

## MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Adam Sussman, Senior Policy Coordinator

**SUBJECT:** Agenda Item J, May 21, 2004  
Water Resources Commission Work Session

### **Update on Legislative Concept Development for the 2005 Legislative Session**

Staff continue the development of legislative concepts for the 2005 legislative session. A list of preliminary legislative concepts was shared with the Commission at its March 2004 meeting in Bend. A stakeholder meeting was held at the Department on April 6, 2004, to describe the concepts and receive input. Based on continued refining, staff submitted preliminary legislative concepts to the Department of Administrative Services (DAS) on April 15, 2004. The preliminary legislative concepts are in Attachment 1.

The legislative concepts in Attachment 1 will be reviewed by DAS and the Governor's Office. Approved concepts will be submitted to Legislative Counsel for bill drafting by May 31, 2004. The deadline for submitting detailed concepts to Legislative Counsel for bill drafting is July 15, 2004. The Department will have until at least November 1, 2004, to request revisions of draft bills. The Governor must pre-session file agency bills by December 16, 2004.

Staff will continue to work with stakeholders during the legislative concept development process. At the Commission's October meeting, staff will continue the discussion of legislative concepts and present draft language for the Commission's consideration and input.

#### Attachments:

1. Preliminary Legislative Concepts Submitted April 15, 2004.

Water Resources Department Preliminary Legislative Concepts Submitted to Department of Administrative Service April 15, 2004

**690-01** (Regulatory Streamlining – Eliminate Regulations)

- (a) Eliminate mandatory pump test program under ORS 537.772 and clarify under ORS 537.780 that the Commission may require such tests as necessary – *eliminates burdensome and expensive mandatory requirement without diminishing resource protection.*
- (b) Eliminate the provision under ORS 537.330 that requires a “seller” to notify WRD of a real estate transaction that involves a water right – *new technology such as digital assessor databases makes this requirement obsolete.*
- (c) Eliminate ORS 537.788, which requires recording of well information on property deed records – *eliminates a burdensome and costly requirement without diminishing resource protection.*
- (d) Eliminate ORS 537.015 to 537.032 regarding Water Use Registrations – *new statutory tools make this burdensome and little used process obsolete.*

**690-02** (Regulatory Streamlining – Alternative Service Delivery)

Remove sunset from Reimbursement Authority (HB 2551, 2003 Oregon Laws). Associated Policy Package for “Contract Management Position” funded by other funds – *provides an opportunity for applicant to pay the cost for expedited processing of request using contracted service delivery.*

**690-03** (Regulatory Streamlining – Water Use Transfers)

- (a) Modify ORS 540.531 regarding surface water to ground water transfers by making the criteria more flexible – *provides opportunity to develop “performance-based” standards for these types of transfers.*
- (b) Provide for the transfer of a point of appropriation (and place of use) for an un-adjudicated Ground Water Registration – *provides for the opportunity to relocate pre 1955 ground water use claims prior to a basin ground water adjudication which may be many years out.*

**690-04** (Regulatory Streamlining – Use of Stored Water)

- (a) Provide for an expedited process to obtain a permit to use stored water – *recognition that this type of water use from an existing storage facility has low probability of harm to the environment or existing water users.*

(b) Provide that all water stored (in non-federal projects) under a permit, certificate, order or decree is deemed to be for multi-purpose storage – *eliminates the need to change the character of use of the stored water prior to making an application to use the stored water for environmental enhancement or economic development purposes.*

**690-05** (Sustainability – Instream Leasing)

Clarify under ORS 540.610 that when a primary water right is leased instream the “forfeiture clock” for the supplemental water right is tolled – *provides certainty about the status of underlying supplemental water rights.*

**690-06** Place holder

Legislation related to the Department’s Notice and Concurrence Work Group. Concepts may include voluntary cancellations, allocations of conserved water, and water right transfers – *provide equitable processes for notice and concurrence on water right transactions that include common conveyance facilities.*

**690-07** Place holder

Modify ORS 537.798 to place Certified Water Right Examiner program under WRD’s jurisdiction – *explore the movement of this program from OSBEELS to WRD.*

**690-08** Place holder

Legislative concepts related to the Department’s Fee Work Group established under HB 2268 (2003, Oregon Laws) – *evaluate relevance, equity and sufficiency of statutorily established fees. Explore incentives to submit applications in a digital format and pay fees on-line.*

## **Summary of LC 01 – Regulatory Streamlining (Elimination of Regulations)**

### **Description of the concept**

LC 690/01 proposes to eliminate a number of existing statutory provisions that are burdensome or obsolete and that do not add value to the Department's regulatory and management mandates. Elimination of these provisions would not diminish protection to existing water users or the water resources of the state.

