

WATER RESOURCES' LEGISLATIVE CONCEPT

Date: May 13, 2008

Division/Program Water Rights & Adjudication; Field Services

Concept Title: Allow the Instream Lease of Claim of a Water Right that Has Been Included in a Final Order of Determination

Contact Person Brenda Bateman

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◆ BRIEF DESCRIPTION OF THIS CONCEPT:

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.

◆ PURPOSE OF THIS CONCEPT (DESCRIBE PROBLEM YOU ARE TRYING TO SOLVE AND SUGGESTED SOLUTION):

This concept would allow instream lease of a Claim of a Water Right that has been included in a Final Order of Determination, while awaiting the court's final decree. Instream leases provide a water right holder with evidence of use for purposes of avoiding loss of right, and are a valuable tool for restoring stream flows when the water will not be used for irrigation or other consumptive beneficial uses. Allowing water right claimants access to the instream leasing program will protect water rights while waiting for a court's final decree, which can take months or even years to produce.

◆ POLICY IMPLICATIONS:

The near-term policy implications of this change are in the Klamath Basin, where the order of determination will be filed with the court during the next biennium. There are 730 claims of water rights in the Basin, and some may have interest in leasing their rights instream during the waiting period for a final decree.

Amend Section 537.348 of Oregon Water Law as indicated.

537.348 Purchase, lease or gift of water right for conversion to in-stream water right; priority dates. (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. A person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.

(2) Any person who has an existing water right, **which includes for the purposes of this subsection a water right evidenced by an order of determination filed with the Circuit Court as provided in ORS 539.130**, may lease all or a portion of the existing water right for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of such lease, the use of the water right as an in-stream water right shall be considered a beneficial use.

(3) A lease of all or a portion of an existing water right for use as an in-stream water right under subsection (2) of this section may allow the split use of the water between the existing water right and the in-stream right during the same water or calendar year provided:

(a) The uses are not concurrent; and

(b) The holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the in-stream water right. [1987 c.859 §9; 2001 c.205 §1]

Note: The amendments to 537.348 by section 2, chapter 205, Oregon Laws 2001, become operative January 2, 2008. See section 3, chapter 205, Oregon Laws 2001. The text that is operative on and after January 2, 2008, is set forth for the user's convenience.

ORS 537.348. (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. A person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585, except that a person who transfers by lease a water right that is evidenced by an order of determination in an adjudication as provided in ORS 539.130 need not comply with the requirement in ORS 540.510 to 540.585 that the water right be a "water use subject to transfer," as that term is defined in ORS 540.505(4).

(2) Any person who has an existing water right, **which includes for the purposes of this subsection a water right evidenced by an order of determination filed with the Circuit Court as provided in ORS 539.130**, may lease all or a portion of the existing water right for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of such lease, the use of the water right as an in-stream water right shall be considered a beneficial use.

WATER RESOURCES' LEGISLATIVE CONCEPT

Date: May 13, 2008

Division/Program Administrative Services

Concept Subject/Title Providing Flexibility to the Water Conservation, Reuse, and Storage Investment Fund

Contact Person Brenda Bateman

Phone No. 503-986-0879

◆ BRIEF DESCRIPTION OF THIS CONCEPT:

This Water Resources' 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.

◆ PURPOSE OF THIS CONCEPT (DESCRIBE PROBLEM YOU ARE TRYING TO SOLVE AND SUGGESTED SOLUTION):

The Department anticipates that as a follow-up stage to SB 1069 or other similar feasibility study efforts, WRD will need funding for subsequent project development stages, such as construction of the Umatilla Basin Aquifer Recovery Project.

The Department envisions using the Water Conservation, Reuse, and Storage Investment Fund, established during the 2008 Legislative Session, for this purpose. The Department plans to submit a 2009 Policy Option Package, requesting the use of lottery-backed bonds in the amount of \$50 million. That would allow the state to sell \$50 million in bonds, which will capitalize the Water Conservation, Reuse, and Storage Fund. For any grants awarded, the Fund will be replenished with future lottery revenues. For any loans, the Fund will be replenished with repayments from the borrower.

◆ POLICY IMPLICATIONS:

Modifying the terms of this Fund will help communities secure necessary funds for the development of water conservation, re-use, and storage projects.

