

MEMORANDUM

TO: Water Resources Commission

FROM: Paul R. Cleary, Director

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

Request for Adoption of a Rule Under OAR Chapter 690, Division 502, Willamette Basin Program

I. Issue Statement

The Commission is asked to adopt a rule under the Willamette Basin Program (OAR Chapter 690, Division 502). The proposed rule would provide an opportunity for certain holders of five-year limited ground water permits to submit an application for a ground water permit without the five-year limitation. Ground water applications reviewed under the proposed rule would be subject to all current application processing rules and review requirements. The proposed rule sunsets January 1, 2006. The final proposed rule is Attachment 1.

II. Background

In January 1992, the Commission adopted modifications to the Willamette Basin Program that included numerous restrictive ground water classifications and limitations. In that public rulemaking, the Commission established several "Ground Water Limited Areas" to address concerns about declining ground water levels. The Commission's rules established a cut-off date of October 4, 1991, as the date pending ground water applications would be subject to the classifications and limitations. In other words, applications in certain designated "Ground Water Limited Areas" pending on October 4, 1991, would be processed under the classifications in effect at the time the application was submitted. Applications filed after October 4, 1991, would be subject to the "new" classifications. However, in either case, the Commission's 1992 rules established provisions that new ground water permits in the "Ground Water Limited Areas" may be issued for a period not to exceed five years, with an opportunity to be extended for additional five-year periods if the ground water resource can sustain the continued use.

Over the last several years, a number of the five-year permit holders with priority dates of October 4, 1991, or earlier have raised concerns that the “retroactive” nature of the Commission’s 1992 rulemaking was unfair. They have also asserted that the ground water resource in their area is stable and therefore a permit without the five-year limitation should be allowable.

The final proposed rule would modify the Willamette Basin Program to allow a holder of a five-year ground water permit (with a priority date of October 4, 1991, or earlier) in the Damascus, Glad Tidings, Kingston, Mount Angel, Parrett Mountain, Stayton-Sublimity, Sherwood-Damascus-Wilsonville, Chehalem Mountain, Eola Hills, and South Salem Hills Ground Water Limited Areas to submit a new ground water permit application and not be subject to the classifications or restrictions established by the applicable Ground Water Limited Area under OAR 690-502-0180 to 690-502-0200. Applications under the proposed rule will be subject to all current application processing rules and review requirements.

III. Rulemaking Process

Notice of the public rulemaking was published in the *Oregon Bulletin* and a hearing draft of the proposed rules was made available on February 2, 2004. Individual notice of the proposed rule was also sent to the holders of five-year limited ground water permits with a priority date of October 4, 1991, or earlier; and because the proposed rule is a basin program amendment, a notice of rulemaking was published in *The Oregonian* newspaper.

Two written comments supporting the proposed rule were received and are provided in Attachment 2. In addition to the written comment period, the Department held a public rulemaking hearing in Salem on February 23, 2004. Commissioner Rasmussen presided over the hearing; no oral testimony was provided.

The Department presented the final proposed rules to the Ground Water Advisory Committee (GWAC) at their April 16, 2004, meeting. Under ORS 536.090, GWAC is to advise the Commission on matters relating to rules for the development, securing, use and protection of ground water. GWAC recommended the Commission adopt the final proposed rule. GWAC also recommended that staff notify qualifying holders of five-year limited ground water permits of the rule and set-up pre-application conferences for those who may apply for a “new” permit. Staff intend to contact the permit holders as recommended by GWAC.

The final proposed rule in Attachment 1 varies slightly from the hearing draft rule. OAR 690-502-0215(3) was added to clarify that any ground water permit issued under the new rule would be subject to the “special permit conditions” required for all other ground water permits in the subject Ground Water Limited Areas. No other modification to the hearing draft rule is proposed.

IV. Summary

The final proposed rule in Attachment 1 would provide an opportunity for certain holders of five-year limited ground water permits to submit an application for a ground water permit without the five-year limitation. Ground water applications reviewed under the proposed rule would be subject to all current application processing rules and review requirements. The proposed rule sunsets January 1, 2006

V. Alternatives

The Commission may consider the following alternatives with regard to the adoption of the final proposed rule:

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

VI. Recommendation

The Director and Staff recommend that the Commission adopt the final proposed rule in Attachment 1.

Attachments:

1. Final Proposed Rule
2. Written comments on the February 2, 2004, Hearing Draft

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503-986-0877