Attachment 4 – List of all written comments (no verbal comments submitted)

Hearing Dates and Locations:

October 22, 2009*
3-5 pm
North Mall Office Building; 1st floor, Conf. Rm. 124A
725 Summer Street
Salem, Oregon

October 26, 2009*
5-7 pm
La Grande Public Library; Community Room
2006 Fourth Street
La Grande, Oregon

* No official verbal comments received at either location.

Listing of Written Comment Submissions (in order received):

10/26 – Powder Valley Water Control District
10/27 – Richard Verboort (Professional Engineer)
10/29 – League of Oregon Cities/SDAO
10/29 – Willy Tiffany (City of Hillsboro)
10/30 – Stuntzner Engineering
10/30 – Stoel Rives (on behalf of Central Oregon Irrigation District and others)
10/30 – Stoel Rives (on behalf of unspecified clients regarding wastewater)
10/30 – Northwest Pulp and Paper Association or ("NWPPA")

POWDER VALLEY WATER CONTROL DISTRICT

P.O. Box 189-690 E Street, North Powder, OR 97867 Tele: (541) 898-2366
Fax: (541) 898-2548 Email: pvwater@eoni.com
Hearing Impaired – Call 711

October 26, 2009

Oregon Water Resources Department
Attn: Ruben Ochoa
725 Summer Street NE, Suite A
Salem OR, 97301-1271

Re: OAR Chapter 690, Division 20 Rulemaking.

Dear Mr. Ochoa;

Our District organized in the early 1960's to provide irrigation water management for the local producers. The Wolf Creek Reservoir was completed in May of 1975 and has been in operation with no large problems since that time. Pilcher Creek Reservoir was completed in 1983 and has also been in operation with no major problems since that time. Both Wolf Creek and Pilcher Creek dams are earthen dams with very little seepage, and have been well maintained.

The district would like to take this opportunity to strongly voice opposition to any potential fees for the dam safety program. Both of the district dams are considered to be 'high hazard' dams and would each be charged a fee of $500 under the proposed rules. This would have to be a budgeted expense for the district and would put a large burden on the local producers who are directly charged for all district expenses.

Dam inspections have been done through the recent years on a regular basis in cooperation with Oregon Water Resources Department with very few changes in findings from year to year. Although it is somewhat helpful to have another organization inspect the projects from time to time, our staff and directors work very closely with the dams and are therefore always conducting inspections looking for necessary maintenance and improvements. Therefore an annual fee for this service will not be a good investment of the patrons' funds that could be better used improving the dams directly. To have such a fee would amount to over seven percent of the annual budgeted operation and maintenance rates for each of the two dams which is a drastic increase with no recognizable benefit to the district or the facilities inspected.

In conclusion it is the opinion of the Powder Valley Water Control District that any new fees on district dams would have a significant negative effect on the local producers who are already struggling during this difficult economic time. Therefore the district strongly urges you to not put such a burden on the local agricultural communities.

Sincerely,

Aaron Umpleby
Manager, PVWCD

Comments: Dick Verboort – Professional Engineer

Ruben, George and Barry,

Thank you for the opportunity to comment on the new draft rules for Division 20. I have a lot of comments. Some of them might be considered to be "picky" so I hope you will bear with me. They are offererd with good intentions.

To the extent possible comments will be referenced to the page, heading and sub heading identification. (It would have been helpful if the lines were numbered as it would be much easier to direct the comments.)

Page 2, (e)(d) ...backfilled with impermeable material... this should be "lower permeability material".

Page 3, General Requirments (2) ...design shall be submitted. Add ... "submitted with the design documentation".

Page 4, (4) ...Approved plans and specifcations... This should be approved drawings and specifications.The drawings and specifications constitute the "Plans". The word plans should not be used in lieu of drawings.

Page 4 (6) There are a couple of comments here. To start, the word "should" shows up at least 5 times in this paragraph. Thou "Shall Not" use "should". The correct word is "shall". This shows up numerous places in the rest of the doucment. Hopefully a word search with your word processor can find them all for you and change them.

