



Oregon

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Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Debbie Colbert, Senior Policy Coordinator

SUBJECT: Water Resources Commission Meeting
March 31, 2006

Briefing on Proposed Legislative Concepts for the 2007 Legislative Session

I. Issue Statement

This report continues the discussion between Commission members and Department staff regarding the substance and policy implications of legislative concepts developed for the 2007 legislative session.

II. Discussion

The process to develop concepts for the 2007 legislative session began early this winter. Starting in January, staff collected internal suggestions concerning agency issues and needs requiring legislative consideration. The Department's Agency Coordination Team (ACT) refined those ideas. Staff shared the list of ideas generated from these discussions at the Commission's March 7, 2006 work session. Department staff also met with stakeholders individually and with a group of interested stakeholders on March 23, 2006, to seek feedback on Department legislative ideas and to discuss issues that may need to be addressed in the 2007 session. Based on that feedback the Department revised its list of draft concepts. With respect to the split season instream lease program (LC 04), some stakeholders (Water for Life and Oregon Farm Bureau) recommended that the Department propose to extend the program through 2014 rather than remove the sunset entirely.

On March 23, 2006, staff also presented legislative concepts related to ground water to the Commission's Ground Water Advisory Committee for their input. There was unanimous support for the fee adjustment (LC 01) to ensure the Department can continue to deliver important program functions. There was also general support (with one abstention) for removing the sunset on the well constructor continuing education program and committee (LC 03).

Based on continued internal refining, staff propose to submit seven preliminary legislative concepts to the Department of Administrative Services (DAS) by the deadline date on April 3, 2006. A list of the concepts is contained in Attachment 1. Upon submittal, the legislative concepts will be reviewed by DAS and the Governor's Office. Concepts approved by DAS and

the Governor's Office will be submitted to Legislative Counsel by June 1, 2006. The Governor must pre-session file agency bills by December 15, 2006.

Several Commission discussions about the concepts (and ultimately the bill language) will occur prior to the December 2006 pre-session filing date. At this Commission meeting and future meetings through the end of the year, Department staff will present issues and draft language for discussion. Staff will brief the Commission at each meeting and seek guidance on how to further develop the concepts.

Summaries of the six legislative concepts developed to date are provided in Attachments 2-7. Concept 07 is a "placeholders" for legislative ideas that may be developed over the next few months. Staff will provide detail on this concept as it becomes available.

IV. Recommendation

Staff recommend that the Commission approve the legislative concepts as provided in Attachments 2-7.

Attachments:

1. List of Proposed Legislative Concepts
2. Summary of Legislative Concept 01
3. Summary of Legislative Concept 02
4. Summary of Legislative Concept 03
5. Summary of Legislative Concept 04
6. Summary of Legislative Concept 05
7. Summary of Legislative Concept 06

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LC 01 Fee Adjustments

Proposes to adjust certain statutorily established fees under ORS 536.050, 537.150(5), and 537.620(5).

LC 02 Exempt Uses:

Modifies ORS 537.141(1)(b) to clarify that any nonemergency fire-fighting training is an exempt use of surface water provided prior approval of use is granted by the appropriate watermaster or other minimum notice requirements are met.

LC 03 Well Constructors Continuing Education

Makes permanent statutory provisions for the well constructors continuing education program and Continuing Education Committee that sunset January 2, 2008.

LC 04 Split Season Use Instream Leasing

Makes permanent statutory provisions under ORS 537.348 allowing the “split season use” instream leasing of water rights that sunset January 2, 2008.

LC 05 Pilot Project for Certain District Temporary Transfers

Continues through January 2, 2010 a pilot project for certain districts to make annual place of use changes to water rights within their district boundaries without making application for a temporary transfer.

LC 06 Irrigation Season Extensions

Modifies ORS 537.385 to clarify that the Commission may extend irrigation seasons by rule rather than by order.

LC 07 Placeholder for Office of Regulatory Streamlining WRPPIT

Placeholder for Office of Regulatory Streamlining Water-Related Permits Process Improvement Team (WRPPIT).

Summary of LC 01 Fee Adjustments

Description of the concept

LC 01 proposes to adjust certain statutorily established fees under ORS 536.050, 537.150(5), and 537.620(5).

Purpose of the concept

Today, limited water supplies, competing demands, and the protection of existing water rights makes the review and processing of water right applications and transfers more complex than ever.

The purpose of this concept is to ensure adequate resources to handle these increasing demands and existing workloads. Increased transaction fees will support the Department's current service capability for water right processing and will continue two limited duration positions to address the water right transfer backlog. Without this fee adjustment, support for these programs and positions will not continue past June 2007.

This concept is a continuation of the effort initiated under HB 2268 (2003), a bill that was only partially successful in achieving fee increases for water right and transfer related programs. While HB 2268 did not achieve the fee increase that the Department proposed, the Department was encouraged to seek incremental adjustments, rather than large jumps, in fees on a regular basis. The incremental adjustment in LC 01 is consistent with this guidance.

Fiscal impacts

Fiscal impacts will result from this concept but estimates are not yet available.

Summary of LC 02 Exempt Uses

Description of the concept

LC 02 modifies ORS 537.141(1)(b) to clarify that any nonemergency fire-fighting training is an exempt use of surface water provided prior approval of use is granted by the appropriate watermaster or other minimum notice requirements are met.

Purpose of the concept

Under current statute, the use of surface water for nonemergency fire-fighting training does not require a water right application, permit, or certificate with written approval of the watermaster in the district where the training will take place and minimum notice to owners of stored water, if the source is existing storage. The watermaster may condition the approval to prevent injury to existing water rights and to protect instream resources.

