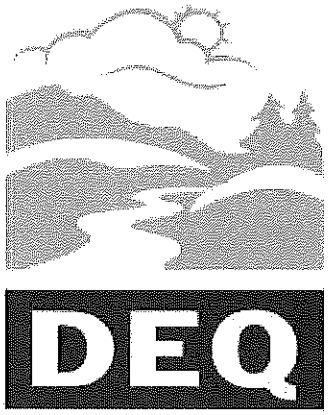
EQCMeeting1of1DOC19990129

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 01/29/1999



State of Oregon
Department of Environmental Quality

RevisedA G E N D A

ENVIRONMENTAL QUALITY COMMISSION MEETING

January 29, 1999
DEQ Conference Room 3A
811 S. W. Sixth Avenue
Portland, Oregon

Notes: Because of the uncertain length of time needed for each agenda item, the Commission may deal with any item at any time in the meeting. If a specific time is indicated for an agenda item, an effort will be made to consider that item as close to that time as possible. However, scheduled times may be modified if agreeable with participants. Anyone wishing to listen to the discussion on any item should arrive at the beginning of the meeting to avoid missing the item of interest.

Public Forum: The Commission will break the meeting at approximately **11:30 a.m.** for the Public Forum if there are people signed up to speak. The Public Forum is an opportunity for citizens to speak to the Commission on environmental issues and concerns not a part of the agenda for this meeting. The public comment period has already closed for the Rule Adoption items and, in accordance with ORS 183.335(13), no comments can be presented to the Commission on those agenda items. Individual presentations will be limited to 5 minutes. The Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

Beginning at 8:30 a.m.

A. **Informational Item**: Oregon Bio-Diversity Project of the Defenders of Wildlife

B. **Informational Item**: Report on the Governor's Budget

C. **Approval of Minutes**

D1. **Action Item**: Waiver for Springcreek
Public comment will be taken on evidence previously submitted to the Commission on the request for waiver of the total dissolved gas criterion.

D2. **Informational Item**: Report by NMFS on Total Dissolved Gas

E. **†Rule Adoption:** Amendments to OAR Chapter 340, Division 52, Review of Plans and Specifications to Exempt Certain Projects from Submittal of Engineering Plans and Specifications

F. **Informational Item**: Outstanding Resource Waters Designations

G. **Informational Item**: Community Solutions Team Approach and What It Means for the Department of Environmental Quality

H. **Action Item**: Governor's Water Enhancement Board (GWEB) delegate from the Environmental Quality Commission

I. **Commissioners' Reports**

J. **Director's Report**

Notice of Executive Session of the Environmental Quality Commission

The Environmental Quality Commission will hold an executive session at 12:00 noon in room 3B, 811 SW Sixth, Portland, Oregon. The Commission will be consulting with legal counsel regarding *G.A.S.P., et al v. Department of Environmental Quality (Case No. 9708-06159)*. The executive session is to be held pursuant to ORS 192.600 (1)(f) and ORS192.660 (1)(h). The regular meeting of the Environmental Quality Commission will commence at 1:00 pm. Representatives of the media will not be allowed to report on any of the deliberations during the session.

Hearings have already been held on the Rule Adoption items and the public comment period has closed. In accordance with ORS 183.335(13), no comments can be presented by any party to either the Commission or the Department on these items at any time during this meeting.

The Commission will have lunch at 12:00 noon. . No Commission business will be discussed.

The Commission has set aside March 18-19, 1999, for their next meeting. The meeting will be in Portland, Oregon at DEQ Headquarters.

Copies of staff reports for individual agenda items are available by contacting the Director's Office of the Department of Environmental Quality, 811 S. W. Sixth Avenue, Portland, Oregon 97204, telephone 229-5301, or toll-free 1-800-452-4011. Please specify the agenda item letter when requesting.

If special physical, language or other accommodations are needed for this meeting, please advise the Director's Office, (503)229-5301 (voice)/(503)229-6993 (TTY) as soon as possible but at least 48 hours in advance of the meeting.

June 8, 1999

Oregon Biodiversity Project

Strategies and opportunities to *conserve Oregon's native* biological diversity

Oregon Biodiversity Project

- **statewide assessment and conservation strategy**
- **collaborative approach**
- **private sector-based**
- **began in 1994**

Why a biodiversity project?

Existing conservation is:

- **single species, site focused**
- **reactive, short-term**
- **antagonistic**
- ***too little, too late***

Why a biodiversity project?

- information is incompatible, inaccessible
- no institutions to integrate across boundaries, disciplines
- weak accountability
- limited tools for private land owners

Why a biodiversity project?

- help set overall priorities
- broad scale increases options
- *local decisions need context*
- need to engage broader audiences

Project partners

- Defenders of Wildlife
  - *staffing*
  - *fund-raising*
  - *products*
- The Nature Conservancy
- Oregon Natural Heritage Program
- 40+ other cooperators

Project funding: $800,000 + in-kind

- Chevron
- Defenders of Wildlife
- EPA / ODFW
- ESRI
- Georgia-Pacific
- Laird Norton Foundation
- Meyer Memorial Trust
- National Gap Analysis Program
- National Fish and Wildlife Foundation
- The Nature Conservancy
- Oregon Natural Heritage Program
- PacifiCorp
- Sequoia Foundation
- Starker Forests
- Sun Studs
- U.S. Department of Defense / Legacy Program
- U.S. Fish and Wildlife Service
- Weeden Foundation
- Weyerhaeuser Foundation

Steering Committee

- **Dan Heagerty**
  David Evans and Associates
- **Tom Imeson / Terry Flores**
  PacifiCorp
- **Cathy Macdonald**
  The Nature Conservancy
- **Fred Otley**
  Cattle Rancher
- **Howard Sohn**
  Sun Studs Inc.
- **Sara Vickerman**
  Defenders of Wildlife

Science Committee

- **Duane Dippon,** *BLM*
- **Craig Groves,** *The Nature Conservancy*
- **Larry Irwin,** *NCASI*
- **Willa Nehlsen,** *U.S. Fish and Wildlife Service*
- **Reed Noss**
- **Janet Ohmann,** *U.S. Forest Service*
- **David Perry,** *OSU*
- **Jim Rochelle,** *Weyerhaeuser*
- **Mark Stern,** *Oregon Natural Heritage Program*
- **Tony Svejcar,** *U.S. Agricultural Research Service*

Implementation Committee

- **Ed Backus,** *Interrain Pacific*
- **Hugh Black,** *Forest Service*
- **Jim Brown,** *Oregon Department of Forestry*
- **Paula Burgess,** *Governor's Natural Resources Office*
- **Jody Calica,** *Confederated Tribes of Warm Springs*
- **Martin Goebel,** *Sustainable Northwest*
- **Steve Gordon,** *Lane Council of Governments*
- **Bianca Strief,** *NRCS*
- **Mike Graybill,** *South Slough NERR*
- **Don Knowles,** *Regional Ecosystem Office*
- **Sue Kupillas,** *Jackson County*
- **Bob Messinger,** *Boise Cascade*
- **John Miller,** *Wildwood Inc.*
- **Geoff Pampush,** *Oregon Trout*
- **Russ Peterson,** *USFWS*
- **Rudy Rosen,** *ODFW*
- **Elaine Zielinski,** *BLM*

Products

- ***Oregon's Living Landscape*** **(atlas)**
- **Poster (graphics)**
- ***Stewardship Incentives*** **(report)**
- **CD (data, tools)**

Assessment and strategy

Project goals:

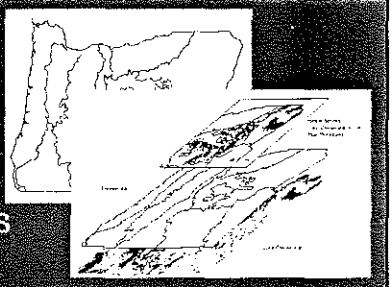
- **big picture view of biodiversity conservation needs**
- **conservation strategy as framework for future action**

Underlying principles

Assessments

- statewide
- ecoregion

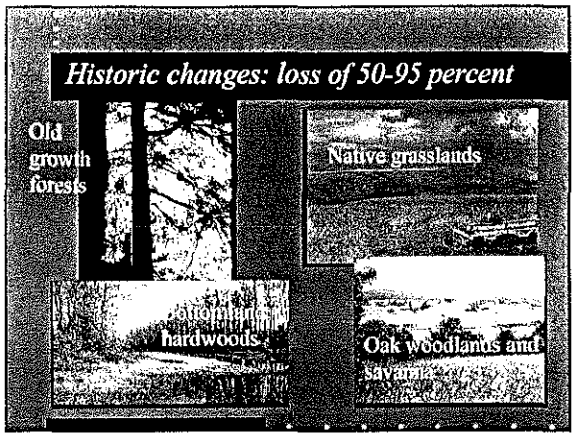
Tools for analysis: GIS



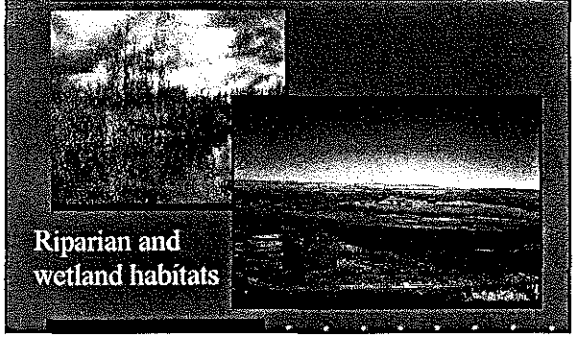
Major findings

- current conservation network is inadequate
- westside forests are relatively well protected
- eastside habitats have largely been ignored
- richest, most productive habitats have already been impacted

Historic changes: loss of 50-95 percent



Widespread loss and degradation



Current conservation network

- lands rated 8-10
- a little less than 10 percent of state

"Protected" habitats

- **less than one-third of native habitats are well protected** *(more than 15 percent in current conservation network)*

- **most are west-side and high-elevation forest types**

"Under-protected" habitats

- **Almost half of native habitat types receive little or no protection** *(less than 5 percent in conservation network)*

Ponderosa pine woodlands: ***4.1 percent***

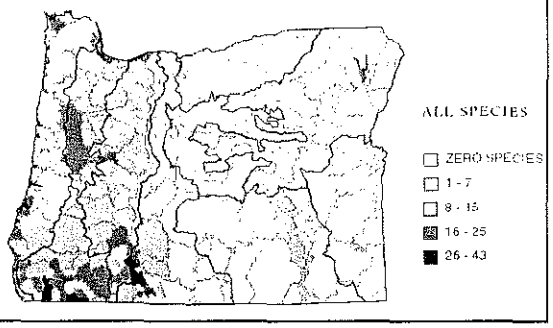
Sagebrush types: ***less than 2 percent***

At-risk species

- **450+ plant and animal species**
- **critically imperiled, imperiled or vulnerable at global or state level -- *Oregon Natural Heritage Program***

Columbian sharptailed grouse

At-risk species



Conservation strategy

Major elements:

- **Better stewardship of "working landscape"**
- **Expand existing conservation network**
- **Focus conservation on best opportunities**

Improved stewardship

Why incentives?

- **reserves not enough -- look at working landscape**
- **reached limits of regulation -- need positive tools**

Types of stewardship incentives

- **financial assistance**
- ***good information***
- **regulatory relief**
- **personal benefits, recognition**
- **market-based**

Targeting opportunities

Ecoregion assessments

Ecoregion assessments

- **vegetation**
- **historic changes**
- **aquatic diversity areas**
- **at-risk species**
- **salmon core areas**
- **wilderness study areas**
- **existing conservation network**
- **exotics**
- **road density**
- **land ownership**

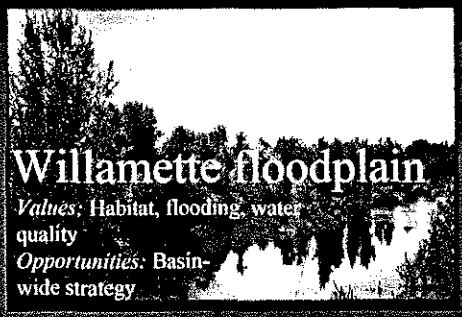
Conservation opportunity areas

- large blocks of native habitat
- priority vegetation types
- at-risk species
- aquatic diversity areas
- complement existing conservation network
- political/social/economic

Tillamook Bay watershed

Values: salmon, migratory birds, owls, murrelets -- 240,000 acres public lands

Opportunities: state forest management plan, Tillamook Bay National Estuary Project



Willamette floodplain

Values: Habitat, flooding, water quality

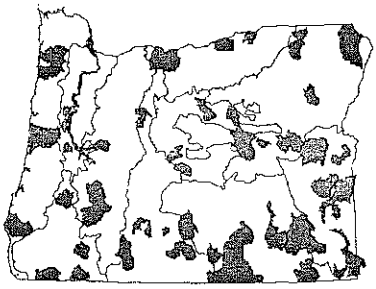
Opportunities: Basin-wide strategy

Klamath Basin wetlands

Values: 6 million migratory birds, hot-spot for at-risk species
Opportunities: Large-scale wetland restoration

Conservation Opportunity Areas:

A framework for more strategic approach

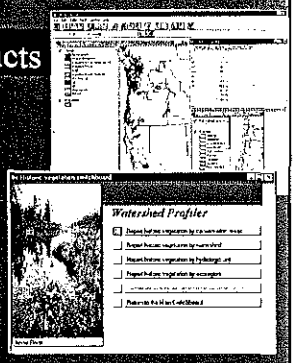


Oregon Biodiversity Project CD-ROM

GIS data and tools to explore biodiversity in Oregon

CD-ROM Products

- **Project Overview**
- **GIS Data and Software**
  - 76 GIS data themes
  - 2 GIS software packages
- **Watershed Profiler**
- **NatureMapping**



Biodiversity project applications

- **stimulate discussion**
- **help set priorities**
- **shape statewide vision**
- **establish benchmarks and accountability**

Biodiversity policies

- **ballot measure -- funding**
- **information management**
- **stewardship councils**
- **incentives**
- ***integrated planning***
- **"green planning" for sustainability**

New Framework

- More integrated information management
- Greater participation by private sector
- More cost-effective
- Clear goals with flexibility to meet them
- Greater responsibility by states
- Improved delivery of scientific information

State Management Option

- Conservation groups skeptical
- Develop comprehensive conservation plan
- Clear goals with local flexibility
- Reliable funding from state and federal agencies
- Credible monitoring
- Provision for scientific oversight

Regional Habitat Conservation Plans

- Multi-species, multi-landowner
- Incidental take permits granted to individuals
- Must accommodate "surprises"
- Adequately funded
- Articulate clear goals and monitor
- Independent scientific review

Conservation Area Designation

- **Convergence of ecological and social values**
- **Public and private lands--voluntary**
- **Eligible for incentives on priority basis**
- **Sustainable economic activity permitted**
- **Demonstrates best management**

Stewardship Agreements

- **Goal to move landowners up scale**
- **Landowners choose target**
- **Incentives linked to goals**
- **Agreements provide regulatory flexibility**
- **Could link to private certification programs**

Oregon Biodiversity Project

Overview

Project Goal

Develop a statewide strategy to conserve Oregon's native biological diversity.

Approach

Use geographic information systems (GIS) technology to assess biodiversity conservation needs at the statewide and ecoregion levels. Involve diverse interests in developing a conservation strategy with an emphasis on cooperative efforts and incentives for voluntary action.

Time Frame and Costs

Project initiated in 1994, final products released in 1998.
Total costs: approximately $1 million.

Project Administration

- Defenders of Wildlife

Partners and Cooperators

- The Nature Conservancy of Oregon
- Oregon Natural Heritage Program
- 40+ other cooperators

Steering Committee

- Dan Heagerty
  David Evans and Associates
- Tom Imeson / Terry Flores
  PacifiCorp
- Cathy Macdonald
  The Nature Conservancy of Oregon
- Fred Otley
  Cattle rancher
- Howard Sohn
  Sun Studs, Inc.
- Sara Vickerman
  Defenders of Wildlife

Major Products

- *Oregon's Living Landscape* (atlas)
- *Stewardship Incentives* (report)
- *Oregon Biodiversity Project CD-ROM* (data, tools)

Why a Biodiversity Project?

MOVING BEYOND SINGLES-SPECIES MANAGEMENT

Natural resource policy in Oregon has been driven by single-species management issues in recent years. First it was the spotted owl, then the marbled murrelet, followed by salmon and steelhead, and now bull trout. All are emblematic of broader problems that jeopardize the health of our natural systems and the human communities that depend on them.

Conservationists and resource managers alike have grown frustrated with this kind of crisis management. But no comprehensive strategy exists to prevent species endangerment and conserve biodiversity – in part due to a lack of common understanding of the larger issues we need to confront.

LOOKING AHEAD TO AVOID FUTURE CRISES

The best way to avoid future endangered species listings is to address conservation needs before they reach the crisis stage – while populations still retain some of their natural resiliency, and land managers still have some flexibility in responding to habitat conservation needs.

EXPANDING THE RANGE OF OPTIONS

By stepping back and getting a big-picture view of the problems, resource managers can explore opportunities to address multiple objectives through their conservation strategies. Strategies that transcend boundaries of ownership and jurisdiction offer individual land owners and resource managers a broader range of options, freeing them from the narrow constraints imposed by traditional regulatory processes.

WHY HASN'T THIS BEEN DONE BEFORE?

The simplest answer is that it hasn't been anyone's job. Most public institutions, like most private interests, have narrowly defined missions and responsibilities. And the technical challenges and costs involved in an undertaking of this magnitude are substantial.

Products

Oregon's Living Landscape: Strategies and Opportunities to Conserve Biodiversity

The centerpiece of the Oregon Biodiversity Project's four-year effort, this book is part atlas, part report: a mix of geography and conservation biology, technical analysis and common sense recommendations. The result is a concise and comprehensive overview of the state's biodiversity values and conservation challenges, together with a blueprint for future conservation strategies. Written for non-technical readers, the 220-page quality-bound paperback is illustrated with dozens of full-color maps and photos by some of the state's premiere photographers.

Available from Defenders of Wildlife; commercial distribution by OSU Press. $29.95

Stewardship Incentives: Conservation Strategies for Oregon's Working Landscape

This140-page, spiral-bound report explores a wide range of incentives for improving stewardship across the landscape, a key element of the Oregon Biodiversity Project's conservation strategy. The document focuses on lands that are used primarily for farming, timber production, urban development and other non-conservation purposes. It highlights dozens of existing and potential incentives to encourage land owners and resource managers to adopt more "biodiversity friendly" management practices.

Available from Defenders of Wildlife, $10.00

Oregon Biodiversity Project CD-ROM

This easy-to-use CD-ROM gives computer users direct access to the Oregon Biodiversity Project's data. Two different software programs included in the package allow novice and more advanced users to make maps and perform their own GIS analysis. A "watershed profiler" provides quick summaries of information on vegetation, at-risk species, land ownership and salmon for individual watersheds, sub-basins, ecoregions and conservation opportunity areas. *NatureMapping* software allows individuals to record and organize wildlife observations in a computerized data base.

Available from Defenders of Wildlife, $16.00

Funding

PROJECT COSTS

- $800,000 raised
- plus in-kind support
- total costs approximately $1 million

FUNDERS

Chevron Corp.
Defenders of Wildlife
ESRI, Inc.
Georgia-Pacific Corp.
Laird Norton Endowment Foundation
Meyer Memorial Trust
National Gap Analysis Program
National Fish and Wildlife Foundation
The Nature Conservancy of Oregon
Oregon Natural Heritage Program
PacifiCorp
Sequoia Foundation
Starker Forests, Inc.
Sun Studs, Inc.
U.S. Department of Defense / Legacy Program
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service
Weeden Foundation
Weyerhaeuser Company Foundation

Committees

Steering Committee

- Dan Heagerty
  David Evans and Associates
- Tom Imeson / Terry Flores
  PacifiCorp
- Cathy Macdonald
  The Nature Conservancy of Oregon
- Fred Otley
  Cattle Rancher
- Howard Sohn
  Sun Studs Inc.
- Sara Vickerman
  Defenders of Wildlife

Science Committee

- Duane Dippon, *Bureau of Land Management*
- Craig Groves, *The Nature Conservancy*
- Larry Irwin, *National Council for Air and Stream Improvement*
- Willa Nehlsen, *U.S. Fish and Wildlife Service*
- Reed Noss, *consultant*
- Janet Ohmann, *U.S. Forest Service*
- David Perry, *Oregon State University*
- Jim Rochelle, *Weyerhaeuser Co.*
- Mark Stern, *Oregon Natural Heritage Program*
- Tony Svejcar, *U.S. Agricultural Research Service*

Implementation Committee

- Ed Backus, *Interrain Pacific*
- Hugh Black, *U.S. Forest Service*
- Jim Brown, *Oregon Department of Forestry*
- Paula Burgess, *Governor's Natural Resources Office*
- Jody Calica, *Confederated Tribes of Warm Springs*
- Martin Goebel, *Sustainable Northwest*
- Steve Gordon, *Lane Council of Governments*
- Bianca Streif, *Natural Resources Conservation Service*
- Mike Graybill, *South Slough National Estuarine Research Reserve*
- Don Knowles, *Regional Ecosystem Office*
- Sue Kupillas, *Jackson County Commissioner*
- Bob Messinger, *Boise Cascade Corp.*
- John Miller, *Wildwood, Inc.*
- Geoff Pampush, *Oregon Trout*
- Russ Peterson, *U.S. Fish and Wildlife Service*
- Rudy Rosen, *Oregon Department of Fish and Wildlife*
- Elaine Zielinski, *U.S. Bureau of Land Management*

Analysis

CURRENT MANAGEMENT

Oregon's current network of conservation lands provides a relatively high level of protection for biodiversity values on a little less than 10 percent of the state's total area.

The Oregon Biodiversity Project classified most public lands on a scale of 1 to 10, based on management objectives, security, biodiversity values and size. Lands rated at the higher end of the scale (ratings of 8-10) account for 9.7 percent of the state. The bulk of these lands are found in mountain wilderness areas, the late-successional reserves established under the federal government's Northwest Forest Plan, and a few large parks and wildlife refuges.

HABITATS

Analysis of historic vegetation patterns indicates declines of more than 50 percent statewide among a half dozen general habitat types, including oak savannas and woodlands, wetlands, riparian habitats, bottomland hardwood forests, native grasslands and old growth conifer forests. Losses range up to 95 to 98 percent in some ecoregions.

Almost 45 percent of Oregon's major native vegetation types currently receive little or no formal protection. Types with less than five percent of their distribution in the current conservation network (lands rated 8-10) include such widespread habitats as ponderosa pine woodlands (4.1 percent), big sagebrush-bunchgrass (1.8 percent), oak woodlands (3.1 percent) and virtually all of the state's native grasslands.

In contrast, subalpine forests (70+ percent) are well protected, and most westside conifer forest types have more than 20 percent within the current conservation network.

AT-RISK SPECIES

More than 450 animal and plant species in Oregon are considered at-risk based on their classification as "critically imperiled," "imperiled," or vulnerable" under the Oregon Natural Heritage Program's ranking system. About five percent of these species, including the gray wolf, grizzly bear and condor, have already been lost from Oregon. Another 25 percent are relatively secure because of the nature of their habitat (i.e., cliff-dwelling plants) or current protection efforts. However, the vast majority of the species classified as at-risk by the Oregon Biodiversity Project remain highly vulnerable to loss. Although the Klamath Basin and the Willamette Valley are among the biggest "hot spots," at-risk species are found throughout Oregon.

Conservation strategy

Promote more biodiversity-friendly management

Improved stewardship across the "working landscape" – the forests, farms, rangelands, and urbanized areas where human uses dominate -- will help maintain basic ecosystem functions and processes, keep "common species" common, and reduce the risk of additional endangered species in the future.

Expand the existing network of conservation lands

The most certain way to ensure that species, habitats, and ecosystem processes are maintained over time is to devote some portion of the landscape to those specific purposes. Additions to the existing network of conservation lands should focus on habitat types that are not already well represented; site protection for species known to be sensitive or at-risk; and habitat needs of potentially vulnerable species.

Focus conservation actions on best opportunities

Investments in conservation need to be as effective and efficient as possible. That means directing conservation actions to areas that provide the best opportunities to maximize biodiversity values, minimize resource conflicts, and avoid future threats.

Provide conservation tools and incentives

Few landowners and resource managers are opposed to the goal of conserving biodiversity, but most have little knowledge of what they can do to help. Given good information, some will be willing to take action on their own. Others will need encouragement and assistance. The best way is through a system of financial and other incentives, rather than new regulatory processes.

Develop cooperative partnerships

No single government agency or private organization has the authority or financial resources to conserve Oregon's biodiversity on its own. Partnerships and cooperative arrangements can leverage limited resources, build bridges between different interests, and expand conservation efforts across traditional lines of ownership and jurisdiction.

Coordinate data collection and management

Collecting, managing, and interpreting the masses of data needed to understand biodiversity issues are major challenges. To be used and useful, data need to be compiled in consistent and compatible formats, with clear documentation of sources and quality. Data need to be accessible to a wide range of users and updated on a regular basis.

Expand public awareness and understanding

Right now, there are few clearly defined "constituencies" for biodiversity. But there is a large reservoir of potential support among Oregonians who value things associated with biodiversity: fish and wildlife, outdoor recreation, open spaces, clean air and water, and sustainable economies. The only way to connect these interests with biodiversity is through education.

Apply principles of adaptive management

Oregon's conservation strategy needs to be a dynamic one. The only way to make it work is to put it into action — to apply our knowledge to real-world conservation problems, honestly evaluate our successes and failures, and adjust our course accordingly.

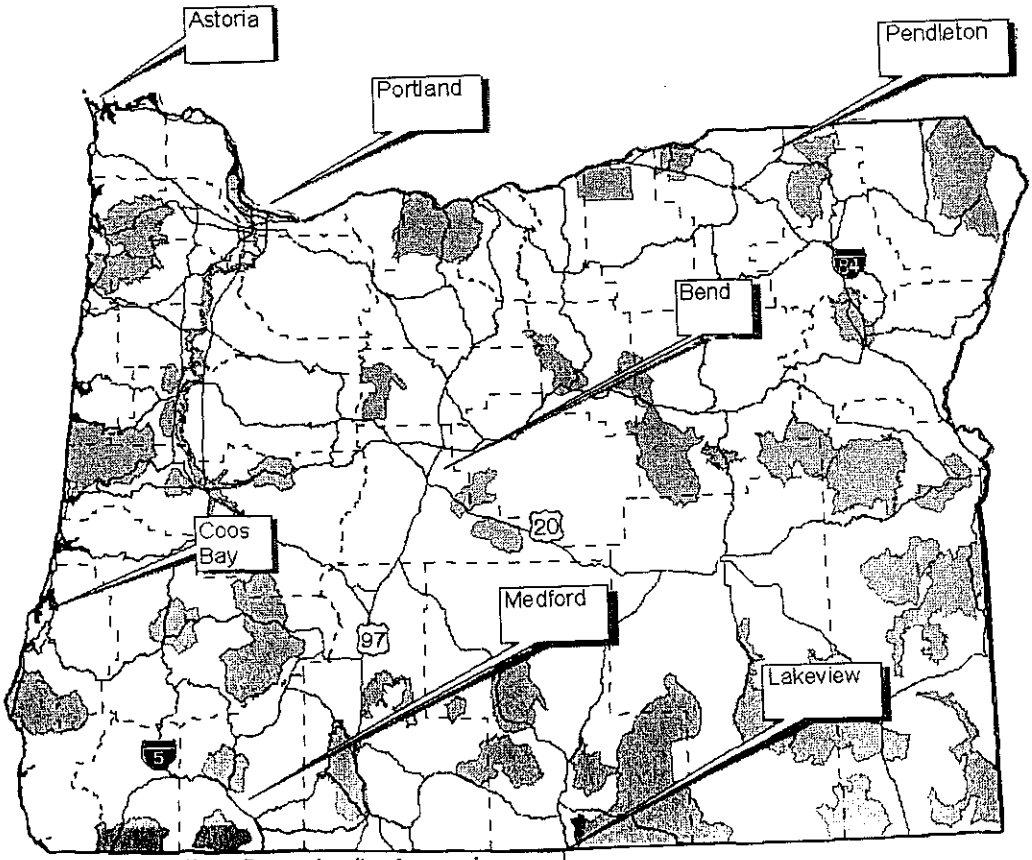
Conservation opportunities

IDENTIFYING TARGET AREAS FOR CONSERVATION ACTION

To help focus conservation efforts, the Oregon Biodiversity Project used GIS analysis and practical knowledge to identify 42 areas around the state that combine significant ecological values with realistic opportunities for conservation action.

These "conservation opportunity areas" typically include large blocks of native habitat and known locations of at-risk plant and animal species. Many encompass watersheds deemed critical for aquatic biodiversity by the Oregon Chapter of the American Fisheries Society. Most of the lands selected are not currently managed for biodiversity conservation. All offer opportunities for practical action to conserve biodiversity values, providing a starting point for a more strategic approach to conservation.

CONSERVATION OPPORTUNITY AREAS



Conservation Opportunity Areas in gray

Contacts

Defenders of Wildlife
503 / 697-3889

Sara Vickerman, *project director*
Bruce Taylor, *project manager*

Project Steering Committee

Dan Heagerty (chair), *David Evans and Associates*
503 / 223-6663

Tom Imeson, *PacifiCorp*
503 / 731-2194

Cathy Macdonald, *The Nature Conservancy of Oregon*
503 / 230-1221

Fred Otley, *Cattle rancher*
541 / 493-2702

Howard Sohn, *Sun Studs, Inc.*
541 / 673-0141

Oregon Venture Highlights Biodiversity

A cooperative Defenders undertaking charts a statewide conservation strategy

BY KRISTEN HANNUM

FORTY MILES SOUTH OF PORTLAND, Oregon, the Willamette Valley floor drops 60 feet to the ancient floodplain of the Willamette River. It's a reminder of what the valley was like in the early days, before the Army Corps of Engineers decided to tame the river.

Back then, the muddy, roiling Willamette, when swollen by spring snowmelt, could broaden to six miles wide. It carved braided channels through the rich soil that could become dead-end sloughs with the next flood's change of heart.

For centuries, Native Americans set fires here that raced through the valley, leaving it a broad, grassy, moist savanna filled with wildlife. Oregon's first white settlers built their homes here, and in 1834 Methodist missionary Jason Lee built a little wooden mission house that washed away in the great flood of 1861. Today, farmers lease about a quarter of 1,686-acre Willamette Mission State Park, established in 1973. Hazelnut groves, vineyards and freshly plowed fields of black, wet earth create a visitor's first impressions. A rustle and then a rush of movement behind a tangle of willows prove to be a fierce-eyed feral cat, which leaves a still-warm field mouse behind as it vanishes in a thicket. The cat, whose ancestors were domesticated in ancient Egypt, is emblematic of the non-native species here. It lives amid invasive reed canary grass that chokes out native vegetation along the sloughs and riverbanks, and it probably naps beneath the smothering deep green of Himalayan blackberry covering the hillsides.

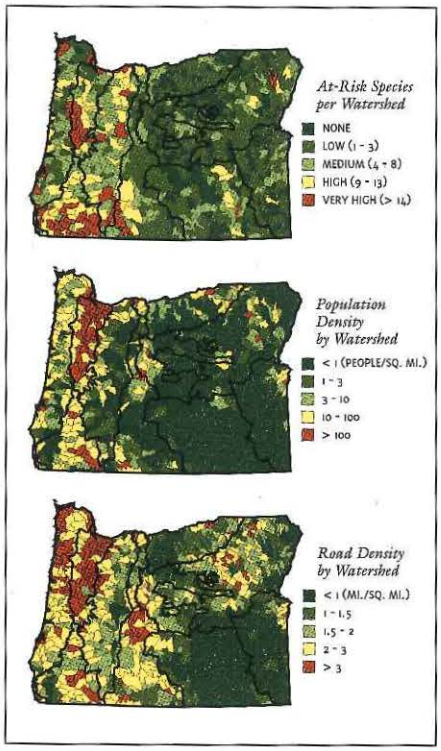
A closer look finds deer tracks marking the sandy trail to a slough. In the distance, a rough-legged hawk perches on a cottonwood at the edge of stubbled winter fields. Six feet away, a short-eared owl sits in the window of a wildlife blind, its buff-colored tail feathers slightly disheveled. It swivels its head to check a noise and then launches into flight over the marsh it had been surveying.

Willamette Mission State Park is the largest fragment of protected riverside along the 120-mile length of the valley. Its size and park status make it an excellent place for conserving biological diversity – a scientific term referring to the variety of life and the ecological processes that sustain it. The park is in fact one of 46 "conservation opportunity areas" designated for action by the Oregon

A rare patch of native habitat near Corvallis in western Oregon's Willamette Valley. More than 70 percent of the state's population lives in this valley, and less than one percent of the original native valley grasslands and savannas remains.

ED ALVERSON

Biodiversity Project, an ambitious collaborative effort managed by Defenders of Wildlife to develop a statewide strategy to conserve Oregon's biodiversity. The project's goal is to maintain or restore representative, ecologically healthy examples of all the state's native habitats, including the salt desert scrub of eastern Oregon, the Cascades' alpine meadows, Coast Range Sitka spruce forest and sand dune ecosystems along the Pacific Coast.



For Willamette Mission State Park, that means working with the state parks department, the Army Corps of Engineers and others to reconnect to the river a diked-off oxbow slough that was once the Willamette's main channel. Doing so would allow the river to flood here just as it did in Jason Lee's day and to reestablish natural ecological processes in this part of the Willamette Valley floodplain.

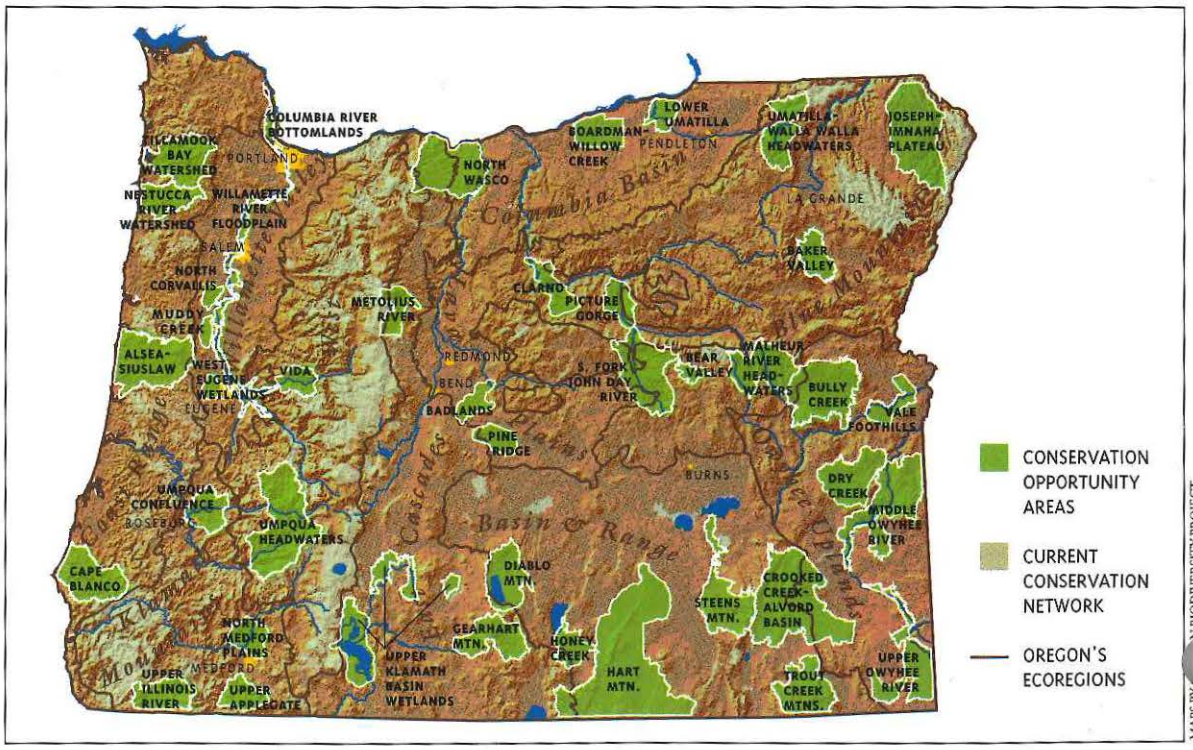
The Oregon Biodiversity Project was conceived in 1993 when Defenders' staff began working with The Nature Conservancy, the Oregon Natural Heritage Program and the Oregon Gap Analysis Program. The last is a joint federal-state effort to identify gaps in Oregon's current protection of its animal and plant species. Based at Defenders' West Coast office in Lake Oswego, a Portland suburb, the project's staff has been compiling information on the state's at-risk species and habitats. The task is critical because Oregon's biodiversity, like that of many other states, is in jeopardy. Indeed, the Oregon Department of Fish and Wildlife considers almost a quarter of Oregon's wildlife at some degree of risk.

The project staff set out to develop an overview of Oregon's habitats, species distribution, land ownership and management status, using modern computer technology to analyze a huge volume of data and to display the information in user-friendly map formats. This information was published recently as *Oregon's Living Landscape: Strategies and Opportunities To Conserve Biodiversity.*

Bruce Taylor, the project's manager and the book's principal author, describes the 138-page volume as "part atlas, part report; a mix of geography and conservation biology, technical analysis and common sense recommendations." Included are maps of dozens of landscape features such as historic vegetation, road densities and patterns of timber harvest. The project is also producing a CD-ROM with much of the same information in electronic form, including the computer database from which the project staff made the analyses.

These tools will be useful to policymakers, land managers and interested citizens. Potential users say this kind of comprehensive information is sorely needed. "We agree on the goals," says Jim Brown, director of the Oregon Forestry Department. "It's the 'how' we argue about."

Russell Peterson, supervisor of the Oregon field office of the U.S. Fish and



MAPS BY OREGON BIODIVERSITY PROJECT

The Oregon Biodiversity Project identified 46 conservation opportunity areas in ten ecoregions as good candidates for protecting biodiversity. Red areas on the three maps above show where species, humans and roads are most concentrated – all factors that influence conservation strategies.

ALAN D. ST. JOHN

The Fender's blue butterfly, endemic to the Willamette Valley, relies on Kincaid's lupine as its larval host plant.

Wildlife Service, says, "Now, instead of arguing whether there's a problem, there's arguing over what should be done."

"Having adequate information can help us plan strategically, rather than acting belatedly one endangered species at a time," says Sara Vickerman, Defenders' West Coast office director and the project's director. Vickerman, a politically minded and thoughtful environmentalist who can "policy wonk" with legislators and lobbyists of any persuasion, knew from the outset that the project would go nowhere if developed in isolation. Forty institutions, some public and some private, eventually cooperated in the project, and 32 individuals representing timber, ranching, electric power and conservation interests contributed to its committees. "If we didn't engage them from the beginning, the project's recommendations wouldn't happen in the real world," Vickerman says.