Second item, regarding pipe. You might check with a couple of pipe manufacturers on this. I do not think fiber-treated bituminous-coated corrugated steel pipe is available anymore. This is probably due to the environmental hazards of the dip tank. An alternate is Aluminized Type II Coating meeting AASHTO M-274. There may be a newer polymer type coating available in addition to this. Check with Contech or the pipe plant at Eugene, OR.

Page 4, (8) Insert "for classification purposes" in the first sentence after "volumes".

Page 4, (8)(a) ...bottom of the reservoir to the emergency spillway... Do you mean principal spillway? This would be consistent with the storage volume used in a permit application.

Page 4, (8)(c) ...full rreservoir at the dam crest... Do you mean spillway crest?

Page 5, (1) ...should... This should be "shall". Top width, picky point, but with current constructiion equipment it is difficult, at best, to construct an 8-foot top width. Ten feet should be the minimum.

Page 5, (4) ...to pass the 50 year flood flow without overtopping. My opinion this should be a minimum of 100-year unless some type of hazard analysis is done.

Page 6, (4)(a) "Plans" should be "Drawings". Also in (A) "plans" shows up in two places. If you mean the drawings and specifications this is ok. If you mean the drawings only then the words should be changed to drawings.

Page 7, (ii) You might add "or acres" after "square miles" (3rd line). Also There should be a period after "square miles". The items listed after that ie " a brief description of the area...percentage of bare and timbered...general watershed characteristics" should be included in the desgin documentation with the hydrology documentation. The purpose of the drawings is to provide the contractor direction in what is to be constructed. Extraneous materials such as this should NOT be on the drawings. Obviously, they are important and should be includd in the design nocumentation as noted.

Page 7, (iii) ...cutoff walls... If you mean cutoff collars than say so to be consistent with earlier uses of this term.

Page 7, (b) add "material" after " construction" so that it reads "construction and material specifications".

Page 7, (A) ...describe in detail the methods... This is a big no-no. The means and methods are up to the contractor. If the Engineer describes the means and methods and they do not work then he is responsible. If you require the Engineer to do that then you may be responsible. Certainly the types of material can be specified (ie concrete, toe drain rock etc.). One can also to some extent the type of construction equipment can be specified (such as a sheepsfoot roller as opposed to a smooth roller etc). But in any case one has to be extremely careful about spelling out means and methods.

Page 8, (5)(c) "plans" should be "drawings.

Page 8, (6) ..."any newly constructed"... this implies that the innundation analysis can be submitted after the dam is constructed. I would assume that the intent is to have the innundation analysis completed as part of the design process so that the hazard rating can effect the design. This section needs to be reworded.

Page 9, Hazard Ratings.

Barry and George, I guess 27 years with SCS, even though that was 25 years ago, has permanently warped my mind. Where other criteria has been established for 50+ years why not try to be consistent with it. SCS (NRCS) has their a, b and c ratings as low, intermediate and high (in that order) your a, b and c are in reverse order. A really picky point, but why not try to avoid the potential confusion!!

OK - Now the "small dam thing"

Page 2 (2)... "provide for the protection of life and property"... How can you say that ODWR is doing this when it is possible to have a 1000 acre foot dam that is 9.8 feet high or a 30-foot high dam that stores 9.1 acre feet that is not required by ODWR to be designed by a registered engineer and the drawings, specifications and design documentation submitted to ODWR for review?

My opinion, any new dam to be constructed should first have the Hazard Rating established.

Then, Low Hazard dams meeting the small dam criteria can be constructed by the means currently allowed.

Dams that meet the small dam criteria that are CLASSIFIED as Significant Hazard or High Hazard would have to meet the design criteria for large dams. This includes design by a registered engineer and submittal of drawings, specifications and design documentation to ODWR.