WATER CONSERVATION, REUSE AND STORAGE [GRANTS] FUNDS

SECTION 1. Planning Studies Grant Program. (1) The Water Resources Department shall establish a grant program to pay the qualifying costs of planning studies performed to evaluate the feasibility of developing a water conservation, reuse or storage projects, as described in section 2 of this [2008] Act. A grant under this section may be made to a local government as defined in ORS 174.116, to an Indian tribe as defined in ORS 391.802 or to a person.

(2) In lieu of grants, the department may pay the cost of providing direct services, including but not limited to technical planning services, for a planning study that is eligible for a grant under this section.

(3) A grant, or the cost of direct services provided under this section may not exceed \$500,000 per project **for planning studies**. A grant or payment for direct services may be provided only if the amount of the grant or the cost of the direct services is matched by funding from another source that is not less than a dollar-for-dollar match of the amount or cost.

(4) Grants and the cost of direct services provided under this section must be paid for from moneys available in the Water Conservation, Reuse and Storage Investment Fund.

(5)(a) In evaluating above ground storage projects for awards of grants or payments for direct services under this section, the department shall give priority to projects that include provisions for using stored water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life or other ecological values.

(b) In evaluating all other eligible projects, the department shall give priority to projects identified by the department in a statewide water assessment and inventory for the award of grants or provision of payment for direct services under this section.

SECTION 2. Eligible studies. (1) A planning study receiving a grant or payment for direct services under section 1 of this [2008] Act may include, but is not limited to:

(a) Analyses of hydrological refill capacity;

(b) Water needs analyses;

(c) Refined hydrological analyses;

(d) Engineering and financial feasibility studies;

(e) Geologic analyses;

(f) Water exchange studies;

(g) Analyses of by-pass, optimum peak, flushing and other ecological flows of the affected stream and the impact of a proposed water conservation, reuse or storage project on those flows;

(h) Comparative analyses of alternative means of supplying water, including but not limited to the costs and benefits of conservation and efficiency alternatives and the extent to which long-term water supply needs may be met using those alternatives;

(i) Analyses of environmental harm or impacts from a proposed water conservation, reuse or storage project;

(j) Analyses of public benefits accruing from a proposed water conservation, reuse or storage project;

(k) Fiscal analyses of a proposed water conservation, reuse or storage project, including estimated project costs, financing for the project and projected financial returns from the project;

[(L)] (l) Hydrological analyses of a proposed water conservation, reuse or storage project, including the anticipated effects of climate change on hydrological refill capacity; and

(m) Analyses of potential water quality impacts of the project.

(2) If a planning study concerns a proposed storage project that would impound surface water on a perennial stream, divert water from a stream that supports sensitive, threatened or endangered fish or divert more than 500 acre-feet of surface water annually, a grant or direct services payment may be provided only if the study contains:

(a) Analyses of by-pass, optimum peak, flushing and other ecological flows of the affected stream and the impact of the storage project on those flows;

(b) Comparative analyses of alternative means of supplying water, including but not limited to the costs and benefits of conservation and efficiency alternatives and the extent to which long-term water supply needs may be met using those alternatives;

(c) Analyses of environmental harm or impacts from the proposed storage project;

(d) Evaluation of the need for and feasibility of using stored water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values; and

(e) For a proposed storage project that is for municipal use, analysis of local and regional water demand and the proposed storage project's relationship to existing and planned water supply projects.

SECTION 3. Water Conservation, Reuse and Storage Investment Fund. (1) The Water Conservation, Reuse and Storage Investment Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Water Conservation, Reuse and Storage Investment Fund shall be credited to the *[General Fund]* fund. Moneys in the Water Conservation, Reuse and Storage Investment Fund are continuously appropriated to the Water Resources Department to award grants and to pay the cost of direct services provided under section 1 of this *[2008] Act*; **or to award grants and to provide loans provided under Section 5 of this Act. Loans originating from the Water Conservation, Reuse, and Storage Investment Fund shall be repaid to the Water Conservation, Reuse, and Storage Investment Fund.**

(2) The Water Conservation, Reuse and Storage Investment Fund shall consist of:

(a) Moneys appropriated to the fund by the Legislative Assembly;

(b) Any moneys that may be transferred to the fund by the federal government, a state agency or a local government; and

(c) Grant **and loan** repayments, if any.