Although the project's cooperators are a diverse group with sometimes widely differing viewpoints, virtually all are agreed on the intrinsic value of biodiversity and the importance of addressing conservation needs before they reach the crisis stage. "In a sense, biodiversity can be likened to the fabric of life, made up of thousands of individual threads woven into a complex tapestry laid across the landscape," writes Taylor in the atlas. "In Oregon, as elsewhere, that fabric has begun to fray with the wear and tear of human use. The loss of a single thread (a species or habitat) may seem insignificant, but repeated many times over may weaken the fabric until it rips under stress, leaving the tapestry in shreds and scraps that can never be put together again."

How best to maintain the integrity of this complex fabric? Scientists offer two general approaches. The first and more traditional is known as a "fine-filter" approach. Usually taken after a species is already in crisis, it focuses on specific at-risk species at specific sites. The second, a "coarse-filter" approach, works to conserve entire ecosystems, thereby preserving most of the species living in those ecosystems.

Because of the immense scale of the undertaking, the Oregon Biodiversity Project staff chose the coarse-filter approach. The result is the project's identification of the 46 conservation opportunity areas around the state, each encompassing a sizable landscape with significant biodiversity values and opportunities to address multiple conservation objectives.

For instance, one conservation opportunity area in the East Cascades Ecoregion, the Upper Klamath Basin Wetlands, consists of an arc of lakes and marshes extending from the California border to the headwaters of the Klamath River system in south-central Oregon. These wetlands host the Pacific Flyway's millions of migratory birds. They also support one of the state's largest concentrations of at-risk plants, fish, birds and mollusks. Several large habitat projects now under way could restore more than 35,000 acres of wetlands here.

Across the state, on the Joseph-Imnaha Plateau in the Blue Mountains Ecoregion of northeastern Oregon, deep canyons slice through high-elevation grasslands. Here live more than a dozen at-risk plant and animal species, including the scarce wolverine and lynx. The Imnaha River and Joseph Creek support critical populations of Snake River salmon and steelhead in a cluster of watersheds identified as key "aquatic diversity areas" by the Oregon chapter of the American Fisheries Society. The privately owned Zumwalt Prairie on the plateau above the canyons is one of the largest remaining native grasslands in the Pacific Northwest.

Not surprisingly, the process of identifying conservation opportunity areas was much more complicated than anyone first imagined. The project's staff had data regarding distributions of individual species of wildlife, human population density, land ownership and the percentage of land covered by roads, but other important information just wasn't available. For example, how could one show the ways the landscape had been altered? How much land would be required to protect wildlife? How should such land be managed? And which private landowners would be amenable to managing their property with biodiversity goals in mind?

Even though it became clear that the project would not be able to come up with a concrete, easily mapped solution to every concern, Vickerman and her colleagues agreed it was important to make a start. "We decided that however imperfect it might be, a compilation and analysis of major elements of biodiversity statewide would help decision-makers take a broader view," she explains.

AS A STARTING POINT, the project divided the state into ten geographic ecoregions that are useful large units for analysis because their boundaries are based on physical features and conditions that often define distinctively different ecosystems. The staff then created a rating system to classify lands on the basis of their contributions to biodiversity conservation. Lands rated from eight to ten on a ten-point scale have high ecological values and are managed primarily for

biodiversity. These lands can be considered the existing conservation network. Lands rated from one to three are mostly urban and industrial areas. Private lands, with the exception of The Nature Conservancy's 53 Oregon preserves, were not rated. But most private lands, like most public lands, would fall into the four to seven range. Private lands in this range are typically farmland, forestland and rangeland, primarily used for commodity production but also retaining significant value for native plants and animals.

Retired Weyerhaeuser forester Jim Rochelle, a member of the project's science committee, was pleased to see the project acknowledge that lands managed for commodity production can contribute to biodiversity. Like many rural Oregonians, he believes saving land from urban sprawl or vacation-home development should be the first priority.

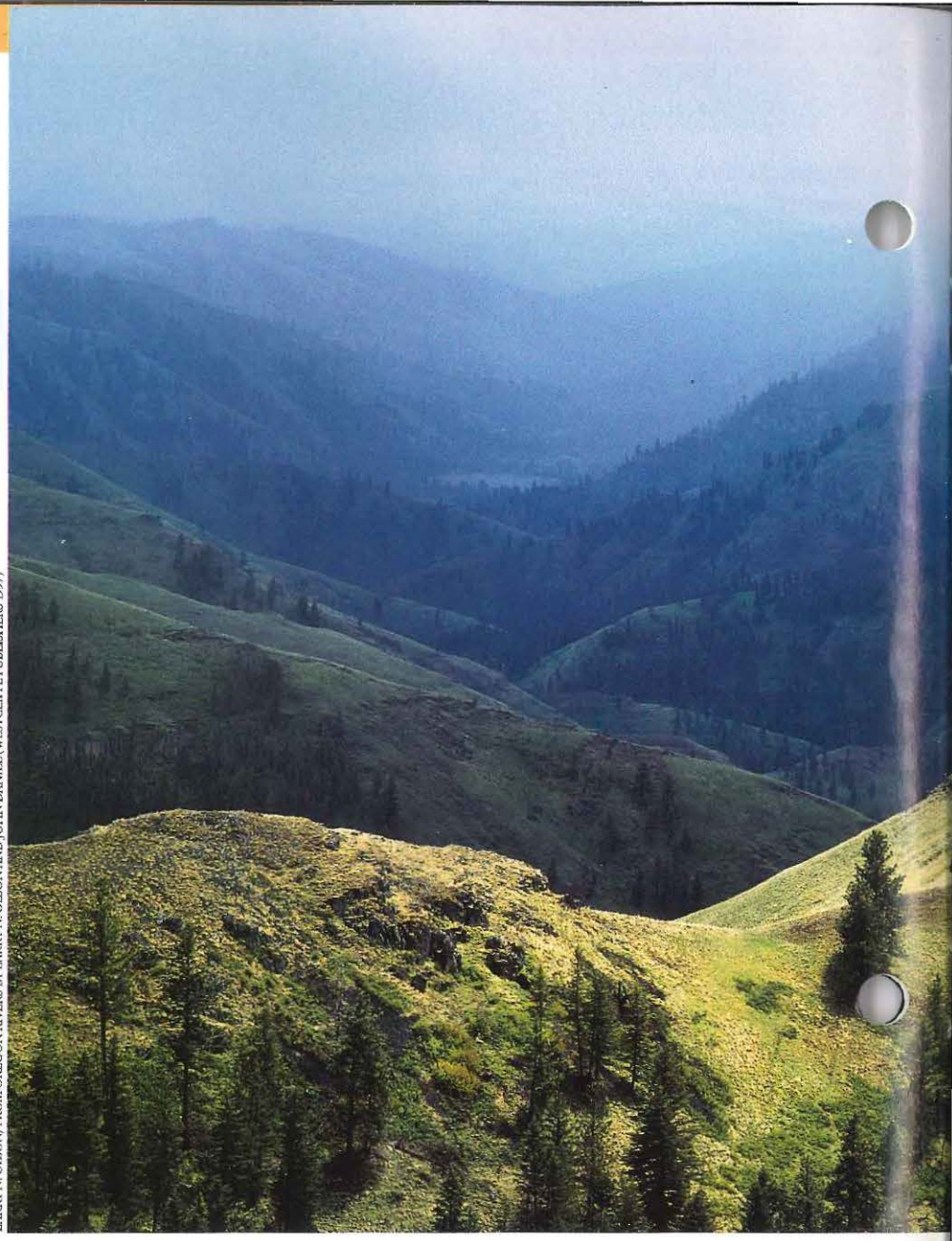
The results of the project's analysis verified what many have suggested all along. Staffers found that alpine sites are well-protected compared with low-elevation lands. In western Oregon's three largely forested, mountainous ecoregions – the Coast Range, Klamath Mountains and West Cascades – 25 percent of the land is rated high for biodiversity management. Compare that with the state's two fertile low-elevation ecoregions – the Willamette Valley and Columbia Basin: Less than one percent of the Willamette Valley and less than two percent of the Columbia Basin are now managed for biodiversity. Land in these ecoregions was developed long ago mostly for agriculture, and today more than 70 percent of the state's human population lives in the Willamette Valley.

The project identified one low-elevation exception to the rule. Near Boardman, a Columbia River town in northern Oregon, a soon-to-be-decommissioned Navy bombing range contains some of the last large remnants of low-elevation native grasslands and shrub-steppe habitats in the vast Columbia River Basin Ecoregion. An adjoining 100,000-acre block of state land also retains significant native habitat. The project identified these lands as offering a prime opportunity for biodiversity conservation.

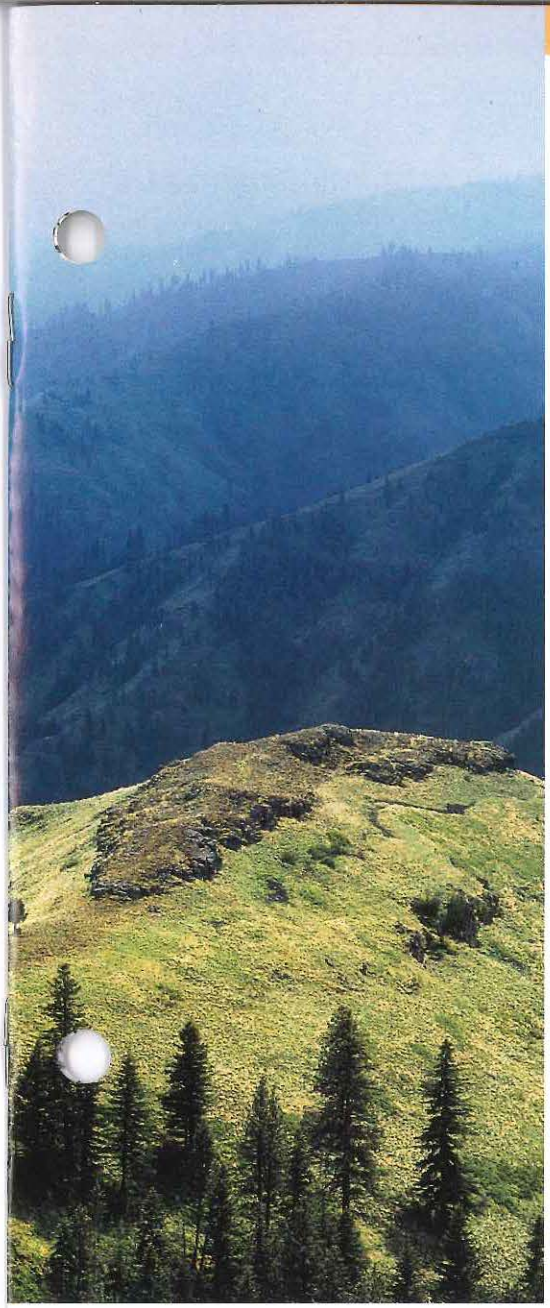
Also grossly underprotected are semi-arid eastern rangelands. In southeastern Oregon's Basin and Range Ecoregion, less than three percent of hundreds of thousands of acres of sagebrush steppe is in biodiversity management categories eight to ten. Similarly, the existing conservation network accounts for less than three percent of the adjoining Owyhee Uplands Ecoregion. The situation is even worse in central Oregon's Lava Plains Ecoregion, where management emphasizes biodiversity on only two percent of the public land. The dominant use of these areas is livestock grazing.

More cattle than people see the problems in eastern Oregon. Seven of eastern Oregon's 17 counties have fewer than three people per square mile. Until the Oregon Biodiversity Project documented this region's huge gaps in biodiversity protection, the problems were easy to underestimate.

Vickerman and Taylor both believe that the project's data show that much of Oregon's conservation energy must be directed toward lands east of the Cascade Mountains, even though the crises there are less apparent than those to the west. Understanding the problems in eastern Oregon takes a trained eye. To someone coming upon a clearcut on the east slope of the Cascades, the impact on the landscape is obvious. But the same person, confronted with the vast shrub-steppe of the Basin and Range Ecoregion, cannot see the profound alteration from its historic condition. Yet entire landscapes in eastern Oregon are today dominated by invasive, non-native cheatgrass and star thistle.



LARRY N. OLSON/FROM *OREGON RIVERS* BY LARRY N. OLSON AND JOHN DANIEL (WESTCLIFFE PUBLISHERS 1997)



"We're faced with challenges on the east side that have barely begun to be addressed," says David Dobkin, founder and executive director of the High Desert Ecological Research Institute in Bend, Oregon. Dobkin says the most promising landscapes for species conservation are big areas that already function well ecologically and often adjoin already protected areas. "We need to think at bigger spatial scales and in longer terms in order to accomplish meaningful, long-term conservation of biodiversity," he says.

This doesn't necessarily mean making huge tracts of the landscape off limits to ranchers and logging. The project's partners all agree that in the long run, economic stability and environmental stability will go hand in hand. "We wanted to get away from that 'either-or' mentality that all too frequently polarizes people and prevents them from moving forward," says Vickerman.

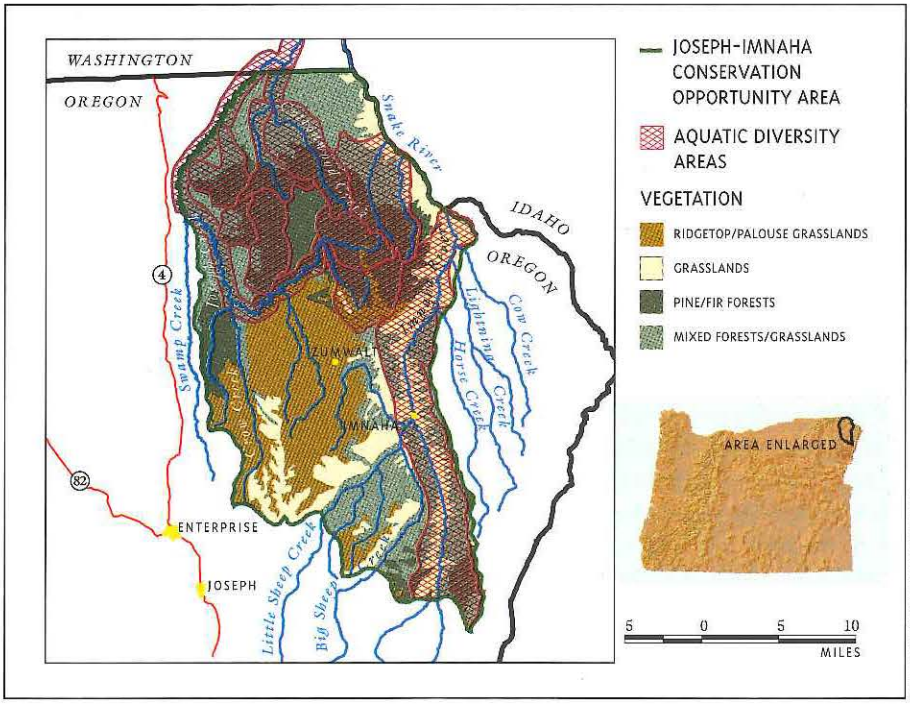
As a result, the staff earned a reputation for being constructive partners in the dialogue on how to balance ecological needs with economic concerns. "Sara was willing to listen, and learned sometimes," says Weyerhaeuser's Rochelle. "Defenders of Wildlife – the name sets people off, but they're reasonable," he said in an aside that illustrates the rural and resource-based community's attitude toward "environmentalists."

The project has received financial help from four timber companies, including Weyerhaeuser, and has involved representatives of timber and ranching on the project's advisory and steering committees. "They don't agree with everything we say, but I think they feel comfortable with the process," says Vickerman of the private commodity interests. This collaborative approach isn't without its critics, who charge that its compromises betray environmental goals and cannot replace protection standards.

The critics have legitimate concerns, concedes Ken Bierly, director of Oregon Governor John Kitzhaber's Watershed Enhancement Board. "There must also be protection standards," he says. "Most development means permanent loss. But if we're trying to achieve common goals, it's impossible to get there without working collaboratively."

With a commitment to collaborative problem-solving, the staff began thinking about how the project's goals for managing land for biodiversity values could best be achieved. "This got us into the incentives issue," says Vickerman.

Ironically, the tools available for conservation, such as land acquisition, exchanges and easements, management agreements and cost sharing, are essentially the same ones used by developers to develop land, which can have serious consequences for biodiversity. The project staff concluded that what was needed was a menu of incentives to make these tools as appealing to landowners and resource managers as they are to developers. With that in mind, the staff set



The Joseph-Imnaha conservation opportunity area in the Blue Mountains Ecoregion stands out for its native grasslands and its contribution to the state's aquatic diversity, which includes Snake River salmon, bull trout and redband trout. Above left, a view of the stunning Joseph Creek drainage shows how these mountains got their name.

about collecting dozens of possible incentives. As an example, one incentive offers tax benefits to "hobby farmers" who protect natural resources on their farms. Fred Otley, a rancher on the project's steering committee, suggested "stewardship exchange programs" in which responsible landowners would receive preferential access to public land. Willamette Valley landowner and advisory committee member John Miller suggested that farmers who restore wetlands on their property be made eligible for additional water rights to compensate for their lost revenue.

Vickerman is especially enthusiastic about a new state law authorizing reduced property tax rates for landowners who conserve habitat under plans approved by the Oregon Department of Fish and Wildlife. "With this law," Vickerman asserts, "we can approach willing landowners in our targeted conservation opportunity areas and help them improve management to conserve biodiversity."

Another promising idea is establishing a statewide "stewardship council." The council could be appointed by the governor to address natural resource issues and important policy issues such as funding, information management and integrating land use planning. "There are lots of individual conservation efforts going on around the state," explains Vickerman, "but no one entity is responsible for examining the larger context." The council would address fundamental questions that cut across agency boundaries and economic sectors. This could facilitate local and regional partnerships. Vickerman and others regard this concept as central to advancing incentives as a conservation tool in Oregon.

These and other incentives are outlined in a second volume produced by the project, *Stewardship Incentives: Conservation Strategies for Oregon's Working Landscape.* Its 139 pages offer private landowners practical methods for conserving biodiversity and highlight some of the contributions they are already making. Many of the incentives outlined in the book have broad application and could be implemented in other states. In fact Defenders is publishing a national adaptation of the Oregon book, *Stewardship Incentives: Conservation Strategies for U.S. Landowners.*

Oregon isn't the only state where people are working together to find a way to save biodiversity. Other states have launched similar projects, although few have put together data and a collaborative process in the way the Oregon Biodiversity Project has, and none is as far along in developing a statewide conservation strategy. Peter Brussard of the University of Nevada, Reno, director of the Nevada Biodiversity Project, says every state is different, with its own political quirks and agency strengths and weaknesses. "Anything that interferes with 'business as usual' in Nevada is taboo," he says. "If you're not 100 percent for the ranchers, you're against them."

GEOFF PAMPUSH

ALAN D. ST. JOHN

BETH DAVIDOW/VISUALS UNLIMITED

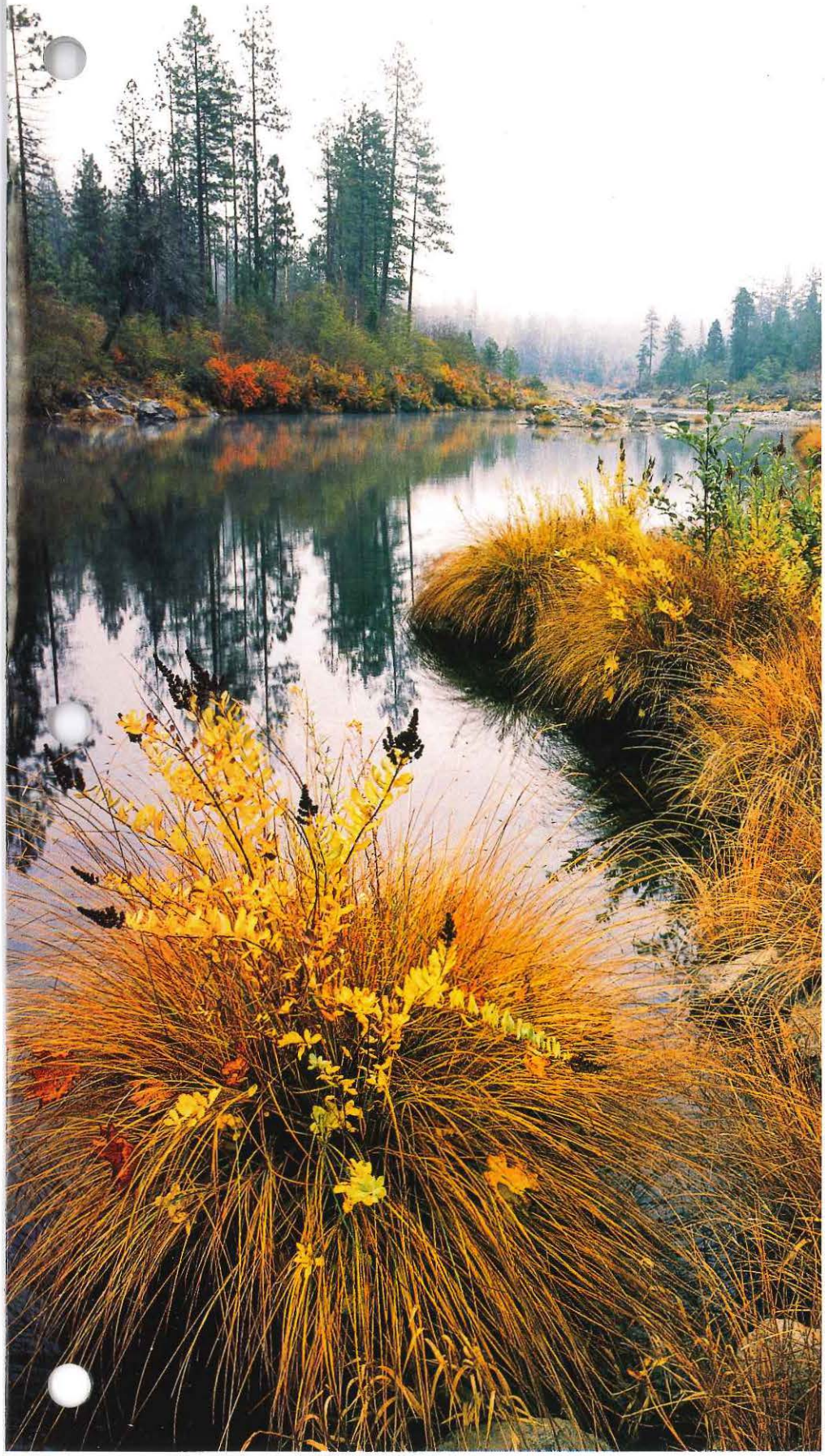
The western meadowlark, Oregon's state bird, is declining in the Willamette Valley because of development pressures. The once-widespread spotted frog is at risk statewide. The American beaver, the state mammal, plays a major role in the health of watersheds.

Even though 85 percent of Nevada is public lands, Brussard says most of the state's "critters" are on private lands because that's where the water is. He hopes to produce a stewardship incentives publication for Nevada similar to the one for Oregon. Brussard warns that the Oregon Biodiversity Project's staff now has the challenge of selling its ideas to policymakers and other parties. "They've got to get people to use the report," he emphasizes.

Some ideas on how to do that are already springing to mind among participants in the Oregon project. Tony Svejcar, a scientist with the U.S. Agricultural Research Service in Burns in eastern Oregon, believes the project's maps and data may help ranchers and agencies obtain habitat restoration funds from the U.S. Department of Agriculture's Natural Resource Conservation Service. Such funds typically are used to pay farmers or ranchers to take lands out of production, but the programs have not been applied in a strategic fashion.

Director Jim Brown of the Oregon Department of Forestry says that for him the project's publications have come at an ideal time. Governor Kitzhaber has asked him to participate in a process to evaluate the potential for Oregon to adopt more goal-oriented environment planning. Brown intends to use the project's information to help move the state toward "green planning." Used successfully in the Netherlands and New Zealand, green planning develops targets – reducing pollution, for example – for economic sectors and then forgoes regulation provided the sectors meet their targets.

Martin Goebel, director of Sustainable Northwest, a nonprofit organization in Portland, says efforts like the Oregon Biodiversity Project could bridge an important gap by helping rural people think of themselves as environmentalists with a strong commitment to



LARRY N. OLSON/FROM *OREGON RIVERS* BY LARRY N. OLSON AND JOHN DANIEL (WESTCLIFFE PUBLISHERS 1997)

Aquatic ecosystems in the Klamath Mountains Ecoregion, such as the Illinois River, have suffered widespread degradation, and several species of native fish have been listed or proposed under the Endangered Species Act.

protecting species and improving natural habitats. Rural residents generally live closest to the land, and Goebel says they believe they know best how to manage it. "Sometimes that's true," he says. "You couldn't do a better job than some of them are doing. Other times I'm appalled at the land's condition."

The Nature Conservancy's Oregon stewardship director, Cathy Macdonald, thinks it's time for Oregonians – environmentalists, scientists, politicians and concerned citizens – to take the project's "big picture" information back to their local communities. "Now we need to take this to the next step, county by county, watershed by watershed," agrees Sustainable Northwest's Martin Goebel. Defenders and its partners now are working to make sure that the Oregon Biodiversity Project's findings do find their way into the hands of landowners and resource managers who can translate the recommended conservation strategy into on-the-ground actions to protect and restore native habitats. And the response so far has been encouraging.

STANDING BY THE world's largest cottonwood in the milky light at Willamette Mission State Park, Bruce Taylor thinks he can see part of the past turn into the future. Park officials are now planning to restore some of the floodplain wetlands. In another generation, the park should be a lush bottomland hardwood forest, fed by a dynamic river system. "This area's been settled for 165 years," Taylor muses as chickadees busy themselves in the willows around him and a river ferry clangs in the distance. "It seems fitting that it may be restored to something that the first settlers of Oregon would recognize." □

Kristen Hannum is a freelance writer based in Portland, Oregon.

DEFENDERS OF WILDLIFE gratefully acknowledges the support of the following:

Department of Defense Legacy Program
Environmental Systems Research Institute, Inc.
Georgia Pacific
Laird Norton Endowment Foundation
Meyer Memorial Trust
National Biological Service
National Fish and Wildlife Foundation
Oregon Natural Heritage Program
PacifiCorp
Sequoia Foundation
Starker Forests
Sun Studs, Inc.
The Nature Conservancy of Oregon
U.S. Environmental Protection Agency/ Oregon Department of Fish and Wildlife
U.S. Fish and Wildlife Service
Weeden Foundation
Weyerhaeuser, Inc.

ORDER FORM

Oregon's Living Landscape: Strategies and Opportunities to Conserve Biodiversity. A full-color atlas and narrative, 210 pages. Paperback, $29.95 + postage (book rate: $3.00 for first book, $1.00 for each additional or call for UPS rate). Enclose check, money order or credit card information, or pay with Visa or Mastercard by phone at 541-737-3166 or fax at 541-737-3170.

Name _____ Visa or Mastercard Number _____

Address _____ Exp. date _____

City/State/Zip _____ Signature _____

Phone _____ Total $ _____

Mail to: Oregon State University Press · Dept. DW · 101 Waldo Hall · Corvallis, OR 97331-6407

To order other materials, call Defenders of Wildlife's West Coast office at 503-697-3222:
Oregon Biodiversity Project CD-ROM ($16, contains an overview and interactive data).
Stewardship Incentives: Conservation Strategies for Oregon's Working Landscape ($10, 138-page report).
National Stewardship Incentives: Conservation Strategies for U.S. Landowners ($12, 100-page report).

PLEASE PHOTOCOPY FORM TO AVOID CUTTING PAGE

Printed on recycled paper.

1999-01 Budget Overview

Presented to the

Environmental Quality Commission

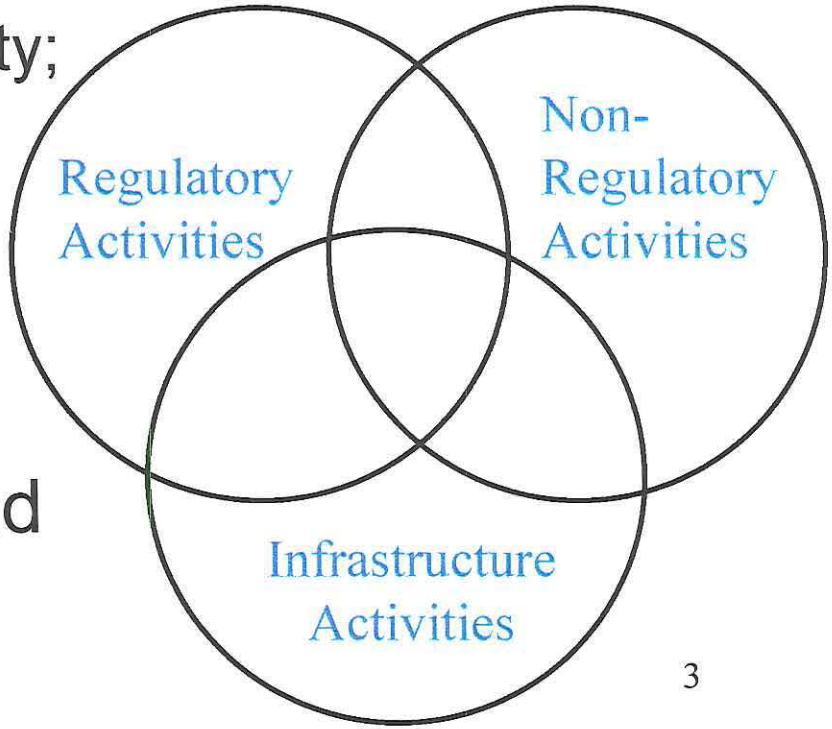
Helen Lottridge
Management Services Division Administrator

January 29, 1999

- Conservative: 6.6% increase from 97-99
- Minimal fee increases
- Indexing fees to CPI for stability
- Guided by environmental priorities….but
- Little flexibility

Long-Term Funding Plans

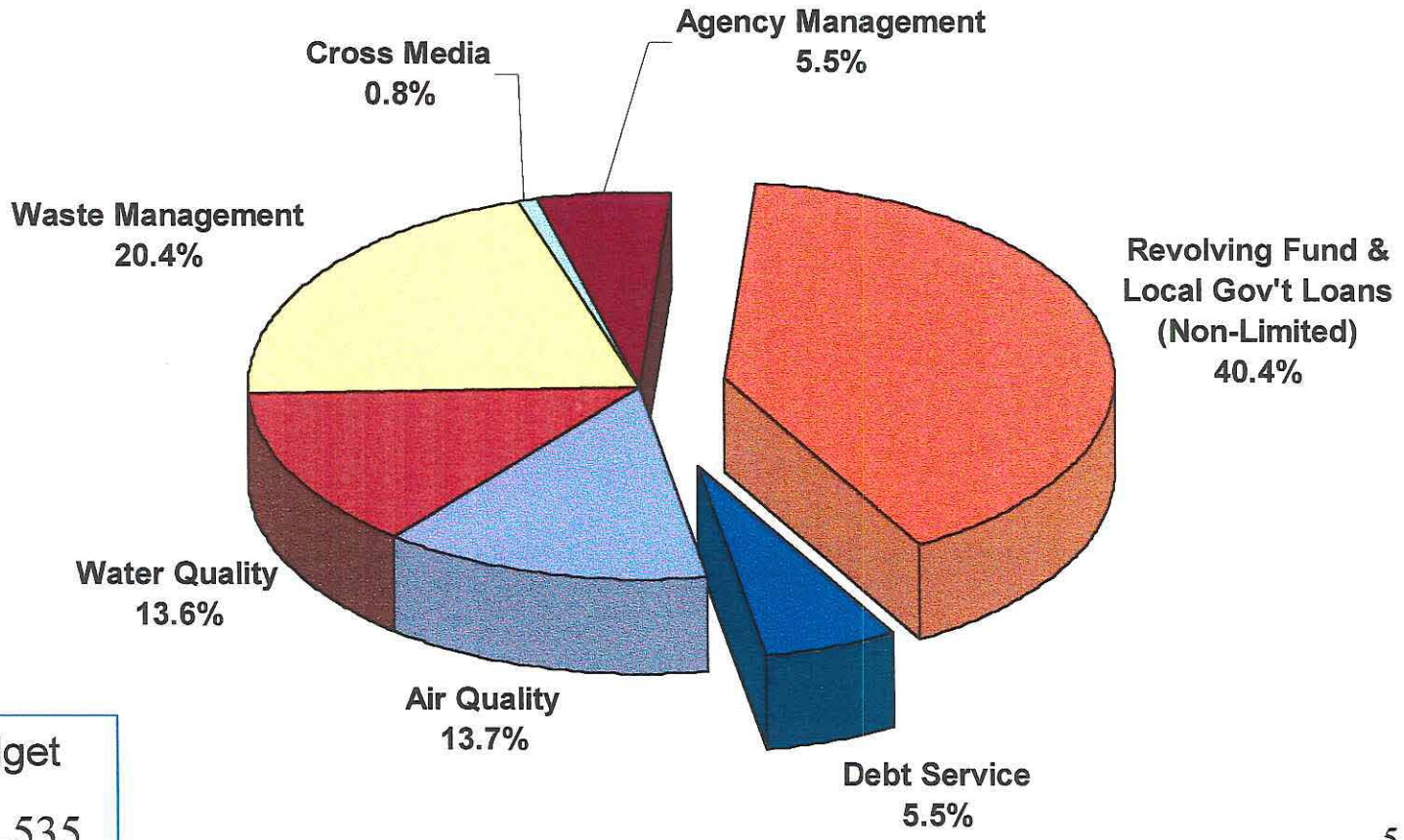
- 5 Principles
  - Stability; Efficiency; Flexibility; Environmental Sensitivity; Equity
- Good mix of funding
- Alternative to General Fund



Short-Term Steps

- Index fees
- Minimize other fee requests
- Request General Fund for nonpoint source work, budget "holes", computer updates
- Participate in other efforts

