



Oregon

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item J, June 10, 2009
Water Resources Commission Meeting

**Request to Adopt Amendments to Water Right Transfer Rules
(OAR Chapter 690, Division 380) and Ground Water Registration
Modifications Rules (OAR Chapter 690, Division 382)**

I. Issue Statement

The Commission is asked to adopt amendments to OAR Chapter 690, Division 380, relating to water right transfers and to OAR Chapter 690, Division 382, relating to modifications of ground water registrations. The proposed rules provide regulatory streamlining by eliminating the requirement for applicants to provide lien holder information and to clarify when ownership reports must be prepared and submitted to the Department. The proposed rules also provide some general housekeeping. The final proposed rules are provided in Attachment 1.

II. Background

OAR Chapter 690, Division 380 sets forth standards for reviewing and approving water right transfers for surface water rights, ground water rights and reservoir rights. OAR Chapter 690, Division 382 sets forth standards for reviewing and approving modifications to ground water registrations filed with the Department but not yet adjudicated.

Water users are required by law to obtain approval by the Department prior to making changes in water use under existing water rights or ground water registrations. When the Department issues a draft preliminary decision on an application, the applicant currently is required to submit a copy of the written notifications they submit to all lien holders associated with the land on which the existing water right or ground water registration is appurtenant. Applicants must also submit an ownership and lien holder report prepared by a title company. The Department uses the information in these reports to ensure that the applicant has sufficient interest in the water right to pursue the change. Title companies prepare the information for applicants, and the cost for these reports is borne by the applicant.

Currently, the ownership and lien holder report must be prepared within three months of issuance of the draft preliminary decision of the Department. This timeline helps to ensure that the

ownership information is as current as possible. In 2004, the Department amended the Division 380 rule and introduced the concept of “water right conveyance agreements.” The “water right conveyance agreement concept” was also carried into the Division 382 rules, adopted in 2006. These agreements convey the interest in a water right to another individual or entity and are recorded in the county records. The rulemaking did not take into consideration ownership reports prepared at the time the conveyance agreement was recorded. For reports being prepared consistent with the existing rules, it was not clear which ownership should be addressed in the report, current ownership or ownership at the time the conveyance agreement was recorded.

III. Rulemaking Process

On February 3, 2009, the Department convened a rule advisory committee (RAC) to assist the Department in reviewing and updating the Division 380 and Division 382 rules. A list of RAC members is provided in Attachment 2.

Prior to convening the RAC, Department staff prepared mark ups of the Division 380 and 382 rules to address the lien holder requirements and the timing of submittal of ownership reports. The RAC met on February 3, 2009, to review the mark ups. RAC members were supportive of the rule changes discussed and requested one additional change. The Department had proposed to have applicants sign a statement as part of the application identifying that notice of the transfer had been sent to any lien holders. The RAC requested that the Department consider removing the lien holder notice requirement entirely from the proposed rules. The Department agreed to remove this language.

Notice of the public rulemaking was published in the *Oregon Bulletin* and a hearing draft of the proposed rules was made available March 2, 2009. In addition to those who subscribe to the Department’s rulemaking notice list, the Department also provided notice of the proposed rulemaking to organizations representing banks, other lending (mortgage) groups, and title companies.

The proposed rules were presented to the Ground Water Advisory Committee (GWAC) on February 13, 2009. GWAC members identified that since the proposed changes to the rules were process based, the Committee did not need pass a motion in support of the proposed rules. However, Committee members were supportive of the proposed rule changes.

The Department held a public rulemaking hearing in Salem on March 23, 2009. No testimony was provided at the public rulemaking hearing. The public comment period closed on April 2, 2009. Two written comments were received and are provided in Attachment 3.

IV. Discussion

Rule Highlights:

The proposed rules would streamline the review process for water right transfers and ground water registrations by eliminating the requirement that applicants provide copies of notice letters sent to lien holders of a proposed change to the water right(s) on a property and by removing the requirement that lien holder information be included in ownership reports prepared by title companies.

The proposed rules would also clarify when ownership reports need to be submitted to the Department and what ownership information needs to be included in the ownership report consistent with whether a water right conveyance agreement is present. If a water right conveyance agreement is present, the proposed rules identify that the ownership report would need to either have been prepared within three months of the agreement being recorded (showing ownership consistent with the conveyance agreement) or be prepared showing ownership at the time the agreement was recorded.

Consistent with the proposed changes, the definition of “report of ownership and lien information” is also proposed to be modified to remove the reference to lien holder and also to remove the reference to a requirement that applicants submit a copy of any water right conveyance agreement to the Department. It was felt that the request for copies of water right conveyance agreement was not appropriate to include in this definition. The requirement to submit a copy of a water right conveyance agreement to the Department has been moved to a more appropriate location of the rules (see OAR 690-380-4010(5)(b) and OAR 690-382-0700 (5)(b)).

While preparing for this rulemaking, Department staff worked with RAC members and identified that lien holder information included in these ownership reports may not always be accurate. Title companies use county records to identify lien holder information. However, this information is only as reliable as the information recorded with the county. Eliminating this requirement will streamline the application process by reducing the amount of time spent by Department staff reviewing, evaluating and confirming lien holder information.

The Department anticipates that the elimination of the requirement that applicants identify and notify all lien holders will reduce applicant costs associated with the preparation of ownership reports, which are prepared by a title company. These reduced costs will vary according to the number of properties associated with the application. Based on a small survey of title companies, with assistance from RAC members, and review of a few pending transfer applications, Department staff identified that applicants could realize estimated cost reductions ranging from \$50 for an application involving a single property to \$20,000 for an application involving multiple properties. The Department also anticipates that the proposed rules will have a positive (but small) fiscal impact on the Department by reducing the amount of time needed for staff to review applications.

In addition to the modifications described, the Department has also proposed several general housekeeping changes to the rules, including corrections of typos, rule references, and formatting changes to provide better clarity to the rules.

Issues Identified in Written Comments:

During the public comment period, the Department received two written comments. Written comments were submitted by Central Oregon Irrigation District (RAC member) and by Lynne Paretchan (Ground Water Advisory Committee member). Comments from Central Oregon Irrigation District were in support of the proposed rule modifications. The comments submitted by Lynne Paretchan were in support of the rules and suggested several language modifications to further clarify the changes proposed by the Department. The majority of the suggested modifications have been incorporated into the final proposed rules.

V. Summary

The final proposed rules in Attachment 1 (Water Right Transfers, OAR Chapter 690, Division 380, and Ground Water Registration Modifications, OAR Chapter 690, Division 382) provide regulatory streamlining and clarify the information requirements and submission requirements for ownership reports prepared by title companies. The final proposed rules are consistent with the State's goal of regulatory streamlining and reducing the fiscal impact of regulations.

The final proposed rules fit within staff capabilities, especially since they may reduce the amount of time needed to review transfer and ground water registration modification applications.

VI. Alternatives

The Commission may consider the following alternative actions:

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

VII. Recommendation

The Director recommends that the Commission adopt the final proposed rules in Attachment 1.

Attachments:

1. Final Proposed Rules
2. Rule Advisory Committee
3. Written Comments Received