



Oregon

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MEMORANDUM

TO: Water Resources Commission

FROM: Brenda Bateman, Senior Policy Coordinator

SUBJECT: Agenda Item H, February 19, 2010
Water Resources Commission Meeting

Legislative Update

I. Introduction

The Oregon Legislature is in the midst of a Special Legislative Session that began February 1, 2010 and scheduled to run for one month. This meeting will alert Commission members to any bills that may affect the Water Resources Department's budget or public policy portfolio.

II. Discussion

Legislative members and committees have introduced a number of substantive policy-related bills. House members were permitted to submit one bill each and Senators were permitted to submit two. In addition, Committees have submitted policy bills of their own.

At the beginning of the Legislative Session, the Water Resources Department was aware of six bills pertaining to the Department—three in the House and three in the Senate. At the time of submission of this report, three remained.

With the passage of Budget Measures 66 and 67, budgets have become much less of an issue in this special session. However, some adjustments may be made should the upcoming revenue forecast be down significantly.

House Bill 3602

HB 3602 was pre-session filed by Representative Bob Jensen from Pendleton on behalf of Umatilla County. The House Environment and Water Committee held a hearing on the bill January 14 and again on February 2. The bill is intended to give relief to Umatilla County, which obtained a hydroelectric project through foreclosure. The County may be held responsible for major decommissioning expenses if it is not allowed an opportunity to transfer the project to new

owners. Current statutes require the Water Resources Department to begin decommissioning proceedings once the County has foreclosed on a project.

In addition, the hydroelectric project has not been operated for more than five years, and as such, is in further jeopardy of losing its hydroelectric license, under Oregon statutes. A potential purchaser of the facility has stepped forward and has announced intentions to refurbish the facility to meet today's environmental standards for hydroelectric facilities, as long as the project's hydroelectric license remains intact.

The bill and its proposed amendments would allow the owner and subsequent buyer extra time to refurbish the facilities and bring them back on-line without loss of the hydroelectric license. Without the change in statute, municipalities or counties who foreclose on such properties for failure to pay taxes may not be able to sell projects due to the potential high costs that might be required for decommissioning. We are aware of only this one hydroelectric project currently in this situation in Oregon. The Water Resources Department continues to work with the sponsors of the bill to development amendments.

House Bill 3661

The House Environment and Water Committee, chaired by Representative Ben Cannon, developed House Bill 3661, "relating to exempt ground water uses." The Committee held public hearings on the Bill January 14 and again on February 2. Under Oregon law, "all water within the state from all sources of water supply belongs to the public." In general, one must obtain a water right permit before using water from any well. However, there are exceptions called "exempt uses."

The definition of exempt uses comes from ORS 537.545, and includes: group or single domestic use, up to 15,000 gallons per day; irrigation of lawn and/or non-commercial garden of ½ acre or less; single industrial or commercial purpose not to exceed 5,000 gallons per day, and several more exemptions.

House Bill 3661 would decrease the allowable exemption for a new, single domestic use from 15,000 gallons per day (gpd) to 5,000 gpd. Water use inside an average home ranges from 200-400 gpd. Watering outside the home may add 2000-3000 gpd when irrigating up to ½ acre under the lawn and non-commercial garden exemption. Changing the maximum allowance from 15,000 gpd to 5,000 gpd will have little practical effect for most households. "5,000 gallons per day" is probably best represented with a swimming pool analogy. An average swimming pool (a community pool, not an Olympic pool) holds about 20,000 gallons of water. So a well supplying 5,000 gallons per day would fill one-fourth of a pool in a day, and an entire pool in four days.

House Bill 3661 would also subject the half-acre lawn and garden exemption to the 5,000 gpd limit for single domestic use (and 15,000 gpd for group domestic use), which will assist our watermasters in determining whether lawn and garden irrigation is within its prescribed limits (i.e., without waste).

Finally, this bill would reinstate an authority that the Water Resources Commission previously held, but was inadvertently deleted during the 1999 Legislative Session. The bill would authorize, but not oblige, the Water Resources Commission to require permits for what are currently exempt-use wells located in Oregon's groundwater administrative areas. These are areas that have been determined to have groundwater supply problems but, for the most part, still allow exempt-use development. Today, as the Water Resources Department and Commission are developing rules related to each administrative area, they may either 1) allow exempt uses within each area or 2) not allow such uses. We have examples of both types of situations in Oregon today. House Bill 3661 would give the Commission greater leeway to require a permit in these areas when review of exempt-use development is warranted, before a well is drilled.

Senate Bill 1021

Senate Bill 1021, pre-session filed by Sen. Edwards, is a bill that seeks full reimbursement for the State of Oregon for energy-related applications. The Bill has been referred to the Senate Finance and Revenue Committee.

The bill lists among the potentially eligible energy facilities "hydroelectric or hydrokinetic facility." Hydroelectric projects, according to ORS 543 and 543A, already have requirements to reimburse the Water Resources Department, Department of Environmental Quality, and Department of Fish and Wildlife for costs associated with processing applications. Section 1(8) of the bill anticipates such arrangements and outlines qualifying exemptions. Amendments may further clarify the exemptions to the bill.

However, these agencies also conduct quite a bit of "pre-application" work, to respond to industry's concerns or questions in advance of a project application. Pre-application work includes meetings with potential applicants, review of Federal licenses or other processes outside of our direct authorities, technical assistance or consultation, and attorney general costs.

These pre-application costs are significant for each agency and currently not covered by our existing authorities to recoup fees. Amendments may further clarify whether the bill covers pre-application costs or not.

III. Conclusion

Legislative leadership has committed hold the 2010 Legislative Session to one month or less. Staff is tracking water-related bills in both the House and the Senate. Department staff will keep the Commission apprised of Department-related budget and policy bills that arise.

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