Total Budget



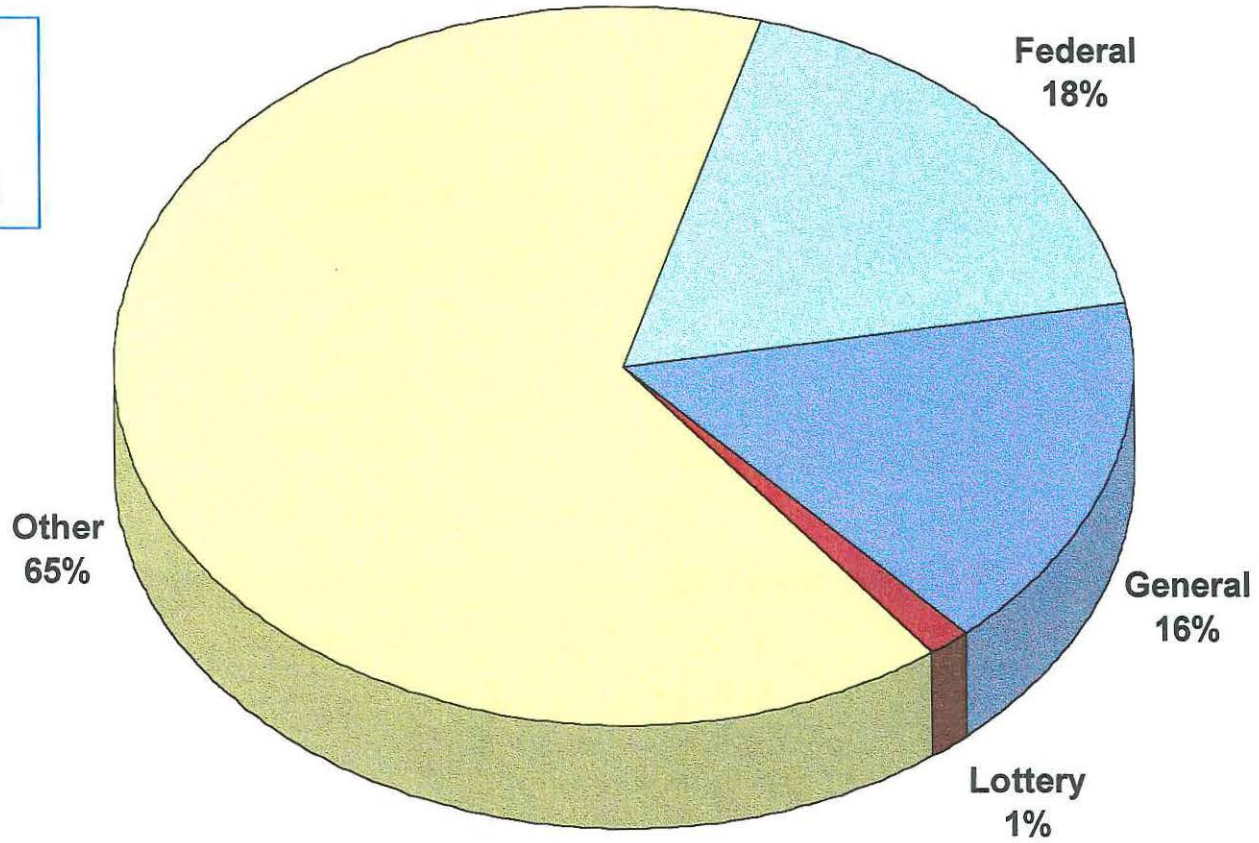
Total Budget

$300,138,535

1999-01 Funding Sources

Operating Budget

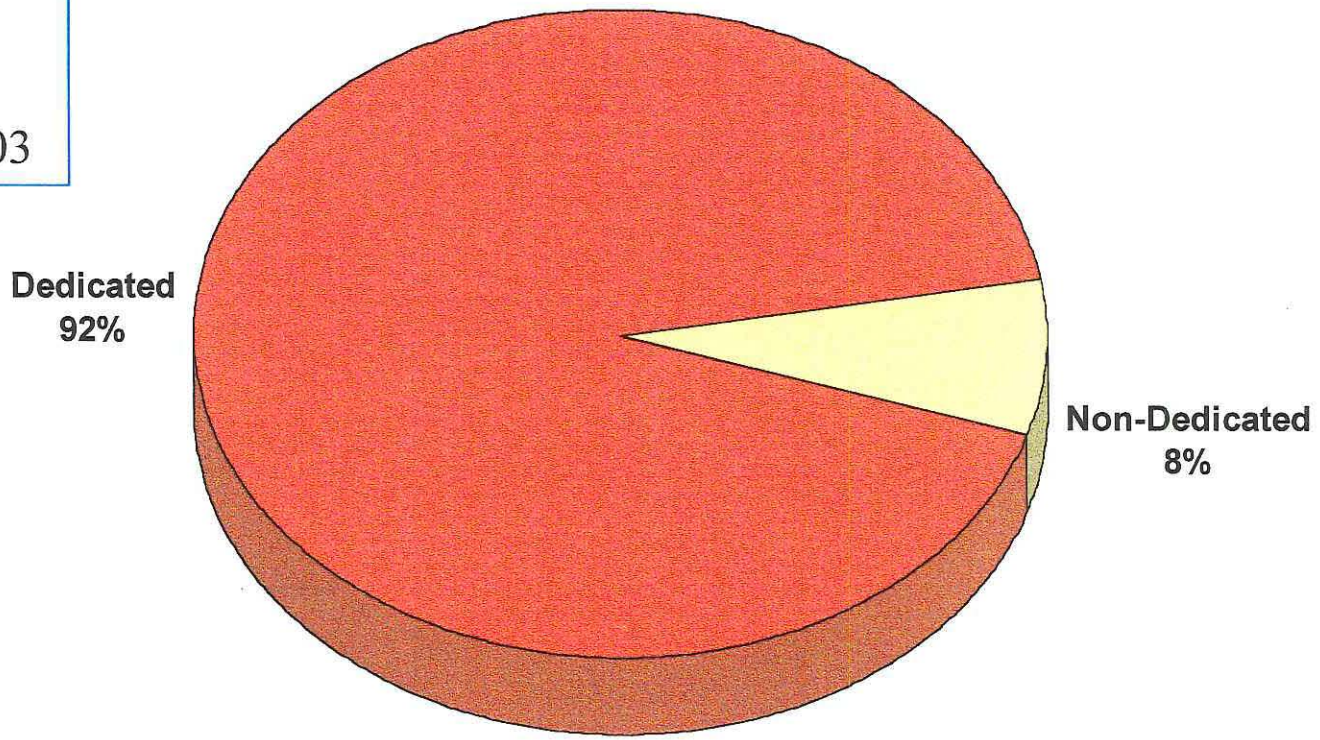
$162,231,503

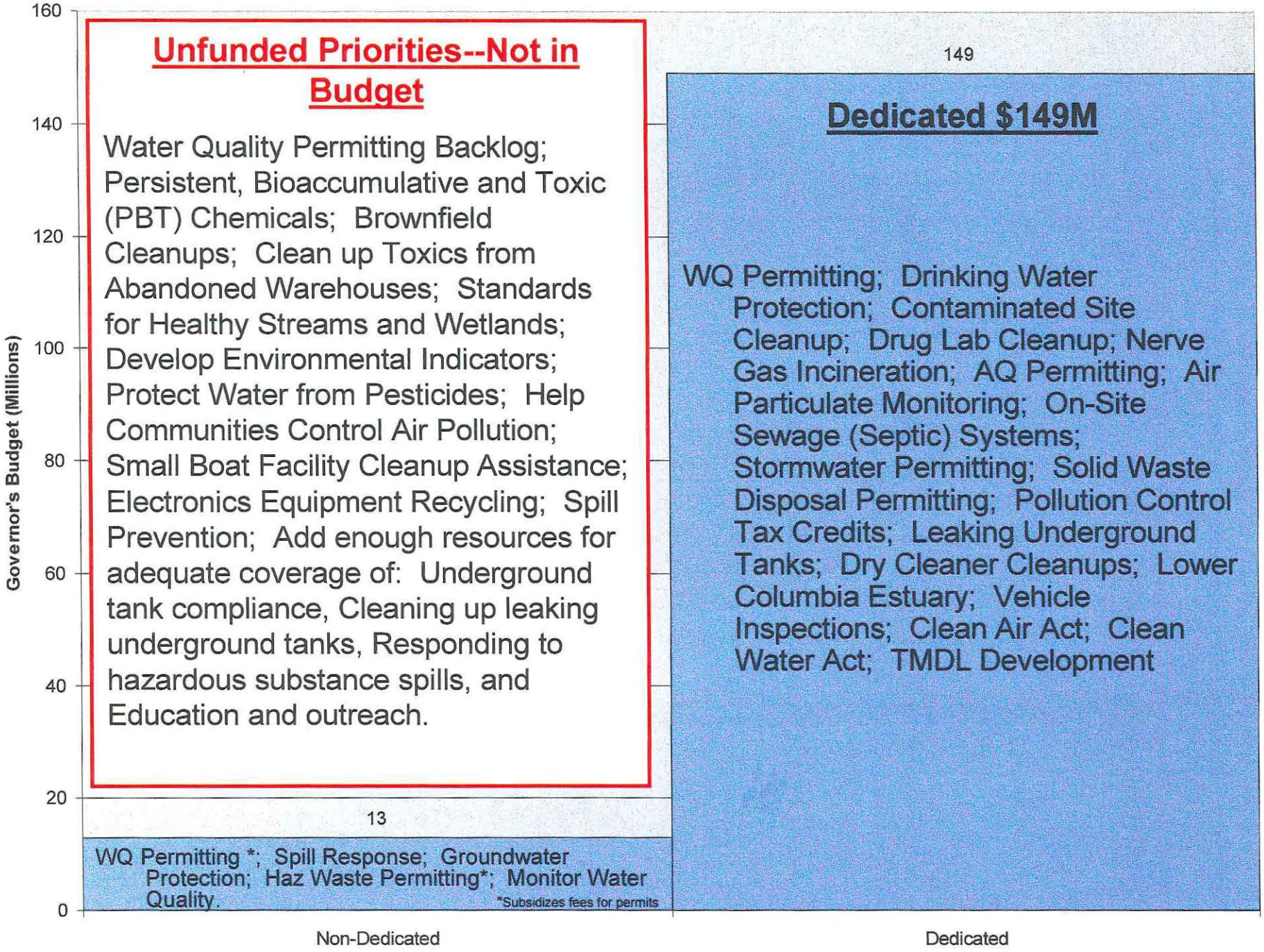


Little Flexibility

Operating Budget

$162,231,503




Governor's Budget (Millions)
160
140
120
100
80
60
40
20
0
Unfunded Priorities--Not in Budget
Water Quality Permitting Backlog; Persistent, Bioaccumulative and Toxic (PBT) Chemicals; Brownfield Cleanups; Clean up Toxics from Abandoned Warehouses; Standards for Healthy Streams and Wetlands; Develop Environmental Indicators; Protect Water from Pesticides; Help Communities Control Air Pollution; Small Boat Facility Cleanup Assistance; Electronics Equipment Recycling; Spill Prevention; Add enough resources for adequate coverage of: Underground tank compliance, Cleaning up leaking underground tanks, Responding to hazardous substance spills, and Education and outreach.
13
WQ Permitting *; Spill Response; Groundwater Protection; Haz Waste Permitting*; Monitor Water Quality.
*Subsidizes fees for permits
149
Dedicated $149M
WQ Permitting; Drinking Water Protection; Contaminated Site Cleanup; Drug Lab Cleanup; Nerve Gas Incineration; AQ Permitting; Air Particulate Monitoring; On-Site Sewage (Septic) Systems; Stormwater Permitting; Solid Waste Disposal Permitting; Pollution Control Tax Credits; Leaking Underground Tanks; Dry Cleaner Cleanups; Lower Columbia Estuary; Vehicle Inspections; Clean Air Act; Clean Water Act; TMDL Development
Non-Dedicated
Dedicated

Budget Targets Priorities

- **Fish and Water** **24.5 FTE**
  - Wastewater Permitting
  - Lower Columbia Estuary
  - Willamette River Restoration
  - Portland Harbor / Contaminated Sediments

- **Clean Air** **93 FTE**
  - Permits
  - Asbestos Certification
  - Heavy Diesel Testing
  - Particulates in Air
  - Vehicle Inspections

Problem-Solving in Communities

- **Human Health and Municipal Infrastructure 38.2 FTE**
  - Community Solutions Team
  - Onsite Sewer Systems
  - Safe Drinking Water
  - Hydroelectric Projects
  - Groundwater Protection
  - Regional Air Quality
  - Emergency Spill Response
  - Umatilla Nerve Gas Incineration
  - Petroleum Tanks

Critical Support

- **Science, Monitoring and Information Sharing**
  10.6 FTE

- **Employee Safety, Human Resources and Central Services** **1 FTE**

Operating Budget Snapshot

	FTE	$
1997-1999 Approved Budget	**739.07**	**152M**
Reduction/Adjustment Packages	- 35.97	
Air Quality	15.27	
Vehicle Inspection	83.0	
Water Quality	36.05	
Waste Management and Cleanup	13.55	
Sediments, Community Solutions	12.75	
Agency Management	6.00	
1999-2001 Budget Request	**869.72**	**162M**

Summary

- **Conservative Budget**
- **Guided by Environmental Needs**
- **Little Flexibility**

- ***Critical Factor: Fee Indexing***

Approved_____
Approved with Corrections__X__

Minutes are not final until approved by the EQC

Environmental Quality Commission
Minutes of the Two Hundred and Seventy-Fourth Meeting

December 30, 1998
Special Phone Meeting

On December 30, 1998 the Environmental Quality Commission met via phone to discuss one agenda item. The following Environmental Quality Commission members were present:

Carol Whipple, Chair
Melinda Eden, Vice Chair
Linda McMahan, Member
Tony Van Vliet, Member
Mark Reeve, Member

Also present were Shelley McIntyre, Assistant Attorney General, Oregon Department of Justice (DOJ); Langdon Marsh, Director, Department of Environmental Quality (DEQ); and other staff from the department.

Note: The Staff report presented at this meeting, which contain the Department's recommendations, is on file in the Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204. Written material submitted at this meeting is made a part of the record and is on file at the above address. These written materials are incorporated in the minutes of the meeting by reference.

Chair Whipple called the meeting to order at 2:03 p.m.

Tax Credits

The tax credit applications were discussed individually.

4926 Balzer Painting

Commissioner Reeve commented that the goal of purchasing a system to avoid requirement for permit should be noted. The Commission asked for commentary changes at the December 11 EQC meeting and they were completed. Commissioner Reeve made a motion to approve tax credit application 4926. Commissioner Van Vliet seconded the motion and the motion carried with five "yes" votes.

4946 Georgia Pacific

Commissioner McMahan asked if we normally grant tax credits for repairs and replacing parts on previously existing facility that has not claimed a tax credit. The Department does grant tax credits for increased prevention. The precipitator is a new unit and the recovery boiler repair was not recommended for approval. Commissioner Reeves questioned the allocation of indirect costs. Staff clarified that the allocation and the method of allocation were determined jointly by staff and the applicant. Commissioner Van Vliet made a motion to approve tax credit application 4946. Commissioner Reeve seconded the motion and it carried with five "yes" votes.

4948 Georgia Pacific

Commissioner Van Vliet voiced a concern that the rebuild and modification of #3 machine is actually considered for a tax credit. He further questioned the fact that there is nothing to stop the facility from going back to the use of virgin pulp on this same machine; therefore not using it for it's intended purpose of increasing the use of waste pulp. Mr. Seton of SJO Consulting Engineers, the reviewer for the Department, explained that to get additional tonnage and handle the short fiber stock GP needed to make major changes to the paper machine and the press section was the largest single cost. Both Commissioners Reeve and Van Vliet stated that this possibly failed the sole purpose test. Staff indicated the broader implementation of the statute and rule provided to solid waste facilities. Bill Bree, staff solid waste reviewer, said these modifications were done solely for the purpose of using new 600 tons of pulp – pulp that would have been solid waste otherwise. Oregonians produce well over 600 tons of waste pulp as cardboard each day and this waste pulp is distributed to 3 mills in Oregon. Commissioner Reeve

made a motion to approve tax credit application 4948. Commissioner McMahan seconded the motion and it carried with four "yes" votes. Commissioner Van Vliet voted no.

4947 Georgia Pacific - West

The Chair asked if the applicant had any comments regarding the denial. They said they did not. Commissioner Eden made a motion to deny tax credit application 4947. Commissioner McMahan seconded the motion and it carried with five "yes" votes.

Audit Discussion

A discussion ensued about an audit mechanism to make sure the facilities were used as intended. Ms. Vandehey stated that the certificate and the statute state it is the responsibility of the certificate holder of a facility to report any changes in usage. Also, the subject of auditing and revisiting certified facilities has been discussed. However, funding and lack of staff has always been an impediment to seriously considering any type of follow-up during the course of the certificates life. Chair Whipple asked why it would be our responsibility to audit as opposed to the Oregon Department of Revenue (DOR). The DOR does not have funding to specifically audit tax credits and the only time a tax credit would be reviewed is if the tax payer's return were audited.

4993 Lamb Weston

Commissioner Reeve questioned if Lamb-Weston should receive a 100% tax credit considering Oregon Potato Company (OPC) will be reimbursing part of the cost over time. OPC does not and will not have an ownership in the Lamb-Weston facility nor will they be able to depreciate the asset. The payments are in return for processing dirty potato wash-water through the facility prior to discharge to the Port of Morrow system. Commissioner Reeve made a motion to approve tax credit application 4993. Commissioner *Eden* seconded the motion and it carried with "five" yes votes.

5075 Hyundai Semiconductor America

Hyundai American Semiconductor, Inc.'s application 5075 was postponed from the December 11, 1998 Commission meeting. In the that Review Report, staff recommended that ductwork in the amount of $10.8 million not be certified as an eligible cost. After listening to staff and the applicant's representatives, the Commission asked Hyundai to estimate the incremental cost of the ductwork over and above what was required by OSHA and the Uniform Fire Code. Jeff Schilling of PricewaterhouseCoopers provided the post EQC meeting information Submittal on December 21, 1998. The information provided by the applicant and the method used to determine the incremental cost of ductwork for pollution control were not adequate for the Department to provide a deliberative response to the Commission. A two-way dialogue with the Department's engineers and the Hyundai's engineers did not take place due to the holidays and the lack of lead-time in receiving the submittal.

Staff recommended the Commission allow Hyundai to remove application 5075 from consideration until the applicant's engineers had time to provide an estimate according to the Commission's direction and allow the Department deliberative time to review the submittal. If this is not acceptable to the applicant then the Department recommended the Commission approve the application 5075 with no change in the recommended facility cost. Jeff Shilling, representing Hyundai, said in order for Hyundai to have the tax credit in the 1998 tax-year they want a decision today. This is irregardless of the outcome. Commissioner Eden made a motion to approve tax credit 5075. It was seconded by Commissioner McMahan and a role call vote was taken as follows: Commissioner Eden – yes; Commissioner McMahan – yes; Commissioner Van Vliet – no; Commissioner Reeve – no; and Chair Whipple – yes. The motion carried with three "yes" votes.

5077 Hyundai Semiconductor America

The issues regarding application 5077 are similar to the issues in application 5075 in that Jeff Schilling of PricewaterhouseCoopers provided the post EQC meeting information submittal on December 21, 1998. Therefore, staff made the same recommendation to allow the applicant to remove the application from review at this time or approve as present with no change to the recommended facility cost. Also, Hyundai stated no matter the outcome they want a decision today.

Staff stated there were no new costs presented in application 5077 as there were in 5075. The applicant just provided information about costs that were previously denied. Staff explained that not just double contained piping was eliminated but additional equipment as well. Commissioner Reeve stated that there is some significant litigation going on between Hyundai and Meissner and Wurst noting the invoices listed as ineligible costs in the review report are from Meissner and Wurst. He asked how the outcome would affect the tax credit if their original costs were to be reduced. Hyundai said these costs were not part of the litigation. Ms. Vandehey and Director Marsh pointed out, again, that this is not within the Department's purview.

Commissioner Eden made a motion to approve tax credit applications 5077. Commissioner McMahan seconded the motion and a role call vote was taken as follows: Commissioner Reeve – no; Commissioner Eden – yes; Commissioner Van Vliet – no; Commissioner McMahan – yes; Chair Whipple – yes. The motion carried with three "yes" votes.

5086 PGE

Commissioner Van Vliet made a motion to approve tax credit application 5086. Commissioner Eden seconded the motion and it carried with five "yes" votes.

5128 Vernon & Galen Kroph

Commissioner Reeves asked how the average hours are set for farm equipment. Ms. Vandehey said they were specific to alternatives to field burning tax credits – from a table developed in 1990 for the Department and approved by the Commission. Commissioner Van Vliet wanted to know if the Kroph's were still field burning. Jim Britton said, "yes, but he was progressively reducing the acres."

Commissioners Eden and Van Vliet asked if there was a conflict with land use and the use of tiling. Mr. Britton said there have always been discussions regarding the use of tiling and it's effects on runoff but that it is still an eligible alternative to field burning. Staff stated this could be changed through rulemaking.

Commissioner Eden made a motion to approve tax credit application 5128. Commissioner Reeve seconded the motion and it carried with five "yes" votes.

5130 Ernest Glaser Farms

Ms. Vandehey recommended that the certificate be corrected to reflect the facility cost in the amount of $171,314. Stating that the ~~timing~~ error was staff's not the applicant's error. Commissioner Reeve made a motion to approve the correction to tax credit application 5130. Commissioner McMahan seconded the motion and it carried with five "yes" votes.

There being no further business, the meeting was adjourned at 4:25 pm.

Approved_____
Approved with Corrections_X___

Minutes are not final until approved by the EQC

Environmental Quality Commission
Minutes of the Two Hundred and Seventy-Third Meeting

December 10-11, 1998
Open House and Regular Meeting

On December 10, 1998 the Environmental Quality Commission met with the Board of Agriculture at the Department of Agriculture Building, 635 Capitol St, NE, Salem, Oregon. The following Environmental Quality Commission members were present:

Carol Whipple, Chair
Linda McMahan, Member
Tony Van Vliet, Member
Mark Reeve, Member

Also present were the Board of Agriculture; Lorna Youngs, Acting Director, Department of Agriculture (ODA); Larry Knudsen, Assistant Attorney General, Oregon Department of Justice (DOJ); Langdon Marsh, Director, Department of Environmental Quality (DEQ); and other staff from both departments.

Note: Staff reports presented at this meeting, which contain the Department's recommendations, are on file in the Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204. Written material submitted at this meeting is made a part of the record and is on file at the above address. These written materials are incorporated in the minutes of the meeting by reference.

Reid Saito, Chair of the Board of Agriculture, called the meeting to order.

The following items were discussed:

Healthy Streams Partnership

Mike Wolf from ODA described the SB 1010 program for developing Agriculture Water Quality Management Plans, answered questions, and introduced Peggy Vogue, ODA, who described details of the 1010 process in one portion of the Willamette Basin where she is ODA's Healthy Streams Partnership staff.

Russell Harding described DEQ's Healthy Streams Partnership program as it relates to TMDL development, assistance to watershed councils, and cooperation with ODA's 1010 process. He discussed and distributed information on DEQ's TMDL priorities, process, and progress to date.

Pollution Prevention Tax Credits

Langdon Marsh and staff briefly talked about the pollution control facility tax credit program. He commended the joint effort of the two agencies in utilizing the program to achieve environmental goals, specifically, in the transition from open field burning. He continued that the two Departments should consider additional ways to utilize the tax credit program in an effort to reduce agriculture's impact on Oregon's water quality.

Staff briefly spoke about the magnitude and history of the pollution control tax credit program. Since 1995, the Department of Agriculture has performed the technical review of "alternatives to field burning" and "animal waste management systems" applications for certification as a pollution control facility. Staff's report and recommendation helps the Environmental Quality Commission in their determination to approve or deny certification.

There have been 338 certificates issued to grass seed growers for engaging in alternatives to open field burning, in the amount of $19,836,788. There have been 76 certificates issued to dairy farmers for installing animal waste management systems in the amount of $1,744,228.

Commissioner Van Vliet gave a synopsis on the mission and goals of the Governor's Task Force on Taxation, of which he was a member. He chaired the subcommittee on the environment. One of the directives for the subcommittee was to look at tax credits and their recommendations will be sent to the Governor before the beginning of the 1999 legislature.

1999 Legislative Concepts

Lydia Taylor, Deputy Director, Department of Environmental Quality; and Chuck Craig, Assistant Director, Department of Agriculture, summarized each agency's legislative concepts that the Departments will be taking to the 1999 legislature. A hand out for each agency was distributed.

Well Head Protection

Sheree Stewart, Drinking Water Protection Coordinator Program Coordinator, DEQ; Clinton Reeder, Oregon Wheat Growers League, and Mike Wolf, ODA, discussed the Drinking Water Protection Program. Clinton Reeder introduced the program and discussed his involvement on the citizens' advisory committee over the past three years. Sheree Stewart gave a short presentation on the new requirements of the Safe Drinking Water Act 1996 Amendments and how those would be accomplished by DEQ and Oregon Health Division. After the source areas are identified for public water systems, DEQ, and ODA, and other agencies will work with land owners within those areas to implement voluntary water quality improvement efforts. Land use changes are not necessary. Local communities may choose to implement any type of protection such as overlay zoning within their own jurisdiction to protect their public water supply from contamination. Mike Wolf discussed how the SB 1010 process will be used by ODA to address water quality issues on farm lands within Drinking Water Protection Areas.

The Environmental Quality Commission had dinner with the Board of Agriculture. No official business was discussed.

The Commission began its regular meeting at 8:35 a.m. on Friday, December 11, 1998, at DEQ Headquarters, 811 SW Sixth Ave, Portland, Oregon. The following members were present:

Carol Whipple, Chair
Melinda Eden, Member
Mark Reeve, Member
Tony Van Vliet, Member

Also present were Larry Knudsen, Assistant Attorney General, Oregon Department of Justice; Langdon Marsh, Director, Department of Environmental Quality; and other staff.

Chair Whipple called the meeting to order. The following items were addressed:

A. Informational Item: Global Warming

Sam Sadler, Oregon Department of Energy, presented a background on Oregon climate change activities going back to 1988. The Office of Energy has prepared reports for the Governor and Legislature as well as two climate change strategy reports. The Office also maintains an inventory of greenhouse gas emissions for the state.

He reviewed the work of the Energy Facility Siting Council, which held a competition among developers based on lowest net CO2 emissions. That led to the Oregon Legislature adopting a carbon dioxide (CO2) emissions standard for energy facilities in 1997. Oregon law sets the CO2 standard for base-load, natural gas-fueled power plants at 0.7 lbs. CO2/kWh. The law allows an applicant for a base-load gas plant to meet the standard through plant efficiency, co-generation that will offset fossil fuels, and other CO2 offsets. The law also establishes a "monetary path" as a mechanism for applicants to meet the standard. This path permits an applicant to pay a deemed amount per ton of CO2 offset, which is $0.57 per ton of CO2. The law describes the criteria for an independent, non-profit organization that will administer the monetary path. The Oregon Climate Trust has been formed in accordance with the criteria in the law to serve as a qualifying organization. To date, the Council has issued site certificates for three facilities that meet the CO2 standard. These facilities will provide about $7 million in offset funds to the Oregon Climate Trust. The law further provides that the Council may set specific standards

for other energy facilities that emit CO2. It is now considering standards for peaking power plants and nongenerating facilities.

He also discussed climate change education activities. The Oregon Office of Energy has received a grant from EPA to educate a wide range of Oregonians about what they can do on a personal, business or governmental level to reduce greenhouse gas emissions. The program will create educational materials and information forums that target local governments, tribes, businesses, existing conservation programs, and citizens statewide. The Department of Environmental Quality is a partner in the grant program, along with the City of Portland, the Oregon Climate Trust, CarSharing Portland, Inc., Portland Sustainable Lifestyles Campaign (EcoTeam), and the Oregon State University Extension Energy Program. The Office of Energy and the other partners expect to launch the program to the public in March, 1999.

B. Informational Item: Oxygenated Fuel Program Evaluation in Relation to the Portland Area Carbon Monoxide Maintenance Plan

Greg Green, Air Quality Administrator, and Howard Harris, Airshed Planning, Air Quality Division, presented this item. The Commission last discussed the oxygenated fuel program in the Portland area when it adopted the Portland Area Carbon Monoxide maintenance plan in 1996. The plan kept the oxygenated fuel program for the life of the maintenance plan, but directed the staff to come back with an informational report after the winter season of 1997/1998. Carbon monoxide levels in the Portland area have fallen to approximately one-half of the standard level of 9 parts per million and the key policy issue was whether and when to eliminate the oxygenated fuel program in the Portland area. The Department's enhanced motor vehicle inspection program was closely tied to the policy issue as the program was expected to result in carbon monoxide emission reductions similar in magnitude to that provided by the oxygenated fuel program. Another factor was that local governments in the Portland area support the oxygenated fuel program. The Department recommended retaining the oxygenated fuel program in the Portland area for at least two more winter seasons, with another informational report to the Commission following the winter of 2000/2001.

After questions from the Commission and response by staff, the Commission took testimony from Rob Forest of Truax Harris Energy. Mr. Forrest urged repeal of the oxygenated fuel program in the absence of strong technical support for keeping it. He cited an added cost to the consumer of 3 cents to 4 cents per gallon. Chair Whipple asked why consumers are not more vocal about opposing oxygenated fuel. Mr. Forrest cited customer complaints at the pumps at the transition time between regular fuel and oxygenated fuel and also noted some customer problems with fuel filter plugging. In response to a question from Commissioner Reeve about methyl tertiary butyl ether (MTBE) and the recent efforts to ban it in California, Mr. Forest said some gasoline in southern Oregon comes from California. However, he did not believe there would be a greater likelihood of MTBE being supplied in Oregon should California ban it.

After further questions to staff, the members of the EQC discussed when the issue should come back to the Commission. Director Marsh suggested the staff could report back after next winter with relevant data on the new Mobile model, assuming it is released on schedule. The Commission accepted the Director's suggestion and indicated that relevant cost information should be included and also any information on whether ethanol might accelerate the rusting of storage tanks.

C. Approval of Minutes

Commissioner Eden made the following corrections: on page 1, paragraph 1, third line, the apostrophe needs to be removed from it's; page 2, agenda item D, second to the last paragraph, the last line should read "but had to be used within the context of the *existing* rules."; and on page 4, agenda item K, the last line of the first paragraph should read "Commission acknowledging *his* 25 years of service to the Department." Commissioner Reeve indicated that in agenda item F, last paragraph, there should be a line indicating who seconded the motion and the outcome *of the* vote. Commissioner Van Vliet made a motion to accept the minutes as corrected. It was seconded by Commissioner Reeve and carried with three "yes" votes. Commissioner Eden abstained as she was not present at the October meeting.

E. Heating Tank Decommissioning Grant Rules

Mary Wahl, Waste Management and Cleanup Division Administrator, and Mike Kortenhof, Underground Storage Tanks Manager, presented this item. These rules were based on legislation passed in 1997 (S.B. 1143). There were problems with the original funding, and the Department intends to implement these rules using a federal grant. This issue will probably be considered during the 1999 session.

There is a large number of heating oil tanks that were leaking - some with serious impacts and there are no decommissioning requirements. Grants to decommission are a logical incentive to deal with tank before they leak. The grants are tiered by income, $750 for the low income group, less for higher income levels. The rule defines decommissioning for purposes of grant eligibility based on existing recommended practices. The primary technical issue *are* soil sampling requirement and a waiver provision for this implementation. The Department feels that sampling may be a disincentive and rules are retroactive. There will be a limited implementation now and the rules will be re-evaluated if fully implemented. Unfunded OHC claims with income <$35, 000 per year will have first priority until March 1, 1999 and then any homeowner with income <$35,000 per year can apply until June 30, 1999. DEQ expects that the 150 grants available will by taken by OHC claimants; and if the program is fully funded, it would provide approximately 2,000 grants per year.

Commissioner Reeve asked how the requirement for deed notices would work. Mike Kortenhof responded that the statute requires a deed notice be made when a decommissioned tank is left in-place, whether cleanup was necessary or not. DEQ will draft forms for homeowners to use.

A motion was made by Commissioner Van Vliet to approve the rules as presented in the staff report. Commissioner Reeve seconded the motion and it carried with four "yes votes.

F. Rule Adoption: New Source Review/Prevention of Signification Deterioration (PSD) Rule Amendments and Miscellaneous Revisions Associated with Revocation of the Old PM10 Standard for Current PM10 Nonattainment Areas and Ozone Standards as a Revision to the State Implementation Plan (SIP)

Greg Green and Brian Finneran, *Airshed* Planning Section, Air Quality Division, provided a summary of this proposed rulemaking. The PSD rule amendments are in response to recent adoption by EPA of a new Particulate Matter standard called the PM2.5 standard, and revisions to the Ozone standard. Federal guidance indicates which areas that met the "old" PM10 and ozone standard that can have their nonattainment area designation revoked. Recent air monitoring shows that all of Oregon's PM10 nonattainment areas are in compliance with the old PM10 standard, and that Salem is in compliance with the "old" ozone standard. This rulemaking will revoke the ozone nonattainment designation for Salem, and the PM10 nonattainment designation for Klamath Falls, Lakeview, La Grande and Grants Pass upon publishing in the federal register.

Once a community's nonattainment area designation is revoked, federal guidance dictates that the stringent requirements that apply to new or expanding major industrial sources be replaced by general PSD requirements, which are much less stringent and developed originally for "attainment" areas that never violated air quality standards. Since these former nonattainment areas have historically had much higher pollution levels than attainment areas, and may have levels in the future close to the new standards, the Department proposed two more stringent PSD provisions for these PM10 nonattainment areas, and one more stringent PSD provision for the Salem ozone nonattainment area, as part of this rulemaking. These provisions are similar to previously adopted PSD rules for the Portland Ozone Maintenance Area, which is also a former nonattainment area.

In addition to these proposed PSD amendments, the Department is removing the Total Suspended Particulate (TSP) nonattainment designation for the three remaining TSP nonattainment areas in Oregon: Medford-Ashland, Eugene-Springfield, and Portland. TSP is a state standard, and was the federal particulate standard prior to adopting the PM10 and PM2.5 standards. These areas have been in compliance with the TSP standard for many years.

The Department conducted considerable outreach prior to the public hearings, holding several meetings in nonattainment area communities with representatives from "stakeholder" groups. The Department held two public hearings and no testimony was provided at these hearings, although three written comments were submitted later.

A brief overview of the Department's current PSD rules was given. Commissioner Eden suggested that in future EQC staff reports involving similar air quality rules, it would be helpful to provide a list of the acronyms used in the report in order to better understand the proposed rulemaking. Commissioner Reeve made a motion to adopt the rules as specified in the staff report. Commissioner Eden seconded the motion and it carried with four "yes" votes.

H. Rule Adoption: Fee Schedule for 401 Certifications

Tom Lucas, Water Quality Division, made a brief presentation explaining the need for additional resources to perform the needed work and reviewing the proposed fee schedule. The fee schedule was authorized by the 1997 legislature but the legislation restricts fees to about 60 projects per year. An advisory committee was involved in preparation of the schedule and it was supported by the committee. The public comment period was extended to

receive comments from the Oregon Water Resources Congress. Commissioners asked if the 401 process would be aimed at hazardous materials; if certifications would be issued to highway cut and fill activities; if dredging on the Columbia River would be fee eligible; and if the Department could charge fees for activities such as dredging contaminated sediment at Ross Island. Staff answered yes to all questions, provided the activity resulted in a discharge to public waters. It was also noted that 401 activities amounted to less than 10% of the Department's water quality activities. Commissioner Reeve made a motion to adopt the fee schedule as outlined in the staff report. Commissioner Van Vliet seconded the motion and it carried with four "yes" votes.

Commissioner McMahan arrived for the discussion of tax credits.

D. Tax Credits

Maggie Vandehey, Tax Credit Coordinator, presented tax credits as shown in Agenda Item D and its Addendum. The following tax credits were removed from the agenda.

Postponed

4570	Willamette Industries, Inc.	$2,596,818	100%	Applicant Request
4751	Portland General Electric Company	$759,299	100%	Staff Request
4792	Willamette Industries, Inc.	$61,631	100%	Staff Request
4806	Willamette Industries, Inc.	$156,122	100%	Applicant Request
4903	Willamette Industries, Inc.	$45,788	100%	Applicant Request
4926	Balzer Painting, Inc.	$131,173	100%	Commission Request
4959	Tidewater Barge Lines, Inc.	$775,000	100%	Applicant Request
4965	Tidewater Barge Lines, Inc.	$775,000	100%	Applicant Request
4993	Lamb-Weston, Inc.	$2,018,468	100%	Staff Request
5075	Hyundai Semiconductor America, Inc.	$11,052,89	100%	Commission Request
5077	Hyundai Semiconductor America, Inc.	$5,381,770	100%	Staff Request

Commissioner Reeves asked for clarification of a sentence in the review report for Balzer Painting's application (#4926) where the text seemed to indicate additional warehouse space is a possible industry standard for drying water-based paint products. The Commission removed application #4926from the agenda for staff to clarify the text. When asked for clarification on Weldon's Enterprises, Inc. (#5088), it was indicated the certificate would be issued for five containment pans under dry cleaning machines. These pans prevent corrosive solvent from seeping through the concrete. Commissioner Reeve asked about the subtraction of the Salvage Value amount shown under the facility cost section in the review report for Rexius Forrest By-Products, Inc. (#5110). Staff responded that subtracting the amount of the salvage value of any pre-existing facility is set out in statute. Regarding Resco Plastics, Inc. (#4836), Commissioner Van Vliet asked if the decision to purchase a re-grinder was more of a business decision to improve the product than a decision to reduce pollution. The application is a reclaimed plastic products tax credit application and a company may claim any investment that allows them the ability to process reclaimed plastic or to manufacture a reclaimed plastic.

Larry Knudsen proposed a motion to approve the tax credits recommended for approval in both the original staff report, Attachment B, and in the addendum and amendments to #5043 and #5079. Hold until after lunch #5075, #4957, and #4963; remove #4903 and 4806 and withdraw application #4926 to reconsider the language. Commissioner Eden so moved counsel's proposed motion. Commissioner Reeve seconded the motion and it carried with five "yes" votes.

Commission Approvals

No.	Applicant	Certified Cost	Percent Allocable
4457	Portland General Electric Company	$2,054,682	100%
4463	Portland General Electric Company	$375,553	100%
4474	Portland General Electric Company	$231,953	100%
4689	Intel Corporation	$1,257,568	100%
4696	International Paper Co.	$48,465	100%
4713	Intel Corporation	$262,091	100%

4745	Schult Homes Corp., Marlette	$20,938	100%
4749	The Halton Company	$238,230	100%
4805	Valmont Industries, Inc.	$54,300	100%
4823	Homebuilders Northwest, Inc.	$13,305	100%
4836	Resco Plastics, Inc.	$9,500	100%
4840	Portland General Electric Company	$71,806	100%
4841	Portland General Electric Company	$123,110	100%
4862	Resco Plastics, Inc.	$13,385	100%
4894	Integrated Device Technology (IDT)	$612,835	100%
4910	Resco Plastics, Inc.	$2,500	100%
4912	WWDD	$9,791	100%
4914	Resco Plastics, Inc.	$5,179	100%
4936	Willamette Industries, Inc.	$11,638	100%
4938	Wimer Logging Company	$17,208	100%
4939	Georgia-Pacific Corp.	$788,845	100%
4942	Willamette Industries, Inc.	$16,336	100%
4956	Roseburg Paving Co.	$239,360	100%
4975	Willamette Industries, Inc.	$48,645	100%
4976	Willamette Industries, Inc.	$213,407	100%
4982	Willamette Industries, Inc.	$52,755	100%
4983	Willamette Industries, Inc.	$56,303	100%
4984	Willamette Industries, Inc.	$53,237	100%
4985	Willamette Industries, Inc.	$53,042	100%
4988	Willamette Industries, Inc.	$57,820	100%
4999	McEwen, Richard T.	$141,153	93%
5001	Capital City Companies, Inc.	$150,211	92%
5003	International Paper	$34,153	100%
5021	NACCO Materials Handling Group,	$116,738	94%
5022	Truax Harris Energy, LLC	$289,506	93%
5024	L. & D., Inc. of Oregon	$61,879.78	98%
5028	Jerry Brown Company, Inc.	$144,692	90%
5035	Willamina Lumber Co.	$147,544	100%
5036	Willamina Lumber Co.	$390,846	100%
5043	Safeway, Inc.	$650,431	100%
5052	Campbell Crane & Rigging Service	$41,000	100%
5054	Sunshine Dairy Foods Inc.	$50,000	100%
5055	Sunset Fuel Company	$29,669	100%
5057	Norman H. & Vivian Faulkner	$79,508	92%
5059	WSCO Petroleum Corp	$166,175	91%
5060	Albany-Lebanon Sanitation, Inc.	$152,131	100%
5061	Albany-Lebanon Sanitation, Inc.	$189,876.72	100%
5062	United Disposal Service Inc.	$57,038	100%
5068	Leathers Enterprises	$193,663	89%
5069	Leathers Enterprises	$234,987	92%
5070	Leathers Enterprises	$191,382	91%
5071	Leathers Enterprises	$248,242	91%
5072	Leathers Enterprises	$165,100	89%
5073	Leathers Enterprises	$211,533	91%
5074	Leathers Enterprises	$260,913	93%
5076	Hyundai Semiconductor America,	$2,184,755	100%
5078	Miller's Sanitary Service, Inc.	$42,742	100%
5079	DRKC, LLC	$74,921	98%

5083	United Disposal Service Inc.	$14,959.05	100%
5084	Capitol Recycling & Disposal Co.	$16,909.60	100%
5085	David L. Towry, Sr.	$95,300	99%
5087	The Jerry Brown Company, Inc.	$113,695.70	99%
5088	Weldon's Enterprises, Inc.	$3,900	100%
5089	United Disposal Services, Inc.	$27,254	100%
5092	Jake's Truck Stop	$86,520.62	85%
5093	Georgia Pacific	$688,783	100%
5094	Pendleton Sanitary Service, Inc.	$48,486	100%
5095	Byrnes Oil Co., Inc.	$143,891.16	96%
5096	United Disposal Service, Inc.	$23,229.72	100%
5097	Dinty's Enterprises, Inc.	$88,477	89%
5098	McKee Farms	$67,005	68%
5099	Michael J. Monroe dba Bert's Auto	$49,650	100%
5106	Baker: Richard D./Russell	$164,561.72	92%
5109	Hwy 99 Tire & Automotive Inc.	$4,497	100%
5110	Rexius Forest By-Products Inc.	$155,000	100%
5112	Marguth: Jerry & Betty	$89,834	100%
5114	IOKA Farms, Inc.	$111,437	100%
5115	Donald F. Wiltse	$63,488.56	100%
5116	Peter J. Kryl	$19,967	100%
5118	Langdon & Sons, Inc.	$27,100	100%
5123	Don & Laura Christensen	$36,590	100%
5124	Daniel D. & Steve C. Sandau	$171,734	100%
5130	Ernest Glaser Farms	$160,814	100%
5133	Ernest Glaser Farms	$91,454	100%

Before the Commission went into Executive Session, Lang Marsh, Director, and Steve Greenwood, Western Region Administrator, recognized Gary Messer, Manager of Air Quality (North) in Western Region, for his 25 years of service to the Department. Gary is the last of the original three DEQ'ers who opened the Salem Office in 1973 and has worked in or with most DEQ medias during that time. With decentralization in late 1993, Gary was selected for the Air Quality Manager's position and subsequently received a first place Governor's award in 1995 for his work in utilizing performance measures to eliminate the permit backlog in Air Quality permits. The morale and productivity of Gary's workgroup has been consistently among the highest at DEQ in the last five years and Gary has been one of DEQ's most innovative problem solvers. Last year, Gary helped a successful transition of the Field Burning program to the Oregon Department of Agriculture, and played a key role in the development and implementation of the Air Quality Strategic Plan.

