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INTERNAL MANAGEMENT DIRECTIVES FOR ESTABLISHING ENFORCEMENT PRIORITIES

PROBLEM STATEMENT

The State of Oregon does not condone the illegal use of water. It is a priority of the Oregon Water Resources Department to reduce or eliminate illegal water use in Oregon through appropriate prevention and enforcement efforts.

Illegal water use may be any one or more of the following:

- Use of water without benefit of a water right or other legal water use authorization.
- Use of water in excess of or contrary to the terms and conditions of a water right.
- Continued use of water after said use has been denied by the proper officer of the Water Resources Department.

Effective implementation of water policy in Oregon continues to be hampered because of an inadequate number of field enforcement workers in the Water Resources Department. Despite increased statewide concern about water and the extensive new workloads imposed by the Legislature since 1983, the number of watermasters and assistants available to perform the work is smaller than in 1983.

Several solutions have been proposed to address the management problems created by the lack of sufficient staff and budget to fully address violations of water law and provide for effective, lawful distribution of water. Those proposals include: streamlining and clarifying existing processes; providing and using modern technology; increasing the span of management control (fewer managers, more workers); placing managers closer to the field workers; setting priorities; and, increasing funding. Progress has been made in several of these areas. This paper focuses on priority setting.

The following strategies and procedures are intended to assist Department staff in setting priorities for enforcement action.

PROGRAM GOALS

The Department embraces the following goals:

- Assure that Oregon's water resources are not used illegally.

- Assure that water is distributed to water right holders in accordance with Oregon law.

PROGRAM STRATEGIES

The following strategies are recognized as ways to prevent water law violations before they occur, thereby avoiding the necessity for initiating formal enforcement actions.

1. Improve and increase public education/information efforts through the development of such media as: public speaking; articles in relevant publications, journals and newsletters; public education programs of other agencies and groups, etc.
2. Better manage and reduce the workload of the field enforcement staff through the use of:
 - A. Voluntary reductions of water use to quantities less than authorized and rotation agreements among users;
 - B. “Seasonal” letters from local watermaster or other regional staff advising users of water supply forecasts, water right conditions and potential need for water use restrictions;
 - C. Other means to provide advance information and guidance to water users.
3. Encourage voluntary compliance whenever possible as a less costly and more timely alternative to formal enforcement proceedings.
4. Encourage the use of Department-trained and supervised public volunteers, staff of irrigation districts and other government agencies for appropriate purposes.
5. Use other Water Resources Department staff, under the guidance of the watermaster, to assist with emergency enforcement.
6. Consider issuance of press releases describing the final results of formal enforcement actions as a means of encouraging voluntary compliance by others.

LAW ON WATER RIGHT ERRORS

During the course of routine regulatory activities, enforcement personnel are bound to distribute water according to the rights of record on file with the Department. If the scope and conditions of use established under a water right are unclear, the Department can issue a clarifying order. If a water right established through a permit contains a scrivener's error, there may be an opportunity for the Department to correct the error. Similarly, there may be an opportunity for a court to correct an error in a decreed right. However, until such corrections are made, water rights are to be enforced according to official Department

records. If parties feel they are injured by enforcement of erroneous rights of record, they can seek injunctive relief and other administrative or legal remedies.

EXISTING ENFORCEMENT TOOLS

Informal

In person/On site contacts

Compliance Schedules

Telephone/letter

“Seasonal” letters (see 2B, above)

News Releases

Public Education

Formal

Headgate notices

Criminal complaint with local district
attorney

Fine/jail/probation

Civil penalty process

Well constructor license suspensions and
revocations

Injunctive relief/Damages

Other legal remedies

ENFORCEMENT DECISIONS POTENTIALLY IMPACTED BY PRIORITY SETTING

When the Department becomes aware of potential water law violations, and is confronted with the need to prioritize this workload, staff regularly make work management decisions in the following areas:

- Whether to conduct a field investigation and how quickly; and
- If a violation exists, what enforcement tool(s) to use.

In addition to all other applicable rules and priorities of the Department, staff shall consider the factors on the following page in making the above decisions. This is not intended to represent an exhaustive list of considerations. It is recognized that various site-specific conditions, new laws or rules or other unforeseen situations may also affect the priority setting decision. Illegal uses causing injury or impacting the most factors would usually be expected to receive the highest enforcement priority.

Factors To Consider in Setting Enforcement Priorities

Injury to existing water right

Complaint from water right holder
Unsatisfied instream water right/minimum streamflow
Class I violation (see OAR 690-260-040)

Interference with Quantified Public Interest Values

Listed Threatened or Endangered species
State scenic waterway
Federal wild & scenic river
Water quality, Total Maximum Daily Load designation
Adverse to local zoning restrictions
Critical Groundwater Area
Serious Water Management Problem Area

Interference with Other Public Values

Damage to resource
Public complaints
Public health/ safety
Sensitive species
Stream restoration/ enhancement projects
Economic impacts on others

History

Repeat offender
User has knowledge
Regulation anticipated, based on prior years' experiences

Management Considerations

Nearby, on work schedule

Feasibility and expected results

Easy fix/low cost

Within agency control

Will cause other violators to comply without field visits

Low volume of unresolved claims*

* “Unresolved” claims would include any unadjudicated federal or Indian claims for reserved rights, vested or inchoate claims and pre-1909 surface water registrations.

