

4. F.B.C. Salmon Farms: The Director reported that a circuit court hearing in this case was scheduled for November 6. The Assistant Attorney General will represent us at that hearing. Roger Bachman asked that the Department aggressively pursue imposing civil penalties on Mr. Cuda, since it is such an egregious violation of the water right regulations. Steve Applegate explained the Department's current policy regarding assessment of civil penalties.
5. Adjudications in the Klamath Basin: The Director reported that the Department recently began taking claims in the Klamath Basin for unadjudicated water rights. The office will close there on December 7 and will reopen on December 17 in Salem. The staff will finish taking claims on February 1, 1991.

Items F, H, and I were considered and acted on in one motion, reported below.

F. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-38725, 39401 AND 61800 TO STORE AND USE AND WATER FROM EXISTING RESERVOIRS AND THE FORKS OF LOST RIVER, TRIBUTARY TO LOST RIVER, FOR IRRIGATION, WILLOW VALLEY IRRIGATION DISTRICT, KLAMATH COUNTY

On May 9, 1963, January 14, 1964 and June 16, 1981, Willow Valley Irrigation District submitted Applications R-38725, 39401 and 61800. Application R-38725 proposed to enlarge Three Mile Flat Reservoir and store waters of Dry Wash and East Fork Lost River. The structure is an earth-fill dam with flashboards in the spillway that would allow storage of an additional 265 acre-feet of water. The enlargement plans were approved in 1964. Application 39401 proposed to use this 265 acre-feet of water for the supplemental irrigation of 2608.1 acres. Application 61800 proposed to use the previously authorized stored waters of Willow Valley, Bumphead and Three Mile Flat reservoirs for the primary irrigation of 211.9 acres. The applicant proposes to use stored water only for irrigation. The site is located in the Lost River Basin.

The question before the Commission was whether the issuance of permits for storage of up to 265 acre-feet of water behind a reconstructed dam would have a significant adverse effect on the public interest. OAR 690-11-080 (2)(a)(C) specifies that dams 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 storage of water would not have a significant adverse effect on the public interest and authorize the Director to issue the permits as conditioned.

H. CONSIDERATION FOR APPROVAL OF APPLICATION 70361 TO USE WATER FROM THE SIXES RIVER, TRIBUTARY TO PACIFIC OCEAN, FOR MINING, FULTON GEOLOGICAL SERVICES, INC., CURRY COUNTY

On May 17, 1990, Fulton Geological Services, Inc., submitted Application 70361, proposing to use up to 16 cfs of water from the Sixes River, tributary to the Pacific Ocean. The use of water would be for mining, and would be considered non-consumptive because the water is returned directly to the river after use. The project is located in the South Coast Basin.

The question before the Commission was whether the issuance of a permit for use of up to 16 cfs of water from the Sixes 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 diversion and use of water would not have a significant adverse effect on the public interest and authorize the Director to issue the permit with the appropriate conditions.

I. CONSIDERATION FOR APPROVAL OF APPLICATIONS R-70334 AND 70335 TO STORE AND USE WATER FROM AN UNNAMED STREAM, TRIBUTARY TO MCFEE CREEK, FOR NURSERY OPERATIONS, GLENN WALTERS NURSERY, WASHINGTON COUNTY

On May 3, 1989, Glenn Walters Nursery, Inc. submitted Applications R-70334 and 70335. Application R-70334 proposed to store up to 45 acre-feet of water in Midway Nursery Reservoir from an unnamed stream, tributary to McFee Creek, behind a structure about 31.5 feet high. Application 70335 proposed to use up to 11 cfs from Midway Nursery Reservoir and the unnamed stream for primary nursery operations on 34.70 acres and supplemental nursery operations on 38.61 acres. The project is located in the Tualatin River Basin.

The questions before the Commission were whether the issuance of permits for storage of water behind a dam that would be 31.5 feet high and for use of up to 11 cfs of 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 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 of greater than 5.0 cubic feet per second be referred to the Commission for this same determination.

Director's Recommendation

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

The above three items, Items F, H, and I, were considered and acted on in a single motion.

It was MOVED by Jim Howland and seconded by Cliff Bentz to approve the Director's recommendation in Items F, H, and I. The motion passed unanimously.