SECTION 4. Rules. The Water Resources Commission shall adopt rules necessary to administer sections 1 *[to 4]* **through 6** of this *[2008] Act*, including rules that:

(1) Establish reporting requirements for grants **and loans** awarded under *[section 1]* of this *[2008] Act*;

(2) Provide for public comment before the award of grants, **loans**, and payment for direct services under *[section 1]* of this *[2008] Act*; *[and]*

(3) Implement the priorities required by section 1 of this *[2008] Act*.

SECTION 5. Project Development Loan and Grant Program. (1) **The Water Resources Department shall establish a loan and grant program to pay the qualifying costs of project development for water conservation, reuse or storage projects. A grant or loan under this section may be made to a local government as defined in ORS 174.116, to an Indian tribe as defined in ORS 391.802 or to a person.**

(2) **Grants and loans provided under this section must be paid for from moneys available in the Water Conservation, Reuse and Storage Investment Fund.**

(3) **Loans provided under this section must be repaid to the Fund from the borrower.**

SECTION 6. Eligible Projects. (1) **A project receiving a grant or loan under Section 5 of this Act may include, but is not limited to:**

(a) **water conservation;**

(b) **water efficiency;**

(c) **water reclamation;**

(d) **water re-use;**

(e) **above-ground water storage;**

(f) **below-ground water storage; and**

(g) **consolidation of water systems.**

SECTION 7 Lottery Bonds. (1) Pursuant to ORS 286.560 to 286.580, lottery bonds may be issued for the Water Resources Department to provide funding for water conservation, reuse or storage investment projects.

(2) The use of lottery bond proceeds is authorized based on the following findings:

(a) Development of future water supplies through conservation, reuse or storage investments is critical to the economic and ecological health of Oregon and its water habitats.

(b) Current water shortages in critical ground water areas have negatively impacted the agricultural economy of Oregon.

(c) Current water shortages in critical ground water areas have caused concerns relating to critical fish and wildlife habitats.

(3) The aggregate principal amount of lottery bonds issued pursuant to subsection (1) of this section for the Water Resources Department may not exceed the amount of \$50 million and an additional amount estimated by the State Treasurer to be necessary to pay bond-related costs as defined in ORS 286.560.

(4) The net proceeds of lottery bonds issued pursuant to this section shall be deposited in the Water Conservation, Reuse and Storage Investment Fund.

WATER RESOURCES' LEGISLATIVE CONCEPT

Date: May 13, 2008

Division/Program Water Rights and Adjudication Division

Concept Subject/Title Exempt Certain Wave Energy Projects from Hydroelectric Licensing Statutes

Contact Person Brenda Bateman

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◆ BRIEF DESCRIPTION OF THIS CONCEPT:

The Department proposes revisions to ORS 543.014 hydropower licensing requirements, to exempt small, pilot wave energy projects so that Oregon can begin to collect experience and lessons learned while monitoring this new industry.

◆ PURPOSE OF THIS CONCEPT (DESCRIBE PROBLEM YOU ARE TRYING TO SOLVE AND SUGGESTED SOLUTION):

Wave energy projects are currently included under the hydropower licensing requirements of ORS 543.014. 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 wave energy projects.

◆ POLICY IMPLICATIONS:

The development of wave energy projects are part of the Governor's renewable energy program goals. Currently, the licensing of wave energy projects fall under hydroelectric statutes, which contain language too restrictive to allow the construction and operation of wave energy projects. The Department proposes language that allows an exemption for pilot projects that meet size and other requirements as listed below.

ORS 543.014 Exemption for wave energy project; conditions. A wave energy project is exempt from regulation under this chapter, except as provided in ORS 543.050 (3), 543.055 and 543.060 if:

- (1) The project generates electricity from wave energy;
- (2) The project is located within Oregon's Territorial Sea, as defined in ORS 196.405;
- (3) The [*nominal*] **average** electric generating capacity, as defined in ORS 469.300, of the project does not exceed five megawatts; and
- (4) A license under the Federal Power Act, 16 U.S.C. 791a et seq., is not required to either construct or operate the project, **or, in the alternative, if a license is required under the Federal Power Act, the applicant has entered into a settlement agreement that:**

- (a) **Addresses state resource impacts;**
- (b) **Has at least the following as signatories:**
 - (A) **The Oregon Department of Fish & Wildlife;**
 - (B) **The Oregon Department of Land Conservation & Development;**
 - (C) **The Oregon Department of State Lands; and**
- (c) **Has been approved in substantial part by the Federal Energy Regulatory Commission.** [2007 c.212 §2]

ORS 469.300 Definitions. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, unless the context requires otherwise:

- (4) "Average electric generating capacity" means the peak generating capacity of the facility divided by one of the following factors:
 - (a) For wind or solar energy facilities, 3.00;
 - (b) **For wave energy facilities, 2.5;**
 - [(b)](c) For geothermal energy facilities, 1.11; or
 - [(c)](d) For all other energy facilities, 1.00.

