

Jim Myron, Oregon Trout, suggested that this would be an ideal case for enforcement and civil penalties by the Department for a gross over-appropriation of water.

5. Preparing Material for the New Governor's Transition Team. The Governor's Office has asked the Department to prepare briefing papers for the incoming Governor and his/her transition team. The Executive Department asked that all agencies follow the same format in preparing this information. The Department is required to complete the briefing papers by October 15.

#### Director's Recommendation

The staff requested Commission direction on preparing briefing papers for the incoming Governor.

The Commission asked the staff to complete a draft for Commissioner Stickel's and Howland's review.

6. Proposed Rulemaking for Water Use Reporting. The Department is preparing a large mailing for the beginning of October to notify public entities that their Annual Water Use Report is due by December 31. This is the second year that reporting has been required under ORS 537.099. Upon request, the Department has been advising reporting entities on methodologies to measure and estimate water use. According to the rules (OAR 690-85-010 and 030), for reports submitted after December 31, 1991, estimating methodologies must be approved in advance by the Director; this means that reporting entities should have approved methodologies in place by October 1991. To individually review the methodologies for almost 600 reporting entities and several thousand points of diversion would place a huge administrative burden on the Department. Therefore, the staff have proposed a process for pre-approving certain measuring techniques. This would minimize the need for individual reviews. The pre-approved methods would be established by rule. If an entity did not use one of the pre-approved methods, it could propose an alternate methodology, which would have to be certified by a qualified individual as being accurate within ten percent. The upcoming annual mailing provides an excellent opportunity to notify the affected parties that the Department is intending to begin a rulemaking proceeding. To that end, the staff are writing "preliminary" draft rules which would: 1) establish ten percent as a target for maximum error; 2) describe pre-approved methodologies; 3) describe who may certify that an alternate method meets the ten percent error target; and 4) approve the described methods for a maximum of five years. The Department requested permission to include these "preliminary" rules with the annual mailing and invite informal comment. Actual draft rules could be issued a few weeks thereafter.

#### Director's Recommendation

The staff recommended that the "preliminary" draft rules regarding estimating methodologies for the Water Use Reporting Program be included in the upcoming annual mailing to reporting entities.

The Commission approved the Director's recommendation.

7. Middle Fork Malheur Basin. The Director reported that he had just been handed a complaint and a formal request from attorneys representing WaterWatch of Oregon, Inc., for enforcement of rates and duties.

Assistant Attorney General Steve Sanders will look into the matter and report back to the Commission.

8. Election of Vice-Chair for the Commission. Chair Stickel reported that Cliff Bentz had expressed willingness to serve as Vice-Chair.

It was MOVED by Roger Bachman, seconded by Mike Jewett, and passed unanimously to elect Bentz to the position of Vice-Chair.

Items H, I, J, and L were acted on in a single motion, described below.

H. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-70193 AND 70194 TO CONSTRUCT, STORE AND USE WATER FROM STRAWBERRY CREEK, TRIBUTARY TO MILLER CREEK FOR SUPPLEMENTAL IRRIGATION (LOST CREEK), WARREN TAYLOR, LAKE COUNTY

On February 9, 1990, Warren Taylor submitted two water right applications, proposing to store up to 766 acre-feet of water in Strawberry Reservoir from Strawberry Creek, tributary to Miller Creek, and to use up to 766 acre-feet of water from Strawberry Reservoir for supplemental irrigation of 275.2 acres. The project is located in the Klamath Basin (Lost Creek).

The questions before the Commission were whether the issuance of permits for storage of up to 766 acre-feet of water behind a dam that is 13.5 feet high and for use of stored water would have a significant adverse effect on the public interest. OAR 690-11-080 (2)(a)(C) specifies that dams greater than 20 feet in height or impounding more than 100 acre-feet of water 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 proposed use of water would not have a significant adverse effect on the public interest and authorize the Director to issue the permits.

I. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-70065 AND 70066 TO STORE AND USE WATER FROM NORTH FORK COX CREEK, TRIBUTARY TO THOMAS CREEK FOR IRRIGATION AND SUPPLEMENTAL IRRIGATION, TAYLOR RANCH, LAKE COUNTY

On September 14, 1989, Taylor Ranch submitted two applications, proposing to store up to 993 acre-feet of water in Taylor Reservoir from an unnamed stream, tributary to North Fork Cox Creek, and to use up to 7.95 cfs from Taylor Reservoir and White Rock Reservoir for primary irrigation of 30.34 acres and supplemental irrigation of 575.3 acres. The project is located in the Goose and Summer Lakes Basin.

The questions before the Commission were whether the issuance of permits for storage of up to 993 acre-feet of water behind a dam that is 11 feet high and for use of up to 7.95 cfs of water from storage would have a significant adverse effect on the public interest. OAR 690-11-080 (2)(a)(C) specifies that dams greater than 20 feet in height or impounding more than 100 acre-feet of water 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.

J. CONSIDERATION FOR APPROVAL OF APPLICATION 70480 TO USE WATER FROM THE WILLAMETTE RIVER, TRIBUTARY TO THE COLUMBIA RIVER FOR MANUFACTURING, ATOCHEM NORTH AMERICA, INC., MULTNOMAH COUNTY

On July 13, 1990, Atochem submitted Application 70480, proposing to use up to 48.5 cfs of water from the Willamette River, tributary to the Columbia River. The use of water would be for cooling purposes and is non-consumptive because it is returned directly to the river. The project is located in the Lower Willamette River Basin.

The question before the Commission was whether the issuance of a permit for use of up to 48.5 cfs of water from the Willamette River would have a significant adverse effect on the public interest. OAR 690-11-080 (2)(a)(A) specifies that appropriations for greater than 5.0 cubic feet per second 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 proposed use of water would not have a significant adverse effect on the public interest and authorize the Director to issue the permit.

L. CONSIDERATION FOR APPROVAL OF APPLICATION G-12056 TO USE WATER FROM ONE WELL IN THE GRANDE RONDE RIVER BASIN FOR SUPPLEMENTAL IRRIGATION, B. L. DAVIS RANCH, INCORPORATED, UNION COUNTY

On March 29, 1990, B. L. Davis Ranch, Incorporated, submitted Application G-12056, proposing to use up to 6.78 cfs of water from a well for supplemental irrigation on 942.6 acres. The project is located in the Grande Ronde River Basin.

The question before the Commission was whether the issuance of a permit for use of up to 6.78 cfs of water from a well in the Grande Ronde River Basin would have a significant adverse effect on the public interest. OAR 690-11-080 (2)(a)(A) specifies that appropriations for greater than 5.0 cubic feet per second 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 proposed use of water would not have a significant adverse effect on the public interest and authorize the Director to issue the permit.

The above four items, Items H, I, J, and L were acted on in a single motion, as follows.

It was **MOVED** by Roger Bachman and seconded by Cliff Bentz to approve the Director's recommendation in the four items described above. The motion passed unanimously.

**K. CONSIDERATION FOR APPROVAL OF APPLICATION G-11970 TO USE GROUNDWATER FROM A BASALT WELL, TRIBUTARY TO CATHERINE CREEK, FOR MUNICIPAL USE, CITY OF UNION, UNION COUNTY**

On October 12, 1988, the City of Union submitted Application G-11970, proposing to use up to 5.57 cfs of water for municipal use from a basalt well that is 1,686 feet deep.

The question before the Commission was whether the issuance of a permit for up to 5.57 cfs would have a significant adverse effect on the public interest. Administrative Rule 690-11-080 (2)(a)(A) specifies that appropriations for greater than five cubic feet per second 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 proposed 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 Roger Bachman, seconded by Mike Jewett, and passed unanimously to approve the Director's recommendation, with added conditions. The Commission instructed staff to include a condition requiring a conservation plan in this and all future municipal permits.