Executive Session:

The Commission heard advise from legal counsel on *Tidewater Barge Lines v. Department of Environmental Quality (Case No. A98545)* and *G.A.S.P., et al v. Department of Environmental Quality (Case No. 9708-06159.*

After Executive Session, discussion of tax credits resumed.

Maggie Vandehey continued the discussion with denials found in attachment C.

There was a discussion regarding the disposition of spent grain used in the brewing process found in the Widmere Brothers Brewing application (#5005). Bill Bree, Waste Management and Cleanup Division, stated that removing the spent grain is an industry standard, as well as, using the spent grain as animal feed. Commissioner Eden made a motion to deny applications #4688, #4945, #4990 and #5005 as presented in Attachment C. Commissioner McMahan seconded the motion and it carried with five "yes" votes.

Denials

No.	Applicant	Certified Cost	Percent Allocable
4688	Columbia Forrest Products, Inc.	$554,768	100%
4945	Georgia-Pacific West, Inc.	$3,463,969	100%
4990	Willamette Industries, Inc.	$49,254	100%
5005	Widmere Brothers Brewing	$276,673	100%

Commissioner Van Vliet made a motion to transfer certificates #2543 and #3243 as presented in Attachment F and its Addendum. Commissioner McMahan seconded the motion and it carried with five "yes" votes.

Commissioner Reeve made a motion to reissue certificates #3965, #3971 and #3975 as presented in Attachment G. Commissioner McMahan seconded the motion and it carried with five "yes" votes.

The applications for Tidewater Barge Lines, Inc. (#4957, #4959, #4963, and #4965) were discussed. It was recommended to approve the vapor recovery systems on two Tidewater Barge Lines, Inc.'s petroleum barges, *The Prospector* (#4957) and *The Tri-Cities Voyager* (#4963). The Department's recommendation for approval of the vapor recovery system was consistent with a previous Commission action on December 28, 1995, where the Commission approved a similar tax credit application (#4417) from Tidewater Barge. A discussion followed regarding the vapor recovery systems, how they eliminate all discharge of vapors from the vessels during loading and as such eliminate venting of VOCs into the Portland airshed. David Fillippi of Stoel Rives LLP, attorney for Tidewater Barge Lines, Inc., was present to answer questions for the applicant.

Commissioner Reeve made a motion to approve applications #4957 and #4963. Commissioner McMahan seconded the motion and it carried with five "yes" votes.

Commission Approvals

No.	Applicant	Certified Cost	Percent Allocable
4957	Tidewater Barge Lines, Inc.	$237,000	100%
4963	Tidewater Barge Lines, Inc.	$250,000	100%

A motion was made by Commissioner Van Vliet to postpone discussion of applications #4959 and #4965 until the March 1999 meeting. It was seconded by Commissioner Reeve and carried with five "yes" votes.

The Commission asked that staff be clear about the benefits that accrue to the State of Oregon when reviewing applications that involve mobile facilities. Staff will clearly state the benefits that accrue to Oregon in future review reports for mobile facilities.

In the review report of Hyundai Semiconductor America, Inc. (#5075), staff recommended that ductwork in the amount of $10.8 million not be certified as part of the eligible cost of the facility since it was required by OSHA and the Uniform Fire Code. The ductwork provides a safe and conducive environment for the manufacture of film substrate. Controlling emissions to the atmosphere is the focus of the air quality portion of the program not controlling the internal processing environment. Gordon Chun, SJO Consulting Engineers, the reviewer of the application, stated that the collection system does not prevent, control or reduce emissions. The ductwork is not an air cleaning device as required by statute; therefore, it is not considered a pollution control device. The ductwork was required by the Uniform Fire Code (UFC) for the handling of hazardous materials.

Hyundai provided a synopsis of their presentation. Jeff Schilling, PricewaterhouseCoopers, LLP, the accounting firm for Hyundai Semiconductor America, Inc., stated that the "primary and most important purpose" of the ductwork is pollution control. Hyundai would show that there are other ways to meet the UFC requirements and provide a safe and conducive environment to film substrate manufacturing absent the pollution control requirement. The alternatives would have been much more efficient than what they installed.

Doug Burke of Hyundai talked about the components of an air cleaning device system. By design "the primary and most important purpose of the ductwork is to control air contamination by containing the air contaminants from the point of origin which is the tool to the device that removes and reduces the air contaminants." Mr. Burke offered alternative solutions to demonstrate that if the primary purpose of the ductwork were to create a safe environment that is conducive to the production of film substrate manufacturing then Hyundai would not meet the air contaminant removal efficiencies required by LRAPA. Commissioner Van Vliet indicated the alternatives were not relevant and asked Mr. Burke if the purpose of presenting any alternatives is to show what might have worked but would not have met standards. He also asked Mr. Burke if the Commission was dealing with a process already in place that is essential to their process. Mr. Burke stated that they installed the system to control air contaminants and they installed the system in the most efficient way they saw possible

Commissioner Reeve asked if Hyundai knew what the difference between the ductwork that would have been necessary for a clean, safe and conducive environment and the ductwork that was required for pollution control. Jeff Schilling stated he did not know exactly but that the general exhaust ductwork would have been considerably cheaper.

Brian Fields, Air Quality Division, stated although internal ducting is needed to deliver air to the scrubber, it is the scrubber that cleans the air. It is the position of the Air Quality Division that internal ductwork is not an air-cleaning device that prevents emissions to the atmosphere. The applicant did not ask for an incremental amount of the ductwork on the application; and therefore, the Department did not review the ductwork in this manner. Since 1993, the Department has been consistent in excluding ductwork needed for the process environment while including ductwork that is essential from the scrubber and beyond – basically, ductwork from the point of roof penetration to the scrubber.

Jeff Schilling referenced ductwork and piping applications that were approved in the morning session. Commissioner Eden stated the ductwork and piping that was presented on the agenda were specific to the pollution control aspect, not a combination as presented on Hyundai's application. She asked if Hyundai could go back to the drawing board to ferret out what is attributable to pollution control. Jeff Schilling stated that, "It is Hyundai's position that we want this application approved this year."

Larry Knudsen provided counsel to the Commission that they have two considerations. First is the principal purpose test. If the Commission concludes that the principal purpose of the ductwork was not installed to comply with DEQ, EPA or LRAPA requirements then it would properly not grant the tax credit to begin with. Then the Commission has the responsibility to allocate costs and not provide a tax credit to costs that serve some purpose other than pollution control.

Commissioner Eden asked if the Department had allocated the cost of the ductwork in an incremental manner. Ms. Vandehey indicated they had not. The Commissioners agreed that it is the applicant's burden to make and support the allocation of costs. Ms. Vandehey suggested that application #5075 be postponed until the December 30, 1998 telephone conference. The Commission agreed.

G.A.S.P., et al v. Department of Environmental Quality (Case No. 9708-06159)

After *advice* from counsel during executive session, Commissioner Van Vliet made a motion that an opportunity to respond to the circuit court's order on remand in the GASP case be put on the January 29, 1999 meeting agenda and that staff and the Attorney General's office prepare a proposed order for the Commission to consider at that meeting. The purpose of the proposed order would be to clarify portions of the previous decision the circuit court judge indicated needed clarification. Further, this proposed order be sent out to the public with appropriate notice to allow limited comment on the proposed order and also specifying that written comments must be submitted by a time certain prior to the January meeting. Commissioner Eden seconded the motion and it carried with five "yes" votes.

J. Commissioners' Reports

Commissioner McMahan made a motion to elect Commissioner Eden Vice Chair of the Commission. The motion was seconded by Commissioner Van Vliet and carried with five "yes" votes.

K. Director's Report

When the Underground Storage Tank program began 12 years ago there were almost 30,000 tanks at 10,000 locations throughout Oregon. Those numbers are down to about 9,000 tanks at 3,260 facilities. As a result of those 20,000 tanks being decommissioned, 5,500 releases of product were discovered, of which 2,635 sites have been cleaned up and the balance are in some stage of cleanup. The 10-year-old federal deadline for upgrade of

gasoline storage tanks is December 22, 1998. Many service stations in Oregon will not meet that deadline for upgrading their tanks and around 500 will close permanently.

A water quality improvement plan prepared by the Siskiyou National Forest, the Bureau of Land Management, DEQ and other agencies is being proposed as a TMDL. The plan builds upon the type of cooperative and effective solutions outlined in the Governor's Oregon Plan for Salmon and Watersheds. The streams addressed by the Sucker-Grayback Management Plan are listed on the 303(d) list because they exceed state water quality standards for temperature, flow modification and habitat modification. The plan concludes that non-point source pollution is the reason for the water quality problems.

On November 25, EPA Region X approved the Total Maximum Daily Loads (TMDLs) developed for the Columbia Slough. The next steps include; issuance of a permit for the Port of Portland for de-icing and anti-icing activities, development of a pollutant specific industrial storm water permit, and agreements with the municipalities to implement pollutant specific management practices.

The issue of septage management in Jackson and Josephine County was raised at the June EQC meeting in Medford. Since that time, DEQ staff has worked with the Environmental Health officials of both counties, who have developed a voluntary reporting agreement with septage pumpers who serve the area. DEQ restated its commitment to take enforcement action against anyone found to be illegally dumping septage. The majority of septage from the two counties currently goes to a treatment plan in Grants Pass operated by Clearwater Technologies. Treatment is based upon separation of solids with liquids passing through to a conventional sewage plant. Solids are landfilled but with further stabilization could be land applied. Other businesses in the area, and statewide, treat septage using lime stabilization method and utilize product for agronomic land application. Clearwater has proposed an ordinance in both counties to franchise septage hauling and treatment, and has drafted proposed legislation that would mandate selected treatment methods (filtration) of septage statewide.

A new Pollution Prevention committee in Lane County, consisting of several public agencies (including DEQ) recently signed a memorandum of agreement that makes them eligible to receive P2 grant funds. The first project, already funded, is for informational displays for the public on pollution prevention ideas. Their next project is to address pollution prevention practices at agency auto fleets (washwater, use of toxics, etc.). Also, the Eugene Register Guard newspaper will be featuring a monthly article on solid waste reduction, written by various agencies. DEQ will be writing the first one.

DEQ estimates it will take two to four months to clean up the approximately 10,000 containers of various chemicals, including acids, caustics, cyanide, electroplating waste, oxidizers, water-reactives and explosives at a warehouse in NE Portland. Police initially entered the warehouse to respond to a dispute between tenants. They found over a dozen people living in the warehouse. After investigating the warehouse, DEQ contacted the EPA Emergency Response Unit in Seattle, which performs time-critical cleanup and removal actions in extreme situations. Federal warrants were executed at the facility and administrative warrants allowed the EPA team to remove chemical hazardous wastes. The warehouse and *its* owner are under intensive investigation.

Every year DEQ's Solid Waste Program surveys garbage haulers and private recycling companies and compiles disposal data from fee report forms. Results of the 1997 Material Recovery Survey show Oregon's recycling rate climbing to 35.7 percent. This is the highest rate recorded in six years. While Oregonians recycled more materials in 1997, they continued to generate more waste and at a faster rate than they increased their recycling.

DEQ signed an agreement with the Portland Harbor group, which will allow the Department to move forward to plan the Harbor cleanup, as well as determine how to dispose of sediments. The Department will finish work by Spring of 1999. In a related issue, Ross Island Sand and Gravel reported that bathymetric maps of their lagoon indicated that sites which had received dredging waste from the Portland of Portland had been disturbed by subsequent gravel dredging at the Ross Island Site. The company committed to recovering the disposal site and determining if any harm resulted to *the environment*. DEQ continues to examine where the disturbed wastes were placed.

There being no further business, the meeting was adjourned at 3:00 p.m.

Environmental Quality Commission

☐ Rule Adoption Item
☒ Action Item
☐ Information Item

Agenda Item D
January 29, 1999 Meeting

Title:

U.S. Fish & Wildlife's Total Dissolved Gas Waiver Request for Spring Creek Fish Hatchery

Summary:

The U.S. Fish and Wildlife Service has petitioned the Commission for a waiver of the State's total dissolved gas standard to enable spill over Bonneville Dam to assist juvenile outmigrating fall chinook salmon released from Spring Creek Hatchery.

Department Recommendation:

The Department recommends that the Commission grant this petition by adopting the findings and conditions contained in the Draft Order attached as Appendix C, subject to implementation of the physical and biological monitoring regime as detailed in the monitoring plan accompanying the USFWS request dated December 11, 1998.

Report Author | Division Administrator | Director

Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

State of Oregon

Department of Environmental Quality Memorandum

Date: January 13, 1999

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item D, U.S. Fish & Wildlife Service's Total Dissolved Gas Waiver Request for Spring Creek National Fish Hatchery, EQC Meeting January 29, 1999.

Statement of Purpose

The U.S. Fish & Wildlife Service (USFWS) has petitioned the Commission for a variance to the state's total dissolved gas standard to enable spill over Bonneville Dam to assist juvenile outmigrating fall chinook salmon released from Spring Creek National Fish Hatchery (NFH).

The petition requests a waiver from the current total dissolved gas standard of 110 percent to 115 percent total dissolved gas as measured at the Camas-Washougal monitoring station, which is equivalent to 120 percent total dissolved gas in the Bonneville Dam tailrace. The waiver request is for the dates March 18, 1999 through March 28, 1999.

Rationale for Waiver Request

The Spring Creek NFH charged with producing fish as mitigation for human caused losses due to Federal water projects, specifically anadromous fish losses as a result of The Dalles and John Day dams. The hatchery will release 4.1 million fish. These fish comprise a portion of the fish to be caught under United States/Canada treaty allocations. The Spring Creek NFH also supports Zone 6 tribal chinook salmon harvests required in the Columbia River Fish Management Plan under the U.S. v. Oregon court settlement. In addition, these fish are important to near shore fisheries off the Washington and northern Oregon coast and to the Columbia River Buoy 10 fishery. The USFWS estimates that the 4.1 million smolts released translates into a potential contribution of 45,100 adult fish to these fisheries.

Spring Creek NFH stock provides protection to the Snake River populations and other stocks of chinook salmon listed under the Endangered Species Act, because the Canadian ocean fisheries are managed under harvest quota, time, and area regulations. Both Spring Creek NFH and endangered Snake River stocks of salmon occur off the west coast of Vancouver Island. Greater numbers of Spring Creek NFH fish in the total number of fish in the United States/Canada treaty fishery area would result in fewer Snake River fish being caught. Other

chinook salmon stocks, including listed Snake River fish will be exposed to higher harvest rates in Canadian fisheries if the productivity of Spring Creek NFH stock is reduced. Historically, Spring Creek NFH fish contributed to 9% of the catch in the fishery off the west coast of Vancouver Island and 27% of the catch off of the Washington and northern Oregon coasts. Spring Creek NFH has contributed as many as 65,600 fish to tribal fisheries and 41,500 fish to non-tribal commercial fisheries in the Columbia River in the past. In 1998 fall chinook salmon produced by Spring Creek NFH contributed about 6,200 fish to commercial and sport fisheries in the Columbia River. The treaty Indian harvest was about 4,900 fish, and the in river sport catch was about 1,300 fish. This low catch is due to restrictions imposed on the fishery due to poor returns to the river.

The fish hatchery program for the Columbia River has been reduced due to a Congressional reduction in Mitchell Act funding. These funding cuts have resulted in reduced production of chinook salmon at both state and federal fish hatcheries and have caused the closure of some facilities. Spring Creek NFH, which will be the only facility producing tule fall chinook above Bonneville Dam, will remain open and continue to produce fish at its present levels. The state of Oregon has drastically reduced its production of tule fall chinook salmon in the Columbia River system. These reductions and closures at other hatcheries make production at Spring Creek NFH even more important for maintaining and improving fisheries in the Pacific Ocean and Columbia River.

Spill was first requested because of the low fish guidance efficiency at the Bonneville Dam Second Powerhouse. Spilling of water over the spillway has been viewed by fisheries managers as a method for improving fish passage efficiency (FPE) at the dams. FPE is the percentage of outmigrating juvenile salmonids that pass a dam by routes other than turbines. A FPE of 80 percent is targeted for the Spring Creek National Fish Hatchery (NFH) release of fall chinook. This is also the FPE target identified by the National Marine Fisheries Service (NMFS) for endangered salmonids. According to the NMFS spill calculations for a river flow of 200 thousand cubic feet per second (kcfs), spills of 45, 80, and 150 kcfs would result in FPE's of 54, 63, and 72, respectively (Table 1). According to the U. S. Army Corps of Engineers (USACE) spills of 45, 80, and 150 kcfs would result in total dissolved gas levels of 110, 115, and 120 percent in the Bonneville Dam tailrace. The USFWS proposes to manage spill so that spill during the daytime hours does not exceed 75 kcfs. This cap is in place to limit migration delay and fall back of returning adult salmonids. Nighttime spill levels would attempt to achieve an 80 FPE and spill volumes would approach 150 kcfs.

Past monitoring by National Marine Fisheries Service staff has shown that migratory salmonids, resident fish, and invertebrates have not been significantly affected by TDG levels that are expected during the proposed spill. There has been physical monitoring of total dissolved gas levels and biological monitoring for signs of gas bubble disease during past spills for Spring Creek NFH and for the system wide program called for under the NMFS biological opinion. Results of these monitoring efforts show that there is a low incidence of gas bubble

disease signs in migrating juvenile and adult salmonids, resident fish, and invertebrates when total dissolved gas levels are 115 percent or less in the dam forebays and 120 percent or less in the dam tailraces. The incidence of gas bubble disease signs increase when total dissolved gas levels increase above the 115/120 percent levels. There were some concerns that the biological monitoring at the dams under estimated the incidence of gas bubble disease because it was thought that the bubbles could collapse when fish entered the smolt by-pass system. Research evaluated this hypothesis by collecting fish in the river prior to entering the smolt by-pass system and then comparing the incidence of gas bubble disease signs for in-river fish and fish collected from the smolt by-pass system. The incidence and severity of gas bubble disease signs were similar for fish collected in-river and from the smolt by-pass.

Table 1. Bonneville Dam Spillway Flows, Total Dissolved Gas Levels in Tailrace, Fish Passage Efficiency, and Increase in Fish Survival Based on Modeling Predictions.

Total River Flow (kcfs)	200	200	200	200	200	200
Spill (kcfs)	0	45	80	100	120	150
Tailrace Gas Level (%)	100	110	115	116	117	120
Fish Passage Efficiency (%)	40	54	63	66	69	72
Increase in Juvenile Fish Survival Compared to No Spill Condition	0	49,300	116,030	127,100	135,300	154,980
Increase in Returning Adult Fish Compared to No Spill Condition	0	542	1,276	1,398	1,488	1,705

Competition between Spring Creek NFH Fish and Snake River Salmon

According to USFWS, Oregon Department of Fish & Wildlife (ODFW), and Columbia River Inter-Tribal Fish Commission (CRTFC) competition between fish released from Spring Creek NFH in March and listed stocks of Snake River salmon is expected to be minimal in both the Columbia River and Pacific Ocean. Their rationale is the distance between Spring Creek NFH and the ocean is relatively short and the March release of Spring Creek NFH fish completely miss the migrations of Snake River fish. Spring Creek NFH fish are also physiologically ready to migrate into the ocean and should quickly move out of rearing areas in the lower Columbia River. It is possible that Spring Creek NFH fish could compete with Snake River listed stocks for food and space in the ocean. Coded wire tag recoveries of Spring Creek

NFH tule fall chinook salmon and Snake River Lyons Ferry Hatchery fall chinook salmon indicate that both stocks of fish migrate north after leaving the Columbia River. However, the USFWS has concluded that the size of the ocean environment and the fact that billions of salmonid smolts migrate to the ocean throughout the range of anadromous fish make it seem that direct interaction between Spring Creek NFH fall chinook and Snake River listed salmon stocks would be a remote possibility.

Alternative Actions Considered by the USFWS

The USFWS considered alternatives to spill to increase the number of Spring Creek NFH fish that pass Bonneville Dam. These alternatives include transporting juvenile fall chinook salmon and releasing more fish.

1. Transporting Juvenile Fish

The alternative of physically transporting juvenile fish from Spring Creek NFH and releasing them downstream from Bonneville Dam has been considered. This alternative offers the potential to reduce the mortality associated with passage at Bonneville Dam caused by turbines, fish bypass devices, sluiceways, and predation in powerhouse tailraces. Transporting fall chinook salmon directly from Spring Creek NFH by barge to a release site below Bonneville Dam has been studied. A very high percentage of the adult returns from the barged groups strayed to other hatcheries. In addition, return rates to Spring Creek NFH were significantly lower for the barge test groups than for the control group released at the hatchery. A return of 7,000 adult fish to Spring Creek NFH is the goal to provide enough fish for spawning purposes. Straying of fish to locations other than Spring Creek NFH may result in failure to meet this return goal. The USFWS has considered using fish that return to other nearby hatcheries as spawning stock should returns to Spring Creek NFH be too low to meet hatchery needs.

Historically, Spring Creek NFH has been the major producer of tule fall chinook salmon in the Columbia River. The Spring Creek NFH stock originated from native brood stock collected from the Big White Salmon River and has developed over many generations without major transfers of other stocks of fish into its program. The Washington Department of Fisheries, Oregon Department of Fish and Wildlife, Columbia River Inter-tribal Fish Commission, and the Fish and Wildlife Service reached consensus in 1985 that Spring Creek fall chinook salmon are a unique group of fish and that transfers of fish from other lower Columbia River hatcheries would jeopardize their genetic integrity.

The unique qualities exhibited by Spring Creek chinook salmon are displayed in their age at maturity, ocean distribution, and survival. Spring Creek NFH fish mature at an earlier age than other lower Columbia River stocks; 66% of the fish returning to Spring Creek were 3-year-old fish compared to 45% 3-year-olds for other hatcheries. Overall survival and contribution to fisheries has generally been higher for Spring Creek fish compared to other hatcheries. Although

it might be possible to use surplus fish from other nearby hatcheries for spawning purposes, The USFWS would not know if fish from other hatcheries would actually be of Spring Creek NFH origin. The unknown origin of fish that would return to other hatcheries would make use of those fish an uncertain proposition. It is also possible that other hatcheries would not have surplus fish available for Spring Creek NFH for spawning purposes. The USFWS does not believe that it would be advisable to transfer fish from other hatcheries in the event that adult fish returns are insufficient because of the desire to protect the genetic integrity of this stock. As a result of the studies of direct transport from hatcheries and the desire to protect the genetic integrity of Spring Creek NFH stock, USFWS does not support direct transport of fish from Spring Creek NFH as an alternative to providing optimal passage conditions at Bonneville Dam.

2. Releasing Additional Fish

The USFWS evaluated the possibility of raising and releasing additional fish to make up for those that would be lost to turbines or other causes during passage at Bonneville Dam in the absence of spill. Spring Creek normally produces the maximum number of fish possible under existing hatchery capacity. Fish are released in March, April, and May under a schedule that produces the maximum number of fish for the available rearing capacity of the hatchery. Under this release schedule, some of the hatchery's fish are released in March and normally the remaining fish grow to occupy the available rearing space that becomes available. Fish that remain after the April release likewise grow to occupy rearing space until their release. It would not be possible to raise additional fish because rearing space, water supply, and waste treatment capability are limited. It would not be feasible to release fish at a later date because of limited hatchery capacity since these fish would continue to grow and exceed hatchery space capacity.

At present Spring Creek NFH is at seventy four percent (74%) of normal production, due to poor returns of adult fall chinook back to the hatchery in 1998. In order to maximize survival from this reduced production it has been decided to maximize available pond space by reducing normal densities in each of the ponds. This should increase average size of the fish at release, reduce disease potential and reduce handling stress by not having to split ponds for the April and May releases.

Although Spring Creek NFH is producing fewer fish than normal because of the poor return in 1998, it is still rearing enough juvenile salmon to warrant March, April, and May releases. Historically, the March release of juvenile fish has usually produced the most returning adults presumably because more juveniles were released at this time. The percent returns from the three releases have been comparable although the month which produces the highest percent return has varied from year to year. The USFWS has scheduled releases of juvenile fall chinook in March, April, and May to reduce the risk of a lower return from a single month's release.

Columbia River system configuration and the decision to spill water is made collectively between state, federal, and tribal Columbia River water and fish managers. However, voluntary spill resulting in total dissolved gas levels above the standard require a waiver before the operating agencies will spill water over the dam that would result in total dissolved gas levels above the 110 percent state standard. The waiver to the total dissolved gas standard would **allow** water to be spilled for fish passage as determined by the water and fish managers. The Commission action **does not require** water to be spilled for fish passage.

Past Spill Requests

Fisheries agencies have requested spill at Bonneville Dam for Spring Creek NFH releases since 1985. Spill was first requested because of the low fish guidance efficiency at the Bonneville Dam Second Powerhouse. Until 1995, spill was usually provided at Bonneville Dam for the March release of chinook salmon. In 1995, the requested total dissolved gas criteria waiver for the Spring Creek NFH fish spill was denied by the Environmental Quality Commission. In part, this request was denied because no biological monitoring was included in the proposal. In 1996 and 1997, the biological monitoring program was included and the dissolved gas waiver request was approved by the Environmental Quality Commission. In 1998 the request for spill was again proposed and a total dissolved gas waiver requested, which included biological monitoring, as was in the case in the previous two years. However, the 1998 request was denied by the Environmental Quality Commission.

Information concerning the difference in fish survival resulting from denial of the waiver was provided to the Environmental Quality Commission at its August 6, 1998 meeting. At the actual total river flow of 188,000 cfs that occurred during the requested waiver period, survival was reduced by about 24,700 outmigrating juvenile tule fall chinook which would equate to 272 fewer adult tule fall chinook that would return. Outmigrating juvenile and returning adult fish were estimated by modeling.

Authority of the Commission with Respect to the Issue

The authority of the Commission to address this issue is contained in Oregon Administrative Rules - OAR 340-41-205, 445, 485, and 525 (2)(n). A copy of the rule is attached as Appendix A.

At its meeting of February 16, 1995 the Commission modified the Oregon Administrative Rules to enable it to modify the total dissolved gas standard for the Columbia River for the purpose of assisting juvenile in-river salmon migration.

If the Commission is to grant this variance, it is required to make four findings under the rules. These are:

(i) that failure to act would result in greater harm to salmonid stock survival through in-river migration than would occur by increased spill;

(ii) that the modified total dissolved gas criteria associated with the increased spill provides a reasonable balance of the risk of impairment due to elevated total dissolved gas to both resident biological communities and other migrating fish and to migrating adult and juvenile salmonids when compared to other options for in-river migration of salmon;

(iii) that adequate data will exist to determine compliance with the standards; and

(iv) that biological monitoring is occurring to document that the migratory salmonid and resident biological communities are being protected.

The rule also allows the Commission to consider alternative modes of migration at its discretion.

Alternatives and Evaluation

Downstream migrating juvenile salmonids can pass by dams by going through the turbines, barge transportation, the fish by-pass system, and over the spillway. Turbine passage has a level of mortality associated with it variously calculated at between 10 and 15 percent. Barge transportation is not a preferred alternative for the Spring Creek NFH salmon because of the earlier stated reasons of straying and reduced returns for barged fish. By-pass facilities do not guide all smolts away from the turbines and the spill request is designed to reduce the mortality of fish not guided to the fish by-pass system that would otherwise go through the turbines. Finally, spill has associated with it the risk of physical injury from the spillway passage and elevated levels of dissolved gas. Mortalities from spill at the levels requested in the USFWS' request have been calculated at between 2 and 3 percent.

The issue before the Commission is one of balancing risk. To not approve the waiver to the state's dissolved gas standard will result in more fish going through the turbines. In earlier work conducted by the Department, the waiver at the level requested was determined to be a relatively conservative approach which would result in protection of migrating salmonids. At the same time, it was determined that waivers at the level of 125 to 130 percent would pose increased risks to fish. Between 120 and 125 percent, the Department was unsure of the impacts, and elected to recommend that the Commission adopt the more conservative approach, at which

the Department believed the risks of elevated dissolved gas were outweighed by the benefits, and that the risks inherent in spill were preferable to the risks inherent in other modes of fish passage. This is supported by the National Research Council's publication, *Upstream: Salmon and Society in the Pacific Northwest*, that recommended risk be spread by facilitating alternative modes of migration. The use of these alternatives are designed to increase survival of outmigrating juvenile salmonids. Although it appears spill benefits outmigrating juvenile salmonid as compared to turbine passage, there is still a low risk of adverse effects occurring from total dissolved gas. In addition, the Department remains concerned about the effects of gas bubble disease resulting from the spill program on early life stages of salmonids, other anadromous fish, and resident fish.

In relation to the four findings required to be made under the total dissolved gas rule, the following are supported by the petition:

(i) failure to act will result in more salmonid passage via hydroelectric dam turbines. Estimated mortalities from fish passing through turbines at Bonneville is between 11 and 15 percent. Fish passing over spillways as a result of spill experience 2 to 3 percent mortality. The Commission is, therefore able to make the first finding;

(ii) the balance of risk of impairment to migrating salmonids, resident fish, and other aquatic life due to elevated dissolved gas levels needs to be balanced against migrating juvenile salmonid mortality from turbine passage. Resident fish and aquatic invertebrates in the Columbia River downstream of Bonneville Dam were monitored by NMFS for signs of gas bubble disease in 1993, 1994, 1995, 1996, 1997, and 1998. There was a low incidence of gas bubble disease (less than 1 percent) in resident fish examined in 1993 and 1995 while in 1994, 1997, and 1998 none of the fish observed had signs of gas bubble disease. There were no signs of gas bubble disease observed in the aquatic invertebrates examined. Signs of gas bubble disease were prevalent in 1996 but this was a high flow year with large volumes of involuntary spill and total dissolved gas levels above 115 percent in the forebays and 120 percent in the tail races of dams. There is a low incidence of gas bubble disease in migrating juvenile and adult salmonids when the total dissolved gas levels are at or below 115 percent in the dam forebays and 120 percent in the tailraces. The low incidence of gas bubble disease observed has been regarded as a low risk for mortality from gas bubble disease. Total dissolved gas of 130 to 140 percent, that have resulted from involuntary spill, resulted in an increased incidence of gas bubble disease and is regarded as an increased risk of mortality from gas bubble disease. Given the past monitoring of gas bubble disease the levels requested in this petition seem to be a reasonable balance between increased survivorship due to reduced turbine mortality and the risk of mortality from gas bubble disease. The Commission is, therefore able to make the second finding;

(iii) USFWS has submitted a detailed physical monitoring plan. Physical monitoring will be conducted by the Army Corps of Engineers at Warrendale, Skamania, Camas/Washougal, and the Bonneville Dam forebay. Hourly data will be available on the Corps of Engineers' Internet World Wide Web pages. Implementation of the physical monitoring plan will ensure that data will exist to determine compliance with the standards for the voluntary spill program; The Commission is, therefore able to make the third finding.

(iv) USFWS has submitted a detailed biological monitoring plan. Juvenile salmonids and resident fish will be collected with a beach seine downstream of Bonneville Dam and examined for signs of gas bubble disease on non-paired fins, eyes, and lateral lines. Adult salmonids will be monitored for signs of gas bubble disease by using video tape as they pass through the viewing chambers of the Bonneville Dam fish ladders. Therefore, the Commission is able to make the fourth finding.

With these findings, the Commission is able to approve the variation to the total dissolved gas standard as sought by the USFWS.

Alternative Commission Actions

The petition is such that the required findings are able to be made, and the waiver approved. Clearly, any level of action less than approval can also be undertaken by the Commission, including denying the petition or approving it with conditions.

Summary of Public Input Opportunity

The record of public comment for the USFWS total dissolved gas standard waiver request is contained in Appendix B. Below is a summary of the public comments received.

Public Comment on the Waiver Request

Oregon Department of Fish & Wildlife: Ron Boyce

ODFW strongly supports the waiver request of the USFWS. The Spring NFH chinook salmon are an important stock to Oregon for a number of reasons. The Spring Creek NFH salmon provide critical protection to ESA listed and other species of salmon. Spring Creek NFH fish provide a buffer to ESA listed chinook in US/Canada fisheries off the west coast of Vancouver Island. The National Marine Fisheries Service's 1995 Biological Opinion for the Federal Columbia River Power System no jeopardy determination of ESA listed Snake River fall chinook was based on the assumption of continued low incidental Snake River wild chinook that is only made possible by the abundance of hatchery chinook including fall chinook from Spring Creek NFH. They are also a key component of the US/Canada treaty ocean harvests and near

shore fisheries off Oregon and Washington. These fish, in abundant run years, can make up a large percentage of the ocean chinook catches off the mouth of the Columbia River and at Buoy 10 in the lower Columbia River. The Spring Creek NFH fish also support Zone 6 tribal chinook harvests required in the Columbia River Fish Management Plan under the US v. Oregon court settlement.

Columbia River Inter-Tribal Fish Commission: Ted Strong

CRTFC strongly supports the USFWS total dissolved gas standard waiver request for Spring Creek NFH released chinook salmon. CRTFC stated that the tribes have legal rights to take fish destined to pass the tribes usual and accustomed fishing places. The Spring Creek NFH chinook salmon are important to the tribes' cultural and treaty reserved resources. CRTFC strongly advises that DEQ and the Commission focus on improving in-river survival and that the Clean Water Act does not provide for protection of beneficial uses by removing them from their habitat and transporting them around dams. CRTFC asserts that there is no "bright line" between the value of hatchery salmon and naturally produced salmon, a principle that has been upheld in federal courts and in the US v. Oregon proceedings. The tribal rights must not be subordinated to other economic interests such as competing fisheries, irrigation storage, or power demands. The Commission lacked a basis for denying the 1998 USFWS request for a waiver as all criteria to meet the variance were met by the USFWS, and strongly recommends the Commission pass the waiver. CRTFC encourages a waiver of 125 percent total dissolved gas in the Bonneville Dam tailrace.

Washington Department of Fish & Widlife: Bruce Crawford

The Washington Department of Fish & Wildlife (WDFW) supports the USFWS request for a waiver to the total dissolved gas standard. WDFW believes that the spill would improve fish passage efficiency resulting in increased outmigrating juvenile salmon survival and adult salmon returns.

National Marine Fisheries Service: Mark Schneider

The National Marine Fisheries Service supports the USFWS's request for a waiver to the total dissolved gas standard to allow spill for the Spring Creek National Fish Hatchery. They believe that the increased spill would result in an increase in survivorship of the Spring Creek National Fish Hatchery outmigrating juvenile chinook and pose little threat to resident or other migratory aquatic life.

Conclusions

The Spring Creek NFH chinook salmon are a critical component to the management of salmon fisheries in the region. These fish are important for treaty, commercial, sport, and ESA purposes. The Department concludes from the above that the variation from the state's dissolved gas standard of 110 percent to a level of 115 percent at Camas/Washougal and 120 percent in the tailrace is still a conservative approach for facilitating fish passage at hydroelectric dams. The risks associated with this waiver in terms of adverse impacts to fish due to elevated levels of dissolved gas need to be balanced against the risks inherent in other modes of passage. The physical and biological monitoring proposed by the USFWS will be able to detect changes in total dissolved gas levels and increased incidence of gas bubble disease signs.

The Department continues to support the waiver request.

Department Recommendation

The Department recommends that the Commission grant this petition by adopting the findings contained in the Draft Order attached as Appendix C, subject to implementation of the physical and biological monitoring regime as detailed in the monitoring plan accompanying the USFWS request dated December 11, 1998, and:

(i) Approve a revised total dissolved gas standard for the Columbia River for the period from midnight on March 18, 1999 to midnight on March 28, 1999;

(ii) Approve a total dissolved gas standard for the Columbia River of a daily (12 highest hours) average of 115 percent as measured at the Camas/Washougal monitoring station;

(iii) Approve a cap on total dissolved gas for the Columbia River during the spill program of 120 percent measured at the Camas/Washougal monitoring station, based on the highest two hours during the 12 highest hourly measurements per calendar day during these times; and

(iv) Require that if *either* 15 percent of the fish examined show signs of gas bubble disease in their non-paired fins, *or* five percent of the fish examined show signs of gas bubble trauma in their non-paired fins where more than 25 percent of the surface area of the fin is occluded by gas bubbles, whichever is the less, the Director will terminate the waiver;

(vi) Require USFWS to incorporate the following conditions into its program:

1. USFWS must provide written notice to the Department within 24 hours of any violations of the conditions in the variance as it relates to voluntary spill. Such notice shall include actions proposed to reduce TDG levels or the reason(s) for no action;

2. that USFWS provide a report of the Spring Creek NFH spill program for 1999. The report should be completed by September 30, 1999 and supply information on the levels of total dissolved gas, the fish monitored and incidence of gas bubble disease.

Attachments

A. Copy of OAR 340-41-205, 445, 485, and 525 (2)(n)
B. Summary of Public Testimony
C. Copy of EQC Draft Order

Approved:

Section:

Division:

Report Prepared By: Eugene Foster

Phone: (503) 229-5358

Date Prepared: January 11, 1999

Appendix A

OAR 340-41-205, 445, 485, and 525(2)(n)

(A) The concentration of total dissolved gas relative to atmospheric pressure at the point of sample collection shall not exceed 110 percent of saturation, except when stream flow exceeds the ten-year, seven-day average flood. However, for Hatchery receiving waters and waters less than two feet in depth, the concentration of total dissolved gas relative to atmospheric pressure at the point of sample collection shall not exceed 105 percent of saturation.

(B)The Commission may modify the total dissolved gas criteria in the Columbia River for the purpose of allowing increased spill for salmonid migration. The Commission must find that:

(i) Failure to act would result in greater harm to salmonid stock survival through in-river migration than would occur by increased spill.

(ii) The modified total dissolved gas criteria associated with the increased spill provides a reasonable balance of the risk of impairment due to elevated total dissolved gas to both resident biological communities and other migrating fish and to migrating adult and juvenile salmonids when compared to other options for in-river migration of salmon;

(iii) Adequate biological data will exist to determine compliance with the standards; and,

(iv) Biological monitoring is occurring to document that the migratory salmonid and resident biological communities are being protected.

(C) The Commission will give public notice and notify all known interested parties and will make provision for the for opportunity to be heard and comment on the evidence presented by others, except that the Director may modify the total dissolved gas criteria for emergencies for a period not exceeding 48 hours;

(D) The Commission may, at its discretion, consider alternative modes of migration.

Appendix B

State of Oregon

Department of Environmental Quality Memorandum

Date: January 11, 1999

To: Environmental Quality Commission

From: Eugene Foster

Subject: Summary of Public Comment on the U.S. Fish & Wildlife's Request for a Waiver to the Total Dissolved Gas Standard

The U.S. Fish & Wildlife Service requested a waiver to the total dissolved gas standard to allow increased spill over Bonneville Dam to reduce turbine mortality of fall chinook salmon released from the Spring Creek Fish Hatchery. The requested waiver would begin on March 18, 1999 and end midnight March 28, 1999. The Oregon Department of Environmental Quality issued a public notice, beginning on December 15, 1998 and closed on December 29, 1998, requesting public comment on the waiver request.

