

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Oregon State Office
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Information Bulletin No. OR-2003-249

To: All District Managers and Field Managers
Attention: Hydrologists, Fisheries Biologists, Restoration Coordinators, GIS Coordinators

From: Deputy State Director for Resource Planning, Use, and Protection

Subject: Public Comment on Oregon Department of Environmental Quality's Division 41 DD: 09/30/2003
Water Quality Standard

On March 31, 2003, U.S. District Court Judge Ancer Haggerty ordered the Environmental Protection Agency (EPA) to rescind the agency's 1999 approval of the Oregon Department of Environmental Quality's (ODEQ) 1996 water quality standard and to replace Oregon's standard. According to the triennial review process, in 1996, ODEQ adopted and submitted a water quality standard for EPA review and approval. The standards were primarily intended for the protection of salmonids. Because of the time required to consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the standards, EPA's review and approval process was drawn out; and, in fact, EPA did not act on ODEQ's submission until July 1999, when EPA conditionally approved Oregon's standard.

The most recent lawsuit alleges that EPA's approval of ODEQ's standard was invalid because the standard was not protective of designated beneficial uses of salmonid spawning and rearing. Specifically, the Court found that EPA should have required a more detailed anti-degradation policy in concert with other water quality criteria for salmonids (e.g., temperature) and that the agency should not have approved the Oregon standard without such a policy. Consequently, the proceedings of March 31, 2003, ordered EPA to rescind the Oregon standard and to prepare and publish a revised standard.

In response to the Court's action, ODEQ has taken the lead in revising Oregon's standard, affirming ODEQ's belief that Oregon's 1996 standard was technically sound and that an EPA-led process might yield a less than adequate standard for Oregon. ODEQ will have ultimate responsibility for implementing the standard and for determining where and when the standard applies, and is therefore committed to ensuring an adequate standard for Oregon is developed.

However, as a consequence of the Court ordered timeline within which EPA is to revise the water quality criteria (e.g., one year) and relative to Oregon's commitment to work in advance of that process, ODEQ has been working to meet a nine-month timeline that will result in a revised state standard in advance of EPA's revision. ODEQ has taken the opportunity to completely revise the Division 41 water quality standard. The revised standard, that becomes the basis for 303(d) listings and Total Maximum Daily Loads, among other regulations, includes both a written standard and

fish distribution maps that illustrate where the temperature standard, in particular, will apply. The Bureau of Land Management's (BLM) interest in ODEQ's timeline and this process relates to the standard itself and to the fish distribution maps which once adopted will become the basis for regulating BLM activities under the Clean Water Act (CWA).

The intent of this Information Bulletin is to reiterate the importance of BLM's role in ODEQ's public process and to encourage Districts to participate in the review of the fish distribution maps. Similar informal requests were advanced to the Districts via email on September 2 and September 5. A third request was recently proposed on September 15, during the monthly Hydrography (HYD) conference call. The decision regarding whether Districts respond to these requests and submit comments on the draft rule by the September 30 deadline will be left to District Managers and/or individual staff. Districts should consider that failure to participate in the process could have implications for BLM regulation under the CWA.

The State Office is encouraging all Districts to participate and respond to this request for public comment, particularly on the fish distribution maps. To expedite submission of BLM's comments to ODEQ, the State Office has elected to submit information from HYD and the Aquatic Resource Information Management System (ARIMS) that will be submitted for the administrative record as BLM's comment on that portion of the draft rule. This occasion provides an excellent opportunity for BLM to showcase our corporate data and information management systems, and to demonstrate the utility of these systems for information and data sharing and for contributing to meeting our regulatory responsibilities. The State Office is pleased to have this opportunity to demonstrate the utility of the HYD and ARIMS systems and encourages Districts to participate in this effort.

On or before September 30, each District should perform Quality Assurance/Quality Control measures on the information on fish distribution in the HYD layers and provide Al Doelker and Dan Wickwire with some sense of the quality of the data. Any specific data quality issues should be identified for possible resolution or correction prior to development of the final standard. ODEQ has assured BLM that we have until November 21, 2003, to refine our submission.

Please also provide Al and Dan with a definition of the District methodology for concluding fish presence "verified" or "not verified." This final step is necessary to ensure that ODEQ understands how BLM has arrived at our fish distribution determination. If a District elects not to participate, the State Office will submit the HYD layers on the District's behalf, realizing that the information has not been reviewed.

Submit your comments to Al and Dan no later than September 30. If there are additional comments on the written standard, please submit these to Rosy Mazaika (OR-932) no later than September 30.

Districts with Unions are reminded to notify their unions of this Information Bulletin and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you assistance in this matter.

Signed by
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(Acting)

Authenticated by
Mary O'Leary
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