



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item F, October 28, 2005
Water Resources Commission Meeting

Request for Repeal of OAR Chapter 690 Divisions 50 and 74

I. Issue Statement

The Commission is asked to adopt final proposed rules to repeal OAR Chapter 690 Divisions 50 and 74 related to hydroelectric projects. The final proposed rules are provided in Attachments 1 and 2. OAR Chapter 690 Divisions 50 and 74 were superseded in 1986 by OAR Chapter 690 Division 51. Since there are no longer hydroelectric projects subject to these rules, OAR Chapter 690 Divisions 50 and 74 are proposed to be repealed. All hydroelectric projects would be reviewed under OAR Chapter 690 Division 51.

II. Background

OAR Chapter 690 Division 50 set out the process for appropriation and use of water for hydroelectric projects. OAR Chapter 690 Division 74 set out the standards for considering applications for hydroelectric projects. In 1986, OAR Chapter 690 Division 51 was adopted by the Commission and superseded Divisions 50 and 74. Division 51 set forth the standards for appropriation and use of water for hydroelectric power and standards for hydroelectric applications.

OAR 690-51-0020(3) specifies that the Division 51 rules apply to all hydroelectric projects except those defined in Section 27, Chapter 569, Oregon Laws 1985. Those projects would continue to be subject to Divisions 50 and 74 and were specified as projects greater than 25 megawatts for which funding was approved by a city before May 15, 1985. At the time that this exception was included in the Division 51 rules, the City of Klamath Falls' Salt Caves project was the only pending project of this size with approved funding in early 1985. That project is no longer pending, and there are no other known projects that meet the specifications above. Since there are no such pending projects and as part of its regulatory streamlining efforts, the Department initiated a rulemaking to repeal Divisions 50 and 74.

III. Discussion

Rulemaking Process

Notice of the rulemaking was published in the Oregon Bulletin on August 1, 2005. Notice was also provided by e-mail to persons on the agency's rulemaking notice list and to parties involved in all three ongoing hydroelectric reauthorization negotiations. The notice was mailed to other interested parties including utility and environmental lobbyists, the City of Klamath Falls, and other owners of major municipal or private hydroelectric projects. The written comment period closed on September 23, 2005. In addition to the opportunity to provide written comment, the Department held a public rulemaking hearing in Salem on September 12, 2005. No testimony was provided at the public hearing. One set of written comments was received from the Hydropower Reform Coalition and WaterWatch of Oregon.

Issue Raised In Comments

The Hydropower Reform Coalition and WaterWatch of Oregon challenge the Department's assertion that there are no pending projects for which these rules should be retained. They assert that there may be potential or currently moribund projects that meet the exception of Section 27, Chapter 569, Oregon Laws 1985. They suggest that, if the City of Klamath Falls' Salt Caves project were to be proposed again, the proper course would be to regulate it under Divisions 50 and 74 rules.

Department Response – Department staff have reviewed databases of historic hydroelectric applications. No projects were found that meet the exception criteria. With respect to the Salt Caves project, it is the Department's understanding that the bonds that were approved for the Salt Caves project in 1985 have since been redirected to the cogeneration project that has been operated by the City for the past few years. If the Salt Caves project were to be reauthorized by the City, then a new bond issue would have an approval date later than May 15, 1985, and the hydroelectric project would therefore be reviewed under OAR Chapter 690 Division 51.

III. Summary

Divisions 50 and 74 were retained for hydroelectric projects greater than 25 megawatts for which funding was approved by a city before May 15, 1985. The Department has concluded that there are no such pending projects and that Chapter 690 Divisions 50 and 74 can be repealed without affecting any present or future hydroelectric projects. All hydroelectric projects will be reviewed under OAR Chapter 690 Division 51. Repeal of Divisions 50 and 74 would also further the Department's regulatory streamlining efforts by deleting regulations that are outdated and unnecessary.

IV. Alternatives

The Commission may consider the following alternative actions:

1. Adopt the final proposed rules in Attachments 1 and 2.
2. Adopt amended final proposed rules.
3. Not adopt the proposed rules and request that the Department further evaluate the issues.

V. Recommendation

The Director recommends that the Commission adopt the final proposed rules as shown in Attachments 1 and 2.

Attachments:

1. Final Proposed Rules – OAR Chapter 690 Division 50 Appropriation and Use of Water for Hydroelectric Power Projects
2. Final Proposed Rules – OAR Chapter 690 Division 74 Standards for Consideration of Applications Involving Hydroelectric Projects
3. Written Public Comment

Mary Graine
(503) 986-0833