

Bill Gauvin, John Day River, objected to water rights applications 70 miles distant from the John Day River being rejected, with **Diack** cited as the reason. He commended **Bill Fujii** for his work in the area but complained that the Commission was acting more like an advocate than a judge. Gauvin suggested that the flow figures are not possible because existing water rights are not retrievable. He asked that the Commission handle this matter like an instream water right.

Bill Smith, ranch manager from Bend, commended the Commission for trying to fulfill its obligation to "do something that is very difficult." He recommended, however, not setting 500 cfs flow as normal and not to consider leisure activity users as the more important water users.

David Bayles, Oregon Rivers Council, urged adoption of the recommended flows. He said that a good system for identification is needed, and a good quantification methodology would help the Commission in their consideration. They believe that work on subsequent rivers will help clarify the documentation of recreational trends already in place and would help clarify the dependence of recreation on specific biologically important conditions within the basin and generally on the management and restoration of the watershed.

David Moskowitz, Northwest Environmental Defense Center, urged that the Commission adopt the flow assessments as they showed in the study. He urged that in other flow assessments this continue to be brought up to date with current technology. Moskowitz thought, however, that there were some gaps in the flow data. He offered to help the Department gather data on use of water. A cooperative database, he said, could strengthen future reports which would be necessary in the future, particularly in the face of staff reductions. His group supported the findings in the staff's report.

Jim Myron, Oregon Trout, supported the flows as developed by the staff, although they have some doubts about the methodology used. The report did not, however, address the river maintenance needs, he said. However, since it is the best one to use at this time, though, and since the Commission needed to make a decision at this time, the Commission should adopt this in order to get on with other basin assessments. Myron also encouraged the Parks Department to go through with their plans for applying for instream water rights.

Karen Russell, WaterWatch of Oregon, Inc., agreed with the other two speakers and recommended that the Commission adopt the flows and move into other basins. She further added that her staff appreciated **Bill Fujii's** cooperation in this matter.

Jill Zarnowitz, Oregon Fish and Wildlife Department, supported the Department in the proposed flows and strongly endorsed adopting the Department's recommendation.

David Childs thought that some of the methodology used in the Department's report lacks substantiation on the river itself.

It was **MOVED** by **Roger Bachman** and seconded by **Didi Malarkey** to approve the John Day Scenic Waterway Assessment and the use of the mid-level flow ranges for the Mainstem and North Fork sections and the base-level flow range for the Middle Fork and the South Fork, as specified therein for making findings pursuant to the **Diack** decision.

Jim Howland thought that the staff should not explore other administrative options, as mentioned in the last sentence of the Director's recommendation.

Cliff Bentz qualified his vote by saying that he considered this just an "assessment only" and not a concrete decision. He would not support, he said, this being a basis for instream water right decisions in the John Day Basin.

Hadley Akins hoped to see a stream restoration program in the John Day or in some other basin to which this technique applies. He hoped that the John Day people would not be discouraged, and he commended **Bill Fujii** on his work.

The motion passed unanimously.

I. PROPOSED ADOPTION OF DEFINITIONS OF TERMS USED IN STATEWIDE POLICIES (OAR 8690-400-010)

The definitions for statewide policies were the subject of a series of five public hearings held on six statewide policies in November 1989. Four of the policies were adopted earlier in the year, but adoption of all of the definitions was delayed because of concerns expressed during the hearings. The definitions were included in discussions during the thirteen conservation and riparian area policy workshops conducted throughout the state in May and June 1990.

The Commission authorized two additional public hearings on the statewide policies on Conservation and Efficient Water Use and Riparian Area Management on Public Lands and the definitions to be held in Baker City on October 23 and in Salem on October 25. Approximately 120 people attended the hearing in Baker City and 32 people testified. Approximately 100 people attended the hearing in Salem and 42 people testified. Written comments were received from about 220 parties subsequent to the hearings.

Based on the comments received, staff proposed one change in the definitions.

Director's Recommendation

The staff recommended that the Commission adopt the proposed rule establishing definitions for statewide policies as shown in Attachment 1.

ADDENDUM TO AGENDA ITEM I

The Department received comments on the proposed statewide policies on Conservation and Efficient Water Use and Riparian Area Management on Public Lands since the staff reports were completed.

One of the letters received was from the Regional Forester, referencing earlier correspondence between the Forest Service and the Department. The Department offered to share results of state agency meetings with the Regional Forester and his staff and also invited the Forest Service to express any concerns it might have and requested that a Forest Service contact person be identified so that further consultation might occur. No additional communication was received from the Forest Service until receipt of the Regional Forester's November 26 letter.

The remaining comments duplicated the information provided by others during the hearing process.

The substance of the comments was considered during preparation of the proposed definitions and statewide policies. Additional changes in the rules were not necessary.

It was **MOVED** by Mike Jewett and seconded by Didi Malarkey to approve the Director's recommendation. The motion passed unanimously.

