



MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item A, August 25, 2005
Water Resources Commission Meeting

Commission Review of Application R-86378

I. Issue Statement

The Port of Tillamook Bay (POTB) has applied for a water right permit to store 360 acre-feet (af) of water for municipal use from Raccoon Creek, a tributary of the Tillamook River (Application R-86378). The North Coast Basin Program (OAR 690-501-0020) requires the Water Resources Commission to review all applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water, an amount equal to 9.2 af of water, prior to approval by the Department.

II. Application Review

The North Coast Basin Program under OAR 690-501-0020 requires that:

“All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Resources Commission prior to approval. During the review the Water Resources Commission may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.”

On July 14, 2005, POTB submitted Applications R-86378 and S-86379 to the Department. Application R-86378, provided in Attachment 1, proposes to store 360 af of water behind a 53 foot dam in the Port of Tillamook Bay Reservoir. Application S-86379, provided in Attachment 2, proposes to appropriate 2 cubic feet per second of water from the Trask River and the 360 af of stored water from Port of Tillamook Bay Reservoir to be constructed under Application R-86378 for municipal use. Commission review of Application S-86379 is not required but is provided here as background because of its close relationship to R-86378.

The proposed storage project is located 2 miles south of the City of Tillamook in the North Coast Basin. The project includes water from two sources. The Raccoon Creek stream diversion and dam would be located approximately 8.5 miles upstream from the mouth of Tillamook River at Tillamook Bay. The Trask River diversion would be located approximately 5.5 miles upstream from the mouth of the Trask River at Tillamook Bay. Maps are provided in Attachments 3 and 4.

The proposed reservoir location is on an intermittent stream at the top of the Raccoon Creek drainage.

This project would supply water for a proposed hotel, conference center, golf course, condominiums and timeshares all to be built on POTB property. The POTB reports that many of the required permits are in place and that the water right permits are the last major permits required in order to secure funding and begin construction.

Sufficient information to complete initial reviews was submitted with the applications at the time of filing. Public Notice of the initial review of the applications was provided in the Department's Public Notice on July 26, 2005.

As described above, under the North Coast Basin Program, the Commission may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution for storage applications proposing to store more than 9.2 af of water. The North Coast Basin Program pre-dates the Department's Division 33 rules (OAR 690-033) adopted in 1996. The Division 33 rules instruct the Department to determine whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species outside the Columbia River Basin.

To this end, an interagency review team comprised of staff from the Departments of Agriculture (ODOA), Environmental Quality (DEQ), Fish and Wildlife (ODFW), and Water Resources are reviewing the POTB's proposed use of water and may submit comments to protect sensitive, threatened, or endangered fish species. As of August 16, 2005, only one comment had been received. The comment was received by Watermaster Greg Beaman. Mr. Beaman reports that there has not been any regulation on the subject sources. The Department intends to include any conditions suggested by the interagency team. Both the applicant and the Department have discussed the proposed project with ODFW. The Department has had no indication that ODFW will suggest the application be denied. The Department expects to receive comments from ODFW that will require minimum flows in Raccoon Creek. The deadline for receiving comments is August 25, 2005. Any additional comments received prior to the Commission's meeting will be summarized at the meeting.

In addition to the Division 33 review of the application, there are two instream water rights protecting the lower Trask River and two instream water rights protecting the lower Tillamook River.

Certificate Number 72998 - Tillamook River tributary Tillamook Bay;
Certificate Number 59667 - Tillamook River tributary Tillamook Bay;
Certificate Number 59669 - Trask River tributary Tillamook Bay; and
Certificate Number 72999 - Trask River tributary Tillamook Bay.

No additional requests have been made from ODFW or DEQ to establish minimum flows under OAR 690-76 or instream water right applications by ODFW, DEQ and Oregon Parks and Recreation under ORS 537.332 to 537.360.

Following the Commission's review under OAR 690-501-0020, the next step in the application process for Application R-86378 is for the Department to issue a Proposed Final Order and, if applicable, a draft permit. This step will initiate a 45-day protest period.

IV. Conclusion

This staff report provides information for Commission review of Application R-86378, as required by OAR Chapter 690, Division 501. The rule requires the Commission to "review" and explains that the Commission "may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution." Application R-86378 proposing to store water for municipal use was filed on July 14, 2005. The Department's water right application process and rules for determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species is provided for under the Department's Division 33 rules. The Department intends to include any conditions suggested by the interagency team. No requests to establish minimum stream flows or instream water rights are pending by any state agency.

I. Alternatives

The Commission may consider the following actions:

1. Acknowledge that the review of Application R-86378 and direct the Department to incorporate into its Proposed Final Order and, if applicable, draft permit any suggestions received by ODFW and DEQ pertaining to the natural flow of the stream to support aquatic life or minimize pollution.
2. Direct staff to continue to work with the applicant and other state agencies and report back to the Commission at a later date for additional review and consideration.

V. Recommendation

Staff recommend Alternative 1, that the Commission review Application R-86378 and direct the Department to incorporate any suggestions received by ODFW and DEQ pertaining to the natural flow of the stream to support aquatic life or minimize pollution into its Proposed Final Order and, if applicable, draft permit.

Attachments

1. Application R-86378
2. Application S-86379
3. Location Map
4. Application Map

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