

Lorna Stickel reported that she and Bill Young had attended the quarterly meeting of the Western States Water Council in Tucson the week before. Some of the issues raised there, she said, were of some interest to the Commission, such as (1) the Clean Water Act reauthorization, and (2) the Comprehensive Wetlands Water Act.

U. S. Rep. Ron Wyden scheduled a hearing in Portland on February 11 at the Portland Building. He invited a number of people to present information, primarily on the municipal supply issue in the Portland metropolitan area. The committee asked what the federal role should be in this matter.

Oregon Rep. Chuck Norris conveyed his respects to the Commission and went on to tell them that he saw a great need for a statewide conservation policy through storage.

Chair Stickel continued her report by distributing a range of alternatives for answering two recent letters from Sen. Dick Springer. The Commission discussed at length what form the response should take, with possibilities including individual letters from Commission members, a written response from the Commission as a body, or a personal meeting with Sen. Springer, with the Commission and the Department attending, as well. The Department will circulate an initial draft response to be discussed during the Commission's first conference call on February 11.

#### H. DIRECTOR'S REPORT

1. Budget: The Director invited the Commission to attend the Department's budget presentation before the Ways & Means Subcommittee on February 13 through 19, at 8:30 am.

2. Southwest Region: The Director told the Commission that Bob Steimer, the current manager of the agency's Southwest Region, planned to retire on February 28. His replacement is Randy Moore who is working with Steimer now to learn the job.

3. Elk Creek Dam: The Department was charged with coordinating responses to the Corps' draft Environmental Impact Statement for the Governor's Office, the Director told the Commission. The Governor's Office has stated that the Governor supports the "no-action" option as the preferred alternative. The Department's response indicated that although the Water Policy Review Board had earlier supported construction of the project, support was predicated on full realization of project benefits. However, given the most recent information from the Corps, full realization does not seem achievable. The Department's response emphasized that should the project be built according to the Corps' preferred alternative, any future change in operation from flood control only to seasonal storage would require early and substantive Department input. The state's responses are due early next week, said Young.

(The Director left the meeting at this point).

4. Klamath adjudication update: The Director told the Commission that February 1 was the last day for water right claims to be filed with the Department for the Klamath River Basin.

There is also pending legal action between the Department and the federal government, Young said, and asked Assistant Attorney General Steve Sanders to review that case for the Commission. The case is expected to be heard on February 19. Federal water right claims in the Klamath must be filed by March 29 or be forfeited.

K. CONSIDERATION FOR APPROVAL OF APPLICATION 66101 TO APPROPRIATE WATER FOR ARTIFICIAL GROUNDWATER RECHARGE, BUELL-RED PRAIRIE DOMESTIC WATER ASSOCIATION, POLK CO.

Application 66101 proposed the appropriation of 75 gallons per minute (0.17 cfs) and 61 acre-feet per year from Gooseneck Creek for the purpose of artificially recharging a deep volcanic tuff groundwater reservoir. The intended use of the recharged water would ultimately be for quasi-municipal (domestic) purposes through a future secondary permit. The recharge would serve to augment the depleted natural supply to the Association's deep wells. Administrative Rule 690-11-080 (2)(a)(E) specifies that the Director shall refer to the Commission all applications for artificial groundwater recharge.

Director's Recommendation:

The staff recommended that the Commission find that the use as conditioned in the draft permit would not be detrimental to the public interest and instruct the Director to issue the permit.

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

J. RECONSIDERATION OF ORDER TO CANCEL GROUNDWATER REGISTRATION GR-1444

In 1958, Blanche R. McCully submitted groundwater registration GR-1444, claiming the use of a well beginning in 1933 for the irrigation of 12.0 acres. The claim stated the well was used intermittently between May and October to irrigate the 12.0 acres.

James D. Evonuk, renter of the McCully property, filed water right applications in 1975 and 1979 proposing to irrigate 15.0 acres from Coast Fork Willamette River. Staff determined that GR-1444 covered the same area as identified in the applications.

The Department received an affidavit in Blanche R. McCully's name, signed by Alton McCully, Attorney-In-Fact, on April 4, 1979, requesting cancellation of GR-1444. The order canceling GR-1444 was issued June 4, 1990.

