



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 J, June 4, 2010
Water Resources Commission Meeting

Authorize the Director to Take Action Under ORS 537.780(1)(i)

I. Issue Statement

Oregon Revised Statutes (ORS) 537.780(1)(i) (Attachment 1) gives the Commission authority to seek a warrant to seize any well-drilling machine used in violation of ORS 537.747 and 537.753 when it appears to the satisfaction of the Commission that the determination of action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525 (Ground Water Act of 1955). The purpose of this agenda item is to request that the Commission authorize such action in one specific instance.

Background

Oregon adopted the Ground Water Act in 1955. This Act requires, among other provisions, that: "no person or public agency shall ... construct or attempt to construct any well or other means of developing and securing ground water ... except upon compliance with ORS 537.505 to 537.795 and 537.992 and any applicable order or rule adopted by the Commission under the same statutes" (ORS 537.535(1)). The Commission, consistent with the Ground Water Act, adopted by rule well construction standards, which describe the minimum standards for constructing wells and for obtaining a well constructor license. Formal enforcement actions are taken when staff are unsuccessful in gaining voluntary compliance.

II. Discussion

A watermaster was recently 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 required start cards and well logs, and for constructing wells without proper

well casing and annular seal. Noncompliance with Oregon's minimum well construction standards often results in wells that do not protect the groundwater 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 the individual from continuing to drill wells.

The individual has willfully advertised services to construct water wells, offered to enter or entered into contracts with another person to construct water wells, constructed water wells, and operated well drilling machinery without possessing a water well constructor's license. The State of Oregon by and through the Water Resources Department filed a complaint in Circuit Court on March 15, 2010 for permanent injunctive relief to stop this individual from constructing wells. The individual failed to respond to the complaint and the Circuit Court entered a Default Order. Additional information has been obtained indicating that despite the Circuit Court filing, the individual has continued to offer his services for constructing wells. Seizing the well drilling machine would deter the individual from continuing to construct wells.

This is an unusual and extreme action. The Department has followed its normal process for attempting to gain compliance. The steps taken include:

1. identifying alleged violations;
2. contacting the responsible individual identifying the violations and requesting voluntary compliance;
3. issuing a notice of violation (Final Order) listing the alleged violation and providing a time in which to come into compliance;
4. assessing civil penalties and license suspension; and,
5. taking action in Circuit Court to enjoin the driller from further well construction activity.

III. Summary

Commission action is requested for authority to seek a warrant to seize a well drilling machine, as provided in ORS 537.780(1)(i) for violations of ORS 537.747 and 537.753. This extraordinary action is needed to protect the ground water resource from contamination, waste, and loss of artesian pressure since all other efforts to gain compliance have failed.

IV. Alternatives

1. Instruct the Director to seek a warrant to seize a well drilling machine in regard to this specific enforcement matter, for violation of ORS 537.747 and 537.753.
2. Decide not to exercise the authority to seek a warrant to seize the drilling machine as authorized under ORS 537.780 ; or
3. Request that staff return at a future meeting with other alternatives.

V. Recommendation

The Director recommends Alternative 1.

Attachment 1: ORS 537.780

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