**M. PROPOSED ADOPTION OF ADMINISTRATIVE RULES ON CANCELLATION OF PERFECTED WATER RIGHTS, OAR 690, DIVISION 17**

Senate Bill 153, adopted by the 1989 Legislature, modified the forfeiture and cancellation statutes. The primary changes were that five consecutive years of nonuse creates a rebuttable, rather than a conclusive, presumption of forfeiture. The burden of rebutting the presumption is on the water right holder. The Department must make a threshold determination regarding rebuttal.

Staff incorporated the legislative changes into the proposed amended Division 17 rules. The Commission authorized the proposed amended rules for hearing at its June 22, 1990 meeting.

A hearing was held on August 14 at the Water Resources Department office in Salem. No one attended. Written comments were accepted through August 18. Written comments were submitted by Jan Boettcher for Oregon Water Resources Congress and by the Oregon Farm Bureau. Commissioner Bentz submitted comments by telephone.

**Director's Recommendation**

The staff recommended that the Commission adopt amended OAR Chapter 690 Division 17 as proposed.

It was **MOVED** by Cliff Bentz and seconded by Jim Howland to change the word "is" to "was" on Page 7, at 690-17-800(2)(c), to delete 690-17-900(1), and to adopt the rules as amended. The motion passed unanimously.

#### N. STATUS REPORT: PUMP TEST RULE IMPLEMENTATION

Last January, the Department notified the owners of 1390 wells that they were required to have pump tests conducted during 1990. The notification packet included a summary of the water right(s) for which wells needed to be tested, a copy of the brochure, "Pump Test Requirements for Ground Water Right Holders," forms for the test results, and a postcard to be returned to the Department indicating whether the recipient of the mailing was indeed the well owner.

A pump test is due on the next ten-year anniversary of the priority date of the water right associated with the well to be tested. According to this schedule, all of the permitted wells in the state should have been tested by the end of ten years. There are about 15,000 permitted wells in Oregon, representing roughly nine percent of all the water wells drilled since the Ground Water Act of 1955 was enacted.

All deadlines during the first six months of 1990 were deferred until July 1 to allow well owners enough time after notification to plan for the well test. Since the first deadline was July 1, the staff have only recently been able to compile a profile of the response rate.

Staff members are currently preparing a large mailing to notify well owners about the pump tests due next year. As noted above, the first stage of the ownership research has been completed: a list of tax lots where the wells are located has been sent to county assessor offices. Names and addresses are being received from the counties and entered into the database. The staff anticipate having all the owner information and mailing materials together for a mailing at the beginning of December.

According to this schedule, well owners whose pump tests would be due during the first few months of 1991 would not have much time to complete the tests. When the specifications for the pump tests were developed, it was assumed that people would have several months to plan for them and that they could be conducted during the irrigation season.

#### Director's Recommendation

The staff recommended that the Commission extend the deadline for all pump tests due during the first six months of 1991 to July 1, 1991.

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

#### O. STATUS REPORT: 1991-93 BIENNIAL WATER MANAGEMENT PROGRAM

At its work session on June 21, 1990, the Water Resources Commission directed staff to prepare a summary of the 1991-93 Biennial Water Management Program (Biennial Program).

The Commission directed staff to make the summary a market tool for proposed agency budgets and legislative concepts. It would be distributed to both the state legislature and the public. The Commission wanted to emphasize the joint preparation of the Biennial Program by twelve natural resource agencies represented on the Strategic Water Management Group.

The Commissioners requested that the summary be visually appealing, clear, and brief. In addition, the Commission requested a format that would provide different levels of detail for readers with varying levels of interest in the Biennial Program. Staff was asked to model the

presentation format of the summary after the format of a document entitled, "Protecting Minnesota's Waters."

The Commission felt that the summary should promote an understanding of state water management goals and policies, including the use of water for enhancing the state economy.

Director's Recommendation

The staff recommended that the Commission review the summary draft and provide staff with further direction on format and content.


Chair Stickel commented that the Executive Summary was exactly what she had in mind when the Commission asked for such a document. Commissioner Bachman made the same comment.

The Commission expressed a desire that the summary show all the major agencies involved in each action.

The Commission took no formal action on this item.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Jan Shaw  
Commission Assistant

JS:dkh

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