

Final Proposed Rules – OAR Chapter 690, Division 190
Exempt Groundwater Use Recording Requirements
Department Response to Public Comment
November 19, 2009

The Department received a total of 21 public comments. Some of the public comments were associated with specific sections of the proposed rules as contained in the public hearing draft. The following presentation of the Department's response to these public comments will show the section of the proposed rule [example: 690-190-0005(2)], a summary of the public comments in bold/bullets, followed by the Department's response in italics.

Other public comments were of a general nature. The Department's response to these public comments begins near the top of page 3.

Public Comments to Specific Sections of the Proposed Rules (Public Hearing Draft):

690-190-0005(2)

- **How are replacement wells dealt with?**
- **What if the well is not used?**
- **Are the rules written to apply only when the well is beneficially used?**
- **The rules are currently structured, if a rancher wanted to move off an exempt surface water source to water his cattle to an 'exempt' ground water use he would have to pay \$300 for each well constructed plus include a map, likely created by expensive survey, for each well.**

Department Response: Staff modified the public hearing draft to reflect comments regarding replacement wells, new wells and converted wells. The rules have been modified to provide that altered or deepened wells are excluded from the recording requirements.

690-190-0005(2)

- **I believe that it should say any new or converted well that is drilled to allow ground water purposes that are exempt under ORS 537.544-545 after the effect date of these rules.**

Department Response: Staff modified the wording in the public hearing draft to include new or converted wells.

690-190-0100(1):

- **Is a registered surveyor necessary to create a map?**

- **In many cases exact property corners are not known, this would cause the owner to have a survey.**

Department Response: Staff modified the wording in the public hearing draft to reflect that a landowner may sketch the location of the well on a tax lot map.

690-190-0100(1)

- **What is the required scale and tolerance for accuracy?**

Department Response: This language was developed in conjunction with the Rules Advisory Committee. Staff does not recommend modification to the public hearing draft.

690-190-0100(3)

- **What transpires if a well does not produce water and is designated a dry well?**

Department Response: This language was developed in conjunction with the Rules Advisory Committee and this issue was addressed in the public hearing draft. Staff does not recommend modification to the public hearing draft.

690-190-0100(1)(a)

- **If water resources is really interested in the location of the well, at no charge to the public, I am sure you could have the well driller GPS the well site before it is drilled.**
- **If more detailed information is needed, require the drillers to enter GPS coordinates on the well log.**
- **As far as the maps goes when I send in a start card then the site has been GPS'ed and I know that the well inspectors in the field have GPS. This will get you closer than a map from the property owner ever will. It is redundant for the property owner and I'm sure the maps you are getting are not near as accurate as the GPS.**

Department Response: Staff modified the wording in the public hearing draft to reflect that besides a tax lot map with a reference corner identified, the rules also authorize the Department to accept Department approved electronic mapping alternative. A map locating the well is not a requirement under the well construction rules, therefore, is not required to be submitted by the well construction. The Department is working on an electronic mapping program that landowners can access. Staff will be working with a few drillers to test the mapping program early in 2010.

690-190-0200(2)(c)

- **The purpose of rules is to clearly identify what the requirements are and what the consequences are if you fail to comply.**
- **Suggesting that the public is subject to any action authorized by law is too broad and does not specify an action.**

Department Response: This language was developed in conjunction with the Rules Advisory Committee. Staff does not recommend modification to the public hearing draft.

690-190-0200(1)

- **Require WRD to initiate enforcement action within a fixed time (e.g. 60 days) of their receipt of a map or fee that does not comply with the law or of their failure to receive a map or fee required by the law.**

Department Response: Staff modified the wording in the public hearing draft to reflect that the Department will notify landowners within 60 days of receipt of the map and fee.

General Comments:

- **Several comments requested additional hearings statewide and copies of the proposed hearing draft.**

Department Response: The Department took note of these requests and scheduled additional hearings in Pendleton and Bend. This was in addition to a hearing that was held in Salem. In addition, the public comment period was extended for 3 weeks and copies of the public hearing draft were forwarded to individuals who requested them.

- **Several comments address the general displeasure of establishing the exempt groundwater use fee and that the fee is a tax.**

Department Response: The Department understands the concerns expressed by these comments, especially in this difficult economic climate. The exempt ground water use recording fee is established in statute.

- **Several comments address delaying the adoption of these rules because of the mapping requirement and generally rework the hearing draft.**

Department Response: The Department understands the position taken in these comments regarding the interest in waiting until an electronic mapping program has been developed.. Statute requires affected landowners to file the location of the exempt use well on a tax lot with the Department. Landowners also need to have an alternative process to submit well locations because an electronic mapping program may not suite all landowners. Staff does not recommend modification to the public hearing draft or delay in the adoption of the final proposed rule.

- **Several comments noted that the start card is confidential for one year or until the well report is submitted.**

Department Response: Senate Bill 788 or the hearing draft of the Division 190 rules does not change the provisions of ORS 537.762 dealing with confidentiality. Staff does not recommend modification to the proposed rule.