In order to accomodate the stockwater ponds (ie those under the 9.2 ac ft/10' height limit) such as those common in Malheur, Lake and Harney counties (and others), you might allow a more limited analysis of downstream condiltions, such as a Quad Sheet analysis by a PE.

Also, in regards to small dams the concerns expressed are height and storage. There should be some concern expressed regarding watershed area above the dam.If there is a large watershed area (think thunderstorms) then there should be an analysis for the hydrology and spillway design.

If you agree with my concerns about the "small dams" some re-writing of several sections of the draft would be required. I have not attempted to do that. If you are serious about the changes I would be more than happy to assist in a re-write.

Finally, as brought out in Eric and my presentation at the March 2009 Oregon Dam Safety Workshop, OSBEELS has determined that any dam design is engineering. I know you do not have to be their policeman but wouldn't it be appropriate to note somewhere in this document that all dam design is required by statute to be done by a registered engineer.

Please consider these comments as mine and not Stuntzner Engineering's. Eric will provide Stuntzners to you.

Thank you for the opportunity to comment!!

Sincerely,

Dick Verboort, P.E.
Civil Engineer/CWRE

October 29, 2009

Water Resources Department
Attn: Ruben Ochoa
725 Summer Street NE, Suite A
Salem, OR 97301-1271

RE: OAR Chapter 690, Division 20 (Dam Safety) rulemaking

Mr. Ochoa,

Thank you for the opportunity to comment on the public hearing draft of the Chapter 690, Division 20 dam safety rules. The League of Oregon Cities and Special Districts Association of Oregon represent cities and special districts, respectively, around the state that own and operate facilities that may be impacted by the proposed rules. Our respective associations supported SB 788, which contains the provision authorizing the Oregon Water Resources Department to assess a fee on owners of dams based on the hazard rating of the dam. It is important that the state maintain the integrity of its program to ensure the safety of large dams in Oregon. In that respect, we support the objective of the draft rules.

The Division 20 rules should be clear in their applicability. In that respect, we are concerned that the draft definition of "dam" may be interpreted to include facilities that are in fact not dams and should not be subject to the requirements of the Division 20 rules. These facilities, such as reinforced concrete and metal storage tanks, wastewater aeration basins, and wastewater clarifiers, are not currently subject to the Department's dam inspection program and are subject to the regulatory authority of other agencies. We appreciate that Department staff has been responsive since this issue was raised at the Rules Advisory Committee meeting on September 23 in discussing possible language with stakeholders to address this concern. In that regard, we suggest the following amendments:

1) Insert the following into the hearing draft rules:

   690-020-0000 (3) These rules do not apply to facilities that do not meet the definition of dam, including but not limited to metal or reinforced concrete water storage tanks or various types of tanks that are part of water treatment facilities.

2) Amend the definition of "dam" in 690-020-0022(e) to read:

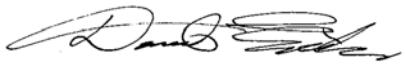
   "Dam" means *[a hydraulic structure]* **an artificial barrier, including appurtenant works,** built above the natural ground grade line that is used to impound water.

   (This language better conforms with the definition used by a number of other states, including Washington, Idaho, Montana, and California.)

Taken together, these changes will clarify that the applicability of the dam safety rules does not extend facilities such as reinforced concrete and metal storage tanks, wastewater aeration basins, and wastewater clarifiers.

We support the other provisions of the hearing draft rules, including the language added regarding inspection frequency, and commend staff for their work. Thank you again for the opportunity to comment.