This exemption is limited to public fire departments and rural fire protection districts. However, a number of other public and private entities conduct these types of fire fighting trainings annually throughout the state, including the Oregon Department of Forestry, Oregon Military Department, and others.

LC-02 would make this exemption available to these groups provided they comply with the existing watermaster approval or notice requirements.

By amending the statute in this way, all entities conducting nonemergency fire-fighting training will be able to conduct the trainings in manner that complies with state law and provides for protection of existing water rights and instream resources.

Fiscal impacts

No fiscal impacts are anticipated.

Summary of LC 03 Well Constructors Continuing Education

Description of the concept

LC 03 makes permanent statutory provisions for the well constructors continuing education program and Continuing Education Committee that sunset January 2, 2008.

Purpose of the concept

As part of the Ground Water Act of 1955, the Department is authorized to regulate and license water well constructors. Under ORS 537.747, no person is to advertise for services or offer to enter into contract to construct, alter, convert, or abandon a well without possessing a water well contractor's license.

SB 579 (2001) modified the statute to require continuing education for renewal of water well licenses every two years starting in June 2005. The bill also created the Well Constructors Continuing Education Committee to make recommendations to the Water Resources Commission for the continuing education program. The goal of the program is to maintain a high level of competence which in turn helps to ensure wells are constructed in a manner that protects the ground water resource.

Since the program began in 2005, the Department has worked very successfully with the Continuing Education Committee and the well drilling community to ensure that sufficient classes are offered to meet the requirements over a broad geographic area of the state. By the next licensing cycle, all drillers will have gone through the program and obtained the 14 continuing education credits required per licensing cycle. This year approximately 400 licensees will renew.

Fiscal impacts

No fiscal impacts are anticipated.

Summary of LC 04 Split Season Use Instream Leasing

Description of the concept

LC 04 makes permanent statutory provisions under ORS 537.348 allowing the “split season use” instream leasing of water rights that presently sunsets January 2, 2008.

Purpose of the concept

In 2001, the legislature authorized a new type of instream lease, called a split season use instream lease (HB 2712, 2001). Split season instream leases allow a water right holder to use his water right on his lands for period of allowed use and protect water instream during another part of the period of allowed use for instream purposes at a time when increased streamflows are most needed.

Before this program was created, the instream lease program required a water right holder to “dry up” all or a part of the place of use for the entire period of allowed use in order to lease water instream. The split season lease provisions allow a water right holder to avoid having to dry up all or a part of the place of use for the entire period of use.

Since the program was authorized in 2001, there have been five split season instream leases approved by the Department. While this type of lease has not been used extensively, conservation groups such as the Oregon Water Trust are interested in maintaining and making permanent this voluntary streamflow restoration tool. The Department is also interested in maintaining this authority as a tool for water right holders to respond to increasing demands to address instream flow needs in ways that can allow them to continue to make productive use of their land. For this reason, LC 04 proposes to remove the 2008 sunset from the split season leasing program.

Fiscal impacts

No fiscal impacts are anticipated.

Summary of LC 05 Pilot Project for Certain District Temporary Transfers

Description of the concept

LC 05 continues through June 30, 2010 a pilot project for certain districts to make annual place of use changes to water rights within their district boundaries without making application for a temporary transfer.

Purpose of the concept

SB 820 (2003) established a pilot project for qualifying districts to make annual place of use changes to water rights within their legal boundaries without making application for a temporary transfer. This streamlined process provides greater management flexibility without diminishing protections to existing water rights.

Talent Irrigation District (TID), Owyhee Irrigation District (OID), and Tualatin Valley Irrigation District (TVID) were identified as qualifying districts for the pilot project. Since the pilot was established in 2003, these districts have been preparing to participate in the program. First use of the program was made in 2005. During 2005, TID made several place of use changes under the program and anticipates similar activity during the 2006 irrigation season. OID and TVID also expect to use the program during the 2006 irrigation season with TVID identifying potential for transferring a thousand acres or more.

Unless extended, the pilot project sunsets on June 30, 2008. Since the pilot will not be fully utilized until 2006 irrigation season, the Department proposed to extend the sunset through 2010 so that the Department and pilot districts can create a longer “track record” for demonstrating this new approach.

Fiscal impacts

No fiscal impacts are anticipated.

Summary of LC 06 Irrigation Season Extensions

Description of the concept

LC 06 modifies ORS 537.385 to clarify that the Commission may extend irrigation seasons by rule rather than by order.

Purpose of the concept

Under current statute, the Commission may extend, by order, the irrigation season of a subbasin beyond the period established by adjudication, administrative rule, or by condition imposed on a permit or certificate. The request for an extension of the season must originate from the Oregon Department of Agriculture (ODA).

Generally, in order to approve the request, the Commission must find that water is available during the extended season and that water use during the extended season will not impair instream flows necessary to protect aquatic resources or the achievement or maintenance of water quality standards. To prevent injury to existing and future water rights, use of water during the extended season is subordinate to all existing and future rights.

ORS 183.330 of the Administrative Procedures Act (APA) states that an order shall not be effective as to any person or party unless it is served upon the person or party either personally or by mail. Historically, the Commission has served irrigation season orders on the Director of ODA. This issuance and service of an order under ORS 537.385 is not clear with respect to the service requirements under the APA.

LC 06 proposes to modify ORS 537.385 so that the Commission would extend an irrigation season by rule rather than by order to avoid any inconsistencies with APA provisions. All other aspects of the statute would continue including findings related to protection of existing rights, aquatic resources, and water quality. Extending the irrigation season by rule would also provide additional public input through the rulemaking notice and hearing opportunities when the Commission is considering this type of action.

Fiscal impacts

No fiscal impacts are anticipated.