The Department received two comments on the proposed waiver during the public comment period and two after the public comment period closed. Comments were received form the Oregon Department of Fish & Wildlife (ODFW), the Columbia River Inter-Tribal Fish Commission (CRTFC), the Washington Department of Fish & Wildlife (WDFW), and the National Marine Fisheries Service (NMFS). Their comments are summarized below.

Oregon Department of Fish & Wildlife: Ron Boyce

ODFW strongly supports the waiver request of the USFWS. The Spring Creek National Fish Hatchery (NFH) chinook salmon are an important stock to Oregon for a number of reasons. The Spring Creek NFH salmon provide critical protection to ESA listed and other species of salmon. Spring Creek NFH fish provide a buffer to ESA listed chinook in US/Canada fisheries off the west coast of Vancouver Island. The National Marine Fisheries Service's 1995 Biological Opinion for the Federal Columbia River Power System no jeopardy determination of ESA listed Snake River fall chinook was based on the assumption of continued low incidental Snake River wild chinook that is only made possible by the abundance of hatchery chinook including fall chinook from Spring Creek NFH. They are also a key component of the US/Canada treaty ocean harvests and near shore fisheries off Oregon and Washington. These fish, in abundant run years, can make up a large percentage of the ocean chinook catches off the mouth of the Columbia River and at Buoy 10 in the lower Columbia River. The Spring Creek

NFH fish also support Zone 6 tribal chinook harvests required in the Columbia River Fish Management Plan under the US v. Oregon court settlement.

Columbia River Inter-Tribal Fish Commission: Ted Strong

CRTFC strongly supports the USFWS total dissolved gas standard waiver request for increased survivorship of Spring Creek NFH released chinook salmon. CRTFC state that the tribes have legal rights to take fish destined to pass the tribes usual and accustomed fishing places. The Spring Creek NFH chinook salmon are important to the tribes' cultural and treaty reserved resources. CRTFC strongly advises that DEQ and the Commission focus on improving in-river survival and that the Clean Water Act does not provide for protection of beneficial uses by removing them from their habitat and transporting them around dams. CRTFC asserts that there is no "bright line" between the value of hatchery salmon and naturally produced salmon, a principle that has been upheld in federal courts and in the US v. Oregon proceedings. The tribal rights must not be subordinated to other economic interests such as competing fisheries, irrigation storage, or power demands. The Commission lacked a basis for denying the 1998 USFWS request for a waiver as all criteria to meet the variance were met by the USFWS. CRTFC encourages a waiver of 125 percent total dissolved gas in the Bonneville Dam tailrace.

Comments Received After the Close of Public Comment Period

Washington Department of Fish & Widlife: Bruce Crawford

WDFW supports the USFWS request for a waiver to the total dissolved gas standard. WDFW believes that the spill would improve fish passage efficiency resulting in increased outmigrating juvenile salmon survival and adult salmon returns.

National Marine Fisheries Service: Mark Schneider

NMFS supports the USFWS's request for a waiver to the total dissolved gas standard to allow spill for the Spring Creek NFH. They believe that the increased spill would result in an increase in survivorship of the Spring Creek NFH outmigrating juvenile chinook and pose little threat to resident or other migratory aquatic life.

Appendix C

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

In the matter of the U. S. Fish & Wildlife Service's request to spill water to assist out-migrating Spring Creek National Fish Hatchery Chinook salmon smolts	(	ORDER

WHEREAS the Department of Environmental Quality received a request from the U. S. Fish & Wildlife Service dated December 11, 1998, to adjust the Total Dissolved Gas Standard as necessary to spill over Bonneville Dam on the Columbia River to assist out-migrating Spring Creek National Fish Hatchery fall Chinook salmon smolts from midnight on March 18 to midnight on March 28, 1999.

WHEREAS the public was notified of the request on December 15, 1998, and given the opportunity to provide written comments until 5:00 p.m. on December 29, 1998.

WHEREAS the Environmental Quality Commission met on January 29, 1999 and considered the request, justification and public comment.

THEREFORE the Environmental Quality Commission orders as follows:

1. Acting under OAR 340-41-205(2)(n)(B), the Commission finds:

(i) failure to act will result in more salmonid passage via hydroelectric dam turbines. Estimated mortalities from fish passing through turbines at Bonneville is between 11 and 15 percent. Fish passing over spillways as a result of spill experience 2 to 3 percent mortality. The Commission is, therefore able to make the first finding;

(ii) the balance of risk of impairment to migrating salmonids, resident fish, and other aquatic life due to elevated dissolved gas levels needs to be balanced against migrating juvenile salmonid mortality from turbine passage. Resident fish and aquatic invertebrates in the Columbia River downstream of Bonneville Dam were monitored by NMFS for signs of gas bubble disease in 1993, 1994, 1995, 1996, 1997, and 1998. There was a low incidence of gas bubble disease (less than 1 percent) in resident fish examined in 1993 and 1995 while in 1994, 1997, and 1998 none of the

fish observed had signs of gas bubble disease. There were no signs of gas bubble disease observed in the aquatic invertebrates examined. There is a low incidence of gas bubble disease in migrating juvenile and adult salmonids when the total dissolved gas levels are at or below 115 percent in the dam forebays and 120 percent in the tailraces. The low incidence of gas bubble disease observed has been regarded as a low risk for mortality from gas bubble disease. Total dissolved gas of 130 to 140 percent, that have resulted from involuntary spill, resulted in an increased incidence of gas bubble disease and regarded as an increased risk of mortality from gas bubble disease. Given the past monitoring of gas bubble disease the levels requested in this petition seem to be a reasonable balance between increased survivorship due to reduced turbine mortality and the risk of mortality from gas bubble disease. The Commission is, therefore able to make the second finding;

(iii) USFWS has submitted a detailed physical monitoring plan. Physical monitoring will be conducted by the Army Corps of Engineers at Warrendale, Skamania, Camas/Washougal, and the Bonneville Dam forebay. Hourly data will be available on the Corps of Engineers' Internet World Wide Web pages. Implementation of the physical monitoring plan will ensure that data will exist to determine compliance with the standards for the voluntary spill program; The Commission is, therefore able to make the third finding.

(iv) USFWS has submitted a detailed biological monitoring plan. Juvenile salmonids and resident fish will be collected with a beach seine downstream of Bonneville Dam and examined for signs of gas bubble disease on non-paired fins, eyes, and lateral lines. Adult salmonids will be monitored for signs of gas bubble disease by using video tape as they pass through the viewing chambers of the Bonneville Dam fish ladders. The Commission is, therefore able to make the fourth finding.

2. The Environmental Quality Commission approves a modification to the Total Dissolved Gas standard for spill over the Columbia River dams subject to the following conditions:

(i) implementation of the physical and biological monitoring regime as detailed in the monitoring plan accompanying the U. S. Fish & Wildlife Service request dated December 11, 1998, and:

(ii) a revised total dissolved gas standard for the Columbia River for the period midnight on March 18, 1999 to midnight on March 28, 1999;

(iii) a total dissolved gas standard for the Columbia River of a daily (12 highest hours) average of 115 percent as measured at established monitors at the Camas/Washougal monitoring station during these times;

(iv) a cap on total dissolved gas for the Columbia River during the spill program of 120 percent as measured at the Camas/Washougal monitoring station, based on the highest two hours during the 12 highest hourly measurements per calendar day during these times; and

(v) that if *either* 15 percent of the fish examined show signs of gas bubble disease in their non-paired fins, *or* five percent of the fish examined show signs of gas bubble trauma in their non-paired fins where more than 25 percent of the surface area of the fin is occluded by gas bubbles, whichever is the less, the Director will terminate the waiver;

(vii) USFWS will incorporate the following conditions into its program:

1. USFWS must provide written notice to the Department within 24 hours of any violations of the conditions in the variance as it relates

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item E
Meeting

Title:

Proposed Amendments to Oregon Administrative Rules, Chapter 340, Division 052, Review of Plans and Specifications, Section 0045, Exemption from Plan Submittal to the Department, to allow exemptions to municipalities and industries from submittal of engineering plans and specifications to the Department, and proposed housekeeping amendments to Division 045, Regulations Pertaining to NPDES and WPCF permits, Section 0065, Other Requirements.

Summary:

The proposed Division 052 rule amendments would authorize the Department to grant exemptions to municipalities and industries, on an owner-by-owner basis, from submittal of engineering plans and specifications for Department review and approval. Prior to granting an exemption the Department would have to make findings that the requesting municipality or industry has adequate, professional staff to perform the review.

The proposed rules require that exempted municipalities submit facility plans and predesign reports for Department review and approval, and that as-built plans be submitted on completion of construction. Regarding industries, the proposed rules require that industries submit engineering feasibility studies and predesign or preliminary engineering reports to the Department for review and approval if the Department requests them.

The Division 045 rule amendments update statutory references, reference Division 052 rules to ensure consistency between the two Divisions, and eliminate the requirements for privately owned systems to file a performance bond. The elimination of performance bond requirements is pursuant to statutory changes passed by the 1997 Legislature.

Department Recommendation:

It is recommended that the Commission adopt the proposed rule amendments to Division 052 to allow plan review exemptions for municipalities and industries, and adopt housekeeping amendments to Division 045, as presented in Attachment A of the Department Staff Report.

Report Author | Division Administrator | Director

PPD\WC15\WC15062.doc

Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

State of Oregon
Department of Environmental Quality Memorandum

Date: January 8, 1999

To: Environmental Quality Commission

From: Langdon Marsh

Subject: Agenda Item E, Proposed Amendments to Oregon Administrative Rules, Chapter 340, Division 052, Review of Plans and Specifications, Section 0045, Exemption from Plan Submittal to the Department, to allow exemptions to municipalities and industries from submittal of engineering plans and specifications to the Department, and proposed housekeeping amendments to Division 045, Regulations Pertaining to NPDES and WPCF permits, Section 0065, Other Requirements, EQC Meeting January 29, 1999.

Introduction

Agenda Item E broadens exemptions to engineering plan review while also establishing new requirements for submittal of reports. Exempted municipalities would continue to submit all municipal facility plans and predesign reports for approval, while exempted industries would need to submit their engineering feasibility studies and predesign reports on request. Prior to presenting the agenda topic, it may be useful to describe the various types of planning and engineering documents that are included in the proposed rule amendments.

Municipal Wastewater Facility Plan. A facility plan is a comprehensive planning report covering a municipality's entire wastewater system needs for the foreseeable future, normally 20 years. The Department has written guidelines covering the scope and content of facility plans. Some of the most important elements include the following:

- A technical description and evaluation of all the existing facilities, including the collection system, treatment plants, and all discharge points, with an inventory of all known wastewater problems in the study area.
- A projection of future wastewater flows and waste loads for a 20-year planning period.
- A discussion of DEQ and other regulatory requirements that must be met.
- An analysis of feasible alternatives, and a selection of a preferred alternative that is cost effective and environmentally sound.
- Technical descriptions and cost estimates for collection, treatment, and outfall improvement projects necessary to implement the preferred alternative.
- An analysis of financing options and development of a financing plan for construction, operation and maintenance and replacement.

The water quality program maintains a file of facility plans and uses them to inform staff decisions regarding permit renewals and permit modifications. Many municipalities also rely on their facility plans to demonstrate to citizens and decision makers that their preferred alternatives are cost effective and environmentally sound, and to show how they will be paid for. In the past, the Department has not required municipalities to update or maintain current facilities plans or to submit them for approval, except for projects funded under the State Revolving Fund program. The proposed amendments would require all exempted municipalities to obtain approval of any facilities plans which they choose to develop.

Industrial Wastewater Engineering Feasibility Study. A feasibility study for industrial facilities is less comprehensive than the municipal facility plan, as industries do not have to satisfy public participation requirements, public agency bidding requirements or any requirements for financial disclosure. Moreover, the Department has not found it necessary to develop guidelines for industrial wastewater feasibility studies. Since pollutant discharges from a malfunctioning industrial treatment plant can be halted immediately by closing the factory, the Department can safely review industrial treatment plans in a more cursory manner than plans for municipal treatment.

An industrial wastewater feasibility study addresses State and Federal regulatory requirements to ensure that the treated discharge meets appropriate water quality standards, evaluates pertinent alternatives, and selects a preferred alternative that meets company needs. Feasibility studies are usually undertaken only for new wastewater treatment facilities or major expansions. Nearly all industrial wastewater upgrades and improvements are documented through predesign reports.

Predesign Report. The term "predesign report" refers to any of the various studies, technical memoranda, and engineering evaluations that may be completed prior to the final design of specific projects. Predesign reports are invariably necessary to study and refine the broad design concepts presented in facility plans and feasibility studies, as these do not provide sufficient information for the preparation of final engineering plans and specifications. Until facility planning concepts have been more clearly defined and agreed to by plant operations staff, through various predesign reports, it is not productive for engineering consultants to undertake a final design. At both municipal and industrial treatment plants, most projects are developed through predesign reports, instead of directly from facilities plans or feasibility studies. The Department relies heavily on predesign reports to inform decisions regarding permitting, water quality impacts, and project reliability and effectiveness.

The Department maintains extensive files of predesign reports for all treatment plants in the state. Practically all minor plant modifications have had to be documented with some form of a predesign report; although for small projects a brief letter report was generally sufficient. The proposed amendments would require exempted cities to secure approval of pre-design reports for all treatment plant projects.

Design Report. The term "design report" refers to the various studies and memoranda that are written as part of the final design of a specific project. Design reports analyze final design options and further refine design concepts and constraints. For example, reports covering such topics as foundation soils, utility and power supply options, equipment manufacturer choices and preferences, solutions to piping conflicts, architectural concepts and finishes, landscaping design, drainage and erosion controls, coatings and colors preferences, etc. are usually classified as design reports. The proposed amendments would exempt them from Department submittal and review.

Engineering Plans and Specifications. The engineering plans and specifications are prepared as contract documents for the construction of each specific project. The final design process on large, complex projects is normally phased to allow for periodic review and comment by plant operators, for example, at the 40%, 70%, and 90% design points. In large cities, the Department's input at these final stages of design has been minimal. The Department maintains a file of final plans for each city in the state, and relies on them to inform regulatory and enforcement decisions regarding complaints, emergencies, violations, and potential mitigating circumstances. They also inform the Department's determination of proper classification levels for certified operators. The proposed amendments would exclude exempted cities from informational as well as review submittal of final plans.

As-Built Plans. Several weeks after completion of construction, the engineer provides the city with several sets of plans showing the finished project, and reflecting all design changes made during construction. The Department does not currently require submittal of as-built plans unless a project has involved significant changes during construction. The intent of the proposed amendments is to require them on all projects from exempted cities, in place of final design plans.

Background

On October 2, 1998, the Director authorized the Water Quality Division to proceed to a rulemaking hearing on proposed rules which would accomplish the following:

Division 052, Section 0045. The proposed amendments would grant engineering plan review exemptions for sewers and pump stations to all municipalities provided they request an exemption and can demonstrate review authority binding upon the design engineer, and will ensure that the plans will be reviewed by a registered professional engineer on staff or that the plans will be reviewed by a registered professional engineer not associated with the project.

The proposed amendments would grant engineering plan review exemptions for wastewater treatment facilities to municipalities with a population of 30,000 or larger provided they request such an exemption in writing and demonstrate adequate professional staff experienced in the design and inspection of complex sanitary engineering projects. Municipalities granted such an exemption must agree to submit facility plans and pre-design reports (as opposed to more detailed engineering plans) to the Department for review and approval, ensure that the design and construction of facilities comply with rules of the Department, and the approved facility plan and applicable predesign reports, and agree to forward copies of as-built plans on completion of construction.

Following is a list of municipalities believed to have a population of 30,000 or larger:

Albany
Clackamas County Service District No. 1
Corvallis
Bear Creek Valley Sanitary Authority
Bend
Gresham
Lake Oswego
Medford
Metropolitan Wastewater Management Commission (inc. Eugene, Springfield)
Oak Lodge Sanitary District
Portland
Roseburg Urban Sanitary Authority
Salem
Tri-City Service District (Clackamas County)
Unified Sewerage Agency (inc. Beaverton, Forest Grove, Tigard, Hillsboro)

The proposed amendments would grant engineering plan review exemptions for wastewater treatment facilities to municipalities with a population of less than 30,000 but rated as major domestic facilities provided they request such an exemption in writing and demonstrate adequate professional staff experienced in the design and inspection of complex sanitary engineering projects. In addition, these municipalities would be required to submit a report to the Department

for review and approval describing technical and managerial expertise in planning and constructing wastewater treatment facilities. Municipalities granted such an exemption must agree to submit facility plans and pre-design reports to the Department for review and approval, ensure that the design and construction of facilities comply with rules of the Department, and the approved facility plan and applicable predesign reports, and agree to forward copies of as-built plans on completion of construction.

The proposed amendments would grant engineering plan review exemptions for industrial waste water treatment facilities provided they request such an exemption in writing and demonstrate adequate professional staff experienced in the design and inspection of complex industrial engineering projects. Owners granted such an exemption must agree to submit engineering feasibility studies and pre-design or preliminary engineering reports to the Department for review and approval if the Department requests such reports. In addition, owners must ensure that the design and construction of facilities comply with rules of the Department, the applicable engineering feasibility studies and predesign or preliminary engineering reports, and terms of their permit.

The proposed rule amendments include a housekeeping change to remove the requirement for submittal of plans for projects to be funded by EPA construction grants. The EPA grant program ended several years ago.

Division 045, Section 0065. The proposed amendments include housekeeping changes to delete obsolete statutory references and update statutory and rule references. The proposed amendments remove performance bond requirements for privately owned sewerage systems. This requirement was already eliminated in statute by the 1997 Legislature (repeal of ORS 454.405 and ORS 454.425).

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on November 2, 1998. The Hearing Notice and informational materials were mailed to the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action on November 2, 1998.

A Public Hearing was held December 4, 1998, with Tom Lucas serving as Presiding Officer. Written comment was received through December 10, 1998. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing and summarizes all the written comments received. (A copy of the comments is available upon request.)

Department staff have evaluated the comments received (Attachment D). Based upon that evaluation, no modifications to the initial rulemaking proposal are being recommended by the Department.

The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public comments and the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

Issue this Proposed Rulemaking Action is Intended to Address

This rulemaking addresses the issue of exemptions to engineering plan review. Under existing rules, plan review exemptions for gravity sewers only have been granted to twenty-five municipalities. All other engineering plans prepared for sewers, pump stations, and wastewater treatment facilities, for both municipalities and industries, are subject to Department review and approval.

The proposed rule amendments propose to very substantially reduce the Department's role in engineering plan review of wastewater facilities. The proposed amendments would allow engineering plan review exemptions to all qualifying municipalities for sewers and pump stations. The amendments would allow exemptions to all qualifying industries and to municipalities with a population of 30,000 or larger for wastewater treatment facilities. The amendments would also allow wastewater treatment facility exemptions to municipalities less then 30,000 but rated as a domestic major facility (roughly a population of 10,000 people) subject to additional qualifications.

Relationship to Federal and Adjacent State Rules

Neither the Clean Water Act nor EPA regulations require State review of engineering plans and specifications. Federal granting agencies such as the Rural Development of the U.S. Department of Agriculture often rely on the State environmental agency to carry out State law and perform engineering plan review on sewerage projects which receive federal grants.

States adjacent to Oregon have historically performed engineering plan review prior to construction of sewerage projects. The Washington State Department of Ecology is now embarking on a pilot project to exempt qualifying municipalities from engineering plan review on a trial basis.

Authority to Address the Issue

The Commission has authority pursuant to State statute at ORS 468.020 authorizing the adoption of rules to carry out the functions vested in the Commission, and at ORS 468.035 authorizing the adoption of rules to implement the Clean Water Act.

The Commission, under ORS 468B.055(3), can exempt by rule systems or works "for which the commission finds plan submittal and approval unnecessary or impractical." Based on advice from the Attorney General's Office, the Department would need to make findings before granting any exemptions.

Process for Development of the Rulemaking Proposal (including Advisory Committee and alternatives considered)

DEQ and its predecessor, the State Sanitary Authority, have performed engineering plan review for domestic and industrial point sources since the 1940's. In the early years of the State Sanitary Authority, plan review was the major activity. In some situations, Sanitary Authority staff actually participated in the developed of the detailed plans.

In 1981, the Department began granting engineering plan review exemptions to municipalities for gravity sewer projects. During the last two decades sanitary engineering expertise has increased rapidly. Some large communities have the capability to perform engineering reviews similar to those now performed by the Department engineering staff. A few of the very large communities actually do some engineering design, particularly sewer extensions, and then rely on consulting firms for other sanitary engineering work. To date 25 municipalities have requested and have been granted exemptions for gravity sewer projects, conditional on adherence to approved design standards. There have not been any environmental problems resulting from these exemptions.

Over the past ten years, members of the Association of Clean Water Agencies (ACWA), League of Oregon Cities (LOC) and several individual municipalities have expressed interest in additional plan review exemptions—for pressure sewers, pump stations and, in some situations, exemptions for wastewater treatment facilities. These associations and communities have expressed that the municipalities have trained professional staff who already perform review of consultant work, and the Department's review is redundant, wastes time, and can increase overall costs.

Beginning in late 1995, and continuing through mid-1997, Department staff met several times with a subcommittee of the Early Warning Team to discuss issues and concerns regarding engineering plan review. The Early Warning Team consists of representatives from the League of Oregon Cities, Association of Clean Water Agencies, Counties, Cities, Special districts, and Department staff.

In response to these concerns, the Department conducted a survey in 1997 to elicit broad response to this issue. Based on responses to this survey the Department decided to consider rule amendments and assigned the review of proposals to the Department's Water Quality Rule Review Advisory Committee. The advisory committee review was limited to review of exemptions for municipalities only.

During 1998, a background paper and proposed rule drafts were brought to the committee for a total of four meetings. The committee reviewed the background information; reviewed several drafts of proposed rules; suggested improvements; and invited staff from several communities to come to meetings and provide information. There was substantial support from individual committee members for proposed rules similar to those described in Attachment A. Members in support expressed that sanitary engineering expertise in many of the larger communities is equivalent to expertise in DEQ, reduction of engineering plan review activities would afford DEQ the opportunity to re-allocate staff to other high priority work such as permits and compliance, and DEQ staff should focus on the planning work done in advance of the actual construction, such as facility plans, to ensure that permit and other regulatory requirements are met. There were some concerns expressed that ending the review process at the completion of facility planning may not be adequate to ensure properly constructed facilities, and that engineering plan review exemptions could, over time, lead to inadequate facilities with resulting inadequate treatment, and raw sewage overflows.

The Department staff reviewed the proposed rules and committee comments, and concluded that rules should be modified to include requirements for Department review and approval of predesign reports and that as-built plans should be submitted to the Department at the completion of construction. In addition, the Department incorporated provisions for plan review exemptions for industries. In 1994, the Department formed an Industrial Wastewater Permit Advisory Committee to review several regulatory and program issues that impact industries across the State. The committee specifically recommended that the Department "phase out DEQ engineering review of plans and specifications, and accept documents as submitted by qualified and certified engineers."

The proposed rule amendments reviewed by the Water Quality Rule Review Advisory Committee, together with revisions incorporating requirements for predesign reports and as-built plans, and the addition of proposed exemptions for industries recommended by the Industrial Permit Advisory Committee, constitute the proposed rules that were sent out for public hearing and comment. These rules are described in Attachment A.

During the course of the advisory committee review and the follow-up evaluation and revisions by Department staff, several alternatives were considered. The primary alternatives are briefly reviewed, as follows:

1. Do nothing. This alternative was rejected. Sanitary and industrial engineering expertise has increased substantially, particularly during the past two decades, and some level of plan review exemption seemed warranted. As noted above, the Department has granted exemptions to municipalities for gravity sewer projects since 1981, and there have been no problems.

2. The Department considered recommending statutory changes to the 1999 Legislature to eliminate plan review entirely. This alternative was rejected because there are many industrial and municipal permittees that have no capability to review consultant prepared engineering plans. In addition, many municipalities and industries will want to continue the present practice of submitting the plans to the Department for review and approval.

3. Propose the rule amendments described in Attachment A for Commission consideration. These proposed rule amendments represent substantial work performed by two Department advisory committees, and include additional evaluation and revisions by Department staff. The Department believes that engineering plan review exemptions can be very beneficial provided these exemptions are given as requested to qualifying municipalities and industries. Exemptions can eliminate redundancy (municipal engineers and State engineers reviewing the same set of plans), and can save time. Because the construction season is often short, time saved in the review process can be helpful in getting a project built on time. This, in turn, is protective of the environment. There is an additional benefit to engineering plan review exemptions—Department staff could be reassigned to other high priority regulatory work such as writing permits, conducting compliance inspections, and concentrating on facility plans and predesign reports.

Summary of Rulemaking Proposal Presented for Public Hearing

Division 052, Section 0045. The proposed rule amendments presented for public hearing would authorize the Department to grant exemptions to municipalities and industries from submittal of engineering plans and specifications for Department review and approval. Requests for exemptions would have to be in writing and any exemptions granted by the Department would be in writing. Prior to granting an exemption the Department would have to make findings that the requesting municipality or industry has adequate, professional staff to perform the review.

Exemptions for sewers and pump stations could be granted if the owner has a registered professional engineer on staff with review authority binding on the design engineer, or the owner will ensure that projects will be reviewed by a professional engineer not associated with the project. For example, the owner could contract with a consulting firm to function as a municipality's city or district engineer.

Owner-by-owner exemptions for projects involving treatment and disposal of industrial or domestic wastewater could be granted for industries and for municipalities 30,000 or larger in population if the owner demonstrates adequate, professional staff in the design and inspection of complex industrial or sanitary engineering projects, including a registered professional engineer with review authority binding upon the design engineer. Municipalities less than 30,000 in population, but rated as domestic major facilities, could be granted exemptions by submitting a written report demonstrating adequate, professional staff in the design and inspection of complex sanitary engineering projects, including a registered professional engineer with review authority binding upon the design engineer, a history of compliance with permit conditions, and technical capability to support large projects.

The proposed rules require that exempted municipalities submit facility plans and predesign reports for Department review and approval, and that as-built plans be submitted on completion of construction. Regarding industries, the proposed rules require that industries submit engineering feasibility studies and predesign or preliminary engineering reports to the Department for review and approval if the Department requests them. Exempted municipalities and industries must comply with rules of the Department and terms of their permit.

Division 045, Section 0065, Rule Amendments. The rule proposed rule amendments presented for public hearing would update statutory references, reference Division 052 rules to ensure consistency between the two Divisions, and eliminate the requirements for privately owned systems to file a performance bond. The elimination of performance bond requirements is pursuant to statutory changes passed by the 1997 Legislature (repeal of ORS 454.405 and 454.425).

Summary of Significant Public Comment and Changes Proposed in Response

No oral comment was received at the public hearing, and no written comment was received that pertained to exemptions for industries. There was significant written comment received from eight commenters that pertained to exemptions for municipalities. Five commenters supported the rule amendments as proposed, citing improved efficiency, reduced time delays in construction, elimination of redundancy and cost savings. Three commenters supported the proposed amendments, but with recommended changes, as follows:

1. Commenters proposed that the rule amendments not require the submittal of as-built plans after construction but rather that these drawings be kept on file at the municipality for review as needed.

   Response: The Department believes that the as-built drawings should be on file at the region offices. In the event of "start up" problems at the initiation of operation, Department technical staff can provide technical assistance. In addition, staff can review the drawings to gain needed familiarity with the wastewater treatment facility.

2. It was proposed that "adequate staff" should include consulting engineers under contract, and that exemptions for wastewater treatment facilities should be given to municipalities with adequate internal staff or with contractors.

   Response: The proposed amendments make a distinction between wastewater treatment facilities, and sewers and pump stations. The proposed amendments would allow qualified engineers, under contract to municipalities, to review and approve engineering plans for sewers and pump stations. The Department believes that adequate plan review of complex wastewater treatment facilities requires professional staff with technical expertise and project oversight capabilities working for the municipality on an ongoing basis. The Department does not believe that retaining yet another consulting firm (in addition to the firm hired to prepare the engineering plans) can ensure the needed expertise on an ongoing basis. In addition, it may be difficult to find consulting engineering firms that will review and approve the work of another consulting firm.

3. Commenters agreed that the Department should review and approve facility plans but recommended that the review process should end at this point, that is, the Department should not review and approve predesign reports.

   Response: The Department believes that predesign reports are a logical extension of the facility plan and often include essential information for writing the permit. The Department does not intend to review reports that are prepared to assist in the actual engineering design.

4. Commenters recommended that exemptions be "blanket" rather than on a project-by-project basis.

   Response: The Department agrees that exemptions should be "blanket" and that the proposed rules state that exemptions will be given to municipalities and industries.

5. It was recommended that there should be a definite procedure and criteria for suspension or revocation of exemptions.

   Response: The Department believes that existing rule language in OAR 340052-0045(7), is sufficient to revoke exemptions.

6. A commenter suggested that there should be a policy statement in the rules expressing that the Department retains responsibility for plan approvals.

   Response: The Department does not believe a policy statement is necessary but agrees that under existing State law the Department is responsible for plan review.

7. A commenter recommended that the Department should not give exemptions for wastewater treatment plant modifications that are not pursuant to an approved facility plan.

   Response: The Department believes that requiring submittal of all facility plans and predesign reports for review and approval should be adequate. In addition, any plant modification must result in a facility that meets in-stream waster quality standards and permit requirements.

Summary of How the Proposed Rule Will Work and How it Will be Implemented

Each request for engineering plan review exemptions will be reviewed by Water Quality Division and region technical staff. Findings will be made and staff recommendations will be forwarded to the water quality program managers for a decision at a regularly scheduled monthly manager's meeting. A Division staff person will then prepare a letter either granting the exemptions or denying the request, for signature by the Water Quality Division Administrator. Copies of the Department's findings and reasons for approving or denying the request will be made available to the applicant. A decision not to grant an exemption may be appealed to the Water Quality Program Division Administrator, and additional information may be forwarded to the Administrator for subsequent evaluation by Department staff. The appeal will be reviewed by the agency program administrators and the Director at a regularly scheduled weekly meeting. A decision will be made at this meeting.

In most situations it is anticipated that requests will be handled routinely with little additional work by Department staff. There may be a substantial number of requests soon after Commission adoption of the rule amendments. This may result in about .25 FTE of extra staff work for about three months.

Recommendation for Commission Action

It is recommended that the Commission adopt the rule amendments to Division 052 to allow plan review exemptions for municipalities and industries, and adopt housekeeping amendments to Division 045, as presented in Attachment A of the Department Staff Report.

Attachments

A. Rule Amendments Proposed for Adoption
B. Supporting Procedural Documentation:
   1. Legal Notice of Hearing
   2. Fiscal and Economic Impact Statement
   3. Land Use Evaluation Statement
   4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   5. Cover Memorandum from Public Notice
C. Presiding Officer's Report on Public Hearing
D. Department's Evaluation of Public Comment
E. Advisory Committee Membership and Report
F. Rule Implementation Plan

Reference Documents (available upon request)

Written Comments Received (summarized in Attachment C)

Approved:

Section:

Division:

Report Prepared By: Thomas J. Lucas

Phone: (503) 229-6099

Date Prepared: January 8, 1999

PPD\WC15\WC15061.doc

Attachment A

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Rulemaking Proposal
for

Proposed Amendments to Oregon Administrative Rules, Chapter 340, Division 052, Review of Plans and Specifications, Section 0045, Exemption from Plan Submittal to the Department, to allow exemptions to municipalities and industries from submittal of engineering plans and specifications to the Department, and proposed housekeeping amendments to Division 045, Regulations Pertaining to NPDES and WPCF permits, Section 0065, Other Requirements.

[~~Existing rule language deleted~~]

New language added

DIVISION 052
REVIEW OF PLANS AND SPECIFICATIONS

Exemption from Plan Submittal to the Department
340-052-0045

(1) The Department may exempt in writing gravity sewer projects**, pump station projects and pressure sewer projects** from submittal to the Department on an owner-by-owner basis subject to provisions it may find necessary including, but not limited to, all of the following:
  (a) The owner requests such an exemption;
  (b) The owner is a municipality;
  (c) The owner has adequate responsible, professional staff including a registered professional engineer with review authority binding upon the design engineer**, or the owner ensures in writing that projects will be reviewed by a registered professional engineer not associated with the project**;
  (d) The owner submits a copy of all specifications and standards by which sewerage system construction will comply and agrees to submit all subsequent changes thereto;
  (e) The owner submits a current master plan for sewer service;
  (f) The owner agrees in writing to approve and construct sewerage systems in conformance with rules of the Department, the owner's published standards, and terms of their permit~~; and~~
  [~~(g) The owner will submit to the Department for review and approval any plans for projects proposed to be funded by EPA construction grants~~].

(2) **The Department may exempt in writing, projects for the treatment and disposal of domestic wastewater on an owner-by-owner basis for all municipalities 30,000 or larger in population, subject to provisions it may find necessary, including but not limited to, all of the following:**

(a) The owner requests such an exemption in writing;

(b) The owner has adequate, professional staff experienced in the design and inspection of complex sanitary engineering projects, including a registered professional engineer with review authority binding upon the design engineer;

(c) The owner agrees to submit all facilities plans and pre-design reports to the Department for review and approval in accordance with the Department's guidelines;

(d) The owner agrees to submit a copy of the as-built plans on completion of construction, and will ensure that the design and construction of facilities comply with rules of the Department, the approved facilities plan and applicable predesign reports and terms of their permit.

(3) The Department may exempt in writing, projects for the treatment and disposal of domestic wastewater on an owner-by-owner basis for all municipalities less than 30,000 in population and classified by the Department as major domestic facilities, subject to provisions it may find necessary, including but not limited to, all of the following:

(a) The owner requests such an exemption in writing;

(b) The owner agrees to submit a written report for Department review and approval demonstrating technical and managerial expertise in planning and constructing wastewater treatment and disposal facilities. The report must include but is not limited to the following:

(A) Demonstration of adequate, professional staff experienced in the design and inspection of complex sanitary engineering projects, including a registered professional engineer with review authority binding upon the design engineer;

(B) History of compliance with permit conditions;

(C) Demonstration of project technical support capability.

(c) The owner agrees to submit all facilities plans and pre-design reports to the Department for review and approval in accordance with the Department's guidelines;

(d) The owner agrees to submit a copy of the as-built plans on completion of construction, and will ensure that the design and construction of facilities comply with rules of the Department, the approved facilities plan and applicable predesign reports and terms of their permit.

(4) The Department may exempt in writing, projects for the treatment and disposal of industrial wastewater on an owner-by-owner basis subject to provisions it may find necessary, including but not limited to, all of the following:

(a) The owner requests such an exemption in writing;

(b) The owner has adequate, professional staff experienced in the design and inspection of complex industrial engineering and wastewater treatment and disposal projects, including a registered professional engineer with review authority binding upon the design engineer;

(c) The owner agrees to submit all engineering feasibility studies and pre-design or preliminary engineering reports to the Department for review and approval if the Department requests such reports;

(d) The owner agrees to notify the Department in writing prior to the construction or installation of new or changed wastewater treatment or disposal facilities or components, and will ensure that the design and construction of facilities comply with rules of the Department, the applicable engineering feasibility studies and predesign or preliminary engineering reports, and terms of their permit.

([~~2~~]**5**) The Department may exempt submittal of plans for industrial waste pretreatment systems where the municipality receiving the industrial waste has competent review staff and is making those plan reviews.

([~~3~~]**6**) Small ponds used for cooling purposes or for the treatment and disposal of turbid wastewaters associated with gravel mining operations, placer mining operations, or stormwater control systems are exempt from plan submittal under the following conditions:

(a) The pond will not have a dam or dike more than five (5) feet in height or have a surface area of more than 20,000 square feet; and

(b) Groundwater will be adequately protected without the need for an artificial liner; and

(c) No toxic chemicals or industrial wastewater other than cooling water, turbid waters, or turbid waters mixed with non-toxic coagulants will be discharged to the facility;

(d) Disposal will be by recirculation, evaporation, and seepage with no direct discharge to surface waters.

([4]**7**) Small oil/water gravity separators are exempt, if they are designed to meet an effluent limit of no more than 10 milligrams per liter oil and grease and are designed to treat no more than 50 gallons per minute.

([~~5~~]**8**) The Department may exempt other facilities where it has been determined that adequate review is conducted by another state agency and the Department's review would be redundant.

([~~6~~]**9**) The Department may exempt from submittal of plans minor modifications to existing facilities where the change will not significantly affect the operation of the treatment or disposal system. Notification to the Department of each such minor modification is required, however, in order to qualify for such exemption.

(~~7~~**10**) The Department may cancel in writing an exemption for cause or changes in circumstances.

Other Requirements

340-045-0065

(1) Prior to commencing construction on any waste collection, treatment, disposal, or discharge facilities for which a permit is required by OAR 340-045-0015, detailed plans and specifications must be submitted to and approved in writing by the Department as required by ORS 468**B**.[~~742~~] **055 and Oregon Administrative Rules, Division 052, Review of Plans and Specifications** [~~; and for privately owned sewerage systems, a performance bond must be filed with the Department as required by ORS 454.425~~].

(2) Monitoring, recording, and reporting procedures used to meet the requirements of a NPDES permit shall conform with the Federal Act and regulations issued thereto.

PPD\WC15\WC15067.doc

Attachment B

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For

Proposed Amendments to Oregon Administrative Rules, Chapter 340, Division 052, Review of Plans and Specifications, Section 0045, Exemption from Plan Submittal to the Department, to allow exemptions to municipalities and industries from submittal of engineering plans and specifications to the Department, and proposed housekeeping amendments to Division 045, Regulations Pertaining to NPDES and WPCF permits, Section 0065, Other Requirements.

Supporting Procedural Documentation

1. Legal Notice of Hearing
2. Fiscal and Economic Impact Statement
3. Land Use Evaluation Statement
4. Question to be Answered to Reveal Potential Justification for Differing from Federal Requirements
5. Cover Memorandum from Public Notice

PPD\WC15\WC15063.doc

Attachment B-1

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING

A Statement of Need and Fiscal Impact accompanies this form.

Department of Environmental Quality	Chapter 340
Agency and Division	Aministrative Rules Chapter Number
Susan M. Greco	(503) 229-5213
Rules Coordinator	Telephone
811 S.W. 6th Avenue, Portland, OR 97204	
Address	

December 4, 1998	10:00 a.m.	811 SW 6th Ave, Conference Room 3A Portland, OR 97204	Tom Lucas
Hearing Date	Time	Location	Hearings Officer
Hearing Date	Time	Location	Hearings Officer
Hearing Date	Time	Location	Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request? Yes X

RULEMAKING ACTION

ADOPT:

AMEND:

OAR 340-0052-0045, Exemption from Plan Submittal to the Department.

OAR 340-045-0065, Other Requirements.

