



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item A, September 2, 2009
Water Resources Commission Meeting

**Request for Adoption of Amendments to Temporary Rules to OAR
Chapter 690, Division 180, Exempt Groundwater Use Recording
Requirements**

I. Issue Statement

The Commission is asked to adopt amendments to temporary rules contained in OAR Chapter 690, Division 180, Exempt Groundwater Use Recording Requirements. The proposed changes to the temporary rules change the effective date of the rule from July 1, 2009 to July 23, 2009, date of Governor's signature of Senate Bill 788 (2009 Laws).

II. Background

The 2009 Legislature passed Senate Bill SB 788 which contains an emergency clause that states the effective as July 1, 2009. This legislation is related in part to recording new exempt groundwater uses. SB 788 was signed by the Governor on July 23, 2009. To record the exempt use, the landowner is to provide the Department with a map showing the exact location of the well on their property and pay a one-time recording fee of \$300. Landowners are to record exempt use within 30 days after the well is completed.

III. Discussion

The Commission adopted temporary rules (OAR 690 Division 180) to implement the exempt purpose recording portion of Senate Bill 788 during its meeting of July 30, 2009. The rules as adopted included an effective date of July 1, 2009.

The Commission and Department received a "Petition for Judicial Determination of Validity of Temporary Rule, OAR Chapter 690 Division 180", on August 19, 2009. The petition alleges that the Commission did not have authority to establish an effective date prior to the date of Governor's signature, July 23, 2009.

Staff and the Attorney General's office have estimated that the cost of actual dollars and time to defend the July 1, 2009 effective date contained in the temporary rule would likely exceed the recording fees which would have been submitted prior to July 23, 2009. Based on the cost to the Department, staff are recommending that temporary rule, Division 180 be modified to apply to wells completed on or after July 23, 2009.

IV. Summary

The proposed amendments to temporary rules Chapter 690 Division 180 in Attachment 1 provide the mechanism for landowners to record the exempt use, for wells completed after July 23, 2009, with the Department, as required by Senate Bill 788.

V. Alternatives

The Commission may consider the following alternatives:

1. Adopt the amendment to temporary rules Chapter 690 Division 180 in attachment 1.
2. Reject the proposed amendments.
3. Request the Department further evaluate the issue.

VI. Recommendation

The Director recommends alternative 1, adopt the amendments to temporary rules Chapter 690 Division 180 in Attachment 1 of the staff report.

Attachments:

1. Proposed amended Temporary Rules, Chapter 690, Division 180

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