



Oregon

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Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Tom Paul, Deputy Director

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

Request for Delegation of Authority to Prosecute Suits to Enjoin Violations of ORS 537.505 to 537.795 and appear and become a party to any action, suit or proceeding in any court or before any administrative body when it appears that the determination of the action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525.

I. Issue Statement

Oregon Revised Statute 537.780(1)(f) (Attachment 1) gives the Commission authority to Prosecute actions and suits to enjoin violations of ORS 537.505 to 537.795 and 537.992, and appear and become a party to any action, suit or proceeding in any court or before any administrative body when it appears to the satisfaction of the Commission that the determination of the action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525 (Ground Water Act of 1955). The Commission has adopted rules delegating authority to the Department to implement nearly all of the provisions of these statutes. The existing rules do not address either joining in suits of others or initiating the filing of suits in the Commission's name to enjoin violations of ORS 537.505 to 537.795. The Attorney General's office has recommended the use of suits as a tool to gain compliance. Timeliness is important for the protection of the resource and senior water users. Actions to enjoin are scheduled before the Court much sooner than criminal complaints.

II. Background

Oregon adopted the Ground Water Act in 1955. This act requires, among other provisions, that: anyone desiring to use ground water to first obtain a water right permit, unless the proposed use is exempt under ORS 537.545; the Commission adopt rules for the construction of wells; and, that individuals in the business of constructing wells be licensed with the Department. Generally, the development and use of ground water and the construction of wells is done in compliance with the Ground Water Act. However, formal enforcement actions are taken when staff are unsuccessful in gaining voluntary compliance.

The Commission has adopted administrative rules, Chapter 690 Divisions 200 through 230 and 240 through 260 to implement most of the provisions of the Ground Water Act. ORS 536.025, states that the Commission may delegate to the Director the exercise or discharge any power, duty or function vested or imposed by law upon the Commission except for adoption of rules. The authority to either join the suits of others or initiate new suits does not involve the adoption or modification of administrative rules.

III. Discussion

Illegal water use and the drilling of wells without the required license are examples of violations for which quick action is important. Recently a watermaster was informed that an un-licensed individual was constructing a well. This person's well constructor license was suspended several years ago for failing to provide the required start cards and well logs and for constructing wells without the proper well casing and annular seal. Noncompliance with Oregon's minimum well construction standards often results in wells that do not protect the ground water resource from contamination, waste and loss of artesian pressure. This individual was assessed civil penalties in excess of \$8,000, which have not been paid. License suspension and civil penalties have not deterred him from continuing to drill wells. It can only take from one day to a week to construct most wells.

Filing a suit to enjoin the responsible party from the alleged illegal activity, water use or well construction, could be either in the form of a Temporary Restraining Order or Injunction. Appearance before the Court is very rapid, within days, with a decision being issued either during the hearing process or soon after. Our attorneys are advising that filing a suit with the Court to enjoin a driller from continuing to construct wells, while the well is being drilled, is important. That means that once the well drilling rig is located, legal documents must be drafted and filed with the Court, often within one or two days.

We consider all of our enforcement tools when determining which action to take. In addition to civil penalties, Oregon Revised Statute 537.990 gives the Department and the Courts authority to bring criminal charges for illegal water use and illegal well construction. Violations of this nature are considered Class B misdemeanors subject to fines of up to \$250 and or up to six months in jail. From the time a complaint is filed it takes between six months and a year for the matter to be scheduled before the Court.

IV. Summary

Commission action is requested to delegate the authority to the Director to prosecute actions and suits to enjoin individuals for violation of ORS 537.505 to 537.795 and to appear and become a party to any action, suit or proceeding in any court or before any administrative body when it appears that the determination of the action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525. Quick and decisive action is needed when all other efforts to gain compliance have failed. Whether the offence is illegal water use or illegally constructing wells, the ground water resource is in danger of depletion, in the case of illegal use, or contamination, waste or loss of artesian pressure.

V. Alternatives

1. Delegate to the Director, the authority to prosecute suits to enjoin violations of ORS 537.505 to 537.795 and appear and become a party to any action, suit or proceeding in any court or before any administrative body when it appears that the determination of the action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525
2. Deny the request to delegate the authority to the Director; or
3. Request that staff return at a future meeting with other alternatives.

VI. Recommendation

The Director recommends Alternative 1.

Attachment 1: ORS 537.780

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