G. CONSIDERATION FOR APPROVAL OF APPLICATION 70525 TO USE WATER FROM ANA RIVER, TRIBUTARY TO SUMMER LAKE, FOR A FISH HATCHERY, BODEGA FARMS, LAKE COUNTY

On July 27, 1990, Bodega Farms submitted Application 70525. Application 70525 proposed to use up to 40,000 gallons per minute (89 cfs) of water from the Ana River, tributary to Summer Lake. The water would be diverted from the diversion dam that supplies water to the Summer Lakes Irrigation District. The use of water would be for a fish hatchery. The use of water would

be considered non-consumptive. Discharge would be returned directly to the river during the winter and delivered to the Summer Lakes Irrigation District canal to satisfy their irrigation rights in the summer. The project is located in the Goose and Summer Lakes Basin.

The question before the Commission was whether the issuance of a permit for use of up to 89 cfs of water from the Ana 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 for a fish hatchery would not have a significant adverse effect on the public interest and authorize the Director to issue the permit.

After preparation of the above report, the applicant, Bodega Farms, at the urging of ODFW, reduced its water rights request to 45 cfs.

It was MOVED by Didi Malarkey and seconded by Mike Jewett to approve the Director's recommendation, as amended. Lorna Stickel voted no. The motion passed.

#### J. REQUEST FOR APPROVAL OF AN ORDER REGARDING CUMULATIVE IMPACT REVIEW OF APPLICATION HE 303, PACIFIC OREGON CORPORATION, ON TRIBUTARIES TO THE CLACKAMAS RIVER, CLACKAMAS COUNTY

The Department received materials completing hydroelectric application HE 303 which was filed in November 1984. Under HE 303, 250 cfs would be diverted from the Oak Grove Fork of the Clackamas River, and 60 cfs from Shellrock Creek, a tributary of the Oak Grove Fork, for hydroelectric power production. The project would produce about 14.5 megawatts of electricity. Once an application is complete, the Commission must determine the potential for a project to contribute to cumulative impacts on natural resources.

OAR 690 - 51 - 290 requires the Commission to enter an order on the potential for a proposed hydroelectric project to contribute to cumulative impacts with other existing, approved or proposed hydroelectric projects in the same river basin. The Commission must consult with a variety of state and federal agencies on cumulative impacts to water resources, fish resources, wildlife, plant life, recreation, land resources, and historical, cultural and archaeological resources.

The rule requires the Commission to presume that there is a potential for cumulative impacts if there are other existing or proposed hydroelectric projects in the same river basin. This presumption may be rebutted by showing that the impacts of the proposed project are "so small in extent, short-termed or localized that there is no reasonable likelihood of cumulative impacts."

If the presumption is not rebutted, the Commission must conduct a "consolidated review" of all existing, approved and proposed hydroelectric projects in the same river basin. Each project in the basin is studied in relation to effects on the natural resources listed in OAR 690 - 51 - 190 through 690 - 51 - 250. The review is conducted as a contested case hearing. On the basis of the cumulative impacts revealed by the study, proposed projects may be approved, adjusted or rejected by the Commission.

### Director's Recommendation

The staff recommended (1) determining that there is no potential that the diversions proposed in application HE 303 on the Oak Grove Fork of the Clackamas River and Shellrock Creek may contribute to cumulative impacts with other existing, approved or proposed hydroelectric projects in the Clackamas River Basin; and (2), directing the matter go to contested case hearing on the merits of the application.

The staff further recommended directing the Department to work with the Hydro Task Force to review OAR Chapter 690, Division 51 and recommend needed changes to the Commission.

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

### K. PROPOSED ADOPTION OF MALHEUR LAKE BASIN PROGRAM PROVISION, OAR CHAPTER 690, DIVISION 512

At its March 30, 1990, the Commission, discussed alternatives for making water availability determinations on new water use permits in the Malheur Lake Basin. The Commission directed staff to develop a draft rule to require that all applications for new uses of water in the basin be accompanied by evidence that water is available to provide for the proposed use.

