



# Oregon

Theodore R. Kulongoski, Governor

## Water Resources Department

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### MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Ruben E. Ochoa, Rules Coordinator

**SUBJECT:** Agenda Item C, September 10, 2009  
Water Resources Commission Meeting

#### **Rulemaking Overview – 2009 Session Requirements**

#### **I. Issue Statement**

This agenda item is for informational purposes only and provides a brief overview of rulemaking activities that the Department has already undertaken or that it intends to undertake as a result of actions taken by the 75<sup>th</sup> Oregon Legislative Assembly.

#### **II. Background**

Legislation passed by the 75<sup>th</sup> Oregon Legislative Assembly and signed into law by Governor Kulongoski, contain provisions directing the Oregon Water Resources Commission to adopt rules. This legislation includes:

HB 3369, relating to water supply management; includes provisions related to water development project financing and development of an integrated state water resources strategy, and

SB 788, relating to water; includes provisions related to landowner recordation (including fees) of exempt groundwater use and application and processing fees associated with the appropriation and management of water (including dam owner fees).

For the most part, the Legislature's direction to adopt rules is expressly stated. For example, HB 3369, Section 2 provides that: "The Water Resources Commission shall adopt rules establishing standards for borrowers obtaining loans issued from the Water Development Fund." The direction to adopt rules is also implied, as in the case of SB 788, Section 5(2) relating to a annual dam fee based upon the dam's hazard rating.

### III. Discussion

HB 3369, relating to water supply management; includes provisions related to water development project financing and development of an integrated state water resources strategy.

*Anticipated Action:* The Department does not anticipate that rulemaking will be necessary to implement provisions of HB 3369 related to the issuance of a \$2.5 million grant for water development projects located in the Umatilla Basin, specifically, the Umatilla Basin Aquifer Recovery Project. The bill contains provisions that direct the Commission to adopt rules:

- Establishing guidelines for the Department's review of applications for certain grants filed pursuant to the Act and for the assessment of projects for which grants are sought,
- For use by the Department in assessing the net environmental public benefits of certain projects pursuant to the Act, and
- Establishing standards for borrowers obtaining loans issued from the Water Development Fund.

The Department anticipates that it will initiate rulemaking to implement these and other provisions of HB 3369 during 2010.

SB 788, relating to water; includes provisions related to landowner recordation (including fees) of exempt groundwater use and application and processing fees associated with the appropriation and management of water (including dam owner fees).

*Anticipated Action:* On July 30, 2009 the Commission adopted temporary rules implementing provisions of SB 788 related to the recording of exempt groundwater use with the Department. The temporary rules are effective through December 27, 2009. The Department is currently engaged in developing permanent rules and intends to bring final proposed rules before the Commission at its regularly scheduled meeting in November 2009 for consideration and potential adoption. In tandem with the proposal that the Commission adopt final proposed permanent rules, the Department will request that the Commission repeal the temporary rules. These parallel actions (adoption of permanent rules and repeal of temporary rules) will allow an effective transition from the temporary rules to the permanent rules.

In addition to rulemaking related to the recordation of exempt groundwater use, the Department will engage in rulemaking to implement provisions of SB 788 that authorize the Department to charge dam owners an annual fee based upon the dam's hazard rating. The Department is currently engaged in the development of these rules and intends to bring final proposed rules before the Commission at its November 2009 meeting for consideration and potential adoption.

Finally, the Department intends to present before the Commission in November 2009 final proposed rules that establish increased fees for Department processing of applications for

and administration of limited licenses and for modifications of groundwater registrations. A provision of SB 788 increases the ceiling for fees associated with modifications of groundwater registrations from \$500 to \$1,125; the current fee established in rule is \$500. By statute, fees associated with limited licenses and with modifications of groundwater registrations are established by the Commission.

#### **IV. Summary**

Legislation passed by the 75<sup>th</sup> Oregon Legislative Assembly and signed into law by Governor Kulongoski (HB 3369 and SB 788) direct the Oregon Water Resources Commission to adopt rules. The Department intends to bring final proposed rules implementing provisions of SB 788 before the Commission in November 2009 for consideration and potential adoption. Final proposed rules implementing provisions of HB 3369 will be brought before the Commission in 2010.

#### Attachments:

1. HB 3369 (enrolled; 75<sup>th</sup> Oregon Legislative Assembly).
2. SB 788 (enrolled; 75<sup>th</sup> Oregon Legislative Assembly).

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