Steven Houston purchased the McCully property in 1980. Houston through his attorney, Charles M. Zennache, filed a motion to reconsider the order to cancel on August 3, 1990 (Attachment 4). The motion claims Houston, owner of the property when the order canceling GR-1444 was issued, did not request cancellation. The motion also claims the cancellation was based on an affidavit which did not reflect the desires of Mrs. McCully.

A November 19, 1990, letter from Houston to Commissioner Deirdre Malarkey asserts the well described under GR-1444 pumped surface water and should not have been filed as groundwater.

Director's Recommendation:

The staff recommended that the Commission find that GR-1444 was properly canceled and deny the motion to reconsider.

(Lorna Stickel left the meeting at this point.)

It was MOVED by Roger Bachman and seconded by Mike Jewett to approve the Director's recommendation. Didi Malarkey abstained because of earlier telephone contacts with principals in this matter. Chair Stickel was out of the room. The motion passed.

M. PROPOSED ADOPTION OF RULES ADDING BACK-SIPHON PREVENTION TO THE WELL CONSTRUCTION STANDARDS, OAR 690-200-050 and 690-215-017

At its September meeting, the Commission authorized staff to conduct public hearings on draft revisions to the rules on construction and maintenance of wells. The draft rules had been developed with the assistance of an advisory committee comprised of representatives from the Oregon Department of Agriculture, the Environmental Protection Agency, agricultural specialists, chemical consultants, growers, and OWRD. Additional assistance was provided by the Department of Environmental Quality. The revisions are the result of HB 3515 which altered ORS 537.780 to include back-siphon prevention devices with general well construction and maintenance requirements.

Some modifications were made to the draft rules as a result of the oral and written comments offered.

Director's Recommendation:

The staff recommended that the Commission adopt the proposed amendments to the well construction and maintenance rules.

(The chair returned to the meeting at this point.)

It was MOVED by Cliff Bentz, and seconded by Mike Jewett, to adopt the proposed rules. The motion passed unanimously.

L. PROPOSED ADOPTION OF ADMINISTRATIVE RULES ON OUT-OF-BASIN DIVERSIONS (OAR CHAPTER 690, DIVISION 12)

The 1989 Oregon Legislature passed Senate Bill 205 governing export of water out of basin. The bill amended existing statutes prohibiting export of water out of state without legislative approval. The bill also added new statutes prescribing the analyses, procedures and cost-allocation for processing an application for diversion for water out of basin.

The Water Resources Commission reviewed draft rules on out-of-basin diversions at its October meeting and authorized staff to hold a hearing on the draft rules. Prior to the hearing, the Department sent copies of the draft rules, hearing notice, and SB 205 to several hundred state and federal agencies, local governments, cities, special districts, interest groups, news media and individuals.

The revised proposed rules reflected changes suggested by those commenting on the hearing draft.

Director's Recommendation:

The staff recommended the Commission adopt the proposed rules on out of basin diversions.

Brad Higby, Bureau of Environmental Services, City of Portland, claimed that the intent of the Legislature was to allow exemption of municipalities for transfer of water between basins.

It was MOVED by Cliff Bentz, and seconded by Didi Malarkey, to approve the Director's recommendation. Chair Stickel, Cliff Bentz, Didi Malarkey and Robert Bachman voted yes, and Jim Howland, Mike Jewett and Hadley Akins voted no. The motion passed.



(Hadley Akins left the meeting at this point.)

N. INFORMATIONAL REPORT: ANALYSIS OF STREAMFLOWS OF TWO SELECTED STREAMS IN RELATION TO INSTREAM WATER RIGHT APPLICATIONS

At its October 26, 1990, meeting the Commission requested a staff presentation describing how instream water right applications are processed. Staff was directed to describe the process in detail for the Meacham Creek application and at least one other. The effect instream water rights may have on future storage projects was of particular concern.

At the December 6, 1990, Commission work session, the WRD and Oregon Department of Fish and Wildlife (ODFW) staff presented an informational report on the existing process. The WRD presentation suggested that the development of future storage is generally not at risk from the instream water rights program. Where requested flows have been evaluated, the levels requested during the "storage season" usually do not preclude storage development. Even where the request would fully appropriate the stream, multiple-purpose storage may still be allowed, because by statute, applicants may request and be granted precedence over an instream water right.