At its August 3 meeting, the Commission authorized a public hearing on the proposed Malheur Lake Basin Program provision. The hearing was held in Burns on September 24. Commissioner Bentz served as the hearings officer. Four parties testified at the hearing, and nine parties submitted written testimony subsequent to the hearing.

#### Director's Recommendation

The staff recommended that the Commission adopt the proposed Malheur Lake Basin Program provision.

It was MOVED by Cliff Bentz and seconded by Hadley Akins to delay the adoption of this matter for two years, awaiting the appointment of a local committee and its conclusions.

Before a vote could be taken, Bentz withdrew his motion.

The Commission agreed to delay action on this matter until its next meeting. The Department was instructed to provide the Commission members with a copy of the original basin report and to prepare changes to the proposed basin program provision that would allow for storage and to focus on the non-irrigation season for live flow.

### O. INFORMATIONAL REPORT: GWEB ACTIVITIES

Lorraine Stahr reviewed recent activities of the Governor's Watershed Enhancement Board. She said that the last application period for this biennium had closed on October 31. Applications to now have totalled nearly \$923,000. Project grants so far total over \$2 million. GWEB has currently allocated between \$400,000 and \$500,000 and have only \$250,000 left. On December 5 and 6, the technical and education committees will meet but will make no decisions until January 24.

Stahr presented a short videotape program which convincingly illustrated the benefits to Oregon's riparian areas gained through GWEB's support.

The Commission took no formal action on this item.

**L. STATUS REPORT: JOHN DAY STREAMFLOW RESTORATION PROJECT**

Doug Parrow and Bob Rice brought the Commission up to date on the streamflow restoration project in the John Day Basin. Bob Rice began work as the Stream Coordinator in October and has made initial contact with agencies and landowners involved in the management of the Middle Fork John Day River subbasin.

The Commission took no formal action on this item.

**M. INFORMATIONAL REPORT: ODFW'S WILD FISH POLICY**

ODFW requested an opportunity to provide the Commission with information on the state's wild fish policy. This information was intended to aid the Commission in making water management decisions. Mark Chilcote of ODFW's fish division submitted his agency's wild fish policy and explanatory materials for the Commission's review.

The Commission heard from Mark Chilcote who reviewed ODFW's wild fish management policy, including its origins, its purpose, and its implementation.

The Commission took no formal action on this item. The members expressed appreciation for Mr. Chilcote's presentation.

**N. STATUS REPORT: JOHN DAY RIVER SCENIC WATERWAY WORKSHOPS AND RECOMMENDATION FOR FUTURE PUBLIC INVOLVEMENT**

After reviewing the John Day Scenic Waterway Recreational Flow Needs Assessment during its August 3, 1990, meeting, the Commission directed staff to hold workshops in the John Day Basin to gather public input on the findings of the report.

Public notice was sent to approximately 1,400 parties, both within and outside the basin, that two workshops would be held. The first was on September 17 in John Day and the second on September 18 in Fossil. Written comments were requested by October 6, 1990. Comment sheets were made available both at the meetings and the District 4 watermaster's office.

Many at the workshops believed that the flows were unreasonably high and would curtail future water resource development in the basin. There was concern that future storage projects (such as those being studied by the Bureau of Reclamation) would be precluded. Staff will review the flows with ODFW and State Parks. An analysis of comments will be provided to the Commission at its December 7, 1990, meeting.

Director's Recommendation

The staff recommended that the Commission direct staff to hold public workshops for all future scenic Waterway Recreation Needs Assessments as part of the report development process.

The Commission took no formal action on this item beyond general concurrence.

PUBLIC COMMENT (cont'd.):

Jan Boettcher, Oregon Water Resources Congress, said her group had filed letters of concern regarding instream water rights that affect planned storage sites. They wanted to know how storage will be protected in the future from being allocated in the meantime by the issuance of instream water right certificates.

DIRECTOR'S REPORT (cont'd.):

6. Legislation: Bev Hayes reported that the Department had provided testimony today to the Joint Water Policy Committee on a draft bill submitted by WaterWatch of Oregon, Inc. The Commission asked to see a copy of the LC draft. After it is distributed to the Commission members, they will meet by telephone conference call at noon on Tuesday, November 13, for consideration of the draft bill.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Jan Shaw  
Commission Assistant

JS:dkh

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