



# Oregon

Theodore R. Kulongoski, Governor

## Water Resources Department

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1266  
503-986-0900  
FAX 503-986-0904

### MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Phillip C. Ward, Director

**SUBJECT:** Agenda Item B, November 19, 2009  
Water Resources Commission Meeting

**Request for Adoption of Rules Regarding Updates Concerning Dam Safety and the Implementation of Fees for Dam Safety, OAR Chapter 690, Division 20**

#### I. Issue Statement

The Commission is asked to adopt revisions to Oregon Administrative Rules Chapter 690 Division 20, Dam Safety Rules and implement fees to be used for Dam Safety purposes.

#### II. Background

The 2009 Legislature passed Senate Bill 788 which contains the authority to charge an annual recurring Dam Safety fee based on a dam's "hazard rating." SB 788 was signed by the Governor on July 23, 2009. The hazard rating refers to the potential harm a dam failure can inflict to human life and property. The legislation authorized an annual fee of \$500 for dams with a high hazard rating, \$150 for dams with a significant hazard rating, and \$75 for dams with a low hazard rating.

In order to implement these fees, it became apparent that the Dam Safety Division 20 rules needed to be updated to address hazard rating and to clarify which dams are subject to the fee. In addition, the rules have not been updated since 1994, so there were several provisions that need to be updated to meet current standards of practice.

#### III. Discussion

The proposed rules add definitions for a dam, hazard rating, large dams and small dams. Large dams, for dam safety purposes, would be dams 10 feet or more in height and storing 3,000,000 or more gallons of water. This matches the size criteria established by ORS 540.400(1). The proposed rules will establish how the Department measures a dam's height and volume to determine the applicability of this statute.

The proposed rules add a section describing how hazard rating classifications for large dams are determined and provides a process for dam owners to request a revised hazard rating. The proposed hazard rating classifications match how the Department is currently determining a dam's hazard rating.

The proposed rules (Attachment 1) establish standards regarding which dams are specifically exempt from fees. SB 788 states that the fee is applicable to dam owners based on the dam's hazard rating. Historically, the Department has not assigned a hazard rating to dams less than 10 feet in height or impounding less than 3,000,000 gallons. By statute these small dams are also exempt from plan reviews. For these reasons, small dams are proposed to be exempted from the fee in rule. Secondly, dams that are inspected regularly by federal agencies such as Army Corp of Engineers, Federal Energy Regulatory Commission, or the Bureau of Reclamation are not regularly inspected by the Department. The rules would exempt dams directly controlled or regulated by an agency of the federal government from the fee where inspection and maintenance programs meet or exceed criteria utilized by the Department.

The rules overall are designed to only include fees for dams that have their plans reviewed by Department staff and are part of our regular inspection schedule.

The fees will allow the Department to better address a backlog in inspections and public outreach and education. The total cost of the Dam Safety Program was recently estimated at \$450,000 per biennium. The fees are estimated to generate about \$40,000 or about 9% of the costs incurred by the program.

#### **IV. Rulemaking Process**

A Rules Advisory Committee (RAC) was appointed by the Department to assist with the development of rules. The RAC met once on September 23, 2009. A hearing draft set of proposed rules was prepared by staff based on input from the RAC. The members of the RAC are given in Attachment 3.

The Department submitted a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact to the Secretary of State for publication on October 1, 2009 in the *Oregon Bulletin*.

The public comment period was open from October 1 until 5:00 pm on October 30, 2009. In addition to the opportunity to provide written comment, public hearings were held in Salem on October 22<sup>nd</sup> and in LaGrande on October 26<sup>th</sup>. There was no oral testimony at either hearing.

Eight letters with written comments were received and are provided in Attachment 4. A listing of all changes made to rules in response to public comments is given in Attachment 2. Agency responses and modifications to hearing draft of new rules in light of comments is given in Attachment 5.

## **V. Summary**

The proposed revisions to Chapter 690 Division 20 in Attachment 1 provide needed clarifications to manage a fee program on top of the other functions of the Dam Safety Program.

## **VI. Alternatives**

The Commission may consider the following alternative actions:

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

## **VII. Recommendation**

The Director recommends Alternative 1 that the Commission adopt the final proposed rules in Attachment 1.

Attachments:

1. Final Proposed Rules
2. Listing of Proposed Changes from Hearing Draft to Commission Draft of rules
3. Rule Advisory Committee Makeup
4. Written Comments Received
5. Agency Responses to Comments

E. George Robison

503-986-0840