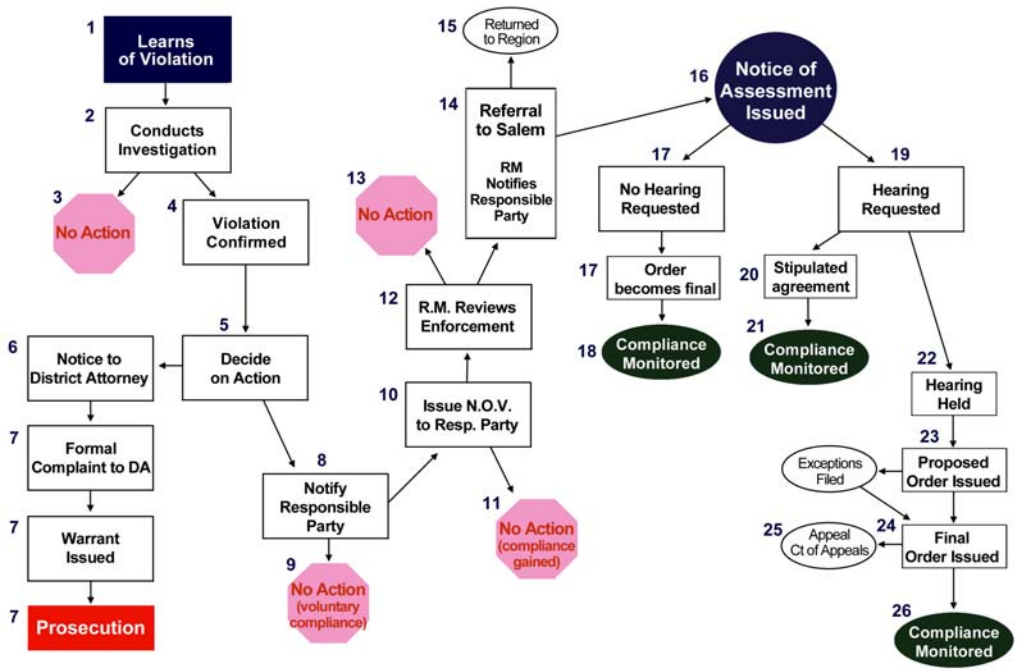
NARRATIVE FOR FLOW CHART

WATER RIGHT VIOLATIONS: ENFORCEMENT PROCEDURE

1. Watermaster/Assistant Watermaster learns of violation either by a complaint or investigation.
2. Watermaster/Assistant Watermaster conducts an investigation to confirm the violation. Water right files are checked, along with databases to make sure no application has been filed. Assessor records should also be checked to identify responsible party.
3. No further action is necessary.
4. Violation is confirmed.
5. Watermaster decides on enforcement action to be taken.
6. Request for compliance sent to responsible party by District Attorney. The District Attorney would not be involved unless we had gone through the process already.
7. Formal complaint filed by Watermaster. Warrant is issued by the District Attorney. Responsible party is prosecuted.
8. Notify responsible party requesting compliance, verbal and/or request compliance in letter.
9. No further action is required since compliance is obtained. Our objective is to strive for voluntary compliance.
10. Notice of Violation must be served on responsible party within 5 days after violation confirmed (OAR 690-260-0030). The Notice of Violation identifies the time frame for compliance and is in effect for 3 years.
11. Compliance is obtained. No further action required.
12. Watermaster submits enforcement referral form to Region Manager for review.
13. No further action required...try to gain voluntary compliance again or look at other options (i.e., temporary transfers).
14. The entire file containing inspection reports, pictures, notices, receipts, etc. are forwarded to Well Construction and Compliance Section in Salem. Region Manager notifies responsible party.

15. Referral returned to region for additional information or stronger case.
16. Notice of Assessment served on responsible party. Notice of Assessment outlines requirements, evidence gathered and civil penalty. Notice of Assessment also allows responsible party opportunity for a contested case hearing.
17. No hearing requested. Proposed Order becomes final.
18. Watermaster monitors terms of order for compliance. If order is violated, then process starts again but this time it is considered repeat factor.
19. Hearing is requested. Hearings Officer schedules hearing.
20. There is an opportunity here to close the matter with a stipulated settlement.
21. Compliance is monitored.
22. After hearing is held a Proposed Order is issued by the Hearings Officer.
23. The responsible party may appeal the Proposed Order in the form of exceptions. Exceptions are directed to the Water Resources Commission.
24. Final Order is issued by the Hearings Officer.
25. Appeals are directed to the Court of Appeals.
26. Compliance is monitored.

Water Right Violations: Enforcement Procedure



Enforcement17 [shubert] - prepared by Oregon Water Resources Department / Public Information Office - 2-23-1997