has been extremely valuable to the fishery, it has resulted in the adopted minimum streamflows not being met in the spring and being exceeded in the fall.

ODFW was the moving force behind the contested case hearing on conversion of these minimum streamflows. After ODFW withdrew its protest, the hearing was postponed and the parties were informed that the Commission would consider conversion of the minimum streamflows without conditions. However, subsequent discussions among staff from the Department, ODFW, and the Corps have revealed confusion and ambiguity regarding the ability of the agencies to manage reservoir releases as has been done in the past.

Director's Recommendation

The staff recommended that the Commission allow the parties in the contested case process to continue to work toward agreement on conditions to be included in the instream water right and to identify the appropriate permittee for the remaining storage.

Mike Jewett reported a number of ex parte contacts from local residents in the area. He recommended that we begin again the hearing process since he thought that many people felt they had no involvement in the earlier process.

It was MOVED by Mike Jewett and seconded by Cliff Bentz to abandon the existing notice and contested case schedule and begin again.

Before the vote was taken, Dave Hunter, WaterWatch of Oregon, Inc., asked the Commission to keep any additional hearings narrowed to the specific issues objected to by ODFW.

Chair Stickel recommended that the Department staff and Mike Jewett work together before the next Commission meeting to prepare a staff report that more clearly states the staff's conclusions and recommendations.

At this point, Commissioner Bentz dropped his second and Commissioner Jewett tabled his motion. Staff was instructed to work with Commissioner Jewett and local groups to clarify the matter. Staff was asked to return to a future Commission meeting with recommendations for further action.

H. PROPOSED ADOPTION OF THE MARCH 1990 EDITION OF THE MODEL RULES OF THE ATTORNEY GENERAL AND AMENDMENT OF OAR 690-01-005

The Attorney General (AG) revised the 1988 edition of the Model Rules, incorporating changes made necessary by the 1989 Legislative Assembly. The revised rules and Administrative Law Manual were published in June 1990.

The Commission is authorized to adopt the Model Rules by reference. In July 1988, the Commission adopted the 1988 version of the Model Rules and amended OAR 690-01-005 to reflect the adoption. With the AG's adoption of the new version of the Model Rules, the Commission also needed to adopt the new rules and amend OAR 690-01-005.

To adopt the Model Rules, the agency must file a certified copy and additional copy of the rule adopting the Model Rules by reference and the Commission's order of adoption with the Secretary of State. A rulemaking hearing would not be required.

Director's Recommendation

The staff recommended that the Commission adopt the AG's 1990 edition of the Model Rules with the exception of OAR 137-03-090 to 137-03-093.

The staff further recommended that the Commission amend OAR 690-01-005 to reflect this adoption and further authorize filing with the Secretary of State.

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

I. PROPOSED ADOPTION OF RULES REGULATING MONITORING WELLS AND OTHER HOLES; OAR CHAPTER 690, DIVISION 240

At its May 1990 meeting, the Commission authorized staff to conduct hearings on draft rules regulating monitoring wells and other holes. The draft rules had been developed with the assistance of an advisory committee comprised of representatives of the water and monitoring well drilling industries, state regulatory agencies, state agencies that make use of monitoring wells and other holes, geologic and engineering consulting firms, and environmental interests. While there was not total agreement among the committee members on the content of the draft rules, there was agreement that they represented a compromise on the major issues. In addition, the draft rules were an acceptable first step that should be followed by additional rule making on the question of hydrologic data holes.

Many modifications were made to the draft rules as a result of testimony. The Groundwater Advisory Committee (GWAC) reviewed the rules and participated in the revision.

Director's Recommendation

The staff recommended that the Commission adopt the proposed rules for the construction and maintenance of monitoring wells and other holes in Oregon.

Changes were made in the proposed rules as follows:

Page 12:

690-240-130(4)

"...to the bottom of the surface seal, or to land surface if the grout slurry is intended to provide the surface seal, in such a manner..."

690-240-130(6)(a)

"...is less than fifty feet and the [height of] standing water column in the borehole or annular space is less than twenty-five feet deep at the time of..."

Page 13:

690-240-135(2)(a)

"...of the land surface and pressure [grouped] grouted with a..."

[Bracketed] language is to be deleted; underlined language is to be added.

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

J. PETITION TO AMEND THE MID-COAST BASIN PROGRAM CLASSIFICATION TO ALLOW THE USE OF WATER FROM WOHINK LAKE FOR PUBLIC PARK PURPOSES

On July 5, 1990, the Department received a petition from the Oregon State Parks and Recreation Department (Parks Department) to amend the Mid-Coast Basin program. The petition seeks a change in the existing water use classification for Woahink Lake to allow public park use. Currently, Woahink Lake and several other natural lakes are classified only for domestic, livestock, and in-lake uses for recreation, wildlife and fish life purposes.

Woahink Lake lies just south of Florence adjacent to Highway 101 and the Oregon Dunes National Recreation Area. It is one of several freshwater, sand-dune lakes located in western Lane County and is about 725 acres in size. Outflow from the lake drains into Siltcoos Lake. Considerable residential development exists around the lake. Honeyman Memorial State Park, established in the 1930's, is located on the north end of the lake.

The Parks Department has a water right to divert 0.45 cubic feet per second (cfs) from Woahink Lake for park purposes. The priority date of the right is June 13, 1958. This predates the classification established by adoption of the original Mid-Coast Basin program. The basin program was last modified on September 25, 1984.

In 1964, a windstorm swept an area of the park, felling and damaging trees. This provided an opportunity for the Parks Department to alleviate crowded recreation facilities at the park. An area of about 16 acres was cleared of trees and a picnic area, boat ramp and shower building constructed. This development took place in an area not covered by the existing water right. In 1971, an underground irrigation system was installed to maintain the landscape of the picnic grounds. The Parks Department failed to apply for a permit to use water in this area of the park. The Parks Department was now approaching the Commission with a petition to amend the basin program so water can continue to be used for park purposes on those lands not covered by the existing permit.

In its petition, the Parks Department asserted that failure to amend the basin program would result in the loss of recreation area available to the public. The area would revert to a non-improved state, and improvements valued at \$600,000 would be lost. Furthermore, the area was used by over 200,000 people in 1989, and the Parks Department feared that failure to maintain these recreation facilities would lead to overcrowding at other sites.

Director's Recommendation

The staff recommended the Commission accept the petition, initiate rulemaking and authorize staff to schedule a public hearing.

It was MOVED by Jim Howland and seconded by Cliff Bentz to approve the Director's recommendation. The motion passed unanimously.

Commissioner Howland volunteered to conduct the hearing on this matter.

K. PROPOSED ADOPTION OF AMENDMENTS TO WATER RIGHTS ADMINISTRATIVE RULES, CHAPTER 690, DIVISIONS 11 AND 15 CONCERNING WATER USE PERMITS, TRANSFERS AND CERTIFICATES

SB 146 and SB 1102 from the 1989 legislative session contained provisions that required minor additions or revisions to the existing water rights rules in Divisions 11 and 15. The staff identified other revisions that were necessary, prompted by directives from the Commission, by the public and by staff experiences in the conduct of daily business.

A public hearing was held in Salem on July 3, 1990. One person attended and offered oral testimony. Written comments on the proposed rules were received from two parties.

The proposed additions and deletions were incorporated in the proposed rules.