

## **MEMORANDUM**

**TO:** Water Resources Commission and Environmental Quality Commission

**FROM:** Dwight French, Water Resources Department, Water Rights Manager; and  
Karen Tarnow, Department of Environmental Quality, Assistant to the  
Water Quality Administrator

**SUBJECT: Interagency Coordination**  
Joint Meeting of the WRC and EQC, June 6, 2002

### **I. Issue Statement**

In 1996, Governor Kitzhaber convened the Water Quality and Water Quantity Task Force to evaluate the effectiveness and coordination of agencies involved in state water management. This report describes the recommendations of the 1997 Report of the Task Force and discusses coordination between the Department of Environmental Quality (DEQ) and the Water Resources Department (WRD) resulting from these recommendations. The report also discusses potential future collaboration related to the Task Force report recommendations.

### **II. Background**

The Water Quality and Water Quantity Task Force was convened in 1996 to examine the management of water quality and water quantity in the state. Principal agencies represented on the Task Force included: WRD, DEQ, Department of Fish and Wildlife (ODFW), and Department of Agriculture (ODA). Agency directors and a representative of their respective board or commission served on the Task Force steering committee. The Task Force also included agency staff and stakeholder groups representing conservation, local government, and agricultural interests.

The goal of the Task Force was to evaluate the regulatory responsibilities of state agencies involved in water management and provide recommendations for more effectively integrating water quality and water quantity management. The full report of the Task Force is attached.

The recommendations of the Task Force focused on three short-term objectives:

1. integration of water quality limited streams (303(d) listed streams) into the public interest review of water right applications;

2. evaluation of the water right transfer process, examining injury to existing water rights and point source pollution permit holders based on water quality; and
3. examination of how agencies such as DEQ could more effectively protect water quality, recreation, and fish and wildlife through requests for instream water rights.

The Task Force effort and recommendations notably increased the level of coordination between the agencies -- a pattern that continues today. Two areas of activity and interest -- the review of water rights applications and the acquisition of instream water rights -- are highlighted below. These illustrate both the increased level of interagency coordination and potential directions for the future coordination on water quality/water quantity issues.

### **III. Discussion**

#### 1) Water Right Applications

In order to approve a water right application, WRD must determine that a proposed water use would not impair or be detrimental to the public interest. The water right statutes and rules provide an opportunity to comment on and/or protest issuance of a permit on a number of grounds, including concerns related to the public interest. In addition, WRD rules provide for an interagency review of any water right application in an area that provides habitat for sensitive, threatened or endangered fish species. This framework provides multiple "on ramps" for water quality interests to be raised and addressed. To date, DEQ participation has focused on water right applications in areas where water quality standards are likely to protect fish species.

In addition to these opportunities to comment, WRD and DEQ have developed a process to incorporate consideration of all water quality limited streams (303(d) listed streams) into the review of water right applications. In the initial review of an application, WRD staff notify applicants and DEQ if the proposed water use occurs within a stream reach that DEQ has determined to have impaired water quality. During the water right review process DEQ may provide comments regarding whether the application should be conditioned or denied to prevent water quality impairment in a manner that could be detrimental to the public interest.

It is critical that water rights applications be treated consistently on a statewide basis. To accomplish this, WRD and DEQ continue to work together on ways to streamline the application review process and ensure consistent and appropriate outcomes for applicants.

#### 2) Instream Rights

In 1987, the Oregon Legislature passed a law providing for issuance of instream water rights. This law allows ODFW, DEQ, and the Parks and Recreation Department (OPRD) to apply for instream rights for the purpose of fish protection, minimizing the effects of pollution, or maintaining recreational uses, respectively. A total of 34 instream water right applications have been filed by DEQ. These instream water rights were approved in 1996 and are all located in the Willamette Basin. They are part of a total of some 1,500 instream water rights statewide that have been approved since 1987.

The instream rights that DEQ requested were based on calculations estimating the lowest flow levels that would occur over seven consecutive days in a ten-year period; i.e., these flows would only be experienced during the most extreme drought conditions. DEQ calculates the level of pollutant discharge allowed based upon these flow levels in order to protect instream water quality under low flow conditions. For this reason, it is likely that the instream flow levels indicated in these water rights will be met most of the time.

In their 1997 report, the Water Quality and Water Quantity Task Force anticipated that water right transfers would be utilized more as sources of available water dwindle. Transfers may provide a means for water users to meet their water needs in areas that are fully appropriated; that is, water for new water right permits is not available. Through transfers, water right holders can make changes to existing rights to allow water to be used at a new location, to appropriate water from a different point on the same source, or to apply water to a different type of use than was allowed under the original right (ORS 540.505 to 540.580). However, a water right transfer is not allowed if the proposed change results in injury to another existing water right.

In some circumstances, water right transfers could lead to water quality issues but no "injury" to an existing water right (e.g., a point of diversion transfer upstream that significantly decreases streamflow in a segment where no instream water right exists). In this example, an instream water right for water quality protections would preclude such an occurrence because of the required injury review.

The Task Force recommended that DEQ examine the need for instream water rights to protect National Pollution Discharge Elimination System (NPDES) permit holders as DEQ conducts base flow analyses to establish Total Maximum Daily Loads (TMDLs) on water quality limited streams. Since the Task Force report was published, several TMDLs have been completed and implementation is beginning. DEQ is evaluating this aspect of TMDL implementation, and WRD has committed to assist DEQ in making the instream water right application filing process as efficient as possible.

The Task Force also recommended that WRD's public notice efforts concerning water right transfers be more targeted and that stakeholders provide recommendations to improve education regarding potential water quality problems resulting from transfer applications. Suggested improvements to the notice included making transfer applications available on the WRD website and sending notices to DEQ and local watershed councils so that dischargers and other stakeholders would be better informed.

WRD publishes a summary of each water right transfer application filed each week in its weekly notice of water right actions. This weekly notice is posted on the agency webpage and is accessible to the public at no cost. The public notice includes information relating to the right proposed to be changed as well as the proposed change.

#### **IV. Conclusions**

Coordination between DEQ and WRD continues to improve. Our agencies continue to work together to address the complex issues at the intersection of our water resource authorities to improve the management and protection of Oregon's water resources.

Attachment:

Report by the Water Quality and Water Quantity Task Force, February 1997

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