Sincerely,



Daniel Eisenbeis
League of Oregon Cities

Mark Landauer
Special Districts Association of Oregon

Joint Water Commission

General Manager
Kevin Hanway
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Board of Commissioners

City of Hillsboro
Will Crandall
Gordon Faber
John Godsey

City of Forest Grove
Rod Fuiten
Carl Heisler
Victoria Lowe

City of Beaverton
Forrest Soth
Marc San Soucie
Denny Doyle

City of Tigard
Dick Winn
Nick Wilson
Craig Prosser

Tualatin Valley Water District
Greg DiLoreto
Jim Doane
Dick Schmidt

October 29, 2009

Mr. Ruben Ochoa
Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Dear Mr. Ochoa,

Thank you for the opportunity to comment on the proposed revisions to OAR Chapter 690, Division 20, the Department's dam safety rules. As a member of the Rules Advisory Committee (RAC) for these rules I would agree with the changes proposed in the Hearing Draft. However, as I expressed in the RAC, I believe that the rules should be further clarified to remove a potential unintentional consequence.

The current definition of "large dam" includes any structure over 10 feet tall or holds more than 3,000,000 gallons. Many finished water reservoirs or treatment facilities meet those criteria although are regulated under the Safe Drinking Water Act or the Clean Water Act and have never been regulated under the state's dam safety program. However, some finished water reservoirs are correctly regulated under the program. As a member of the RAC the Department has asked for some suggested language to exempt traditional concrete and steel water reservoirs while preserving Department's authority over earthen embankment structures.

I suggest the following two changes to clarify the issue:

1) Add the following language:

   690-020-0000 (3) These rules do not apply to metal or reinforced concrete water storage tanks or various types of tanks that are part of water treatment facilities.

2) Change the following language:

   690-020-0022 (e) "Dam" means an artificial barrier, including appurtenant works, built above the natural ground grade line that is used to impound water. Dams include hydraulic structures that store water, attenuate floods, divert water into canals, and store and treat wastewater

Thank you for the opportunity to comment. If you have any questions please do not hesitate to contact me. Thank you.

Sincerely,

Willie Tiffany
Intergovernmental Relations Manager

Stuntzner Engineering & Forestry, LLC

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COOS BAY - FOREST GROVE - DALLAS - BROOKINGS

October 29, 2009

Mr. Ruben Ochoa
Water Resources Department, Dam Safety
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Comments on Proposed Rule Changes to OAR Chapter 690, Divisions 20

Dear Mr. Ochoa:

We have reviewed the draft rule revisions to OAR Chapter 690, Division 20 *Dam Safety* and are submitting these comments for your consideration. Our comments are listed by page number, heading, and sub heading as identified on the draft document published October 1, 2009.

690-020-0022, page 2: It appears that the upper-level numerical headings (1) and (2) are being removed. Will the **Definitions** section have a numerical heading (1) or jump directly to letters (a) – (p)? Also we have suggested the use of the term "Principal Spillway" later in our comments; therefore a definition of "Principal Spillway" should be provided or perhaps a definition of just "Spillway" and then what "Principal" and "Emergency" are.

690-020-0022, page 2, (d): "backfilled with impermeable material" should read "backfilled with low permeability material".

690-020-0022, page 3, (l) "Freeboard" definition: The designed "high-water level" during large storm events is higher than the principal spillway elevation. We propose defining "Freeboard" as "the vertical distance between the principal spillway elevation and the dam crest", or "vertical distance between emergency spillway and dam crest".

690-020-0022, page 3, (n): Remove the word "large". We will further explain our reasoning for this later in this letter. Basically, we think small dams can be hazardous.

690-020-0022, page 3, (p): Capitalize the "d" in "Small dam" definition.

690-020-0025, page 3, (2): Add "with the design documentation" to the end of the last sentence in this section. We want to clarify that this should not clutter the drawings and specifications (or plans).

690-020-0025, page 4, (4): For engineering submittals, the word “plans” typically means “drawings and specifications”. Further references to these items should be consistent with these terms. Possibly define dam plans as the set of dam drawings and dam specifications.

690-020-0025, page 4, (6): The first instance of the word “should” shows up. We believe that the word “shall” is intended. Search and replace all uses of “should” with “shall”. We think that in many cases it would be best to use “shall”.