REPEAL:

RENUMBER:
Secure approval of rule numbers with the Administrative Rules Unit prior to filing

AMEND AND RENUMBER:
Secure approval of rule numbers with the Administrative Rules Unit prior to filing

Stat. Auth.: ORS 468.020, Rules and Standards
Stats. Implemented: ORS 468B.055, Plan Approval required; Exemptions

RULE SUMMARY

Amendments to OAR 340-052-0045, Exemption from Plan Submittal to the Department, would allow exemptions from submittal of engineering plans and specifications to municipalities for municipal sewers, pump stations and wastewater treatment facilities, and exemptions to industries for wastewater treatment facilities. Requests for exemptions must be made and exemptions would be given subject to certain requirements and qualifications. The proposed amendments require municipalities and industries to submit facility plans and predesign reports to the Department for review and approval.

Amendments to Oregon Administrative Rules, Division 045, Section 0065, Other Requirements, would make housekeeping changes to update the statutory reference, cross-reference Division 052, would remove performance bond requirements already eliminated in statute by the 1997 Legislature (repeal of ORS 454.405 and 454.425).

December 10, 1998
Last Day for Public Comment

Authorized Signer and Date

PPD\WC15\WC15015.doc

Attachment B-2

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Rulemaking Proposal
For

Proposed amendments to Oregon Administrative Rules, Chapter 340, Division 52, Review of Plans and Specifications, Section 045, Exemption from Plan Submittal to the Department, by allowing exemptions for municipal sewers and pump stations, and municipal wastewater treatment facilities, and by allowing exemptions for industrial wastewater treatment facilities, subject to certain requirements and qualifications.

Proposed amendments to Oregon Administrative Rules, Chapter 340, Division 45, Regulations pertaining to NPDES and WPCF Permits, Section 065, Other Requirements, proposed housekeeping changes to update the statutory reference, cross-reference Division 52, Review of Plans and Specifications, and eliminate performance bond requirements for private systems.

Fiscal and Economic Impact Statement

Introduction

The proposed rules will eliminate the Department's review of detailed engineering plans and specifications pertaining to **sewers and pump stations to all municipalities** that request an exemption and demonstrate review authority binding upon the design engineer, and will ensure that the plans will be reviewed by a registered professional engineer on staff or that the plans will be reviewed by a registered professional engineer not associated with the project.

The proposed rules grant engineering plan review exemptions for **waste water treatment facilities to municipalities with a population of 30,000 or larger** provided they request such an exemption and can demonstrate adequate professional staff experienced in the design and inspection of complex sanitary engineering projects. Municipalities granted such an exemption must agree to submit facilities plans and pre-design reports to the Department for review and approval, ensure that the design and construction of facilities comply with rules of the Department, and the approved facility plan and applicable predesign reports, and agree to forward copies of as-built plans on completion of construction.

The proposed rules extend the engineering plan review exemptions for **waste water treatment facilities to municipalities with a population of less than 30,000 but rated as major domestic facilities** provided they meet the requirements described above for facilities 30,000 or

larger and, in addition, submit a report to the Department for review and approval describing technical and managerial expertise in planning and constructing waste water treatment facilities.

The proposed rules grant engineering plan review exemptions **for industrial waste water treatment facilities on an owner-by-owner basis** provided they request such an exemption and can demonstrate adequate professional staff experienced in the design and inspection of complex industrial engineering projects. Owners granted such an exemption must agree to submit engineering feasibility studies and pre-design or preliminary engineering reports to the Department for review and approval if the Department requests such reports. In addition, owners must ensure that the design and construction of facilities comply with rules of the Department, the applicable engineering feasibility studies and predesign or preliminary engineering reports, and terms of their permit.

The proposed rule amendments include housekeeping changes to OAR 340-45-065 to update statutory and rule references, and to eliminate reference to performance bond requirements already eliminated in statute during the 1997 legislative session.

General Public

There would be no known impact to the general public as a result of these proposed rule amendments.

Small Business

DEQ does not now charge a fee to industrial permittees for any engineering plan review. It is doubtful that any small businesses would request an exemption because small businesses generally lack the engineering capability to review consultant engineering plans. To the extent that any small businesses do request exemptions, the fiscal and economic impact would be taken into account by the specific business in its internal analysis of the merits of an such an exemption. The impact would probably be neutral to slightly positive.

Large Business

DEQ does not now charge a fee to industrial permittees for any engineering plan review. Large business often have the engineering expertise to review consultant engineering plans, and routinely perform this activity. If the proposed rule amendments are adopted by Environmental Quality Commission action, many large businesses may request and be granted an exemption from DEQ engineering plan review. As with small businesses, large business will perform an internal analysis and, if there is a positive economic and fiscal impact, they will make the request.

Local Governments

DEQ charges a fee to municipalities for review of engineering plans and specifications, and this fee should be taken into account in determining fiscal and economic impact. The fee ranges from $4,600 for review of plans to construct a new treatment facility or substantially modify an existing one down to $100 for review of plans for a minor collection system expansion. DEQ now grants exemptions from engineering plan review for gravity sewer projects only to 25 large municipalities.

Municipal Sewers. Many of the larger municipalities have adequate engineering expertise to review consultant sewer projects, including gravity sewers, pressure sewers, and pump stations. These municipalities often perform their own review and the DEQ review is somewhat redundant. Plan review exemptions for these municipalities would have a positive financial and economic impact. Small communities generally do not have the necessary engineering expertise to review consultant engineering plans. The could add appropriate staff or ensure that the project would be reviewed by a registered professional engineer not associated with the project. In either event there would be a cost. To the extent that any small municipalities do request exemptions, the fiscal and economic impact would be into account by the municipality in its internal analysis of the merits of an such an exemption. The impact would probably be neutral to slightly positive.

Municipal Wastewater Treatment Facilities. Only the large municipalities with over 30,000 in population are known to have sufficient engineering expertise to review the consultant engineering plans for waste water treatment facilities. These municipalities already perform their own review of consultant engineering plans. In this case, the financial and economic impact would be positive for these municipalities—they would not have to increase staffing, and they would not have to pay the engineering plan review fee to DEQ.

State Agencies

The fiscal and economic impact on DEQ should be positive. The Department receives about $190,000 in fee revenues per biennium for engineering plan review, enough to fund about one staff person (1.0 FTE). However, the Department funds an additional 2.5 FTE with waste treatment permit fees and another 1.1 FTE with State revolving loan program funds. While the fiscal and economic impact cannot be fully known until the Department knows the number and sizes of municipalities that will be requesting exemptions, it is likely that substantial resource can be re-allocated to waste discharge permit activities such as writing permits and conducting inspections. The water quality program has a very substantial backlog in expired permits, so this resource transfer would be positive.

Some State and Federal agencies rely on DEQ to perform engineering plan reviews for municipal waste treatment facilities and sewer projects. The fiscal and economic impact on these agencies should be neutral. DEQ engineering will still perform a substantial number of reviews. Municipalities with plan review exemptions will perform reviews equivalent to those performed by DEQ.

Housing Cost Impact Statement

The Department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

PPD\WC15\WC15009.doc

Attachment B-3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Proposed amendments to Oregon Administrative Rules, Chapter 340, Division 52, Review of Plans and Specifications, Section 045, Exemption from Plan Submittal to the Department, by allowing exemptions for municipal sewers and pump stations, and municipal wastewater treatment facilities, and by allowing exemptions for industrial wastewater treatment facilities, subject to certain requirements and qualifications.

Proposed amendments to Oregon Administrative Rules, Chapter 340, Division 45, Regulations pertaining to NPDES and WPCF Permits, Section 065, Other Requirements, proposed housekeeping changes to update the statutory reference, cross-reference Division 52, Review of Plans and Specifications, and eliminate performance bond requirements for private systems.

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The proposed rule amendments eliminate the Department's review of detailed engineering plans and specifications pertaining to **sewers and pump stations to all municipalities** that request an exemption and demonstrate review authority binding upon the design engineer, and will ensure that the plans will be reviewed by a registered professional engineer on staff or that the plans will be reviewed by a registered professional engineer not associated with the project.

The proposed rule amendments grant engineering plan review exemptions for **waste water treatment facilities to municipalities with a population of 30,000 or larger** provided they request such an exemption and can demonstrate adequate professional staff experienced in the design and inspection of complex sanitary engineering projects. Municipalities granted such an exemption must agree to submit facilities plans and pre-design reports to the Department for review and approval, and must agree to forward copies of final construction plans and specifications at the beginning of construction, and as-built plans on completion of construction.

The proposed rule amendments extend the engineering plan review exemptions for **waste water treatment facilities to municipalities with a population of less than 30,000 but rated as major domestic facilities** provided they meet the requirements described above for facilities 30,000 or larger and, in addition, submit a report to the Department for review and approval describing demonstrating technical and managerial expertise in planning and constructing waste water treatment facilities.

The proposed rule amendments grant engineering plan review exemptions **for industrial waste water treatment facilities on an owner-by-owner basis** provided they request such an exemption and can demonstrate adequate professional staff experienced in the design and inspection of complex industrial engineering projects. Owners granted such an exemption must agree to submit feasibility studies and pre-design reports to the Department for review and approval if the Department requests such reports. In addition any applicant for an exemption must agree to forward copies of final construction plans and specifications at the beginning of construction, and as-built plans on completion of construction.

The proposed rule amendments include housekeeping changes to OAR 340-45-065 to update statutory and rule references, and to eliminate reference to performance bond requirements already eliminated in statute during the 1997 legislative session.

2. **Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program? X Yes**

   a. If yes, identify existing program/rule/activity:

   340-18—030(5)(a), Approval of Wastewater System and Facility Plans.

   b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules? X Yes

   c. If no, apply the following criteria to the proposed rules.

   Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

   1. Specifically referenced in the statewide planning goals; or

   2. Reasonably expected to have significant effects on
      a. resources, objectives or areas identified in the statewide planning goals, or
      b. present or future land uses identified in acknowledged comprehensive plans.

   In applying criterion 2 above, two guidelines should be applied to assess land use significance:
   - The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
   - A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

Not applicable

3. **If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.**

Not applicable

Division	Intergovernmental Coordinator	Date

PPD\WC15\WC15010.doc

Attachment B-4

Questions to be Answered to Reveal
Potential Justification for Differing from Federal Requirements.

1. **Are there federal requirements that are applicable to this situation? If so, exactly what are they?**

   There are no EPA regulatory requirements for engineering plan review. EPA used to require engineering plan review for proposed EPA construction grant projects, but that program ended several years ago. The basic water quality program delegation agreement between EPA and DEQ does not require that DEQ perform engineering plan review activities.

   Federal granting agencies such as the Farmers Home Administration (now the Rural Community Assistance Program) do rely on DEQ to perform plan review activities. However, DEQ will still be performing this activity for non-exempted municipalities, and exempted municipalities will be performing a review equivalent to the DEQ review. In addition, DEQ will be reviewing all facility plan reports.

2. **Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?**

   N/A

3. **Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?**

   N/A

4. **Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?**

   N/A

5. **Is there a timing issue which might justify changing the time frame for implementation of federal requirements?**

N/A

6. **Will the proposed requirement assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?**

N/A

7. **Does the proposed requirement establish or maintain reasonable equity in the requirements for various sources? (level the playing field)**

N/A

8. **Would others face increased costs if a more stringent rule is not enacted?**

N/A

9. **Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?**

N/A

10. **Is demonstrated technology available to comply with the proposed requirement?**

N/A

11. **Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?**

N/A

Attachment B-5

State of Oregon
Department of Environmental Quality **Memorandum**

Date: November 2, 1998.

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements

Proposed amendments to Oregon Administrative Rules, Chapter 340, Division 52, Review of Plans and Specifications, Section 045, Exemption from Plan Submittal to the Department, would allow exemptions for municipal sewers and pump stations, and municipal wastewater treatment facilities, and exemptions for industrial wastewater treatment facilities, subject to certain requirements and qualifications.

Proposed amendments to Oregon Administrative Rules, Chapter 340, Division 45, Regulations pertaining to NPDES and WPCF Permits, Section 065, Other Requirements, would make housekeeping changes to update the statutory reference, cross-reference Division 52, Review of Plans and Specifications, and eliminate performance bond requirements for private systems.

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to amend Division 52, Review of Plans and Specifications to allow exemptions from requirements to submit municipal and industrial engineering plans for review and approval by DEQ, and to amend Division 45, Regulations pertaining to National Pollutant Discharge Elimination System (NPDES) and State Water Pollution Control Facility (WPCF) permits by making housekeeping changes to accommodate the Division 52 revisions

Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

The proposed rule amendments to Division 52, Review of Plans and Specifications, Section 045, Exemption from plan submittal to the Department, would accomplish the following:

- The amendments would eliminate the Department's review of detailed engineering plans and specifications pertaining to **sewers and pump stations to all municipalities** that request an exemption and can demonstrate review authority binding upon the design engineer, and will ensure that the plans will be reviewed by a registered professional engineer on staff or that the plans will be reviewed by a registered professional engineer not associated with the project.

The proposed rule amendments grant engineering plan review exemptions for **wastewater treatment facilities to municipalities with a population of 30,000 or larger** provided they request such an exemption in writing and demonstrate adequate professional staff experienced in the design and inspection of complex sanitary engineering projects. Municipalities granted such an exemption must agree to submit facilities plans and pre-design reports to the Department for review and approval, ensure that the design and construction of facilities comply with rules of the Department, and the approved facility plan and applicable predesign reports, and agree to forward copies of as-built plans on completion of construction.

- The proposed rule amendments grant engineering plan review exemptions for **wastewater treatment facilities to municipalities with a population of less than 30,000 but rated as major domestic facilities** provided they request such an exemption in writing and demonstrate adequate professional staff experienced in the design and inspection of complex sanitary engineering projects. In addition, these municipalities would be required to submit a report to the Department for review and approval describing technical and managerial expertise in planning and constructing wastewater treatment facilities. Municipalities granted such an exemption must agree to submit facilities plans and pre-design reports to the Department for review and approval, ensure that the design and construction of facilities comply with rules of the Department, and the approved facility plan and applicable predesign reports, and agree to forward copies of as-built plans on completion of construction.

- The proposed rules grant engineering plan review exemptions **for industrial waste water treatment facilities on an owner-by-owner basis** provided they request such an exemption in writing and demonstrate adequate professional staff experienced in the design and inspection of complex industrial engineering projects. Owners granted such an exemption must agree to submit engineering feasibility studies and pre-design or preliminary engineering reports to the Department for review and approval if the Department requests such reports. In addition, owners must ensure that the design and construction of facilities comply with rules of the Department, the applicable engineering feasibility studies and predesign or preliminary engineering reports, and terms of their permit.

- The proposed rule amendments include a housekeeping change to remove the requirement for submittal of plans for projects to be funded by EPA construction grants. The EPA grant program ended several years ago.

The proposed rule amendments to Division 45, Regulations pertaining to NPDES and WPCF permits, Section 065, Other Requirements, would accomplish the following:

- The amendments include housekeeping changes to delete obsolete statutory references and update statutory and rule references.

- The amendments remove performance bond requirements for privately owned sewerage systems. This requirement was already eliminated in statute by the 1997 Legislature (repeal of ORS 454.405 and ORS 454.425).

The Department has the statutory authority to address this issue under ORS 468.020, Rules and Standards and ORS 468B.055, Plan approval required; Exemptions.

What's in this Package?

Attachments to this memorandum provide details on the proposal as follows:

Attachment A	The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335)
Attachment B	A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
Attachment C	Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.
Attachment D	The actual language of the proposed amendments.

Hearing Process Details

The Department is conducting a public hearing at which comments will be accepted either orally or in writing. The hearing will be held as follows:

Date: December 4, 1998

Time: 10:00 a.m.

Place: Conference Room 3A
Department of Environmental Quality Headquarters
811 SW Sixth Avenue
Portland, Oregon

Deadline for submittal of Written Comments: December 10, 1998, 5:00 p.m.

Tom Lucas will be the Presiding Officer at the hearing.

Written comments can be presented at the hearing or to the Department any time prior to the date above. Comments should be sent to: Department of Environmental Quality, Attn: Tom Lucas, 811 SW 6th Avenue, Portland, Oregon 97204.

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. Thus if you wish for your comments to be considered by the Department in the development of these rules, your comments must be received prior to the close of the comment period. The Department recommends that comments are

submitted as early as possible to allow adequate review and evaluation of the comments submitted.

What Happens After the Public Comment Period Closes

Following close of the public comment period, the Presiding Officer will prepare a report which summarizes the oral testimony presented and identifies written comments submitted. The Environmental Quality Commission (EQC) will receive a copy of the Presiding Officer's report. The public hearing will be tape recorded, but the tape will not be transcribed.

The Department will review and evaluate the rulemaking proposal in light of all information received during the comment period. Following the review, the rules may be presented to the EQC as originally proposed or with modifications made in response to public comments received.

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is January 29, 1999. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process.

You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period. Otherwise, if you wish to be kept advised of this proceeding, you should request that your name be placed on the mailing list.

Background on Development of the Rulemaking Proposal

Why is there a need for the rule?

Under existing rules, the Department now exempts 25 communities from engineering plan review for gravity sewers. There have not been any environmental problems resulting from these exemptions.

Members of the Association of Clean Water Agencies (ACWA), League of Oregon Cities (LOC) and individual municipalities have expressed interest in additional plan review exemptions—for pressure sewers, pump stations and, in some situations, exemptions for wastewater treatment facilities. In addition, interest has been expressed for wastewater treatment exemptions for industries. In 1995, a DEQ industrial advisory committee recommended that exemptions from engineering plan review for industries be considered.

The Department believes that engineering plan review exemptions can be very beneficial provided these exemptions are given as requested to qualifying municipalities and industries. Exemptions can eliminate redundancy (municipal engineers and State engineers reviewing the same set of plans), and can save time. Because the construction season is often short, time saved in the review process can be helpful in getting a project built on time. This, in turn, is protective of the environment. There is an additional benefit to engineering plan review exemptions—staff can be reassigned to other high priority regulatory work such as writing permits and conducting compliance inspections. Finally, if exemptions are given for the detailed engineering plans, Department staff can concentrate on the facility plans and predesign reports. The facility plan is the basic planning document that describes the project and the project's relationship to the community and to regulatory requirements that must be met.

Under the proposed rule amendments (Attachment D) only qualified municipalities and industries would be given exemptions from plan review. The amendments require that exemptions only be given as requested to municipalities and industries that request an exemption in writing and have qualified engineers on staff, or, for sewers and pump stations, either have qualified engineers on staff or have access to qualified engineers not associated with the project.

The proposed amendments include requirements for submittal of facility plans and predesign reports which are an extension of the facility plan. The existing rules do not require submittal of these reports although they are routinely sent in prior to the detailed engineering plans. If engineering plan review is exempted, then review and approval of the facility plan will be necessary. The review will be essential for Department staff to clearly understand the project and for staff to convey necessary environmental and other regulatory requirements that must be complied with. The facility plan approval process will also constitute the Department's approval of the project.

How was the rule developed?

Municipal Engineering Plan Review. Over the last ten years, many communities have expressed concerns about municipal engineering plan review, citing the extra time involved and that the Department review is redundant, i.e., the communities have trained professional staff who already perform reviews of consultant work. In response to these concerns, the Department

conducted a survey in 1997 to elicit broad response to this issue. Based on responses to this survey the Department decided to consider rule amendments and assigned the review of proposals to the Department's Water Quality Rule Review Advisory Committee.

A background paper and proposed rule drafts were brought to the committee four a total of four meetings. The committee reviewed the background information; reviewed several drafts of proposed rules; suggested improvements; and invited staff from several communities to come to meetings and provide information. There was substantial support from individual committee members for proposed rules, described in Attachment D. Members in support expressed that sanitary engineering expertise in many of the larger communities is equivalent to expertise in DEQ, reduction of engineering plan review activities would afford DEQ the opportunity to re-allocate staff to other high priority work such as permits and compliance, and DEQ staff should focus on the planning work done in advance of the actual construction, such as facility plans, to ensure that permit and other regulatory requirements are met. There were some concerns expressed that ending the review process at the completion of facility planning may not be adequate to ensure properly constructed facilities, and that engineering plan review exemptions could, over time, lead to inadequate facilities with resulting inadequate treatment, and raw sewage overflows.

The Department staff reviewed the proposed rules and committee comments, and concluded that rules as drafted in Attachment D should be proposed for public review and comment.

Industrial Engineering Plan Review. In 1994, the Department formed an Industrial Wastewater Permit Advisory Committee to review several regulatory and program issues that impacted industries across the State. This committee had many recommendations including several for streamlining the industrial permitting program. The committee specifically recommended that the Department "phase out DEQ engineering review of plans and specifications, and accept documents as submitted by qualified and certified engineers." Based on committee recommendations and an agency review of industrial engineering expertise, the Department concluded that rules exempting industrial wastewater treatment projects from engineering plan review should be proposed for public review and comment.

Copies of the documents relied upon in the development of this rulemaking proposal can be reviewed at the Department of Environmental Quality's office at 811 SW 6th Avenue, Portland, Oregon. Please contact Tom Lucas, (503) 229-6099, for times when the documents are available for review.

Whom does this rule affect including the public, regulated community or other agencies, and how does it affect these groups?

The proposed rule amendments affect those municipalities and industries that will be constructing wastewater treatment facilities improvements. The exempted municipalities and industries will no longer rely on DEQ engineering staff for construction plans and specifications review, and instead, will perform this review with qualified staff or ensure that the review is performed by qualified professional engineers not associated with the project. Exempted municipalities will no longer be required pay a technical activities fee to DEQ.

Regulated industries and municipalities that do not apply for exemptions, or do not receive an exemption after applying, will continue to submit engineering plans and specifications for review. Municipalities will continue to pay a technical activities fee to DEQ.

How will the rule be implemented?

Municipalities and industries desiring plan review exemptions will be required to request the exemption in writing and describe the necessary qualifications for an exemption. The information provided will be evaluated by Department staff and determinations will be made. Engineering plan exemptions for sewers and pump stations will be simple since the municipality will only need to demonstrate that a registered professional engineer is on staff with review authority binding on the consulting firm, or that the municipality has access to a qualified engineer not associated with the project. Applications for plan review exemptions for wastewater treatment facilities to large municipalities over 30,000 in population and large industries should not be difficult because they usually have qualified engineers capable of reviewing complex wastewater treatment projects. Applications by municipalities under 30,000 in population and small industries will have to be evaluated carefully to determine qualifications.

Applicants who qualify for exemptions will be notified in writing with authorization given by the Department's water quality headquarters administrator.

Are there time constraints?

None specific. The Department would like to complete the rulemaking as soon as possible so that staff can be reassigned to other high priority work in the water quality program.

Contact for More Information

If you would like more information on this rulemaking proposal, or would like to be added to the mailing list, please contact:

Tom Lucas, Water Quality Division
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

phone: (503) 229-6099

This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.

PPD\WC15\WC15008.doc

Attachment C

State of Oregon
Department of Environmental Quality

Memorandum

Date: December 14, 1998

To: Environmental Quality Commission

From: Tom Lucas

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: December 4, 1998, beginning at 10:00
Hearing Location: Conference Room 3A
DEQ Headquarters, 811 SW Sixth Avenue
Portland, Oregon 97204

Title of Proposal for Hearing:
Proposed amendments to Oregon Administrative Rules, Chapter 340, Division 052, Review of Plans and Specifications, Section 0045, Exemption from Plan Submittal to the Department, would allow exemptions for municipal sewers and pump stations, and municipal wastewater treatment facilities, and exemptions for industrial wastewater treatment facilities, subject to certain requirements and qualifications.

Proposed amendments to Oregon Administrative Rules, Chapter 340, Division 045, Regulations pertaining to NPDES and WPCF Permits, Section 0065, Other Requirements, would make housekeeping changes to update the statutory reference, cross-reference Division 052, Review of Plans and Specifications, and eliminate performance bond requirements for private systems.

The rulemaking hearing on the above titled proposal was convened at 10:00 a.m.. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

One person was in attendance, Wayne Giesy, Philomath, Oregon. No person signed up to give testimony.

Prior to receiving testimony, Tom Lucas briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

Summary of Oral Testimony
No oral testimony was presented at the public hearing.

There was no further testimony and the hearing was closed at 10:30 a.m..

Written Testimony
No written testimony was presented at the public hearing

Written testimony submitted and included in the hearing record is summarized as follows:

A. **Oak Lodge Sanitary District** (Walter Mintkeski, PE, Manager, Planning and Engineering). The Oaklodge Sanitary District supports the proposed rule amendments, citing improved Department efficiency and reduced costs, and reduced time delays in construction of sewerage facilities.

B. **Oregon State Marine Board** (Dave Obern, Facilities Manager). The Marine Board supports the proposed rule amendments, stating that the exemptions can eliminate redundancy and save time.

C. **Unified Sewerage Agency** (Robert Cruz, Director, Conveyance Systems Department). The Unified Sewerage Sewerage Agency supports the rule amendments as proposed. The agency notes that it has been exempt from engineering plan review for gravity sewers since the early 1980's without encountering any environmental problems. The agency believes the exemptions will reduce confusion in the approval process and will save time.

D. **City of Gresham** (Gregory DiLoreto, Director, Department of Environmental Services). The City of Gresham supports the rule amendments as proposed, and notes that, as a municipality over 30,000 in population, Gresham would apply for an exemption.

E. **Douglas County Planning Department** (Phil Stenbeck, Planner). In written comment Douglas County expressed no objections to the proposed rule amendments.

F. **Everclean Maintenance Company** (Annie Choi, President). The Everclean Maintenance Company supports the rule amendments as proposed, and expresses satisfaction that state law makes the Department responsible for plan review. The Company states that exemptions could be legally challenged if the exemption process cripples the Department's ability to perform this enginering review responsibility or respond to public concerns. The company hopes Governor Kitzhaber would be against weakening the statute on plan review.

The Company notes that the Department would retain necessary control over plan approvals through detailed guidelines, and intensive review of facility plans, pre-design reports, and as-built drawings; and also through restriction of exemptions to municipalities with engineering staff who are qualified to address the Department's concerns.

The Company suggests three items to strengthen the rules to ensure environmental protection, as follows:
1. The rules should establish a definite procedure and criteria for suspension and revocation of exemptions.
2. To avoid disputes about the meaning and intent of exemptions, the rules should include a policy statement acknowledging that the Department retains ultimate responsibility for plan approvals, in accordance with state law.
3. To avoid friction and enforcement problems between the Department and exempted cities, the rules should clarify that exemptions for sewage treatment projects exclude plant modifications and improvements that are not being designed or built pursuant to an approved facility plan or predesign report.

G. **League of Oregon Cities** (Willie Tiffany, Staff Associate). The League of Oregon Cities generally supports the proposed rules and opines that the exemptions would reduce duplication and free up resources at DEQ. The League has two comments pertaining to the proposed rules, as follows:
1. The League recommends that the rules should not require municipalities to submit as-built plans on completion of construction, but rather that they would agree to allow the Department access to as-built plans retained on file by the municipalities. The League believes that this would eliminate an unnecessary copying and mailing expenses, yet would ensure that construction complied with the facilities plan and pre-design report.

2. Regarding wastewater treatment facility exemptions for communities under 30,000, the League believes that the intent is to allow smaller communities an opportunity for exemption by contracting for adequate staff to meet the Department's requirements, rather than only providing them through in-house staff. If so, they support this section, again without the requirement for submittal of as-built plans.

H. **The Oregon Association of Clean Water Agencies** (Janet A. Gillaspie, Executive Director). The Association of Clean Water Agencies (ACWA) supports the proposed amendments, and states that the amendments offer a balance between the ability of larger jurisdictions to complete plan review independent of the Department, and smaller communities where Department review can be useful.

ACWA recommends several revisions to the proposed amendments.

1. ACWA believes that the proprosed rules are unclear as to the employment status of "adequate professional staff," that is, municipalities should be allowed to determine which whether their employees are qualified to perform plan review and professional consulting engineers should be considered qualified by default. ACWA recommends the following clarification to OAR 340-52--045 (2)(b): "adequate professional staff **(employees or contractors)** experienced in the design..."

2. Department requirements for predesign reports should be in guidelines (rather than rules) and the requirements should be limited to simple reports containing no more than scope, treatment process and design criteria. OAR 340-52-045(2)(c) should be modified to read "The owner agrees to submit all facilities plans [~~and pre-design reports~~] to the Department for review and approval in accordance with the Department's guidelines."

3. ACWA states that submitting as-built plans is not productive and provides little benefit to the State, and recommends the following modifications: "The owner agrees to [~~submit a copy of the~~] **notify the Department that** as built plans **are available** on completion of construction[,~~and~~]. **The owner** will ensure that the design and construction of facilities comply with rules of the Department, the approved facilities plan and applicable predesign reports and terms of their permit." ACWA believes that this modification will reduce pollution and save the Department money by reducing filing and storage fees.

4. OAR 340-52-045(3) should clearly state that exemptions for smaller communities with the capacity and desire to complete their own plan review would be broad, blanket exemptions, and not limited to individual projects.

PPD\WC15\WC15057.doc

Attachment D

Department's Evaluation of Public Comment

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Rulemaking Proposal
for

Proposed Amendments to Oregon Administrative Rules, Chapter 340, Division 052, Review of Plans and Specifications, Section 0045, Exemption from Plan Submittal to the Department, to allow exemptions to municipalities and industries from submittal of engineering plans and specifications to the Department, and proposed housekeeping amendments to Division 045, Regulations Pertaining to NPDES and WPCF permits, Section 0065, Other Requirements.

Testimony

There was no oral testimony. Written comments are summarized in Attachment C. All written comments pertain to municipal plan review, i.e., there were no comments pertaining to industrial facility plan review.

Response to Testimony

Comment: (Association of Clean Water Agencies, League of Oregon Cities) Required submittal of as-built drawings is not productive, provides little benefit to the State, and requires unnecessary copying and mailing expenses. Instead, as-built drawings should be retained on file by the municipalities, and Department engineering staff should have access to the drawings. The rule language should be modified to reflect this change.

Response: The Department believes that it would be productive to have as-built drawings on file. If there are serious problems during the "start-up" phase of the facility, engineering staff can quickly review the as-built drawing and give technical assistance in resolving the problems. This can be important because problems during initiation of operation can result in serious permit and water quality violations. In addition, staff can review the drawings to gain needed familiarity with the treatment facility.

Comment: (Association of Clean Water Agencies, League of Oregon Cities) Concern was expressed regarding the meaning of "adequate professional staff." The meaning of "adequate professional staff" should include both municipality staff and consulting engineers that would be retained by a municipality under contract. The rule language should be modified to include both municipal employees or contractors. In addition, municipalities should be entitled to determine which employees are qualified to perform plan review, and consulting engineers should be considered qualified by default.

Response: The Department's intent in proposing wastewater treatment facility exemptions for municipalities is to only grant the exemptions to municipalities that have adequate and professional staff on an ongoing basis with solid expertise and experience in the design and inspection of complex sanitary engineering projects. The Department believes that this is an essential prerequisite to granting engineering plan review exemptions for wastewater treatment facilities. The Department anticipates that communities over 30,000 in population will have these qualifications. There may be some communities less than 30,000 with similar capabilities but the Department is requesting additional information through a report to demonstrate the necessary expertise. The Department does not believe that retaining yet another consulting firm (in addition the firm hired to prepare the engineering plans) can ensure the needed expertise on ongoing basis. In addition, it may be difficult to find consulting engineering firms that will review and approve the work of another consulting firm.

Comment: (Association of Clean Water Agencies) Municipalities should not be required to submit predesign reports for Department review and approval, i.e., the Department's review process should be complete with review and approval of the facility plan. The rule language should be modified to require only submittal of facility plans. ACWA would agree to prepare predesign reports pursuant to guidance, but that the guidance should be limited in scope.

Response: The Department believes that predesign reports are a logical extension of the facility plan and, in many situations, provide the necessary detailed information to fully approve the facility plan. In some situations the information contained in the predesign report is needed to write a permit consistent with the proposed new or modified treatment facility, and to ensure that in-stream water quality standards are met. A predesign report is a part of a group or type of reports generally known as engineering reports. Many engineering reports are specific to the ultimate design of the facility and would be prepared after review and approval of the facility plan and predesign report. The rules would not require that such reports be submitted for review and approval.

Comment: (Association of Clean Water Agencies) Regarding wastewater treatment and disposal exemptions for communities less than 30,000, ACWA believes that the exemptions should be "blanket," rather than on a project by project basis. The rules seem unclear in this regard.

Response: Proposed exemptions for wastewater treatment and disposal and for sewers and pump stations would be granted to the municipality, and not on a project by project basis. Section (2) of the proposed amendments would grant exemptions "for all municipalities 30,000 or larger in population...," and section (3) would grant exemptions "for all municipalities less than 30,000 in population and classified by the Department as major domestic facilities...". The proposed rules are consistent with the gravity sewer exemptions which are now granted to the requesting municipality.

Comment: (Everclean Maintenance Company) The rules should establish a definite procedure and criteria for suspension and revocation of exemptions.

Response: Existing rules, OAR 340-052-0045(7), state that "The Department may cancel in writing an exemption for cause or changes in circumstances." The Department believes that this language is sufficient to proceed with any necessary suspensions or revocations. The Department may revise facility planning guidelines to provide examples of situations where a suspension or revocation may be warranted.

Comment: (Everclean Maintenance Company) There should be a policy statement in the rules expressing that the Department retains ultimate responsibility for plan approvals, in accordance with State law.

Response: The Department does not believe a policy statement is necessary. Under existing State law the Department is clearly responsible for plan review.

Comment: (Everclean Maintenance Company) The rules should clarify that exemptions should not be given for sewage treatment projects involving plant modifications or improvements that are not being designed and built pursuant to an approved facility plan or predesign report.

Response:
The proposed rules will require that all facility plans and predesign reports be submitted for review and approval. This should ensure that engineering plans and subsequent construction of sewage treatment plant modifications and improvements are done in accordance with an approved facility plan. In addition, any plant modifications must result in a facility that meets in-stream water quality standards, and meets permit conditions including limits on pollutant discharge.

PPD\WC15\WC15064.doc

Attachment E

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For

Proposed Amendments to Oregon Administrative Rules, Chapter 340, Division 052, Review of Plans and Specifications, Section 0045, Exemption from Plan Submittal to the Department, to allow exemptions to municipalities and industries from submittal of engineering plans and specifications to the Department, and proposed housekeeping amendments to Division 045, Regulations Pertaining to NPDES and WPCF permits, Section 0065, Other Requirements.

Members of Water Quality Rule Review Committee

Chair
Jan Betz, Deputy City Attorney
City of Portland
1220 SW 5th Avenue
Portland, OR 97204

John Ledger, Legislative Representative
Environment & Natural Resources
Associated Oregon Industries
1149 Court Street NE
Salem, OR 97301

Nina Bell, Director
Northwest Environmental Advocates
133 SW 2nd Avenue, Suite 302
Portland, OR 97204

Joni Low, Sr. Staff Assoc.
League of Oregon Cities
PO Box 928
Salem, OR 97308

Jim Goble, Manager
Nehalem Bay WW Agency
PO Box 219
Nehalem OR 97131

Mark Steele, Project Environmental Engineer
Norpac Foods Inc
PO Box 458
Stayton, OR 97383

Jim Hill, Superintendent
Medford Public Works Department
411 West 8th Street
Medford, OR 97501

PPD\WC15\WC15065.doc

Attachment F

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Proposed Amendments to Oregon Administrative Rules, Chapter 340, Division 052, Review of Plans and Specifications, Section 0045, Exemption from Plan Submittal to the Department, to allow exemptions to municipalities and industries from submittal of engineering plans and specifications to the Department, and proposed housekeeping amendments to Division 045, Regulations Pertaining to NPDES and WPCF permits, Section 0065, Other Requirements.

Rule Implementation Plan

Summary of the Proposed Rule

Division 052, Section 0045, Rule Amendments. The proposed rule amendments would authorize the Department to grant exemptions to municipalities and industries, on an owner-by-owner basis, from submittal of engineering plans and specifications for Department review and approval. Requests for exemptions would have to be in writing and any exemptions granted by the Department would be in writing. Prior to granting an exemption the Department would have to make findings that the requesting municipality or industry has adequate, professional staff to perform the review.

Exemptions for sewers and pump stations could be granted if the owner has a registered professional engineer on staff with review authority binding on the design engineer, or the owner will ensure that projects will be reviewed by a professional engineer not associated with the project. For example, the owner could contract with a consulting firm to function as a municipality's city or district engineer.

Owner-by-owner exemptions for projects involving treatment and disposal of domestic or industrial wastewater could be granted for industries and for municipalities 30,000 or larger in population if the owner demonstrates adequate, professional staff in the design and inspection of complex industrial or sanitary engineering projects, including a registered professional engineer with review authority binding upon the design engineer. Municipalities less than 30,000 in population, but rated as domestic majors facilities, could be granted exemptions by submitting a written report demonstrating adequate, professional staff in the design and inspection of complex sanitary engineering projects, including a registered professional engineer with review authority binding upon the design engineer, a history of compliance with permit conditions, and technical capability to support large projects.

The proposed rules require that exempted municipalities submit facility plans and predesign reports for Department review and approval, and that as-built plans be submitted on completion of construction. Regarding industries, the proposed rules require that industries submit engineering feasibility studies and predesign or preliminary engineering reports to the Department for review and approval if the

Department requests them. Exempted municipalities and industries must comply with rules of the Department and terms of their permit.

Division 045, Section 0065, Rule Amendments. The rule amendments update statutory references, reference Division 052 rules to ensure consistency between the two Divisions, and eliminate the requirements for privately owned systems to file a performance bond. The elimination of performance bond requirements is pursuant to statutory changes passed by the 1997 Legislature (repeal of ORS 454.405 and 454.425).

Proposed Effective Date of the Rule
Upon filing with the Secretary of State, anticipated in February 1999.

Proposal for Notification of Affected Persons
All municipalities and industries holding an NPDES or WPCF permit will be notified in writing, and a copy of the rules will be enclosed. Municipal and industrial Associations with an interest in environmental regulations will also be notified.

Proposed Implementing Actions
Requests for exemptions will be forwarded to the Water Quality Division, Policy and Program Development Section. A staff person will be assigned to coordinate the requests as follows:

1. Requests and supporting documentation will be assigned to an internal review group to review the requests and make recommendations. The review group will consist of one technical staff person from each of the three DEQ regions.

2. The coordinator will review the recommendations, secure additional information as appropriate and make findings.

3. Findings and recommendations will be forwarded to the Department Water Quality Managers for a decision, at a regularly scheduled monthly meeting.

4. The staff coordinator will prepare letters granting exemptions or denying the request, for signature by the Water Quality Division Administrator.

Decisions not to grant exemptions may be appealed to the Water Quality Division Administrator. Appeals will be reviewed by the agency administrators and the Director at a regularly scheduled weekly meeting. Final decisions will be made at these meetings.

Proposed Training/Assistance Actions
Training will not be necessary.

