

MEMORANDUM

TO: Water Resources Commission

FROM: Paul R. Cleary, Director

SUBJECT: Agenda Item B, May 20, 2004
Water Resources Commission Meeting

Request for Repeal of OAR Chapter 690, Divisions 003, 011, and 026; and Amendment of OAR Chapter 690, Divisions 310 and 340

I. Issue Statement

As part of its regulatory streamlining efforts the Department is proposing to repeal rules that are outdated or no longer necessary due to statutory changes. The Department is also proposing to amend a number of rules in order to implement laws adopted by the 2003 Legislature. The rules proposed for appeal and amendment are in Attachment 1.

II. Background

A. Proposed Rule Repeals

The Department is proposing to repeal all the rules in OAR Chapter 690, Divisions 003, 011, and 026.

OAR Chapter 690, Division 003 – The rules in this division address application processing procedures and timelines. The statutory basis for the rules – ORS 182.815 (Oregon Laws 1982 Special Session) – was repealed by the Legislature in 1999 (ORS 285a.380). In addition, the substantive portions of the rules have been superseded by statutes addressing processing timeframes for new water right applications (Senate Bill 674, 1995 Oregon Laws) and review procedures and processes for all applications (Senate Bill 957, 2001 Oregon Laws).

OAR Chapter 690, Division 011 – In March of 1996, the Commission repealed or renumbered most of OAR Chapter 690, Division 11 in order to implement the changes brought about by Senate Bill 674 (1995 Oregon Laws), a law that made major modifications to the water right application review process. The only rule remaining in Division 11 is OAR 690-011-0220, requiring water right application maps to be filed by a Certified Water Right Examiner. However,

with the passage of Senate Bill 674 in 1995, there no longer is a statutory basis for this requirement. In addition, OAR 690-011-0220 is in conflict with OAR 690-310-0050, which does not require water right application maps to be prepared by a Certified Water Right Examiner.

OAR Chapter 690, Division 026 – In 1989 the Legislature established a process for the users of seepage or spring waters to apply for a “certificate of registration” as evidence of that right. To implement the 1989 law, the Commission adopted rules under OAR Chapter 690, Division 26. However, in 1991 the spring registration process was repealed by the Legislature (Senate Bill 202, 1991 Oregon Laws). Therefore there is no longer a statutory basis for the rules under OAR Chapter 690, Division 26.

B. Proposed Rule Amendments

The Department is proposing the following rule amendments in order to implement laws adopted by the 2003 Legislature.

OAR Chapter 690, Division 310 – Generally, water use permit applicants must state whether they own or have written authorization to all lands crossed by ditches, canals or other works. Senate Bill 82 (2003 Oregon Laws) modified this requirement to allow irrigation and domestic water users who hold a permit, certificate, order or decreed water right to occupy state-owned submersible lands. Several rules under Division 310 are proposed for amendment in order to make the Commission’s rules consistent with Senate Bill 82 (2003 Oregon Laws).

In addition, statutory renumbering as part of the Department’s fee adjustment bill (House Bill 2268, 2003 Oregon Laws) resulted in several outdated statutory references within OAR Chapter 690, Division 310. These discrepancies are proposed to be resolved by generalizing the references that refer to the statute and section (e.g. “ORS 536.050”), rather than to specific subsections or paragraphs (e.g. “ORS 536.050(1)(r)”).

Finally, the proposed rules would modify OAR 690-310-0060 regarding reduced fees for small reservoirs. This modification ensures consistency with the statutory fee structure for small reservoirs established by the Department’s fee adjustment bill (House Bill 2268, 2003 Oregon Laws).

OAR Chapter 690, Division 340 – The fee for examining a limited license application submitted under ORS 537.143 is established by rules of the Commission (*See* ORS 536.050). The current fee is \$100 for the first point of diversion, plus \$10 for each additional point of diversion. The Department is proposing to increase the limited license fee consistent with the Department’s fee adjustment bill (House Bill 2268, 2003 Oregon Laws), which raised water use application fees by roughly 50%. As proposed, OAR 690-340-0030 would be amended to adjust the limited license fee proportionally to \$150 for the first point of diversion, plus \$15 for each additional point of diversion.

III. Rulemaking Process

Notice of this rulemaking was published in the *Oregon Bulletin* on January 1, 2004. In addition to the opportunity to provide written comment, two public rulemaking hearings were held in Salem on January 27, 2004. No commenters provided testimony at the public rulemaking hearings.

One written comment was received and is provided in Attachment 2. The commenter, WaterWatch of Oregon, proposed that the amount of the fee increase under OAR 690-340-0030 regarding limited licenses be greater for multi-year licenses. However, the fees associated with limited license applications are related to “costs” incurred by the Department in processing the application. The cost of processing a multiple-year limited license is not substantially different than processing a one-year limited license. Staff do not recommend changes to the proposed amendment to OAR 690-340-0030 in response to the written comment.

IV. Summary

The proposed repeal of the rules in OAR Chapter 690, Divisions 003, 011, and 026 will further the Department’s regulatory streamlining efforts. The rules proposed for repeal are either outdated or no longer necessary to statutory changes. The proposed amendment of rules in OAR Chapter 690, Divisions 310 and 340 will achieve consistency with current statutes and would ensure that fees paid for limited licenses are modified commensurate with other statutorily established fees that were adjusted by the 2003 Legislature.

V. Alternatives

The Commission may consider the following alternatives with regard to the proposed repeal of OAR Chapter 690, Divisions 003, 011, and 026; and the proposed amendment of OAR Chapter 690, Divisions 310 and 340:

1. Adopt the final proposed rules in Attachment 1.
2. Adopt modified final proposed rules.
3. Not adopt the proposed rules and request that the Department further evaluate the issues.

VI. Recommendation

Staff recommend that the Commission adopt the final proposed rules in Attachment 1.

Attachments:

1. Final Proposed Rules.
2. Written comment on the December 30, 2003, Hearing Draft Rules.

Cory Engel
503-986-0813