



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Brenda Bateman, Senior Policy Coordinator

SUBJECT: Agenda Item G, June 4, 2010
Water Resources Commission Meeting

Water Resources Department's Proposed 2011-2013 Legislative Concepts

I. Introduction

The Department submitted initial legislative concepts to the Oregon Department of Administrative Services on April 9, 2010, after discussion with the Department's legal counsel, Governor's office, and numerous stakeholder groups. Staff has held subsequent meetings with stakeholders to take specific comments on proposed concepts. This briefing includes ten legislative concepts the Water Resources Department may propose to the 2011 Oregon Legislature.

II. Background

The Water Resources Department has prepared legislative concepts that are few in number and technical nature, as it has in the past. These concepts are meant to streamline Departmental operations, provide greater consistency in statutory language, and ensure the fees and resources necessary to maintain services.

As with its proposed 2011 budget, the Water Resources Department has incorporated ideas that originated with the Water Resources Commission, stakeholder groups, the regulated community, and the Governor's office. There are 10 legislative concepts in all. They are:

Concept 69000-01 "Electronic Transactions at the Water Resources Department"

In several of the Water Resources Department's programs, transactions and their records must be passed back and forth between the Department and customers in hardcopy, according to statute. This increases the time materials involved in these transactions, as most letters, maps, and other documents are now created and used in electronic form. The Water Resources Department proposes to send and receive electronic documents when mutually agreed to with the customer. This includes maps, proposed final orders, final orders, transfer letters, and other documents.

Concept 69000-02 “Broadens the Category of Eligibility for In-Conduit Hydro”

During the 2007 Legislative Session, HB 2785 created an expedited process in which holders of certificated water rights could install “in-conduit hydroelectric turbines” (“in-conduit hydro”), in order to generate electricity from water that was already moving through transmission and distribution lines. At present, this benefit applies only to those with “certificated rights,” meaning they have fully grown into their water right permits, and have submitted claims of beneficial use, which the Department has evaluated and approved. The problem is that several Oregon water users have water rights that were legislatively approved, not administratively approved by the Department. The City of Portland, with its surface water supplies from the Sandy Basin is a good example. Water from that particular source also happens to be gravity fed and would be a good candidate for electricity generated from “in-conduit” hydroelectric power. Other water users in the “legislatively approved category” include Medford and Eagle Point Irrigation Districts, Bend, and Pendleton. This concept would modify ORS 543.760 to broaden applicability to include certificated and legislatively approved water rights.

Concept 69000-03 “CWRE Training”

Certified Water Right Examiners (CWREs) are trained surveyors, engineers, and geologists who have passed exams allowing them to document and confirm the location and beneficial use of water. This documentation is a requirement for any water right holder who submits a “claim of beneficial use,” and wishes to get his or her water right “certificated” by the Water Resources Department. While the Department has historically prepared, proctored and scored the exam, the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) issues the licenses to CWREs and manages the license renewal process. The Department would prefer that CWREs have some ongoing training so that they can keep current with rules and requirements of the Department. Also, OSBEELS needs to have clearer authority to revoke, suspend, or modify a CWRE license if there is an appropriate finding of wrongdoing. This authority exists for engineering and land surveying, but not for CWREs. Finally, some portions of the original statute governing CWREs, passed in 1987, is outdated as it relates to fees collected by OSBEELS and how those fees are deposited for use by OSBEELS and WRD. This concept would clean up and modernize statutes related to CWRE training.

Concept 69000-04 “Alternate Reservoir Process”

In 1995, the Oregon Legislature set in statute the ability for small water storage reservoirs, “alternate reservoirs” (defined as storing either 9.2 acre-feet or less OR having a dam height less than 10 feet high) to go through an expedited water right permitting process, compared to larger reservoirs. Over the last few years there have been circuit court challenges to a few of the Department’s final orders. Current law states that an applicant needs to own the reservoir suggesting that the reservoir should be completed before applying for a permit. In another section, the statute states that the review standard for impacts to existing fishery resources can be based on the “potential for impacts” instead of “significant impacts,” which is the listed standard throughout the rest of the statute. This concept would modify ORS 537.409 to clarify that the reservoir may be existing or proposed and to clarify that the standards for fish protection be consistent throughout the statute.

Concept 69000-05 “WRD Issuance of Emergency Limited Licenses”

During the growing season, it is important to have ongoing access to water for irrigated crops. When irrigators have water rights in place to deliver water in a timely manner, unforeseen circumstances may occur, such as breaks in canals, transmission lines, or pumps, which cause a disruption in the system. Today, the Water Resources Department can issue an emergency “transfer” of water rights to address such a problem (meaning water users may change their point of diversion from the same water source), but it cannot issue an emergency limited license (allowing water use from an altogether different water source). This concept would give the Department authority to issue emergency limited licenses for irrigation for emergency purposes, in the event a water delivery system goes down.

Concept 69000-06 “Broadens the Category of Permits Involved in an Exchange”

ORS 540.533 does not allow an exchange (“substituting one source of water for another”) with a permit unless it is a permit filed under ORS 537.211 for an instream purpose or a permit for which the proof of beneficial use has been approved by the Director or the Water Resources Commission. There are two potential groundwater recharge projects in the Umatilla basin that could benefit greatly if the above statute (ORS 540.533) is amended to allow a permit to be involved in an exchange. This concept would modify ORS 540.533 to include additional types of permits eligible to be involved in an exchange.

Concept 69000-07 “Replace Requirement of Newspaper Notice with Electronic Notice”

In several of the Water Resources Department’s programs, pending transactions must be noticed in local newspapers, according to statute. This increases the time and materials involved, and does not take into account the fact that most members of the public now have access to information in electronic form. This concept would modify statutory noticing requirements to allow for electronic notification, via the Water Resources Department’s webpage as a substitute for a newspaper notice.

Concept 69000-08 “Water Resources Department’s Ability to Enter into MOUs”

The Water Resources Department does not have the specific authority to enter into Memoranda of Understanding with other entities. Other states agencies in Oregon have already sought and received specific authority to do so. The Department seeks specific authority under “Powers of the Director/Department” to enter into Memorandum of Understanding (MOUs) and memoranda of Agreements (MOAs) with other entities.

Concept 69000-09 “Fees”

The Governor’s Office has asked agencies to craft a plan to meet 25 percent reductions in their general fund budgets for 2011-13. The Department has submitted this concept as a placeholder, in case of a need to initiate a new type of fee to help meet these goals.

Concept 69000-10 Klamath Basin Restoration Agreement Fund

The Governor’s office is requesting \$3.4 million in lottery revenue bonds to offset economic losses resulting from the KBRA, including: lost property tax payments upon retirement of four hydroelectric dams, and reductions in property values, business opportunities, and agricultural

water rights and water deliveries. The Department would carry this legislation.

III. Discussion

The Department is interested in feedback and discussion regarding these concepts.

IV. Conclusion

No Commission action is necessary today. The Department of Administrative Services will send updates that notify each Department's Legislative Coordinator if legislative concepts have gone to the next stage for editing / drafting. Once the drafting stage is complete, the Department will have one opportunity to make final changes to the text or pull concepts entirely before the start of the 2011 Legislative Session.

Brenda Bateman
503-986-0879