



Oregon

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Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item D, November 19, 2009
Water Resources Commission Meeting

Request for Adoption of Rules Ensuring the Consistency in Fees for Limited Licenses and Modifications to Ground Water Registrations, OAR Chapter 690, Division 340 and Division 382

I. Issue Statement

The Department's Limited License and Ground Water Registration Modification fees are set in rule in Divisions 340 and 382, respectively. The Department is proposing to increase the application fees for limited licenses and modifications to ground water registration consistent with the cost recovery levels included in Senate Bill 788 (2009 Oregon Laws). The proposed Division 340 (Limited Licenses) rules are included in Attachment 1 and proposed Division 382 (Ground Water Registration Modification) rules are included in Attachment 2.

II. Background

The 2009 Legislature approved SB 788, which increased fees for water-related transactions. The bill adopted a set of fees that raised the cost recovery level from approximately 28 percent to approximately 50 percent. Fees are set by rule for applications for limited license and for modifications to ground water registrations. The 50 percent cost recovery model, which was developed by the Department for use by the 2009 Legislature, included expected fee increases for these two application types.

OAR Chapter 690, Division 340

- a. The fee for examining a limited license application submitted under ORS 537.143 is established by rules of the Commission (*See* ORS 536.050(1)(L)). The current fee is \$150 for the first point of diversion, plus \$15 for each additional point of diversion for all types of limited licenses. These fees were last adjusted in 2004.

As proposed, OAR 690-340-0030 would be amended to adjust the fee to \$250 for the first point of diversion, plus \$25 for each additional point of diversion for most limited licenses.

- b. In addition, approximately once or twice per year, the Department receives limited license applications to test an Aquifer Storage and Recovery (ASR) project or to test an Artificial Ground Water Recharge (AR) project. The Department estimates that the processing of these types of requests takes approximately \$10,000 in staff time. We recognize the value of having ASR or AR as an option to address water storage needs in Oregon and see the value in dropping the fees below the 50 percent cost recovery level.

The proposed rules (Attachment 1) for the Commission's review and possible approval include provisions to increase the fees for these types of Limited Licenses to \$1,000. The processing of ASR Limited Licenses is laid out in OAR 690-350. The rules include provisions to "renew" or "modify" an ASR Limited License. It is recommended that the fees for these activities be set at \$500.

OAR Chapter 690, Division 382 – Ground water registrations are claims to appropriate ground water that were recorded but not yet adjudicated. Under Division 382, an applicant can modify the point of appropriation, place of use, or character of use of a ground water registration. The current fee for modifying a ground water registration is \$350 for changes in place of use only and \$500 for all other modifications. SB 788 raised the maximum fee for modifying ground water registrations to \$1125. This fee level is consistent with the overall 50 percent cost recovery levels identified for all water-related transactions. SB 788 authorized the fee adjustment, but the actual fees must be adopted in rule. The proposed rules (Attachment 2) use a two-tiered format similar to the existing rules, setting fees for changes in place of use only at \$775 and \$1125 for all other modifications.

III. Rulemaking Process

Notice of this rulemaking was published in the *Oregon Bulletin* on October 1, 2009. A Rules Advisory Committee convened and met on September 23, 2009, to discuss the proposed rule changes for both Divisions 340 and 382. In addition to the opportunity to provide written comment, two public rulemaking hearings were held – one in Salem on October 23, 2009 and one in LaGrande on October 26, 2009. No testimony was provided to the Department at the public rulemaking hearings.

The proposed rules were presented to the Ground Water Advisory Committee (GWAC) on October 9, 2009. While there was some concern expressed about fee increases overall, GWAC passed a motion in favor of the proposed changes.

One written comment was received and is provided in Attachment 3. The commenter, the League of Oregon Cities, supports the draft rules.

IV. Summary

The proposed rule amendments in OAR Chapter 690, Divisions 340 and 382 would ensure that fees paid for limited licenses and modifications to ground water registrations are consistent with other statutorily established fees that were adjusted by the 2009 Legislature.

V. Alternatives

The Commission may consider the following alternatives with regard to the proposed amendment of OAR Chapter 690, Divisions 340 and 382:

1. Adopt the final proposed rules in Attachments 1 and 2.
2. Adopt modified final proposed rules.
3. Not adopt the proposed rules and request that the Department further evaluate the issues.

VI. Recommendation

The Director recommends that the Commission adopt the final proposed rules in Attachments 1 and 2.

Attachments:

1. Division 340 Final Proposed Rules
2. Division 382 Final Proposed Rules
3. Written Comment on Hearing Draft Rules

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