PPD\WC15\WC15066.doc

Outstanding Resource Waters (ORW)

Environmental Quality Commission
January 29, 1999

Talk Outline

- Background & History of ORWs
- ORW Designation Process
- ORW Implementation
- Next Steps

January 27, 1999

Water Quality Classifications

- Water Quality Limited Waters
- High Quality Waters
- Outstanding Resource Waters

(definitions, OAR 340-41-006; policies, OAR 340-41-026)

January 27, 1999

Water Quality Limited Waters

- Do not meet standards or support beneficial uses
- Included on 303(d) List
- Requires TMDL development
- No further degradation of water quality allowed

January 27, 1999

High Quality Waters

- Meet or exceed standards
- Antidegradation Policy applies
  - Allow degradation of water quality only when the EQC determines that:
    - –There are no other alternatives
    - –Social and economic benefits outweigh environmental costs
    - –Water Quality Standards will still be met

January 27, 1999

Outstanding Resource Waters

- Special designation for state or federal outstanding resources or critical habitat
- Protection described as follows:
  - Establish the outstanding water quality values to be protected
  - Provide a "process for determining what activities are allowed that will not affect the outstanding values"
  - Activities that lower water quality will not be allowed
- ORWs are designated by rule
- Allows for protective in-stream Water Right

January 27, 1999

ORW History:

- **1991** ORW Rule adopted
- **1992-1993** Department evaluated 9 sites; Crater and Waldo Lakes were identified
- **1994-1995** Policy Advisory Committee recommended a process for designating sites; Department published Issue Paper
- **1995-1997** Limited resources kept ORW out of last triennial review

January 27, 1999

ORW History (Cont.)

- **1997-** NMFS/State Agreement obligated the Department to evaluate Coho core areas for ORW designation.
- **1997-** Three environmental groups petitioned the EQC to designate 10 ORWs.
- **1998-** The Department formed an ad hoc workgroup to refine screening criteria.

January 27, 1999

ORW Designation Process

- Evaluate proposed sites against criteria
- List outstanding sites in 305(b) report
- Prioritize list at initiation of triennial standards review; select candidate sites
- Solicit public comment on sites & selection process
- Develop management approach along with rulemaking
- EQC designation of ORW

January 27, 1999

ORW Screening Criteria

- Only waters with high quality for all variables will be considered
- Values must be related to Water Quality
- Values must be truly outstanding:
  - unique
  - distinguished or conspicuous among others of its kind
- Demonstrate need for ORW protection

January 27, 1999

ORW Implementation

- *Non-degradation for Water Quality*
- *No new or increased loads*
- *Work with existing programs for nonpoint sources:*
  - *"1010 Plans" for Agriculture*
  - *Forest Practices for State & Private forestry*
  - *Federal Forest Plans*
  - *Local governments*

January 27, 1999

Issues Identified to Date

- *Eligibility of 303(d) listed waters as ORWs*
  - *staff recommendation is "not eligible"*
  - *rule language identifies high quality waters*
  - *waters in question are scheduled for TMDL*
- *Criteria for ORW designation based on critical habitat*
- *How does ORW protection differ from Antidegradation Policy*

January 27, 1999

Next Steps

- Evaluate Coho core areas & petitioned sites against screening criteria-- identify outstanding sites
- Executive order directs consideration of salmon habitat statewide, for all species
- Develop guidance for Antidegradation Policy including:
  - NPDES permitting
  - "SB 1010" Agricultural management plans (work with ODA)
  - Forest Practices Rules (work with ODF)

January 27, 1999

ORW Work Group Representation

- OR Fish & Wildlife
- US Fish & Wildlife
- Ntl Marine Fisheries
- OR Dept. Forestry
- OR Dept. Agriculture
- US Forest Service
- Bureau of Land Management
- OR Dept. Water Resources
- Environmental Groups
- Associated OR Industries
- OR Forest Industry Council
- Municipal Water Supply
- League of OR Cities
- Cattlemen's Association
- Farm Bureau
- Ass. Clean Water Agencies

January 27, 1999

Petitioned Sites (December, 1997)

- Donner Und Blitzen
- N. Fork John day
- Steamboat Creek
- Elk River
- Little North Santiam
- Kilchis River
- North Fork Trask
- Upper North Santiam
- Waldo Lake
- Salmonberry River

January 27, 1999

State of Oregon

Department of Environmental Quality Memorandum

Date: January 8, 1999

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item F, EQC Meeting January 29, 1999, Update on Outstanding Resource Water Designations,

Statement of Purpose

This presentation is an informational item, to update the Commission on progress made during 1998 to develop Outstanding Resource Water(ORW) screening criteria, and refining a process for designating ORWs.

Background

The topic of this report is Outstanding Resource Waters (ORW)—one of three classes of water quality in Oregon. A brief background on the three classes will help provide perspective.

- Water Quality Limited waters do not meet standards or support their designated beneficial uses. These are included on the 303(d) list of water quality limited waterbodies, and water quality management plans, also referred to as Total Maximum Daily Loads (TMDLs) must be completed for these.
- High Quality Waters meet or exceed water quality standards and are protected from degradation under the Antidegradation policy. The Antidegradation Policy allows water quality water to be lowered only when no other alternatives exist, water quality standards will be maintained, and the Commission determines that the social or economic need outweighs the cost of degradation.
- Outstanding Resource Water (ORW) is a classification that can be assigned to specific waterbodies that constitute "outstanding state or national resources," or are designated as critical habitat areas. Once designated by the Environmental Quality Commission as ORWs, no degradation of water quality will be allowed. The major difference between the antidegradation policy that applies to high quality waters, and the nondegradation policy for ORWs lies in the ability of the Commission to allocate some of the assimilative capacity of a high quality water, once the required test of social and economic need has been met. This allocation is not allowed for an ORW, regardless of social and economic need, although short term degradation is allowed in emergency situations.

Adoption of an Antidegradation Policy (describing protection for both high quality waters and ORWs), is a requirement under the federal Clean Water Act (40 CFR Part 131; requirement in section 131.6, description of Antidegradation under 131.12). Following is a brief history of the Oregon Outstanding Resource Water rule and policy:

1991- The Commission accepted the Outstanding Resource Water rule (OAR 340-41-026(1)(a)(D-F).

1992—1993- Department solicited other agencies for potential sites, and then evaluated priority sites for ORW designation. The Department did not receive nominations and consequently identified nine sites. Of those evaluated, Crater Lake and Waldo Lake were proposed for nomination.
1994- The Water Quality Standards Triennial Review Policy Advisory Committee (PAC) recommended the development of a process prior to designating sites, and assisted in process development. The PAC further suggested that nomination of Crater and Waldo Lakes be delayed until the new process was implemented.
1995- Department published an Issue Paper describing the process recommended by the Policy Advisory Committee for ORW designations. The process was not implemented during the next water quality standards triennial review due to lack of Department resources.
1997- Oregon Plan obligated the Department to evaluate *Coho* core areas for potential Outstanding Resource Water designation.
1997- Three environmental groups collectively petitioned the Commission for rulemaking to designate ten sites as ORWs. The petition was withdrawn before consideration by the Commission.
1998- The Department formed an *ad hoc* external workgroup to develop screening criteria to determine which sites are indeed outstanding, and to design a process to identify designation priorities for those sites. The process developed in 1995 did not include detailed screening criteria.

Authority of the Commission with Respect to the Issue
Only the Commission has the authority to designate ORWs, as provided under Oregon Administrative Rule 340-41-026(1)(a)(D-F). The authority to implement the federal Clean Water Act is granted to the Commission under ORS 468B.035. The provision for states to designate ORWs as part of the Antidegradation Policy, is required under the federal Clean Water Act (40 CFR 131.06 and 40 CFR 131.12).

Alternatives and Evaluation
The purpose of this informational item is to briefly present and discuss the ORW policy as developed to date. These three areas have been discussed: the process followed in designating ORWs, the screening criteria and prioritization process for selecting potential sites, and management approaches to implement the non-degradation ORW policy.

Designation Process:
The Department, with the assistance of the Triennial Water Quality Standards Review Policy Advisory Committee (convened in 1992-1995) and the current Outstanding Resource Water Work Group, has developed the following process for identifying, evaluating, and designating potential Outstanding Resource Water sites:
- Solicit public nomination of sites during specified time period

- Evaluate public and Department nominated sites for eligibility and outstanding values by applying screening criteria. Prioritize and select those which will be considered for designation during current triennial review. Develop list of all candidate sites for 305(b) report to EPA.
- Solicit public comment on selected sites and prioritization process
- Develop rule language for specific designations, and concurrently develop management strategies for these sites. Solicit public comment as part of rulemaking process
- Present sites to EQC for official designation. Management strategies for specific sites will be included. In addition, any items proposed for EQC action to assist in site management, such as petitioning other agencies for site specific rule changes, etc. will be presented with the site designation rules.
- Management Plans and related activities will be completed within two years.

These steps are described in more detail in the attached Draft Policy report (Attachment A).

Screening & Prioritization Criteria:
The screening criteria being developed by the Department and the Work Group are described in more detail in Attachment A. The Department must first determine that the waterbody has high quality water for all parameters, and that the outstanding values are related to water quality. For all proposed sites, the outstanding values must be clearly identified and defended with data or information supporting their outstanding nature. In addition, the advantages offered by ORW designation over the antidegradation protection that is applied to all high quality waters should be identified and considered. Once a determination is made that the proposed sites have outstanding values worthy of protection under an ORW designation, the list of all such sites will be prioritized. Criteria used for prioritizing sites may differ from one triennial review to the next, but will be documented, and subject to public comment. Criteria that will likely be used to prioritize the list of potential sites include data availability, urgency for designation (contrasted with existing water quality protection), scarcity of habitat for identified species, consideration of sites by other agencies or entities, and the perceived workload to develop the ORW designation. Sites will be selected from the prioritized list for consideration in the next triennial water quality standards review. The number of sites selected will depend on available Department resources. Sites not selected for designation will be maintained on a list of potential sites, and published in the biannual 305(b) report to EPA.

Nondegradation Implementation:
A nondegradation standard will be adopted for designated ORWs. The designation rule language will identify the outstanding values, provide a process for determining which activities will not affect the outstanding resource values, and will very likely specify criteria relating to the outstanding value that must be met in the Outstanding Resource Water. Discharges to waters of the state are regulated through the National Pollution Discharge Elimination System (NPDES) permit program. The Department is delegated to implement this program in Oregon, and will thus be able to implement the ORW designation for these sources

through the permit program. Nonpoint sources will be managed through existing programs, for instance, under the statewide Forest Practices Act, federal forest management plans, the Agricultural Water Quality Management Plans that are commonly referred to as "1010" plans, and any other pertinent federal, state or local programs. Management strategies for protecting candidate ORW sites will be drafted prior to final designation of the site as an ORW. This will both establish the protective needs for potential sites, and assist in providing protection to the site beginning at the time of designation.

Summary of Public Input Opportunity

The designation process described in the 1995 Issue Paper was largely developed by the Policy Advisory Committee. This Committee included representatives from several industries, agencies and environmental interests. The concepts of this work were the subject of several public workshops, but were not developed into rule language, so additional public comment and hearings were not held. In 1998 an *ad hoc* work group was convened to provide input on more detailed screening criteria. This group had similar representation as the Policy Advisory Group, and has discussed ORW Policy over a series of seven meetings.

Intended Future Actions

The Oregon Plan committed the Department to review the *Coho* core areas for potential Outstanding Resource Water designation. The Department intends to work with the Department of Fish and Wildlife to evaluate the *Coho* core areas against the recently developed screening criteria, to address this commitment. Sites identified in the petition submitted to the EQC in late December, 1997 will also be evaluated using the screening criteria. A list of ORW candidates will be tallied from these sources and added to the existing list that includes Crater and Waldo Lakes. The Department will then suspend work toward designating these sites as ORWs until the following questions regarding Antidegradation have been addressed. The Antidegradation Policy allows the lowering of water quality only under certain conditions. The Department has not expressed how this process works within the Department's NPDES permitting system, within the Agricultural "1010" Plan development, or within the state Forest Practices Act or the development of federal forest management plans. The Department will work with the appropriate Agencies to address these issues, including the Department of Agriculture concerning the "1010" plans, the Department of Forestry regarding the Forest Practices Act, and the federal agencies for federal land management issues. The major difference between the Antidegradation Policy that applies to high quality waters and the ORW Policy is in the ability to utilize the assimilative capacity of high quality waters. Without meeting the necessary criteria to use this capacity, no degradation is allowed in either high quality waters or ORWs. Thus, development of the Antidegradation Guidance is crucial to implementation protection for ORWs as well as high quality waters. Designation of ORWs can proceed once the Antidegradation Guidance is completes.

Department Recommendation

It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate. The Department proposes to:

- Produce a list of potential ORW sites from the *Coho* core areas and the list of ten sites petitioned for ORW designation in January 1998, by evaluating them against the proposed screening criteria
- Produce a guidance document describing the implementation of our Antidegradation Policy including the NPDES permitting program, the Agricultural "1010" plans, the state Forest Practices Act, and federal land management plans.

Attachments

Draft report entitled "Procedure for Selecting and Designating Outstanding Resource Waters," currently in review by the Outstanding Resource Water Work Group.

Reference Documents (available upon request)

Oregon Administrative Rule, Chapter 340, Division 41, section 026.

1995 Issue Paper on Outstanding Resource Waters Implementation Plan, an internal report of the Department of Environmental Quality, Portland, Oregon. This report was attached to the staff report for Item E of the January 9, 1998 Commission Meeting.

Federal rules for state adoption of Water Quality standards, 40 CFR 131.

Approved:

Section:

Division:

Report Prepared By: Avis Newell

Phone: (503)229-6018

Date Prepared: January 8, 1999

adn
E:\ANEWELL\WINWORD\ORW\EQC INFO REPORT.DOC

ATTACHMENT A

Procedure for Selecting and Designating Outstanding Resource Waters
DEQ Draft Document

Procedure for Selecting and Designating Outstanding Resource Waters

1. Introduction

Oregon water quality rules classify waters into three categories Water quality limited waters have impaired water quality that does not meet water quality standards, and require a management plan to improve water quality. High quality waters are those waters where beneficial uses are supported, and existing quality is better than the water quality standards; this class includes all waters not included in the other two classifications. Outstanding Resource Water is a special designation that Oregon may bestow on high quality waters that constitute an outstanding national or state resource. Once designated, no degradation of the existing water quality will be allowed.

Authority to so classify and protect waters is offered under the federal Clean Water Act (33 U.S.C. 1251 et seq; especially sections 101, and 303) and related federal rules (40 CFR §131.12, 131.10). Designation of Outstanding National Resource Waters is described in EPA rules (40 CFR § 131.12), and further clarified in the federal water quality standards guidance (EPA Water Quality Standards Handbook: Second Edition, 1994, EPA-823-B-94-005a). Outstanding Resource Water designation is intended to protect extraordinary waters and critical habitat from water quality degradation.

While states are required to fulfill the mandates of the federal Clean Water Act, they may tailor their own rules to do so. The Oregon Administrative Rule describing Outstanding Resource Water is listed here (OAR 340-41-026(1)(a)(D-F).

> (D) *Outstanding Resource Waters Policy: Where existing high quality waters constitute an outstanding state or national resource such as those waters designated as extraordinary resource waters, or as critical habitat areas, the existing water quality and water quality values shall be maintained and protected, and classified as "Outstanding Resource Waters of Oregon". The Commission may specially designate high quality waterbodies to be classified as Outstanding Resource Waters in order to protect the water quality parameters that affect ecological integrity of critical habitat or special water quality values that are vital to the unique character of those waterbodies. The Department will develop a screening process and establish a list of nominated waterbodies for Outstanding Resource Waters designation in the Biennial Water Quality Status Assessment Report (305(b) Report). The priority waterbodies for nomination include:*
>
> (i) *National Parks;*
> (ii) *National Wild and Scenic Rivers;*
> (iii) *National Wildlife Refuges;*
> (iv) *State Parks; and*
> (v) *State Scenic Waterways.*
>
> (E) *The Department will bring to the Commission a list of waterbodies which are proposed for designation as Outstanding Resource Waters at the time of each Triennial Water Quality Standards Review;*

(F) *In designating Outstanding Resource Waters, the Commission shall establish the water quality values to be protected and provide a process for determining what activities are allowed that would not affect the outstanding resource values. After the designation, the Commission shall not allow activities that may lower water quality below the level established except on a short term basis to respond to emergencies or to otherwise protect human health and welfare.*

To date, no waterbodies have been given this designation in Oregon. State rule was adopted in September of 1991. The Department of Environmental Quality then evaluated nine sites as potential candidates prior to the 1992 triennial review. The Policy Advisory committee for the 1993-1995 triennial review recommended that in lieu of designating any of the nine sites, the Department first establish a designation process. A process was developed with the help of the Policy Advisory Committee, and completed in 1995. The process is summarized in the next section, and described in an issue paper (Outstanding Resource Waters Implementation Plan, 1995, Department of Environmental Quality, Portland, Oregon).

The Department is currently developing screening criteria to identify Outstanding Resource Waters as required in the rule. Once these are established, we will be nominating waters for designation.

The purpose of this document is to provide background on the Outstanding Resource Water designation, describe how potential sites will be evaluated and prioritized, and to describe the general concept for water quality protection under an Outstanding Resource Water designation. Finally, this document provides guidance to those outside the Agency, who wish to nominate a site for designation.

2. Nomination Process

The Department has identified a process for designating Outstanding Resource Waters; it is based largely on the process proposed by the Policy Advisory Committee (PAC), summarized in an internal issue paper (Outstanding Resource Waters Implementation Plan, 1995, Department of Environmental Quality, Portland, Oregon). The proposed process is presented in Figure 1. This figure outlines the activities at 7 steps. Most are self explanatory, but a few are described in more detail below. Table 1 shows how the proposed process differs from that developed by the PAC.

The Outstanding Resource Water Rule (OAR 340-41-026(1)(a)) directs the Department to establish a list of potential sites, and to bring a list of waterbodies proposed for designation at the time of each triennial water quality standards review. The Department is committed to involving the public in the designation of ORWs. This will be done at two steps in the beginning of the designation process. First, as the PAC proposed, the Department will solicit proposals for designations. However, during triennial reviews where other Department commitments provide sufficient numbers of sites for evaluation as ORWs, the public solicitation period may be canceled. Second, after evaluating proposed sites for their outstanding values, and prioritizing those with outstanding values for designation, the Department will seek public comment on the selected sites and prioritization criteria. This public comment is an addition to the proposed PAC process, and will coincide with comment on the issue papers that describe potential rule changes to be considered during the triennial water quality standards review. The public

Figure 1. The Department of Environmental Quality proposed process for designating Outstanding Resource Waters.

Designation Process for Outstanding Resource Waters

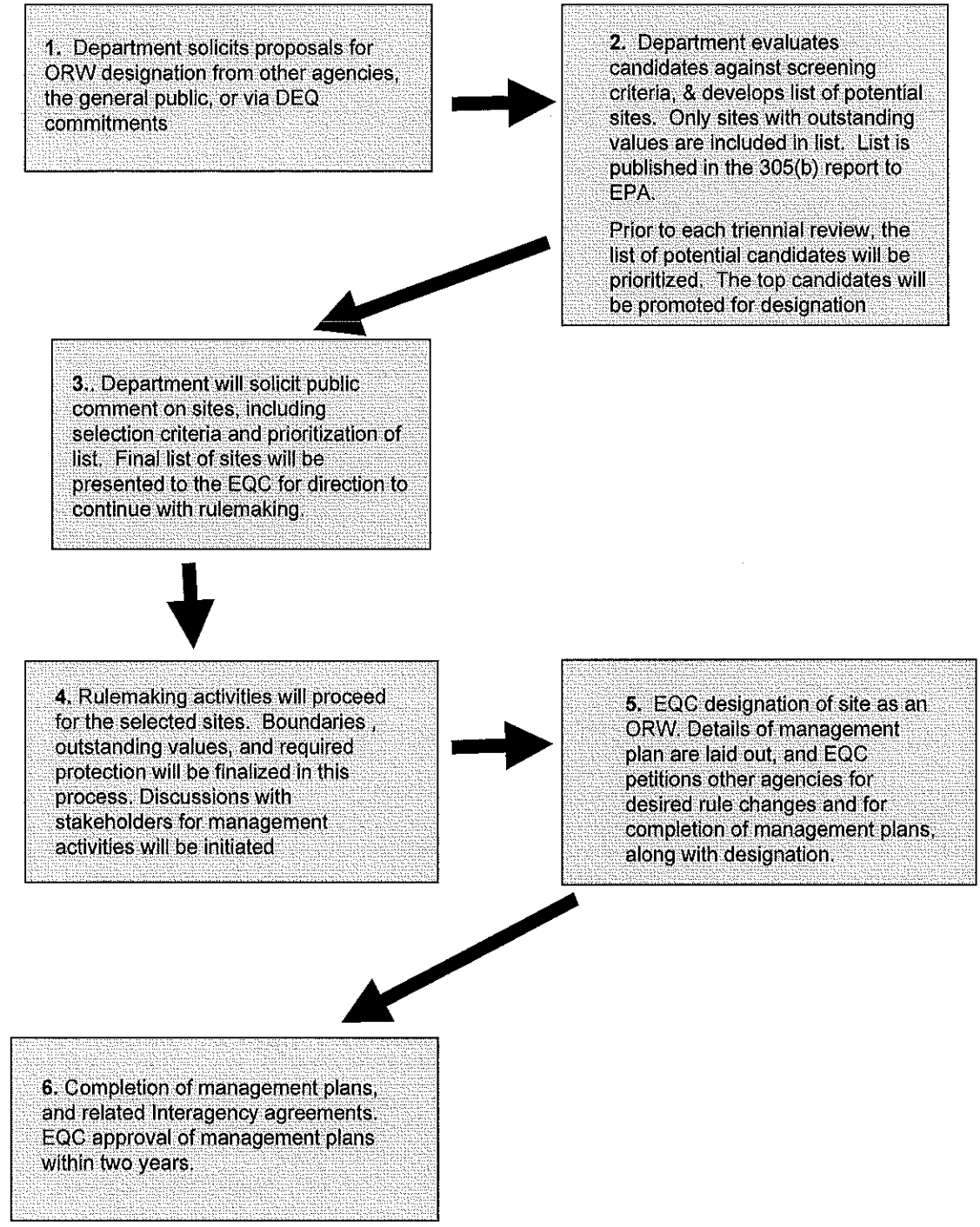


Table 1. A comparison of the Policy Advisory Committee approach to Department Modifications.

Step	Policy Advisory Committee Recommendation	Modification for Proposed Process
Step 1	Solicit public nominations	(same)
Step 2	DEQ evaluation of proposed sites, prioritized at time of triennial review for designations	(same)
Step 3	EQC nomination of sites to proceed with rulemaking and designation; interim protection offered to nominated sites	Solicit public comment on sites selected for nomination; present to EQC for endorsement. Voluntary measures for interim protection could be requested at this point.
Step 4	Rulemaking, develop management approach, data analysis	(same)
Step 5	EQC designation	Same, but also have management approach developed so that EQC can make necessary petitions and requests to other boards at time of designation, for example for rule changes to Board of Forestry, and for agricultural management plans to Department of Agriculture
Step 6	Complete Management Plan	Continue work with other agencies identified in management plan in order to complete tasks and provide protection for sites.
Step 7	EQC approval of Management Plan	Should not be necessary if management approach is well defined at designation, but could be done if needed

comment period will be held regardless of having solicited for the public nomination of sites.

The list of proposed sites may then be revised based on the comments received, and will be presented to the Environmental Quality Commission for endorsement. The PAC process referred to this step as "nomination" of proposed sites, and suggested that the following interim protection be provided to all nominated sites:

- Active implementation of the high quality waters anti-degradation policy
- EQC approval for minor and major permittees seeking new or increased loads for water quality parameters related to the outstanding values
- A review of all existing permits for an appropriate level of interim protection
- Triggering of non-point source best management practices, including those specified under Senate Bill 1010 for agriculture.

Although these appear to be reasonable measures for protection of a potentially outstanding site, interim protection may in fact be difficult to provide. Active implementation of the antidegradation approach is easily offered, since it already applies. The remaining measures would not be legal without a formal change in the classification of the water body. EQC approval of minor permits would constitute a change in approach without an actual change in water classification designation, and

thus poses questions of equity among minor permittees. Changes in existing permits would be equally difficult. Agricultural management plans do not prescribe specific management practices, and plan development would not be triggered without a change in designation.

Some steps could be taken to establish voluntary interim protection. Interagency agreements might be completed for activities on public land that are controlled by various agencies. The Environmental Quality Commission could make a non-binding request that landowners and facility operators adopt best management practices for their activities while the site is considered for ORW designation. Other tasks could be identified on a site by site basis.

Once endorsed by the EQC, rulemaking activities for formally designating the sites will follow. The rule making activity referred to in Step 4 (Figure 1 or Table 1) will include specifying the boundaries of the waterbody, final identification of the outstanding values and their related water quality parameters, and identifying the "process to determine which activities would be allowed that would not effect water quality," as required by rule. In addition, this time would be used to make progress in developing a management approach to protect the outstanding resource. Agencies, landowners and all other stakeholders would be included in developing a management approach for the Outstanding Resource Water. At this time, the need for interagency agreements, potential changes to existing management policies, and any need to develop site-specific water quality rules would be identified. Existing data would be extensively analyzed to identify and address the management needs for maintaining the water quality of the identified resource. The Policy Advisory Committee expected that it may then take 18 months or longer to complete the public process required for rulemaking, to initiate the planning and analysis required to develop the final designation rule, and to identify the protection necessary for a designated site. The Department concurs with this time estimate, as it anticipates that numeric criteria will be developed for each parameter protected by the Outstanding Resource Water designation. Public comment and hearings are included in the rulemaking process, and will be held when the draft rule is fully developed. The Department will then present the nominated sites to the Environmental Quality Commission for final designation as an Outstanding Resource Water. This will include an analysis of the need to petition any other Boards or agencies for rule changes that may be needed to protect the Outstanding Resource Water. These petitions should be made at the time of designation, to fully protect water quality. Because the petitions will require more stringent protection for specific sites, they can not be made without an ORW designation. However, the Department will work with other agencies in developing the designation and protection needs, so any petitions resulting from the designation will be anticipated by other agencies, and can be promptly acted upon.

The Department will identify most management activities at the time of designation, and will follow existing rules to protect the water quality of ORW sites. If necessary, existing mechanisms will be used to change rules as needed. This approach may not require a lengthy, detailed management plan for each designated site. Plans for many sites might consist of an outline of applicable rules. Detailed plans could be completed only for those sites with special conditions and management approaches where a written plan is necessary to confirm the management needs of a site. The management approach will be identified for all sites at the time of designation, although some aspects of the management plan may not be completed prior to the designation. Inter-agency

agreements, petitions for changes in rules, management plans or "endorsed management practices" could not occur without an official designation, but would be identified prior to, and completed soon after designation. The Policy Advisory Committee suggested that a management plan be developed and approved by the Environmental Quality Commission within two years of an Outstanding Resource Water designation. The approach adopted by the Department is not greatly different from that envisioned by the PAC; it should shorten the time needed to complete the management plans, as the management approach would be identified from the time of designation.

3. Evaluation Process

The following series of questions describes the process that will be used to determine whether a site has outstanding values. If a site makes it through this evaluation process, it is deemed to have outstanding values, and will be added to a list of sites with outstanding values, to be published in the state's 305(b) report to the EPA (a biennial event). At the time of the triennial review, the current list will be prioritized for the selection of Outstanding Resource Waters to be considered for designation. The steps of the evaluation process are presented in Figure 2, and are discussed below.

The first step in evaluating a waterbody is to fully identify the candidate site:

Step 1. *Describe the waterbody and its outstanding values.*

- *what are the boundaries of the proposed waterbody?*
- *what are its outstanding values?*
- *to which water quality parameters are they related?*
- *what are the beneficial uses related to the outstanding values*

For designation, the waterbody and its outstanding values must be identified. In addition, the rule designating the site as and ORW must identify a process to determine what activities will be allowed that will not affect the outstanding values. In order to evaluate the site as a candidate, and to fully protect its outstanding values, the values must be well described.

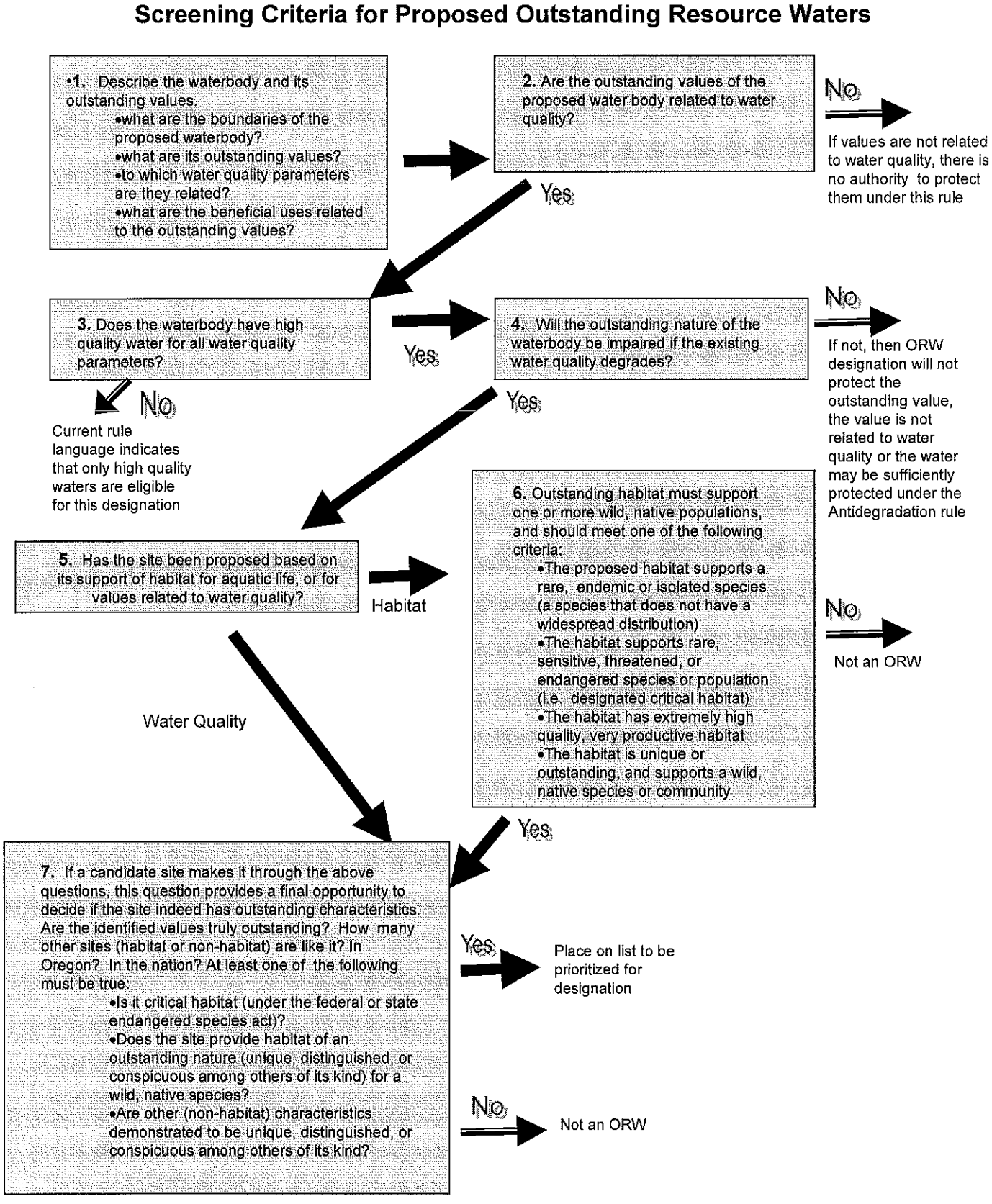
The Outstanding Resource Water designation does not provide authority to protect non-aquatic resources such as scenery, geology or cultural artifacts. For this reason, the following question is built into the evaluation process:

Step 2. *Are the outstanding values of the proposed water body related to water quality?*

As an example, National Wild and Scenic Rivers have identified "outstandingly remarkable values" that are protected by their individual management plans. Some of these are dependent on water quality, such as fish or aquatic habitat, and water quality. Others, such as "outstandingly remarkable" scenery or geology will not be affected by changes in water quality. The sites may qualify as outstanding sites under other designations such as the National Wild and Scenic Rivers, or State Scenic Waterway, but designation as an Outstanding Resource Water with concomitant water quality protection, will do little to protect those values.

The Oregon Administrative Rule that describes the Outstanding Resource Water designation (OAR 340-41-026(1)(a)(D-F)) indicates that an Outstanding Resource Water is a high quality water that constitutes an outstanding state or national resource. As such, waterbodies that do not meet water quality standards or that are not eligible for Outstanding Resource Water designation. The next question pertains to this stipulation:

Figure 2. Screening Criteria for Evaluating Proposed Outstanding Resource Waters



Step 3. *Does the waterbody have high quality water for all the water quality parameters for which data are available?*

If not, then the waterbody is not a candidate for Outstanding Resource Water designation, if so, the site will receive further evaluation as a potential candidate.

Outstanding Resource Water designation is intended "to protect the water quality parameters that affect the ecological integrity of critical habitat or special water quality values that are vital to the unique character of those waters." The following question ensures that the outstanding values are related to water quality, and that Outstanding Resource Water designation could potentially protect those values:

Step 4. *Will the outstanding nature of the waterbody be impaired in any way, if water quality degrades?*

Oregon has an Antidegradation Rule (OAR 340-41-026, of which the Outstanding Resource Water designation is a subset) that protects the existing water quality of all high quality waters. This rule indicates that water quality may be lowered only after a public process has found that the action is necessary and justifiable for economic or social development benefits, and all water quality standards and beneficial uses will still be met. High quality waters in Oregon receive a high standard of protection, therefore Outstanding Resource Water designation is reserved for waterbodies with truly outstanding character. Oregon Administrative Rules do not offer a definition for outstanding. In cases where rules and statutes fail to provide definitions, the common definition applies. Webster's II New Riverside University Dictionary defines outstanding as "distinguished, or conspicuous among others of its' kind." The term unique has also been used as a descriptor for Outstanding Resource Waters by both the Policy Advisory Committee and the current Outstanding Resource Water Work Group (a group providing advice on the screening criteria to the Department), so these are the meanings applied to "outstanding" for the purpose of this rule.

The Rule (OAR 340-41-026(1)(a)(D-F)) identifies potential outstanding sites as "extraordinary resource waters or critical habitat." Whether sites are proposed for outstanding water quality, critical habitat, or both, each proposed value must be shown to have outstanding qualities. However, to assist in identifying the outstanding values of a site, we have provided some guidance to help identify the outstanding nature for sites that support aquatic habitat. These may be either critical to a particular species survival, or a particularly unique or productive habitat or aquatic community for multiple species.

Step 5. *Sites may have outstanding values related to habitat or water quality. To determine if those proposed for habitat are outstanding, go to Step 6. For sites with outstanding water quality values without remarkable habitat, go to Step 7.*

Sites with outstanding values related to aquatic life must pass the following test:

Step 6. *Is/are the population(s) supported by the outstanding habitat, native and wild? If so, the outstanding habitat should meet one of the following criteria:*

- *The proposed habitat supports a rare, endemic or isolated species (a species that does not have a widespread distribution)*
- *The habitat supports rare, sensitive, threatened, or endangered species or population (i.e. critical habitat as identified under state or federal rule)*

- *The habitat has extremely high quality, very productive habitat*
- *The habitat is unique or outstanding, and supports a wild, native species or aquatic community*

Outstanding Resource Water designation for aquatic habitat areas is being reserved for wild and native populations. Introduced species are not considered an extraordinary resource, nor are highly managed systems where stocking programs are required to maintain or enhance the population. If a site supports a wild and native population, there are several ways in which that habitat may be considered outstanding, as highlighted by the above characteristics.

If a site meets the above criteria for critical habitat, then it should be evaluated one last time for its' outstanding values, as will sites that have been proposed for values related to water quality, or other ecological criteria that may not suit the above characteristics.

***Step 7**. Are the identified values truly outstanding?*

- *How many other sites (habitat or non-habitat) are like it? In Oregon? In the nation?*

To be outstanding, a site must receive a yes to at least one of the following questions:

- *Is it critical habitat (under the federal or state endangered species act)? If so, will Outstanding Resource Water designation contribute to survival of the threatened or endangered species? Is the high level of protection offered by ORW designation necessary to protect the species at this site?*
- *Does the site provide habitat of an outstanding nature (unique, distinguished, or conspicuous among others of its kind) for a wild, native species?*
- *Are other (non-habitat) characteristics demonstrated to be unique, distinguished, or conspicuous among others of its kind?*

At this point, the outstanding nature of the site must be accurately described and defended. If the site provides important habitat for a species, references by appropriate agencies or experts in the field should concur with the description. If a site is promoted for its water quality values, then evidence of its unique or distinguished nature should be presented. Four examples describing outstanding values are shown in Table 2, two sites have outstanding water quality values and two support critical habitat. Note that the descriptions of the outstanding values pinpoint specifically what is considered outstanding, and provide facts that describe the unique nature of each site. For example, part of Crater Lake's outstanding nature is as a very clear lake, that is also the 7th deepest lake in the world, in a unique setting, with unusual aquatic communities. Similarly Waldo Lake has a chemistry shared by few other Oregon lakes, and is Oregon's second largest and second deepest freshwater lake. Borax Lake has been identified as critical habitat for an endangered species that occurs only in Borax Lake and surrounding marshes. The Clackamas River is thought to support the last viable Coho population of the Lower Columbia River coho gene conservation unit. These kinds of statements, with their supporting evidence, represent the level of detail needed to describe the outstanding values of a site. It is not sufficient that a site is thought to have outstanding values by one or a few people, it is necessary to defend why that is true, through comparison to other sites, or to similar values of other locations, and supported by data for the proposed values.

Table 2. Examples of well-described outstanding values for some candidate sites. Note that the Descriptions include specific detail of the unique nature of these outstanding values.

