

MEMORANDUM

TO: Water Resources Commission

FROM: Paul R. Cleary, Director

SUBJECT: Agenda Item F, April 12, 2002
Water Resources Commission Meeting

Request for Adoption of Rule Amendment to OAR Chapter 690, Division 315, Water Right Permit Extensions

I. Issue Statement

The Commission is asked to adopt an amendment to rules contained in OAR Chapter 690, Division 315, relating to water right permit extensions. The proposed amendment would provide that until July 1, 2003, holders of municipal use permits may, but are not required to, submit an application for an extension of time to develop their water rights. A copy of the final proposed rule is contained in Attachment 1.

II. Background

In November 1998 the Water Resources Department formed a Community Water Supply Work Group to address the unique issues of community water suppliers, including possible future rulemaking regarding extensions of municipal water use permits. To provide the group more time to develop rule recommendations on permit extensions, in December 2000 the Commission amended OAR 690-315-0010(4) to provide that the Division 315 rules “shall not be effective for municipal use permits until July 1, 2003.”

The intent of the modification was to allow the work group more time and to indicate that holders of municipal use permits are not required to apply for extensions until July 1, 2003. However, the rule language as adopted unintentionally precludes holders of municipal use permits, if they so desire, from making an extension application under OAR Chapter 690, Division 315.

This proposed rule amendment would modify OAR 690-315-0010(4) to reflect the original intent by providing holders of municipal water use permits the option of applying for a permit extension under the current provisions of OAR Chapter 690, Division 315. The proposed modification would also clarify that holders of municipal use permits are not required to apply for an extension until July 1, 2003, unless through subsequent rulemaking, the Commission

changes the July 1, 2003, effective date to expedite development and implementation of the work group's recommendations.

III. Discussion

Under current rules, holders of municipal water use permits are precluded from making an application for an extension. Without a mechanism to obtain an extension, some permit holders are unable to undertake necessary water development activities. For example, the Department is aware of at least two municipal permit holders that are in need of a permit amendment in order to modify well locations under existing permits. However, the Department cannot process a permit amendment after the completion date has passed, until or unless an extension has been granted. As such, municipal use permit holders must not be precluded from applying for permit extensions if they so desire.

IV. Rulemaking Process

Notice of the rulemaking was published in the *Oregon Bulletin* on March 1, 2002. The proposed rule amendments were the subject of a public hearing held on March 25, 2002, from 1:00 to 3:00 p.m. at the Department's Salem office. Oral testimony was received from Paul F. Becker, P.E., a representative of the City of Woodburn. Mr. Becker testified that the City of Woodburn was supportive of the proposed change as it would allow the city to move forward with its proposed permit amendment. No one other than Mr. Becker testified at the hearing.

The closing date to receive written comments was March 25, 2002. Written comments were received from WaterWatch of Oregon (see Attachment 2). In their comments, WaterWatch indicates their dissatisfaction with the direction of proposals by the Community Water Supply Work Group and suggests that "the exception from processing should be removed from the rules altogether and holders of municipal use permits should be subject to the same rules as all other permittees in this state." WaterWatch also suggests that if amendments are to be made to the existing rules, the proposed language should be clarified to focus on activities related to municipal use permits that require an extension.

The staff report to the Commission regarding the Community Water Supply Work Group describes the rationale for exempting holders of municipal water use permits from the extension process until July 1, 2003. (See Community Water Supply Work Group, WRC Work Session April 11, 2002). The proposed rule does not propose to remove the municipal use permit "exception" nor do staff recommend making such a change. The Department does concur with WaterWatch's suggested improvements to the proposed language and has incorporated the language improvements into the final proposed rule draft in Attachment 1.

V. Alternatives

The Commission may consider the following alternative actions:

1. Adopt the proposed rule amendment to OAR Chapter 690, Division 315 (Attachment 1).
2. Adopt amended final proposed rules.
3. Decline to adopt the final proposed rules.

VI. Director's Recommendation

The Director recommends Alternative 1, that the Commission adopt the proposed rules attached to this staff report as Attachment 1.

Attachments:

1. Final Proposed Rules - OAR Chapter 690, Division 315
2. Copy of Written Comment

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