The discussion then focused on two points:

1. WRD staff find that many of the applications request flow levels for the low-flow months which exceed the calculated natural flow. Many of the requests also cite the presence of fish species listed as sensitive, threatened or endangered. Staff was seeking Commission direction as to whether this listing should allow the establishment of instream water rights at levels that exceed the estimated average natural flow. Staff also was seeking clarity as to whether the Department should have standards when granting instream water rights to protect flow levels greater than average.

The Commission requested additional flow data on Meacham and Trout Creek to compare with ODFW's applications.

2. The applications do not make any exception for stock or human consumption. Staff compared this with the minimum perennial streamflows, established by the WRC and Water Policy Review Board, all but one of which did exempt these uses. In the case of stock, staff submitted that allowing the development of off-riparian watering facilities would in most cases be in the public interest. The Commission directed staff to prepare rule amendments that would ensure all new instream water rights would exempt human and off-stream livestock consumption.

Director's Recommendation:

The staff recommended that the Commission approve the proposed method for determining when livestock exceptions are warranted on instream water rights and that further rulemaking was not necessary.

This was an informational report. Staff intended to bring another report to the next Commission meeting, describing a resolution process for instream water right applications requesting high flow levels.

There was general agreement among the Commission members who endorsed the direction described in the staff report.

(Cliff Bentz left the meeting at this point.)

I. CONSIDERATION FOR APPROVAL OF APPLICATIONS 4-70484 AND 70921 TO STORE AND USE WATER FROM THE CHEWAUCAN RIVER, TRIBUTARY TO LAKE ABERT, FOR IRRIGATION AND WILDLIFE HABITAT, RIVERS END RANCH, LAKE COUNTRY.

On July 1 and November 14, 1990, James Stewart submitted two applications, the first proposing to store up to 1,839 acre-feet of water from the Chewaucan River. The applicant proposed to rehabilitate an existing diversion structure, raising the height of its spillway five feet. The structure would be 17 feet tall, backing up 14 vertical feet of water. The proposed reservoir would store 1,839 acre-feet to be used for wildlife habitat enhancement (839 acre-feet) and irrigation (1,000 acre-feet). The second application proposed to use up to 24 cubic feet per second (cfs) of the Chewaucan River and the waters stored in the reservoir to maintain the reservoir for wildlife habitat (10 cfs) and for the irrigation of 968.8 acres (14 cfs).

The questions before the Commission were whether the issuance of permits to store up to 1,839 acre-feet and to use up to 24 cfs of water would have a significant adverse effect on the public interest. Administrative Rules 690-11-080 (2)(a)(A) and (C) specify that applications to appropriate over 5 cfs or impound more than 100 acre-feet of water shall 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 storage and use of water would not have a significant adverse effect on the public interest and authorize the Director to issue the permits with appropriate conditions.

The Commission approved a number of changes in the permit language, as follows:

"The permittee shall comply with the land management and reservoir operation provisions contained in the draft lease agreement between the U. S. Fish and Wildlife Service and the permittee which is hereby referenced and made a part of this permit (attached).

"Should a lease agreement be negotiated and signed by the Oregon Department and Fish and Wildlife, the U. S. Fish and Wildlife Service and the permittee, the signed document shall supersede the referenced draft lease when it is delivered to and approved by the Water Resources Department.

"Additionally, the inflow which exceeds the uses allowed within this permit or causes the reservoir levels to exceed those listed in either above referenced lease shall be passed through the reservoir.

"The watermaster may regulate water use when the Oregon Department of Fish and Wildlife notifies the watermaster of noncompliance with the above referenced lease."

It was MOVED by Jim Howland, seconded by Didi Malarkey, and passed unanimously to approve the revised permits, as amended.

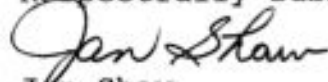
Other Business:

At the request of the Commission, Bob Rice, stream coordinator for the John Day Basin, reviewed the progress of his program. He said that a draft report had gone out for review and was scheduled for final approval by the Commission in May.

Bev Hayes, WRD public information officer, reviewed for the Commission the latest activity taking place in the Legislature and the progress of particular bills submitted by the Department or on those which the agency is tracking.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Jan Shaw  
Commission Assistant

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