### **Purpose of the concept**

The purpose of this concept is to streamline the Department's regulatory processes. This would be accomplished by eliminating the following statutorily-based regulatory processes:

- (a) Eliminate the mandatory requirement under ORS 537.772 that requires well owners to conduct a pump test every ten years. Clarify under ORS 537.780 that the Water Resources Commission may require such pump tests as necessary – eliminates burdensome and expensive mandatory requirement without diminishing protection of existing water users or the resource.
- (b) Eliminate the last sentence of ORS 537.330(2) that requires a “seller” to notify the Department of a real estate transaction that involves a water right – this information is often not provided, unreliable, and new technology such as digital assessor databases makes this requirement obsolete.
- (c) Eliminate ORS 537.788 which requires recording of well information on property deed records – eliminates a burdensome and costly requirement without diminishing protection of existing water users and the resource.
- (d) Eliminate ORS 537.015 through 537.032 regarding Water Use Registrations – new statutory tools make this burdensome and little used process obsolete.

### **Fiscal Impacts**

No fiscal impacts are anticipated to result from this concept.

## **Summary of LC 02 – Regulatory Streamlining (Remove Sunset from HB 2551, 2003 Oregon Laws)**

### **Description of the concept**

Remove the sunset from HB 2551 (2003, Oregon Laws). HB 2551 provides applicants the opportunity to enter into voluntary agreements with the Department to pay for the cost of expedited processing of certain regulatory activities. Removing the January 2, 2006 sunset will allow the Department to maintain this important alternative service delivery tool.

### **Purpose of the concept**

Increasing demands for water and diminishing staff resources have created growing workloads in a number of Department program areas. HB 2551 (2003, Oregon Laws) complimented the Department's efforts to address this issue by providing a means to expedite certain regulatory processes through voluntary agreements between the Department and an applicant. To date, the Department has been using pre-qualified contractors to carry out the work for such agreements. Removing the sunset from the existing statute will allow the Department to maintain this alternative service delivery tool.

### **Fiscal Impacts**

Estimated expenditures (pass through to contractors) \$244,000 other funds.

## **Summary of LC 03 – Regulatory Streamlining (Water Use Transfers)**

### **Description of the concept**

This concept would modify ORS 540.531 regarding the transfer of a surface water point of diversion to ground water by making the criteria for such a transfer more flexible. It would also provide authority for the Department to process requests to change the place of use, type of use or point of appropriation for pre-1955 ground water uses (ground water registrations).

### **Purpose of the concept**

There can be multiple benefits to moving a surface water diversion to ground water including improved water quality and fish passage. ORS 540.531 currently provides an opportunity to change a surface water diversion to ground water if certain prescriptive standards are met. These prescriptive standards are meant to protect existing water users and the state's water resources; however, these goals can be met with more flexible, performance-based standards.

Oregon's ground water code, which requires a permit to use ground water for many uses, was enacted in 1955. Pre-1955 ground water users had an opportunity to register their use under ORS 537.605 and 537.610. These "certificates of registration" are not final determinations of the water use; the final determination is made through an adjudication by the Department and decree of the court. The adjudication of ground water registrations is many years off. In the mean time, there is no process to modify the place of use, type of use or point of appropriation of the ground water use claimed in the registration. This legislative concept would provide the Water Resources Commission the authority to develop such a process.

### **Fiscal Impacts**

Estimated revenue \$70,000 other funds.

## **Summary of LC 04 – Regulatory Streamlining (Use of Stored Water)**

### **Description of the concept**

This concept would establish an expedited process to obtain a water right permit to use water lawfully stored in a reservoir. The concept would also establish that all water stored in non-federal reservoirs under a permit, certificate, order or decree is deemed to be for multi-purpose storage.