690-020-0025, page 4, (6): We do not believe it is necessary to specify types of pipe that are allowable to be used in construction in the rule. We recommend deleting the sentence starting with “Acceptable conduit materials include…”. If you keep the sentence in you should include steel with alum. coating and types of appropriate PVC.

690-020-0025, page 4, (7): Add the word “maximum” in front of “vertical distance”, and replace “between the center point of the dam crest…” with “between the centerline of the dam crest and the native ground”. Alternatively, the “height of dam is maximum vertical distance of crest of dam to original native ground”.

690-020-0025, page 4, (8): Add “for classification purposes” after “(in acre-feet or millions of gallons)” and before “as follows”.

690-020-0025, page 4, (8) (a): Replace “emergency spillway crest” with “principal spillway elevation or normal full water elevation”.

690-020-0025, page 4, (8) (c): Replace “dam crest level” with “emergency spillway level”….Flood control dams need volume at flood levels.

690-020-0029, page 5, (4): Insert a specification for the minimum acceptable amount of freeboard in this section. Is the construction of a small dam “to pass the 50-year flood flow without overtopping” conservative enough? We believe this should be a minimum of 100-year flood flow unless some type of hazard analysis is done. Possibly use 50-yr flood and specify a minimum freeboard. Replace the last word of this section “fill” with the words “dam embankment”.

690-020-0035, pages 6 and 7: Additional uses of “plans” along with “specifications” but not “drawings”. We think it should be consistent that plans equal the drawings and the specifications. The text seems inconsistent.

690-020-0035, page 7, (4) (a) (B) (ii): In the second sentence after “square miles” add “or acres”. In the last sentence of this section, replace the words “at different water levels” with “at different flow events”. We believe some of the descriptive information specified in this section to be placed on a map is better placed in the design report. The hydrology data should not be in plans, but should be in the design report.

690-020-0035, page 7, (4) (a) (B) (iii): In the second sentence replace “cutoff walls” with “cutoff collars”.

690-020-0035, page 7, (4) (b) (A): The wording for “specifications shall describe in detail the methods to be followed” is not flexible enough to allow engineers to use “performance

specifications" in addition to or in place of "method specifications". We suggest rewording this sentence to allow both "method" and "performance" specifications. We do not think requiring all methods specifications is prudent.

690-020-0035, page 8, (6): Reword the first sentence to read "To determine the hazard rating during the design process for newly constructed or proposed construction of a large dam, or enlargement or rehabilitation of a large dam, the dam owner or owner's representative must submit to the department an inundation analysis using methods described in 690-020-100."

690-020-0035, page 8, (6) (a) and (b): Combine section (b) into section (a) or place the words "If a dam is rated as a high hazard, the inundation…" at the beginning of section (b).

690-020-0100, page 10, (2): Subsections (a), (b), and (c) are all methods or models acceptable for studies. Subsections (d) and (e) are not methods or modeling but rather definitions or additional information. Can the information in subsections (d) and (e) be placed in the main paragraph of section (2) prior to listing the three methods in (a) – (c)? We also believe that the order of these three methods should be reversed with the "simplified" methods as paragraph (a).

690-020-0100, page 10, (2) (d): Replace the word "floorboard" with the words "finished floor".

690-020-0100, page 11, (4) (a): We firmly believe that small dams should be assigned a hazard rating. A simplified hazard analysis method can be utilized or a qualitative analysis of downstream receptors of a small dam can be completed to determine a hazard rating for a small dam. Small dams that are classified as "Significant Hazard" or "High Hazard" would then have to meet the design criteria for large dams.

690-020-0200, page 11, (1): Although there is a reference to "annual" fees in this section, there are currently no fees documented in ORS 536.050. We assume that ORS is going to be revised at the same time.

As a final comment, Oregon's engineer licensing board (OSBEELS) has determined that any dam design is engineering. We believe Division 20 is an appropriate location to note that all dam design is required by statute to be done by a registered engineer with the exception of a small dam that has no public danger constructed on private property and designed by the property owner. This requirement should be included in the small dam section of Division 20.