Site	Outstanding Value(s)	Description of Values
Crater Lake	Water Clarity, aesthetics	Very clear water in a unique setting. Crater Lake is the 7th deepest in world, and is unlike most other lakes in the world, in its chemistry, formation, topography and biology. The lake is uniquely clear with a secchi depth usually between 25 and 40 meters; where other clear Oregon Lakes have secchi depths about 15-17 meters (Johnson *et al.*, 1985). The lake color is a deep blue, characteristic of deep, clear lakes. Crater Lake is unique in its water clarity, oligotrophic nature, and physical setting. The phytoplankton community is found at greater depths than most other lakes, and while it includes some common species, there is also an unusually diverse array of less common species. The lake's unique physical characteristics of very clear water, somewhat warmer water at great depth, cold water at mid-depth, and cool water at the surface, combined with unique chemical attributes including very low nitrogen, and unusual chloride and sulfate ratios, create a unique habitat for aquatic phytoplankton and benthic bacteria.
Waldo Lake	Water clarity, Ultraoligotrophic Lake	The *Atlas of Oregon Lakes* (Johnson *et al.,* 1985) describes Waldo Lake's features as follows: "The most outstanding feature of this lake is its oligotrophic character; it is indeed one of the most oligotrophic water bodies in the world. The water is a beautiful cobalt blue color and remarkably clear. ... Concentrations of ions, conductivity, and alkalinity are exceptionally low, closely similar to the composition of rain water in a pristine environment. ...The population densities of planktonic algae are perennially low, seldom exceeding 50 cells per milliliter." Some of these characteristics are shared with other Cascade lakes to some extent. However Waldo Lake is very large; it is the second largest and second deepest of the freshwater lakes in Oregon. For this reason, combined with its popularity and accessibility, it is an outstanding resource worth protecting.
Clackamas River	Coho spawning & rearing habitat	The Clackamas is a cold and very clear running river, both important characteristics for salmonid habitat. In addition, the fish habitat structure of the Clackamas is excellent, with substantial large woody debris, side channel and braided river supplying important *Coho* rearing areas. Other reaches have fast flowing water preferred by steelhead. The Watershed Analysis conducted by the US Forest Service suggests that historic fish declines have had a greater impact from hydroelectric and commercial and recreational fishing pressures, than from loss of habitat in the Clackamas River system. This system is thought to support the only remaining runs of wild *Coho* in the Lower Columbia River (Nehlsen *et al.*, 1991). Thus, continued preservation of a historically fecund system should help to re-establish salmonid runs in the Lower Columbia River gene conservation units.
Borax Lake	Borax chub habitat	Borax Lake is an outstanding resource due to its support of a threatened species, the Borax chub, so designated under the federal Endangered Species Act. This species does not occur at any other site. The unique thermal regime, chemistry and trophic state all contribute to the chub's survival.

Some sites may benefit by having basin-specific water quality standards to protect the outstanding value. If this need becomes apparent during the evaluation process, it will be noted along with the site and its values. Further development of a site-specific standard can be completed along with the development of management strategies and specific rule language, prior to designation of the site as an Outstanding Resource Water.

4. **Prioritization of Candidate Sites**

Once the outstanding values of candidate sites have been identified and confirmed as outstanding, meeting the criteria as a high quality water, with outstanding values that would be protected by the special designation, they will be placed on a list of candidate sites. The current list of candidate sites will be published in the state's 305(b) report; the state's biannual report to EPA and Congress describing the status of our water quality. At the initiation of each water quality standards triennial review, the candidate sites will be prioritized. Those that have the highest priority will be proposed for nomination and designation. The number of sites selected with each review will depend on the availability of Agency resources, and the perceived workload for the highest priority designations.

Factors that will influence site prioritization include the level of urgency for designation, the scarcity of habitat for identified species, a relative assessment of the value of the outstanding resource, and the need for Outstanding Resource Water designation. Because antidegradation and outstanding resource water both provide a high level of protection, the prioritization process will include an examination of the impacts, both positive and negative, of an ORW designation. Department workload may impact the ranking of sites, as well as the availability of data for evaluating and defining protection for an Outstanding Resource Water. The relationship to other departmental or agency rankings or plans, evaluations from watershed councils and other interest groups, and an assessment of multiple benefits provided by one or more outstanding values will also be considered. Comments received from the site solicitation period will also influence the priority ranking of the potential sites, and the draft list may be modified in response to the initial public comment period.

Due to the Department's limitation of resources for Outstanding Resource Water designations, the availability of data to evaluate and to develop appropriate protection for a candidate site may have a substantial influence on its prioritization for designation. If limited data are available, there may be neither sufficient information to identify and describe the outstanding values, nor enough information to evaluate whether the waterbody has high quality water. Most importantly, in order to protect water quality, there must be sufficient information to understand at what level the protective criteria should be set. Even though designation may be highly desirable for a site, if insufficient information is available, nomination will have to wait until data are available.

Prioritization of the list of potential sites will differ with each triennial review, but all of these factors will be considered in the prioritization process. An objective approach for prioritization has not been established, as the process will depend largely on a comparison of sites on the list of potential candidates. However, documentation of the process and priority rankings will be completed with the selection of sites for each triennial review, and available for public comment at the onset of the review period.

5. What Outstanding Resource Water Designation Means For Activities Affecting the Site

The Outstanding Resource Water designation establishes a standard for water quality that allows no degradation of water quality. The rule does not provide direction about how this will be accomplished, it merely indicates that a "process for determining what activities will be allowed that will not degrade the outstanding values," will be included in the designation (OAR 340-41-026(1)(a)(F). Direction from the federal rules for Outstanding Resource Waters indicates that no degradation of water quality will be allowed that will affect designated Outstanding Resource Waters.

Outstanding Resource Water designation provides the highest level of water quality protection. No water quality degradation is allowed for these waters, even if there is a social or economic desire to do so, and water quality standards would still be met. Table 3 identifies how various aspects of the current water quality program will apply to ORWs. Rule changes and management plan modifications would be requested on a site specific basis, and would not be required at a scale larger than that necessary to protect the designated Outstanding Resource Water.

One of two policies may be adopted for point sources that are designated as Outstanding Resource Waters. There may be no new or increased discharges to the water despite the cessation of some pollutant sources to the waterbody, or there may be reallocation of loads that have been discontinued at other facilities. The implementation policy will be site specific and will be noted in the ORW designation. Selection of either policy will depend on the nature of the outstanding values to be protected, and the margin of safety desired for protection of those values.

Non-point sources of pollution are not regulated as directly as point sources, as no permit programs are in place. However, in Oregon, there are several programs that control non-point sources of pollution. These programs include the Agricultural Management Plans as required under Senate Bill 1010 (Oregon Revised Statutes 568.900-568.933, and Oregon Administrative Rules, Chapter 603 Division 90) to control water quality impacts from agricultural activities, practices required under the state Forest Practices Act (Oregon Revised Statue 527.610-527.770, and Oregon Administrative Rules Chapter 629, Divisions 600-669) that are applicable on state and private forest land, and management plans for federal forests, that control practices on federal forest land. Given the antidegradation water quality standard that is currently in place, these mechanisms should already ensure that activities regulated under these plans do not affect water quality. However, if they are shown to impact water quality, or are reasonably suspected of impacting water quality at a level that is not acceptable for an Outstanding Resource Water, the Environmental Quality Commission will petition the appropriate agency, board or commission for site-specific changes in the management plans or identified best management practices of the applicable plan. These changes will be requested at a scale appropriate for protecting the Outstanding Resource Water but will not restrict activities outside this area.

Implementation of the Outstanding Resource Water designation is expected to follow existing management approaches (Table 3). For instance, the Department of Environmental Quality implements the point source program, through a series of water quality permits. With the exception of short-term perturbations that "respond to emergencies or otherwise protect human health and welfare," point source permits for

Table 3. This Table describes how the Outstanding Resource designation for point and non-point sources will be implemented. For ease in reading the Table, Outstanding Resource Water has been abbreviated as ORW.

Water Classification	Outstanding Resource Waters
Water Quality Standard	Water quality criteria specified at time of ORW designation to protect outstanding value, no water quality degradation related to outstanding value will be allowed.
General Implementation	No new or increased sources effecting outstanding values. As sources go off-line, load & wasteload allocations may or not be re-assigned, as indicated in ORW designation. The only exceptions are for emergency and short term activity which must meet test of protecting human health and welfare
Point Sources	New or increased sources effecting outstanding value are temporary in nature, will not effect water quality over the long-term, & must meet test of protecting human health & welfare
401 Water Quality Certification	New or increased sources effecting outstanding value are temporary in nature, will not effect water quality over the long-term, & must meet test of protecting human health & welfare
Non Point Sources	
Urban	no new or increased stormwater permits for sources effecting outstanding values
Agriculture	ORW designation will require an agricultural management plan. The plan will be used to control agricultural impacts on water quality, resulting in no degradation of outstanding values.
Forestry	Forest Practices Act will be used to ensure that there is no degradation water quality due to forest activities on state and privately owned land. Federal Forest Plan will be used to ensure no degradation of water quality to forest activities on federal land
Flow	Option to apply for Instream Water Right for ORW

new or additional sources would not be allowed within the boundaries of an Outstanding Resource Water, or sufficiently near a designated site to impact water quality of the site.

Designation of a site as an Outstanding Resource Water would include a requirement for an Agricultural Management Plan, as described under Oregon statute (Oregon Revised Statue 568.909(1)(c)). Management plans are currently being developed for many Oregon basins and will be developed by 2002 for the remaining basins. If an Outstanding Resource Water designation is expected in a basin where plans are currently under development, it will be drawn to the attention of those involved in the plan development. If a designation is proposed in a basin with an existing agricultural management plan, the existing plan will be reviewed for consistency with the needs of the Outstanding Resource Water. Requests for modification of Plans that do not provide sufficient protection will be directed to the Department of Agriculture, and subsequently modified under their direction, using the existing management plan development process.

Outstanding Resource Water protection would follow a similar process for forestry activities on lands subject to the Oregon Forest Practices Act. Currently, the Oregon Forest Practices Act directs the Board of Forestry to approve best management practices for forest activities on state and private lands. These practices would be followed in watersheds containing Outstanding Resource Waters as well, unless the practices were found to provide insufficient protection to the identified outstanding values. This may happen at the time of designation, or at a later time. In either case, the Environmental Quality Commission would petition the Board of Forestry for a rule change, requesting different practices in areas that might impact the Outstanding Resource Water.

An analogous approach would be used to change the practices used on federal forest lands adjacent to an Outstanding Resource Water. However, the US Forest Service is governed by the Federal Land Management Act, and follows a somewhat different process to establish and revise forest practices. In this case, the Environmental Quality Commission would petition the appropriate National Forest, and request a change in the applicable Forest Plan. The Forest Service would then follow the Federal Land Management Act directives for modifying the Forest Plan.

Activities not included in Table 3, would follow the same principle; following existing statutes, rules, or guidance, and using the identified mechanisms for modifying the existing approach where necessary to protect the Outstanding Resource Water.

6. **Procedure for Submitting Nominations to the Department of Environmental Quality for Consideration**

Nominations for Outstanding Resource Water designations will be solicited sufficiently in advance of the triennial review to allow evaluation of the proposed sites prior to the initial public comment period. Any interested person, agency, organization or watershed group may submit proposals for consideration.

The most important elements of the proposal are the identification of the outstanding value(s), and a discussion of why the site should be designated as an ORW. Supporting documentation for the outstanding nature from other agencies, or "local experts" (folks who can provide detailed information or data for the site) is encouraged,

especially if the outstanding values are related to aquatic habitat. The proposal should clearly address these questions:

- What makes the site truly outstanding?
- Why does the waterbody require Outstanding Resource Water designation?
- Why does antidegradation provide insufficient protection for this waterbody?

If insufficient information about the outstanding nature of the site is available, the Department is unlikely to rank the site as a high priority for designation, and may fail to find that the site indeed has outstanding values.

Proposals should include all the information that is available to evaluate the proposed outstanding values, determine that the proposed site has high quality water, and to identify the management needs for the site. The extent of existing data should be described, and data should be made available to the Agency upon request. If insufficient data are available to evaluate the site, the Department may assist in collecting additional data, provide information regarding acceptable data collection, or may assist in locating funds for data collection. Whatever the data source, it must be collected by methods approved by the DEQ, and must be accompanied by sufficient quality assurance data to ascertain that the data are reliable.

The format used to summarize the Department findings is attached here (Table 4), along with a completed example (Table 5). A contact person should be included, so questions regarding the proposal can be directed to the appropriate person. Outside of solicitation periods, proposals will be evaluated as time permits, but will only be considered for designation during the scheduled determined for the triennial water quality standards review.

Table 4. A form for submitting Outstanding Resource Water Proposals to the Department of Environmental Quality.

ORW Proposed Waterbody

1. NAME:
2. BOUNDARY:
3. WATERSHED CHARACTERISTICS:
4. NATIONAL OR STATE SIGNIFICANCE:
5. OUTSTANDING VALUE(S):
6. SIGNIFICANT HABITAT:
7. WATER QUALTIY PARAMETERS RELATING TO OUTSTANDING VALUE:
8. WATER QUALITY STATUS:
9. ARE EXISTING PROTECTIONS SUFFICIENT TO PROTECT VALUES:
10. IS WATERBODY AN OUTSTANDING RESOURCE BASED ON WATER QUALITY ATTRIBUTES:
11. PROTECTION CURRENTLY AFFORDED:
12. POTENTIAL THREATS:
13. LEVEL OF URGENCY FOR PROTECTION:
14. SUMMARY OF AVAILABLE DATA:

Table 5. A completed example of a form describing a proposed Outstanding Resource Water.

ORW Proposed Waterbody

1. NAME: Crater Lake
2. BOUNDARY: Lake Rim
3. WATERSHED CHARACTERISTICS: National Park. Watershed not much larger than lake. Steep sided volcanic crater, limited vegetation.
4. NATIONAL OR STATE SIGNIFICANCE: National Park.
5. OUTSTANDING VALUE(S): Very clear water in a unique setting. Crater Lake is the 7th deepest in world, and is unlike most other lakes in the world, in its chemistry, formation, topography and biology. The lake is uniquely clear with a secchi depth usually between 25 and 40 meters; where other clear Oregon Lakes have secchi depths about 15-17 meters (Johnson *et al.*, 1985). The lake color is a deep blue, characteristic of deep, clear lakes. Crater Lake is unique in its water clarity, oligotrophic nature, and physical setting. The phytoplankton community is found at greater depths than most other lakes, and while it includes some common species, there is also an unusually diverse array of less common species.
6. SIGNIFICANT HABITAT: Not extensively described. Fish present have been stocked. There are some unusual chemotrophic bacterial mats on the floor of the lake, of which little is known. Algal comunities include some unusual species.
7. WATER QUALITY PARAMETERS RELATING TO OUTSTANDING VALUE: Turbidity, chlorophyll, suspended solids, transmissivity, secchi disk reading
8. WATER QUALITY STATUS: High quality water for all measured parameters.
9. ARE EXISTING PROTECTIONS SUFFICIENT TO PROTECT VALUES: Existing water quality rules may not fully protect outstanding values, as water clarity is unique in this system.
10. IS WATERBODY AN OUTSTANDING RESOURCE BASED ON WATER QUALITY ATTRIBUTES: Yes. Crater Lake has unique clarity among other lakes of the world, it is a very deep lake, and is located in a unique and beautiful setting. The lake's unique physical characteristics of very clear water, somewhat warmer water at great depth, cold water at mid-depth, and cool water at the surface, combined with unique chemical attributes including very low nitrogen, and unusual chloride and sulfate ratios, create a unique habitat for aquatic phytoplankton and benthic bacteria.
11. PROTECTION CURRENTLY AFFORDED: National Park
12. POTENTIAL THREATS: Most likely threats are from high the visitation rate, and the potential for atmospheric pollution inputs.
13. LEVEL OF URGENCY FOR PROTECTION: To be determined with further analysis.
14. SUMMARY OF AVAILABLE DATA: Ten years of intensive monitoring and assessment data between 1982 and 1992 including water clarity and color, chemical and biological parameters, and analysis of lake cores from which historic conditions can be inferred. Miscellaneous data ranging back to 1890s.

References:

Johnson, D.M., R.R. Petersen, D.R. Lycan, J.W. Sweet, M.E. Neuhaus, A.L.Schaedel 1985. *Atlas of Oregon Lakes.* Oregon State University Press, Corvallis, Oregon.

References

Johnson, D.M., R.R. Petersen, D.R. Lycan, J.W. Sweet, M.E. Neuhaus, A.L. Schaedel 1985. *Atlas of Oregon Lakes.* Oregon State University Press, Corvallis, Oregon.

Nehlsen, W., J.E. Williams, J.A. Lichatowich. 1991. *Pacific Salmon at the Crossroads; Stocks at risk from California, Oregon, Idaho, and Washington.* Fisheries **16**(2):4-21.

State of Oregon

Department of Environmental Quality Memorandum

Date: January 11, 1999

To: Environmental Quality Commission

From: Langdon Marsh, Director

Subject: Agenda Item G, Informational Item: Community Solutions Team Approach and What it Means for the Department of Environmental Quality, EQC Meeting January 19, 1999

Statement of Purpose

The Department is working as a part of the Community Solutions Team (CST) to develop higher quality communities with public investments that are both more effective and lower in total cost. This report provides the Commission with information about the CST approach and its relationship to DEQ activities.

Background

Governor Kitzhaber believes that state agencies should work with local partners to enhance and build quality communities. The Governor defines a 'quality community' as a community that is

> "in balance, that provides good jobs for its citizens; has affordable and well-located housing; has an efficient transportation system that provides transportation choices; possesses a sewer and water system that supports the community and maintains a clean environment; and has a vision for its future to manage growth and development as well as a plan to deliver it."

The CST was formed as a board that advises the Governor on community development. The Department of Environmental Quality joins with the Department of Land Conservation and Development, Oregon Department of Transportation, Oregon Housing and Community Services and Oregon Economic Development Department to comprise the CST. The CST agencies administer a host of programs that directly affect the built environment in Oregon. The directors of these five agencies have met twice monthly since August 1996, working together to integrate state agency actions and services to help build quality communities.

In December 1997, Executive Order 97-22 *The Use of State Resources to Encourage the Development of Quality Communities* was signed as a way to direct diverse agency plans and programs to work together to encourage and support high-quality development. The order articulates a set of common objectives that describe the state's interests in developing quality communities. The Order is intended to guide and coordinate state agency actions and investments in community development.

The Governor's Community Development Office (CDO) was organized in January 1998 to assist and support the work of the CST and to carry out the Governor's charge to the agencies to focus efforts on "solving problems verses running programs." The Community Development management team consists of a senior staff person from each of the five CST agencies.

Nine Regional Community Solutions Teams are organized to implement the Governor's directive for more efficient, better-coordinated solutions to local problems. The regional field teams consist of high-level field representatives from each of the five agencies. The field teams are tasked with assuring that agency actions and investments are well coordinated and effectively meet state and local objectives.

Regional partnerships were proposed by the Interim Work Group on Economic and Community Development as a way to create a forum, or "place", at the local level where local/state/federal government jurisdictions can identify issues and problems, resolve conflicts and coordinate investments. As state agencies begin to implement a more collaborative, inter-agency approach to meet community needs, working in partnership with organized local interests offers an effective and efficient model for state/local interaction. The *Guiding Principles for State/Local Partnerships* developed by city, county and state leaders in 1996 provide a foundation for the organizing the regional partnerships. The regional partnership model is presently being tested in four pilot regions during 1998-99.

Department Recommendation

It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate.

Memo To: Environmental Quality Commission
Agenda Item G, Informational Item: Community Solutions Team Approach and What it Means for the Department of Environmental Quality, EQC Meeting Page 3

Attachments

Executive Order 97-22, *The Use of State Resources to Encourage the Development of Quality Communities*, December 1997.

Purpose and Goal of the Community Solutions Team

Community Solutions Relationships (diagram)

Service Areas for Regional Community Solutions Teams, October 1998 (map)

Regional Community Solutions Teams – List of members

Executive Summary of the Report of the Interim Work Group on Economic and Community Development, *"Solving Problems, Not Running Programs"*, September 1998.

Guiding Principles for State/Local Partnerships, March 27, 1995.

Approved:

Section: _____

Division: _____

Report Prepared By: Pete Dalke

Phone: (503) 229-5588

Date Prepared: January 11, 1999

E:\winword\eqcreport1-99

EXECUTIVE ORDER NO. EO 97 - 22

USE OF STATE RESOURCES TO ENCOURAGE THE DEVELOPMENT OF QUALITY COMMUNITIES

WHEREAS it is a goal of the State of Oregon as expressed in statute and in state agency goals and programs to accommodate growth and development in a manner that promotes quality communities, protects the land base for our farm and forest industries, and reduces the cost of public facilities and services; and

WHEREAS several state agencies are responsible for implementing this goal through state policies, statutes and administrative rules; and

WHEREAS there is a need to coordinate and target these programs and activities in order to protect the long-term value of the state's investments in Oregon communities and to use limited public dollars strategically; and

WHEREAS a set of development objectives reflecting state policies, statutes and administrative rules is needed to articulate the state's community development interests and to provide a framework for coordinating and targeting state programs and actions; and

WHEREAS it is recognized that local jurisdictions may have their own set of development objectives and priorities reflecting local needs and interests; and

WHEREAS the state should negotiate to resolve differences between state and local community development objectives.

THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:

The state shall strive to ensure that its programs and activities help build and maintain quality communities which have clean air and water, housing that is affordable to community residents, a balance of jobs and housing in proximity to one another, development patterns that minimize the cost of public services, and a mix of residential, commercial, industrial and institutional uses that supports a balanced transportation system.

A. Quality Development Objectives

The following Quality Development Objectives are hereby established to articulate the state's community development interests and to establish the state's

investment priorities for the physical development of communities. The Objectives should be used in combination with state and local partnership principles and local development objectives to help build healthy and diverse communities and regions throughout Oregon.

1) Promote compact development within urban growth boundaries to minimize the costs of providing public services and infrastructure and to protect resource land outside urban growth boundaries.

2) Give priority to a quality mix of development that addresses the economic and community goals of a community and region.

3) Encourage mixed use, energy-efficient development designed to encourage walking, biking and transit use (where transit is available).

4) Support development that is compatible with a community's ability to provide adequate public facilities and services.

5) Facilitate development that is compatible with community and regional environmental concerns and available natural resources (e.g., available water, air quality, etc.)

6) Support development that provides for a balance of jobs and affordable housing within a community to reduce the need to commute long distances between home and work, thereby minimizing personal commuting costs as well as the public and societal costs of expanding the transportation infrastructure.

B. Affected Agencies

The Quality Development Objectives are intended to guide all state agency actions related to community development.

However, the agencies on the Governor's Community Solutions Team including the Oregon Departments of Transportation, Environmental Quality, Economic

Development, Transportation, Land Conservation and Development, and Housing and Community Services will have the primary responsibility for implementation.

C. Implementation of "Quality Development Objectives"

1) Each agency shall ensure that agency actions are consistent with the "Quality Development Objectives."

2) Each Director of a Community Solutions Team agency shall designate staff to implement the executive order and to develop a training program for agency personnel responsible for implementing the "Quality Development Objectives."

3) No later than April 30, 1998, each Community Solutions Team agency shall submit a report to the Governor indicating how it will implement the "Quality Development Objectives" through agency programs, activities and the budget process. At that time, the Community Solutions Team shall also identify other state agencies which shall be involved in implementation.

4) The Community Solutions Team agencies shall implement an on-going mechanism to ensure coordination among major programs affecting community development.

5) By December 31, 1998, the Community Solutions Team shall prepare a report outlining how it is implementing the "Quality Development Objectives."

6) Each Community Solutions Team agency shall use the population and employment forecasts developed or approved by the Department of

Administrative Service's Office of Economic Analysis in coordination with Oregon's 36 counties to plan and implement programs and activities.

Done at Salem, Oregon, this 16th day of December, 1997.

John A. Kitzhaber, M.D.
GOVERNOR

ATTEST:

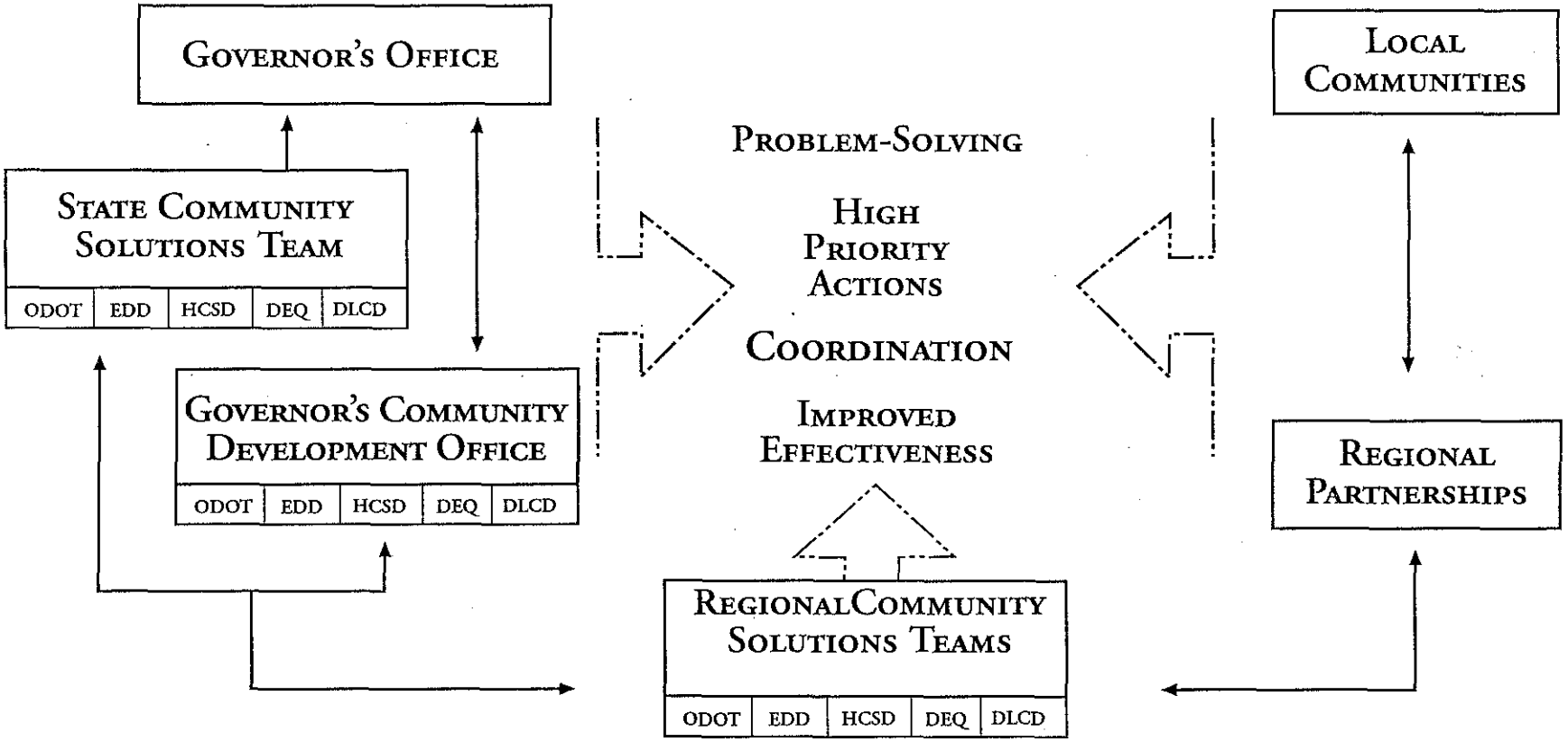
Michael Greenfield
DEPUTY SECRETARY OF STATE

THE GOAL OF THE COMMUNITY SOLUTIONS TEAM IS:

To develop higher quality communities with public investments that are both more effective and lower in total cost.

The Community Solutions Approach to Community Development	**Potential Functions of a Regional Partnership**
PURPOSE	**PURPOSE**
• To focus government on problems that are the most relevant to citizens in our communities • To be more efficient and effective in the use of limited public resources • To more effectively address issues that extend beyond traditional jurisdictional boundaries • To creatively solve problems rather than to run programs • To encourage flexibility in the way problems are solved • To target state investments to achieve healthy communities	• Identify problems of regional significance and seek solutions • Advocate regional priorities • Share information among jurisdictions • Coordinate regional efforts • Review state agency investments in the region for effectiveness and efficiency • Enter into formal and informal agreements between state/local government on mutual actions to address problems • Develop measures to track the success of community development efforts

COMMUNITY SOLUTIONS RELATIONSHIPS



KEY

Community Development Office. Group within Governor's Office composed of liaisons from each of the CST agencies. The CDO serves as a liaison between each agency and the Governor's Office at a senior policy level and helps ensure that the objectives of the CST are met.

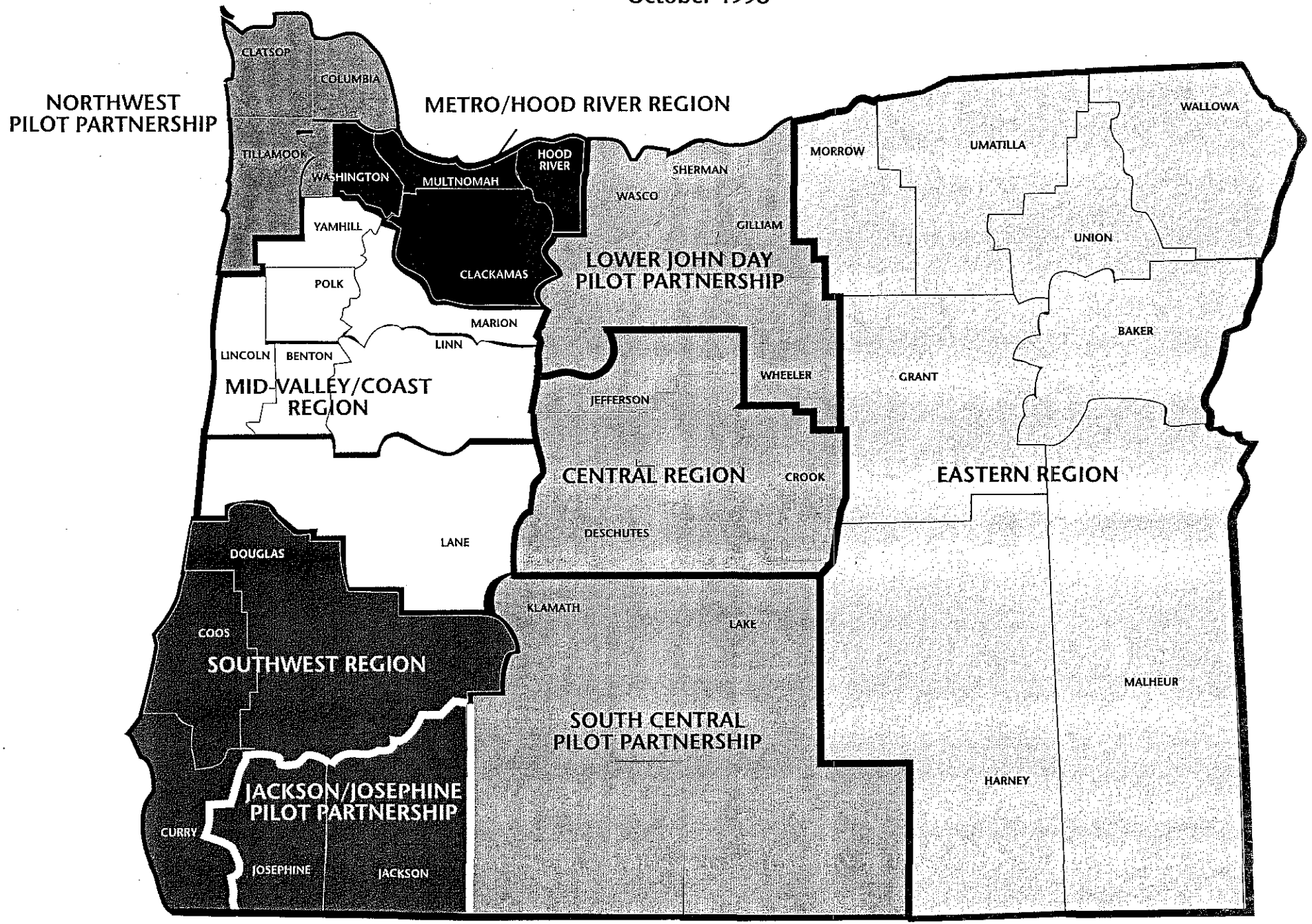
State Community Solutions Team. Composed of directors of Department of Environmental Quality, Department of Land Conservation and Development, Economic Development Department, Housing and Community Services and Department of Transportation. The CST works closely with the Governor and his staff to address community development issues at top level.

Regional Community Solutions Teams. Teams in each of six regional coordination districts composed of representatives from CST agencies. Their function is to identify and solve priority problems at the field level.
DEQ. Department of Environmental Quality
DLCD. Department of Land Conservation and Development
EDD. Economic Development Department
HCSD. Housing and Community Services Department
ODOT. Oregon Department of Transportation.
Regional Partnerships. Regional (multi-county) groups composed of local representatives working toether to address community development problems.

November 1, 1998

SERVICE AREAS FOR REGIONAL COMMUNITY SOLUTIONS TEAMS

October 1998



REGIONAL COMMUNITY SOLUTIONS TEAMS

NORTHWEST:

(Clatsop, Columbia, Tillamook, and western Washington pilot partnership)

Vince Chiotti - HCSD
Larry Ksionzyk - DLCD
Mohamad Dichari - ODOT
Bill Campbell - EDD*
Dale Jordon - DLCD
Neil Mullane - DEQ

MID-VALLEY/COAST:

Mike Burton - EDD*
June Carlson - ODOT
Jack Duncan - HCSD
Don Ehrich - ODOT
Steve Greenwood - DEQ
Bob Pirrie - ODOT
Mark Radabaugh - DLCD

SOUTHWEST:

Kerri Nelson - DEQ
Chris Claflin - EDD*
Dave Perry - DLCD
Deborah Price - HCSD
Mark Usselman - ODOT

JACKSON-JOSEPHINE:

(Jackson-Josephine Pilot Partnership)

John Becker - DEQ
Monte Grove - ODOT
Jeff Griffin - DLCD
Bruce Laird - EDD*
Deborah Price - HCSD

METRO-HOOD RIVER:

Patrick Allen - EDD
Vince Chiotti - HCSD
Cheri DeBeaumont - HCSD
Leo Huff - ODOT
Marcy Jacobs - EDD
Robert Baumgartner - DEQ
Jim Sitzman - DLCD*
Dave Williams - ODOT

LOWER JOHN DAY:

(Wasco, Sherman, Gilliam, Wheeler Counties and Confederated Tribes of Warm Springs pilot partnership)

Sam Wilkins - ODOT
Brent Lake - DLCD
Dave Harlan - EDD
Cheri DeBeaumont - HCSD
Gerry Preston - DEQ

CENTRAL:

Jack Duncan - HCSD
Stephanie Hallock - DEQ
Brent Lake - DLCD
Robert Bryant- ODOT
Robert Raimondi - EDD
Regina Troupe - (ad hoc) Corrections

SOUTH CENTRAL:

(Klamath-Lake Pilot Partnership)

Bob Doran - ODOT
Larry Holzgang - EDD
Brent Lake - DLCD
Dick Nichols - DEQ
Deborah Price - HCSD
Regina Troupe - (ad hoc) Corrections

EASTERN:

Cheri DeBeaumont - HCSD
Joni Hammond - DEQ
Jill Miles - EDD
Deborah Price - HCSD
Tom Schuft - ODOT
Laren Woolley - DLCD
*rotating chair

*Chair
updated 10/28/98

"Solving Problems, Not Running Programs"

Executive Summary of the Report of the Interim Work Group on Economic and Community Development

September 1998

What is the Interim Work Group on Economic and Community Development?

The Interim Work Group on Economic and Community Development was chartered by the 1997 Legislature to implement "New Directions" for economic and community development in Oregon as envisioned by the 1995-97 Biennial Report of the Economic Development Commission. The 15-member Work Group is comprised of legislators, representatives of local governments, the Governor's Office, the Economic Development Commission and the private sector. During the past year, the Interim Work Group has brought together a broad array of interests to provide the framework in which Oregon should approach economic and community development into the next century.

"New Directions" focuses the efforts of the Interim Work Group

Inclusiveness	Support distressed communities and populations that have not shared in Oregon's economic boom and diversification;
Sustainability	Ensure economic strategies reinforce Oregon's long-term prosperity and livability;
Competitiveness	Focus economic assistance on businesses that are starting up or already doing business in Oregon; and
Partnerships	Link state investments and initiatives that affect local communities.

Recommendations of the Work Group Report To Implement "New Directions"

The Interim Work Group reached three basic findings in their report. These are:

1. Principles for Investment of Resources

The vision, goals and priorities of regions and communities should drive the planning and investment process of state agencies. Local priorities and state or federal interests should be respected in the investment of state, local and federal funds. Principles established by the Work Group for investment of state resources include:

- ☐ Flexibility of state structures and processes to meet local needs
- ☐ Use of partnerships in decision-making
- ☐ Demonstrated accountability, and
- ☐ Efficiency of public investment and assistance for local priorities

2. Need for Regional Partnerships and Integration

Establish regionally organized partnerships, supported by regional community solutions teams to better integrate local, state, federal and private sector activities, set regional priorities and resolve community and regional issues. Each region will have an opportunity to develop a pilot partnership model that is the most effective way for the region to address its problems and key issues. Why use regional partnerships? The Work Group believes it will allow the agencies of the Community Solutions Teams and their partners to move away from a categorical approach of making regulatory decisions and funding projects to an integrated approach of problem solving and decision making. It is a major shift in philosophy of the state's approach to governing, and is intended to be a pervasive transition throughout state agencies as a better way to deliver public services.

3. Coordination of Resources and Adequate Funding

Coordinate and allocate financial and other resources based on regional and community-identified priorities and statewide concerns through the regional partnerships/community solutions process. Although the new system will improve the utilization of whatever funding is available for economic and community development, the current level of funding is inadequate to address the needs of Oregon communities, both to leverage other public and private resources and to gain real commitment by all parties to achieve measurable outcomes. The Work Group strongly recommends that depleted funds be recapitalized, and funding be increased to accomplish state priorities for economic and community development.

Guiding Principles for State/Local Partnerships

Agreed upon at local government summit: Governor, County and City Officials
(March 27, 1995)

Preamble

All governments working together provides a better tool through which the people of Oregon can achieve their aspirations. Obtaining our preferred future requires a partnership guided by the following principles.

Principles

1. Work together to support each Oregon community's vision for the future. Help them see how their individual vision can fit into and support a shared vision for Oregon. Such visions must be collaboratively developed and widely communicated, understood and supported.

2. Work together to achieve the vision, with accountability established through negotiated, locally appropriate outcomes.

3. Put aside past differences— build trust and courage to change.

4. Take the reasonable risks that change and innovation require: be positive, constructive, and proactive; listen to and understand each other; tell each other what we want and what's happening— avoid surprises; stand together, openly and honestly, with public and press.

5. Include each other and all stakeholders, private and public— respect the diversity of Oregonians, their communities and their viewpoints.

6. Build policies and services from the local level. Respect local uniqueness. Maximize local flexibility. Strengthen local capacity. Focus governmental resources on community goals and negotiate conditions for transfer of responsibility.

7. Recognize the power of concerted action. Expand the opportunities to work together.

8. Negotiate responsibilities based on common goals, not traditional positions.

9. Mobilize public and private resources to achieve common goals. Be good stewards of Oregon's values and resources.

10. Maintain the continuity and integrity of the partnership and its goals. Meet regularly to ensure the application of these principles and enhancement of the partnership.