### **Purpose of the concept**

The water right permit review process is designed to ensure that proposed new appropriations of surface water will not impair or be detrimental to the public interest. The current process provides for numerous notice and comment opportunities and therefore takes a minimum of 6 months to complete. However, the proposed use of water already stored in a reservoir has a very low probability of harm to the environment or existing water users. This concept recognizes the low probability of concerns being raised about this type of use and establishes an expedited permitting process.

Permits authorizing the storage of water in a reservoir describe the use for which the water is being stored e.g, irrigation use etc. If a water user wants to change the use of the stored water (e.g from irrigation to commercial use), under current law, they need to submit two transfer applications - one to change their use of the stored water and one to change the purpose for which the water is being stored under the reservoir permit. Deeming all water legally stored in non-federal reservoirs to be for multiple purpose storage will eliminate the need to submit a transfer to change the purpose for which the water is stored.

### **Fiscal Impacts**

Fiscal impacts are unknown at this time.

## **Summary of LC 05 – Instream Leasing**

### **Description of the concept**

This concept would clarify under ORS 540.610 that when a primary water right is leased instream under ORS 537.348 the "forfeiture clock" for an underlying supplemental water right is tolled.

### **Purpose of the concept**

The leasing of a water right instream provides multiple benefits including the restoration of streamflow and the protection of the water right from forfeiture (five consecutive years of non-use). A concern by some lease applicants is that their supplemental water right (a water right to make up a deficiency in supply from the "primary" right) may be subject to forfeiture because it is not being used while the primary water right is leased instream. This concept would amend ORS 540.610 to alleviate this concern.

### **Fiscal Impacts**

No fiscal impacts are anticipated to result from this concept.

## **Summary of LC 06 – Place Holder (Notice and Concurrence Work Group)**

### **Description of the concept**

This concept is a place holder for a Department work group that is working to develop equitable processes and standards that address notice and concurrence for water right actions (transfers, allocations of conserved water and cancellations) that involve water rights on a shared conveyance system.

### **Purpose of the concept**

During the 2003 Legislative Session there were a number of bills that attempted to define "ownership" as it relates to water rights. None of the bills proposed were passed. At the end of the 2003 session, the Department committed to attempt to address the underlying issues raised in debate on the "ownership" bills; namely in making a modification to a water right that is on a shared conveyance system, whom needs to be notified of such a change and whom needs to concur with the change. To this end, the Department has formed the Notice and Concurrence Work Group, made-up of a diverse group of stakeholders, and is working on notice and concurrence issues related to water right transfers, cancellations, and allocations of conserved water.

### **Fiscal Impacts**

Fiscal impacts are unknown at this time.

## **Summary of LC 07 – Place Holder (Certified Water Rights Examiner Program)**

### **Description of the concept**

This concept is a place holder in the event modifications need to be made to the Certified Water Rights Examiner Program (ORS 537.798).

### **Purpose of the concept**

Water right examiners, certified by the Oregon State Board of Examiners for Engineers and Land Surveying (OSBEELS) assist in the application and certification of water right transactions. The certification of the water rights examiners is under the jurisdiction of OSBEELS. The Department and OSBEELS have been in discussions regarding potential changes to the program. As part of those discussions, the Office of Regulatory Streamlining has suggested that both agencies submit a place holder in case changes need to be made to ORS 537.798.

### **Fiscal Impacts**

Fiscal impacts are unknown at this time.

## **Summary of LC 08 – Place Holder (Fee Work Group)**

### **Description of the concept**

This concept is a place holder for recommendations that may be forwarded by the Department's administrative fee work group established by House Bill 2268 (2003 Oregon Laws).

### **Purpose of the concept**

In the 2003 Legislative Session, the Department proposed an adjustment to statutorily established fees in House Bill 2268. The bill passed with a provision requiring the Department to establish an administrative fee work group that would, among other things, research and evaluate the relevance, equity, and sufficiency of fees established under ORS 536.050 and 537.762. The Department will also be asking the work group to explore fee incentives for submitting applications digitally or paying fees on-line. The Department is to report the findings and recommendations of the work group to the Seventy-Third Legislative Assembly.

### **Fiscal Impacts**

Fiscal impacts are unknown at this time.