Please let us know if you have any questions, and thank you for providing this opportunity to comment on the proposed rule.

Sincerely,

Eric Urstadt, PE, CWRE
William Kness, PE, CWRE
William Flatz, PE, CWRE
Kaid McKay, PE
Stuntzner Engineering and Forestry, LLC

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October 30, 2009

VIA FACSIMILE (1-503 986-0903)
AND EMAIL (rule-coordinator@wrd.state.or.us)

Oregon Water Resources Department
Attn: Ruben Ochoa
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Proposed Administrative Rules Related to Dam Safety (Division 20); Comments on Behalf of Central Oregon Irrigation District, North Unit Irrigation District, and Swalley Irrigation District

Dear Mr. Ochoa:

We represent Central Oregon Irrigation District, North Unit Irrigation District, and Swalley Irrigation District (the "Districts") with respect to the Department's proposed administrative rules related to dam safety (Division 20). The Districts are all organized pursuant to Oregon Revised Statutes ("ORS") Chapter 545, and rely upon both federal and nonfederal dams to store and divert irrigation water to their patrons. We hereby provide these comments on the Districts' behalf.

1) The Proposed Rules Should Be Revised to Define Enlargement, Rehabilitation, Repair, and Alteration

There are several instances in the proposed rules where requirements are tied to enlarged, repaired, altered, or rehabilitated dams or structures. For example, see proposed OAR 690-020-0025(2) (requiring submission of certain records for "a new, enlarged, or rehabilitated structure"); proposed OAR 690-020-0035[1] (requiring professional engineer licensed in Oregon to prepare certain documents for "construction, enlargement, repair, or alteration" of large dams); and proposed OAR 690-020-0035(6) (requiring submittal of inundation analysis as part of design process for any "newly constructed, enlarged or rehabilitated dam"). The Districts note that these various terms ("enlarged," "rehabilitated," "repair," and "alteration") are not defined in the proposed rule amendment.

The Districts understand that these rules are intended to apply only when there is a physical, structural change to a dam that would result in an alteration to the potential inundation that the dam would cause if it failed. Thus, routine operations and maintenance ("O&M") work at a dam should clearly be excluded from the definition of "repair" that might otherwise trigger the above requirements. Similarly, construction or alteration work beyond routine O&M work is often performed at a dam, but does not alter inundation potential, and as such should also be excluded from triggering the above requirements. While the Districts do not necessarily agree with or endorse the definitions, we would point out that the Oregon Department of Fish and Wildlife ("ODFW") does attempt to define dam "construction" and "major replacement" for purposes of triggering fish passage requirements, and as such, ODFW precludes routine O&M work and work below certain bright-line thresholds from triggering regulatory requirements. See ORS 509.580(2); OAR 635-412-0005(9). In particular, for dams and diversions, "major replacement" of a dam generally includes "excavation and replacement of 30 percent by structure volume of the dam." OAR 635-412-0005(9)(b)(A). Similar to ODFW's approach, the Districts would propose modifying the language in the proposed rule to explicitly exclude ordinary O&M work from triggering the above requirements, and would further propose clarifying at what point repair, alteration, rehabilitation, etc. actually triggers the above requirements.

Along these same lines, the Districts would also recommend that enlargement or enhancement be defined to explicitly include physical work only and not merely a change in water right status at the dam. In other words, if the storage purpose of a dam is changed, or if a storage right is added to an existing dam, or if a new instream water right is created such that the dam will bypass additional flow, but there is no change to the structure of the dam itself, then such a change in water right status should not trigger the above requirements.