J. PROPOSED ADOPTION OF A STATEWIDE POLICY ON CONSERVATION AND EFFICIENT WATER USE (OAR 690-410-060)

The development of the draft statewide policy on conservation and efficient water use has taken approximately two years. During that time, the Conservation Advisory Committee met regularly to review and discuss the policy. A series of five public hearings were held on the conservation policy in November 1989. In addition, thirteen workshops were conducted throughout the state in May and June 1990. Two additional hearings were held in October 1990 in Baker City and Salem.

Based on the comments received, staff made some changes in the policy.

Director's Recommendation

The staff recommended that the Commission adopt the proposed rule on conservation and efficient water use and approve the conservation policy, including the statutory guidance, policy discussion and implementing strategies for inclusion in the Oregon Water Management Program.

It was **MOVED** by Roger Bachman, seconded by Mike Jewett, and passed unanimously to approve the Director's recommendation.

K. PROPOSED ADOPTION OF A STATEWIDE WATER POLICY ON RIPARIAN AREA MANAGEMENT ON PUBLIC LANDS (OAR 690-410-050)

At the September 21, 1990, meeting, the Commission authorized staff to conduct two additional public hearings on the conservation and public lands riparian area policies. These hearings were held October 23 and 25 in Baker City and Salem, respectively.

Testimony on the proposed public lands riparian area policy was mixed. The Departments of Fish and Wildlife and Environmental Quality endorsed the policy, although both believed it should be strengthened. WaterWatch, the Northwest Environmental Defense Center, the National Wildlife Federation and Oregon Trout also favored the policy. The Oregon Cattlemen's Association, while not explicitly endorsing the policy, concurred with its major principles. The Bureau of Land Management generally supported the policy, but believed it was unfairly restricted to public lands. Water for Life and many from the agricultural community opposed the policy. The Department of Agriculture maintained the policy needed to recognize economic and ecologic feasibility. The Department of Forestry had major concerns and State Forester Jim Brown requested a meeting with Director Bill Young to try to alleviate them.

Director's Recommendation

The staff recommended that the Commission adopt the proposed rule on protection of water resources on public riparian lands and approve the statutory guidance, policy discussion and implementing strategies for inclusion in the Oregon Water Management Program.

It was **MOVED** by Didi Malarkey and seconded by Hadley Akins to approve the Director's recommendation. The motion passed unanimously.

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

During previous meetings, the Commission has discussed alternative for water availability determinations prior to issuance of new water use permits in the Malheur Lake Basin. These discussions have been in response to a petition from Oregon Trout seeking withdrawal of the basin from further appropriation. During the discussions, the Commission instructed staff to prepare a basin program provision requiring that evidence of water availability be provided with any applications for new water right permits in the basin.

The Commission authorized a hearing on a proposed basin program provision to be held in Burns on September 24, 1990. The hearing was held and, during the October 26 meeting, the Commission considered adoption of a revised program provision. At that time, the Commission instructed staff to prepare additional revisions in the draft program provision to ensure that the

required water availability analyses would not unduly interfere with the development of storage in the Malheur Lake Basin.

Director's Recommendation

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

It was **MOVED** by Cliff Bentz, seconded by Hadley Akins, and passed unanimously to approve the Director's recommendation.

M. PROPOSED ADOPTION OF AMENDMENT TO THE MID-COAST BASIN PROGRAM

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 Parks Department sought a change in the existing water use classification for Woahink Lake to allow public park use. Woahink Lake and several other natural lakes are classified only for domestic, livestock, and in-lake uses for recreation, wildlife and fish life purposes.

The petition proposes reserving 1.0 cubic foot per second from Woahink Lake for use in public parks. At its August meeting, the Water Resources Commission reviewed the petition and authorized staff to proceed with rulemaking.

A notice of rulemaking hearing was published in the Secretary of State's Bulletin on October 1, 1990, and mailed to the local media and about two hundred people compiled from the Department's mail list.

Commissioner Howland presided over the rulemaking hearing held on October 23 at the Lane County Courthouse in Florence, fulfilling the statutory obligation of ORS 536.300(3) that requires the Commission to conduct at least one public hearing in the affected basin when amending a basin program.

Two people attended the hearing but offered no testimony. Staff received two written comments on the proposed amendment to the basin program.

Director's Recommendation

The staff recommended the Commission amend the Mid-Coast Basin program to reserve 0.75 cfs of the waters of Woahink lake for public park purposes. This represents a change in the rule proposed by the petitioner, and the codified language would read as follows:

690-518-002 RESERVATIONS

- (1) In addition to the uses specified in subsection (1)(a) of OAR 690-518-001, 1.5 cfs of the waters of Woahink Lake are reserved for municipal purposes and [1.0] 0.75 cfs for public park purposes.

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

N. PROPOSED ADOPTION OF WATER SUPPLY AUTHORITY RULES THAT AMEND OAR CHAPTER 690, DIVISIONS 11 AND 15.

In 1987, the Oregon Legislature enacted legislation authorizing the creation of water supply authorities by one or more cities or districts (ORS Chapter 450). The 1989 Legislature passed

Senate Bill (SB) 1118 and companion House Bill (HB) 2936 that expand upon previous water supply authority legislation. The bills amended ORS 537.260, 540.510 and 540.530.

