



Oregon

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Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Brenda Bateman, Senior Policy Coordinator

SUBJECT: Agenda Item E, May 30, 2008
Water Resources Commission Meeting

Water Resources Department's 2009 Proposed Legislative Concepts

I. Issue Statement

The Department turned in its initial legislative concepts to the Oregon Department of Administrative Services on April 4, 2008, after discussion with the Water Resources Commission, Department legal counsel, the Governor's office, and numerous stakeholder groups. Staff then held a subsequent meeting with stakeholders on April 22, 2008 to take comments on specific proposed language. Today Department staff plans to present five legislative concepts the Water Resources Department wishes to propose for 2009, along with specific proposed language for Commission review.

II. Background

The Water Resources Department has prepared legislative concepts that are few in number and technical nature, as it has in the past. These concepts are meant to streamline Departmental operations, ensure the fees and resources necessary to maintain services, and provide greater consistency in statutory language. The Department partners with and relies on other stakeholder groups to initiate "high level" public policy bills.

As with its proposed 2009 budget, the Water Resources Department has incorporated ideas that originated with the Water Resources Commission, stakeholder groups, the regulated community, and the Governor's office. There are five legislative concepts in all. They are:

- Allow the Instream Lease of Claim of a Water Right that Has Been Included in a Final Order: Modifies (ORS 537.348) to make a claim of a water right included in

the final order of determination eligible for in-stream lease prior to the court's issuance of a final decree in adjudication cases.

- Providing Flexibility to the Water Conservation, Reuse, and Storage Investment Fund: This legislative concept would modify the SB 1069 language (now residing in Chapter 13 of Oregon's 2008 Laws) that established the Water Conservation, Reuse, and Storage Fund, broadening the language to address additional needs. While continuing to provide grant funding for feasibility studies, it would add a new section allowing the Department to provide loans and/or grants for subsequent stages of project development as well.
- Exempt Certain Wave Energy Projects from Hydroelectric Licensing Statutes: WRD proposes revisions to ORS 543.014 hydropower licensing requirements, to exempt small, pilot wave energy projects. Because these statutes were originally written for river-based hydroelectric projects, however, they do not work particularly well in an ocean setting and, in practice, present insurmountable barriers to the construction of pilot wave energy projects.
- Increase Start Card Fees. Modify 537.762 (5) to increase start card fees from \$125 to \$200 for paper filing. A separate fee of \$175 for electronic filing will be addressed through rule-making.
- Establishing Fees for Data Entry Related to Geotechnical Holes: Add ORS 537.767 to assess a new fee on the administrative Processing of Geotechnical Holes (test holes for mining and other industries).

In addition, the Department recommends dropping another four concepts that have received substantial opposition from stakeholders:

- Explicit Authority to Recognize or Establish Water Supply Banks Statewide: The Department has authority to recognize or establish mitigation banks state-wide. This legislative concept would have modified ORS 536 to explicitly authorize the Oregon Water Resources Commission to adopt rules to establish "water supply banks" to facilitate water transactions for mitigation and general water supply needs.
- Permanent Irrigation District Transfers of Supplemental Permits: Currently, statutes related specifically to irrigation district transfers (ORS 540.570 and 540.580) do not explicitly permit the transfer of supplemental permits along with the transfer of water rights, while statutes pertaining to other water uses (ORS 540.510 and 540.523) do. This concept would have modified ORS 540.570 and 540.580 to address this gap and provide greater consistency.
- Adding "Person" to Those Affected by Final Order: This concept would have amended ORS 536.075 to read: "Any **person** or party affected by a final order" may

appeal the order to circuit court. ORS 536.075 currently states that "[a]ny party affected by a final order other than contested case" may file a petition for judicial review in the circuit court. The statute's current language has been interpreted as excluding affected persons who are not a party from seeking judicial review. OWRD sought to clarify that any person affected by a final order in other than contested case may petition for judicial review.

- **Establishing Fees for Applicant Protests:** This concept would have modified ORS 537.621 (7f) and ORS 537.153 (6f) to include applicants among those required to pay a protest fee. Currently, applicants for water rights and related actions (permit extensions, transfers, etc.) pay an initial application fee, but do not pay additional fees to initiate a protest. Since 2004, two-thirds of the protests filed with the Department have come from the applicants themselves.

See Attachment 1 for the description, justification, and proposed language for the five remaining legislative concepts.

III. Discussion

The Department is interested in general feedback and discussion regarding these concepts.

IV. Conclusion

No Commission action is necessary today. The Department of Administrative Services will send updates that notify each Department's Legislative Coordinator if legislative concepts have gone to the next stage for editing / drafting. Once the drafting stage is complete, the Department will have one opportunity to make final changes to the text before the start of the 2009 Legislative Session.

Attachment: Water Resources Department's 2009 Proposed Legislative Concepts

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