



Oregon

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item J, November 17, 2006
Water Resources Commission Meeting

Review of OAR Chapter 690, Division 315 Related to Water Right Permit Extensions

I. Issue Statement

At this October 2005 meeting, the Commission adopted rules under OAR Chapter 690, Division 315 related to water right permit extensions. The rules implemented House Bill 3038 (Chapter 410, 2005 Oregon Water Laws) which adjusted the standards the Department uses to review certain applications for extensions of time filed by holders of municipal use permits. The rules required that Commission evaluate the implementation of these rules by November 30, 2006. OAR 690-315-0010(7). The following is a review of implementation activities to date as required by this provision.

II. Background

The issuance of a water right permit triggers statutory timelines for constructing the associated works and making full beneficial use of the water. If construction is not complete or full beneficial use is not attained within the statutory timelines (generally five-years), the Department can grant an extension of time upon a finding of "good cause." An extension of time can be granted for the reasonable time necessary to complete construction or apply the water to full beneficial use.

In 2005, House Bill 3038 established a statutory timeline of 20 years to commence and complete construction for new surface water and ground water permits for municipal use. House Bill 3038 also adjusted the statutory standards the Department uses to review applications for extensions of time filed by holders of municipal use permits. It requires that all municipal permit extensions be conditioned to require a Department approved Water Management and Conservation Plan (OAR Chapter 690 Division 86) prior to diverting water beyond the maximum amount currently beneficially used by the municipality. It clarified that, in determining permit extensions for municipal use permits, the Department shall give due weight to the considerations in ORS 539.010(5).

The legislation also required that, for the first extension issued after June 29, 2005 (the effective date of the bill) for a municipal use permit issued before November 2, 1998, the Department

must find that the undeveloped portion of the permit is conditioned to maintain, in the portions of the waterways affected by water use under the permit, the persistence of listed fish species.

In August 2005 the Commission adopted amendments to OAR Chapter 690, Division 315 to implement the statutory changes under HB 3038. The Commission included a provision that the Commission review the rules by November 30, 2006. OAR 690-315-0010(7). The Commission also designated a subcommittee of Commissioners Meloy, Rasmussen, and Smith to guide the implementation of the rules. The subcommittee recommended that the Department begin processing pending extension applications that presented the “least” challenge with respect to the “persistence” review. To develop its implementation strategy, the Department also convened interested stakeholders to identify an approach to working through the backlog of pending municipal extension applications subject to the new rules. Stakeholders included League of Oregon Cities, WaterWatch of Oregon, Special Districts of Oregon, Oregon Department of Fish and Wildlife (ODFW), and several individual municipal water providers. Based on this input and direction from the subcommittee, the Department decided to “batch” extension applications geographically, starting with pending applications for the mainstem Willamette River. The goal was to complete the review of this first batch and summarize the proposed conditions and issues raised on this batch for the subcommittee to review.

III. Discussion

The Department has not been able to meet its goals for processing the first “batch” of applications. On March 13, 2006, the Department sent to ODFW nine applications for extensions of municipal use permits for the mainstem Willamette River for the “persistence” review. Prior to completion of ODFW’s review, all of these applicants requested that their applications be put on administrative hold. More recently, Tualatin Valley Water District requested that the Department take their application off of administrative hold. The Department is currently waiting for ODFW’s recommendations on fishery resource protection conditions to maintain the persistence of listed fish species for this permit extension application.

As the Department batched up the applications that needed the “persistence” review, we have focused on completing work on other pending applications that did not need this review. Of the 141 that were pending on the effective date of HB 3038, 107 needed a persistence review. The remaining applications had fully developed use under the permit or were for ground water use that did not have the potential for substantial interference with surface water. Of these, the Department has issued final orders on 24. We continue to work the remaining applications through the review process.

IV. Recommendation

This report provides an overview of implementation activities as required under OAR 690-315-0010(7). No further Commission action is required. The Commission may want to direct the Department to continue to provide regular updates on implementation of these rules.

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