



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item J, November 30, 2007
Water Resources Commission Meeting

Request by Tumalo Irrigation District for Expanded Quit Claim Deed

I. Issue Statement

In 1988, the Water Resources Commission authorized conditional conveyance of 930 acres of former Tumalo Reservoir Project property to the Tumalo Irrigation District (TID) through recorded statutory Quit Claim Deed to be held under public ownership and used as a winter feeding area for wildlife. TID is requesting an additional 533 acres of contiguous property be added to the 930 acres; also to be used as a winter feeding area for wildlife.

II. Background

Under the Carey Act of 1894, the federal government entered into contracts with state governments for the irrigation and reclamation of desert lands. In 1901, Oregon officially accepted the conditions of the Act. The 1901 state Carey Act program and implementing statutes were repealed in their entirety with the 1909 enactment of a revised state Carey Act program, now codified at ORS 555.010 to 555.190.

Under the Carey Act, the federal government granted certain desert lands to Oregon. Under the Oregon statute, the state was authorized to contract for construction of irrigation projects to reclaim those desert lands granted by the federal government. Once an irrigation project could ensure a reliable water supply, the law allowed entry by settlers on the reclaimed lands and conveyance of title to the settlers following settlement and cultivation. In some cases, the land reverted back to the State of Oregon if the settler could not "prove up their claim".

The Tumalo Reservoir project was authorized by the 1913 State Legislature to build a reservoir at Wimer Flat and to improve and enlarge the canal system to irrigate 22,500 acres. The dam is structurally sound, but Tumalo Reservoir fails to hold water. This is a case where land reverted back to the State of Oregon.

The August 1988 meeting of the Water Resource Commission authorized the transfer of a 930 acre parcel to the Tumalo Irrigation District (TID) through a Quit Claim Deed, to hold under public ownership, allowing use as winter grazing for wildlife but excluding any form of transfer, mining, drilling or other form of exploration. The 930 acres fell roughly within the boundaries of the old reservoir. Adjoining parcels owned by the State were not transferred at that time.

TID is requesting transfer of additionally identified Carey Act property bordering the lands transferred in 1988 for the purpose of expanding the amount of property that is protected from vandalism and litter created by the general public to provide for a winter feeding area for wildlife in the area.

III. Discussion

The Department has carefully reviewed the facts and the available history behind the stewardship of these parcels of land; along with TID's request to be the custodian-in-place of the Department. Tumalo Irrigation District understands and agrees to hold the stewardship under the certain reversionary conditions. It is the opinion of the staff that the transfer will further assure that the property will be of service to the community rather than being degraded by trespassers and a tort liability to the Department as well as the State in general.

IV. Alternatives

The Commission may consider the following alternative actions:

1. Approve the request to convey 533 acres through a conditional Quit Claim Deed
2. Deny the request
3. Take no action and direct staff to provide additional information

V. Recommendation

The Director recommends Alternative 1 to approve the request by Tumalo Irrigation District.