2) <u>The Proposed Rules Should Be Revised to Wholly Exclude Federal Dams</u>

The Districts are of the view that if a dam is subject to the safety program of a federal agency, and in particular, the U.S. Bureau of Reclamation's dam safety program, then not only should the dam be exempt from fee requirements as proposed in OAR 690-020-0200(6)(b), but the dam should simply be exempt from the entire Division 20 rules. Thus, to the extent that the rules are intended to describe the standards and requirements pursuant to which the Department will administer and enforce the design, construction, maintenance, and inspection of dams, in addition to fees (proposed OAR 690-020-0000(1)), but the federal government has already assumed responsibility for design, construction, maintenance, and inspection pursuant to federal law and other federal authorities, and Congress has not otherwise delegated authority to undertake these tasks, then the Department has no basis for endeavoring to apply its own general

requirements, minimum engineering design requirements, hazard ratings, or fees to such dams. Not only do such efforts have the potential to become duplicative, but it's unclear why the state would want to expose itself to potential liabilities by attempting to regulate such federal facilities.

In the event that the rules are not modified to exclude federal dams altogether, and instead the exemption is only limited to fees, then the Districts would note that the exemption from fee requirements in proposed OAR 690-020-0200(6)(b) is too narrow. For example, there is no reason why a dam should have to be "part of a networks [sic] of dams" in order to qualify for the exemption. Moreover, it is unclear why the federal program must have a mandated inspection schedule (proposed OAR 690-020-0200(6)(b)(B)), while the state's inspection schedule is only one the Department "endeavor[s]" to achieve (proposed OAR 690-020-0100(1)(a)-(c). Further, the requirement for a federal agency to enter into a memorandum of understanding to meet certain state requirements that may be inconsistent with the federal dam safety program mandated by federal law and regulations appears unnecessary and over-reaching.

Finally, in the event that proposed OAR 690-020-0200(6)(b)(C) is retained, we would propose revising the language to be more consistent with the language used throughout the same subsection and to remove the requirement that the federal agency be able to "coerce" the regulated party, which carries a pejorative connotation. Instead, we would propose language as follows:

> "The federal agency that controls or regulates for safety of the dam must also have a regular maintenance program or be able to require maintenance activity that will address problems discovered in the inspection program."

Thank you for the opportunity to submit these comments.

Sincerely,

David E. Filippi

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ATTORNEYS AT LAW

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October 30, 2009

VIA FACSIMILE (1-503 986-0903)
AND EMAIL (rule-coordinator@wrd.state.or.us)

Oregon Water Resources Department
Attn: Ruben Ochoa
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Comments Regarding Proposed Administrative Rules Related to Dam Safety (Division 20) and Wastewater

Dear Mr. Ochoa:

We provide these comments on behalf of a party interested in the above-referenced rulemaking.

In a departure from current rules, it appears that the Department is attempting to exert authority over wastewater storage and treatment facilities as part of its proposed amendments to its Division 20 rules. Not only is such regulation not required by statute, but such facilities are already thoroughly regulated by the Oregon Department of Environmental Quality ("DEQ"). Moreover, Senate Bill 788 (2009), which according to the Department's notice of rulemaking is the recently adopted bill that is necessitating the current rulemaking effort, is largely a fee bill and says nothing about the Department being authorized or otherwise needing to extend its jurisdiction to include wastewater facilities.

The particular language that we propose revising appears in proposed OAR 690-020-0022(e), which defines "dams" to include "hydraulic structures that *** store and treat wastewater." We would propose that the term "and store and treat wastewater" be removed from the newly proposed definition. In the alternative, we would propose that the term "wastewater" simply be changed to "sewage," which would be consistent with references to "sewage treatment lagoons" in proposed OAR 690-020-0025(8)(b) and "sewage lagoons" in proposed OAR 690-020-0200(5).

In short, to the extent wastewater storage and treatment facilities are already governed by DEQ and regulated pursuant to parallel programs, and where the Water Resources Department is not otherwise involved in issuing permits for the use or storage of water within such facilities, we are

of the view that the Department's Division 20 rules should not be revised to proclaim jurisdiction over such facilities, particularly absent coordination with DEQ as to the existing, ongoing regulation of such facilities.

We appreciate the opportunity to provide comments.

Sincerely,

David E. Filippi