Staff drafted rule language amending and supplementing existing OAR 690, Division 11 and 15 rules governing applications and permits, and water right transfers. A work group was formed to review and comment on draft language.

At its August meeting in Ontario, the Water Resources Commission authorized staff to schedule a public hearing on proposed rules. The Commission reviewed the proposed rules at its September meeting and authorized staff to conduct a public hearing. The public hearing was held in Salem on October 17, 1990.

Director's Recommendation

The staff recommended that the Commission adopt the proposed amendments to Chapter 690, Division 11 and 15 rules that implement ORS 537.260, 540.510 and 540.530.

A change was made in 690-15-150(1)(c), as follows:

"... or other evidence showing consistency with other local comprehensive plans ..."

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

O. PROPOSED ADOPTION OF RULES FOR THE MANAGEMENT OF LOW-TEMPERATURE GEOTHERMAL RESOURCES, AMENDING OAR CHAPTER 690, DIVISIONS 08, 230 AND 250.

Modifications to the Standards and Procedures for Low-Temperature Geothermal Wells and Disposal Systems rules were developed by an advisory committee formed by the Department. The committee included representatives from the Department of Energy, Klamath Falls Geothermal Advisory Committee, Oregon Institute of Technology, Citizens for Responsible Geothermal Development, the well drilling industry, utilities, several state agencies, and various other interested parties. The Ground Water Advisory Committee reviewed the rules prior to taking to hearing.

The purpose of the rule modifications was to clarify the existing rule language, create two new definitions that describe substantial thermal degradation of a geothermal water supply, and, as required by the Legislature, recommend an initial temperature below which low-temperature geothermal use will not be protected from thermal interference caused by appropriation of groundwater for non-thermal purposes.

The Department conducted two public hearings for the purpose of receiving oral and written comment on the proposed rule changes. Written comments were also accepted for one week after the second hearing.

Staff reviewed and considered all oral and written comments and prepared the final rules for the Water Resources Commission to consider for adoption.

Director's Recommendation

The staff recommended that the Commission adopt the proposed amendments to the Low-Temperature Geothermal Wells and Disposal Systems Rules, OAR Chapter 690, Division 08, 230 and 250.

Agenda Item O, above, refers to proposed changes to the Low-Temperature Geothermal Wells and Disposal System Rules, OAR Chapter 690 Division 8, 230 and 250. Included with the staff report sent the Water Resources Commission were several attachments, including Attachment 1b. Attachment 1b was included in an effort to clearly outline only the proposed changes to the existing rule language, not intermediate changes from the hearings.

In a later review of Attachment 1b, staff found that numerous work omissions and few rule language changes were still warranted in order for the rules to read clearly and concisely. Additional changes were made, therefore, in order to avoid misinterpretations and ambiguity of the rules. The overall meaning of the rules, however, was not modified.

The most important changes are described below. All other changes were minor and did not reflect changes to the meaning to the existing rule language. Underlines indicate proposed language additions, and [brackets] indicate proposed deletions.

Rule language changes:

1. Page 6, WELL CONSTRUCTION STANDARDS, 690-230-080 (1), sentence 2 ... Test results must be recorded by the well constructor on the water well report.
2. Page 6, WELL CONSTRUCTION STANDARDS, 690-230-080[(5)](2), sent. 1 ... The Director may [prescribe] require the well owner to provide a more detailed test separate from the water well report that could include ...
3. Page 6, WELL CONSTRUCTION STANDARDS, 690-2230-085 (1), new sent. 3 ... and prior to injecting to the well. The results of this test do not need to appear on the water well report. This test shall be in addition to the minimum one-hour test requirement under OAR 690-210-370.

Cliff Bentz declared a conflict of interest with this matter.

It was **MOVED** by Jim Howland and seconded by Mike Jewett to approve the Director's recommendation, including language changes above. Cliff Bentz abstained. The motion passed.

P. PROPOSED ADOPTION OF REVISIONS TO RULES FOR CONSTRUCTION AND MAINTENANCE OF WELLS (OAR 690-200-030, -050, AND 690-215-005)

At its August meeting, the Commission authorized staff to conduct a hearing on draft revisions to the construction and maintenance of wells rules. The draft rules had been developed with the assistance of an advisory committee comprised of representatives from state and local environmental, health, and planning agencies, the water well drilling industry, and an environmental consulting firm. The amendments are required by legislation passed in 1989 (House Bill 3515). That legislation included "threat to health" as an additional criterion for administrative actions.

Some modifications were made to the draft rules as a result of the hearing testimony.

Director's Recommendation

The staff recommended that the Commission adopt the proposed revisions to the construction and maintenance of wells rules.

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

In other business, Didi Malarkey was appointed to serve as the Commission's alternate member on the Governor's Watershed Enhancement Board.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Jan Shaw
Commission Assistant

0159C