



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Dwight French

SUBJECT: Agenda Item E, February 22, 2007
Water Resources Commission Meeting

**Follow Up to November 2006 Meeting
OAR Chapter 690, Division 340**

I. Issue Statement

At the November 17, 2006 Commission meeting, the Commission adopted rules that implement HB 2178 (2005) to provide an expedited review process for applications to use stored water exclusively. During the discussion, which concluded with the Commission adopting the proposed rules, there was concern about the Department's ability to raise public interest issues on these applications. The Commission asked Department staff to look into this issue and report back at a future meeting.

II. Discussion

The recently adopted Division 340 rules provided a streamlined process for reviewing applications to use stored water. Under the new expedited storage statute, the Department may issue a permit if no public interest issues have been raised. At the time of Commission discussion, the Department thought that the statute meant that it may not refuse to issue a permit on the basis of public interest issues, unless those issues were raised through comments. Department staff met with the Assistant Attorney General who advised that the enacting statute (ORS 537.147) and newly adopted rules (OAR 690-340-0060) do not preclude the Department from raising public interest issues or causing applications to be moved into the regular reservoir application process. Department staff are reviewing each application using a checklist of potential issues.

III. Recommendation

This report is presented to the Commission as an informational item. No Commission action is necessary.

Attachments:

1. OAR 537.147
2. OAR 690-340-0060 (7)(8)(9)

Dwight French
503-986-0819

Attachment 1

537.147 Permit to use stored water; fee. (1) Notwithstanding the process for applying for a water right permit established in ORS 537.150 to 537.230, a person may, pursuant to this section, apply to the Water Resources Department for a water right permit to use stored water. A person applying under this section for a water right permit to use stored water shall submit:

(a) A fee, in the amount required by ORS 536.050 for applications to appropriate stored water.

(b) A completed application for a secondary permit, in a form determined by the department, that contains the information required of applications under ORS 537.140 and 537.400 (1).

(c) Evidence that the proposed use of the stored water is one of the authorized uses under the water right permit, certificate or decree that allows the storage of water.

(2) If an applicant provides, to the satisfaction of the department, the fee and the information required by subsection (1) of this section, the department may, after public notice and a 30-day opportunity to submit comments on the application, issue a water right permit upon determining that no public interest issues as identified in ORS 537.170 (8) have been raised through the comments submitted.

(3) If the department determines that public interest issues have been identified, then the department shall treat the application under this section as an application under ORS 537.150 and perform the public interest review required by ORS 537.153 (2).

(4) At a minimum, a water right permit issued by the department for use of stored water under this section shall be conditioned to require:

(a) Fish screens and by-pass devices and fish passage as may be required by the State Department of Fish and Wildlife; and

(b) A measuring device at each point of diversion authorized under the water right permit.

(5) Within 10 days of issuing a water right permit under this section, the department shall provide notice of the permit issuance in the weekly notice published by the department and to persons who have submitted comments pursuant to subsection (2) of this section. [2005 c.37 §2]

OAR 690-340-0060

(7) Within 30 days after the public notice prescribed in section (6) of this rule, any person may submit written comments to the Department. The 30-day comment period shall commence on the day the Department gives notice. All comments must be sent by facsimile, postmarked, or hand-delivered to the Department on or before the last day of the 30-day comment period, and shall identify:

(a) The specific public interest under ORS 537.170 (8) that would be affected by the proposed use, and

(b) Specifically how the identified public interest would be affected.

(8) Following the end of the 30-day comment period, the Department may issue a final order and permit approving the application.

(9) If the Department determines public interest issues are raised pursuant to section (7) of this rule, the Department shall process the application as an application under ORS 537.150, and issue a proposed final order pursuant OAR 690-310-0150.