WATER RESOURCES' LEGISLATIVE CONCEPT

Date: May 13, 2008

Division/Program Technical Services

Concept Subject/Title: Increase Start Card Fees

Contact Person Brenda Bateman

Phone No. 503-986-0879

◆ BRIEF DESCRIPTION OF THIS CONCEPT:

Modify 537.762 (5) to increase start card fees to \$225 for paper filing.

◆ PURPOSE OF THIS CONCEPT (DESCRIBE PROBLEM YOU ARE TRYING TO SOLVE AND SUGGESTED SOLUTION):

WRD uses Start Card Fees, which arrive with the notification of construction of new wells, to pay the Department's well inspection staff. Currently, the fee of \$125 per new well does not sustain the well inspection program, which also includes the inspection of on-going wells and data entry for geotechnical wells (test wells for industrial and other purposes). WRD last increased start card fees in 2003, and believes—with encouragement from stakeholders—that fee increases should occur at regular intervals, in order to keep pace with the increasing cost of doing business.

◆ POLICY IMPLICATIONS:

This change in statute will allow the Department to sustain its well inspection program with statutorily authorized start card fees. The Department and Water Resources Commission plan to undertake rule-making to set electronic filing fees at \$200. [OWRC has rulemaking authority pursuant to ORS 537.780(1)(h).]

537.762 Report of constructor before beginning work on well; rules; fees.

(5) Each report form submitted under subsection (1) of this section for the construction of a new well, deepening of an existing well, or conversion of a well shall be accompanied by a fee of **\$225** [~~\$125~~]. Notwithstanding the fee established pursuant to this subsection, the commission may adopt by rule a reduced fee for persons submitting materials to the Water Resources Department in a digital format approved by the department.

WATER RESOURCES' LEGISLATIVE CONCEPT

Date: May 13, 2008

Division/Program Technical Services

Concept Subject/Title: Establishing Fees for Data Entry Related to Geotechnical Holes

Contact Person Brenda Bateman

Phone No. 503-986-0879

◆ BRIEF DESCRIPTION OF THIS CONCEPT:

Add ORS 537.767 to assess a new fee of \$25 on the administrative processing of geotechnical holes.

◆ PURPOSE OF THIS CONCEPT (DESCRIBE PROBLEM YOU ARE TRYING TO SOLVE AND SUGGESTED SOLUTION):

Currently, drillers of geotechnical holes (test wells for mining and other industries) have no statutory requirements to pay fees to the Department. However, drillers do submit data to the Department, which administrative staff enters into the computer. During FY 2006-07 the Department received paperwork from about different 120 engineering, well construction and environmental consulting firms, related to about 8,500 geotechnical wells. A new fee on the entry of data coming from geotechnical holes will help ensure that WRD can sustain the cost of its well inspection program during the next biennium.

◆ POLICY IMPLICATIONS:

While potential revenues from this group may be substantial, there is a risk that drillers will cease to voluntarily contact the agency with valuable data, in order to avoid paying these new fees. The Department has no efficient way to enforce fee collection, because of the diversity of well drillers in this group. The Department and Water Resources Commission plan to undertake rulemaking to set electronic filing fees at \$10.

Proposed Language:

537.767 Log of geotechnical hole construction.

- (1) The activity of constructing geotechnical holes is declared to be an activity affecting the public welfare, health, and safety. In order to enable the state to protect the welfare, health, and safety of its citizens, any person or public agency constructing a geotechnical hole shall keep a log of each geotechnical well constructed and furnish a log to the Water Resources Commission within 30 days after completion for geotechnical holes that meet any of the criteria listed in subsections (a) through (d):**
 - (a) Greater than 18 feet deep; or**
 - (b) Within 50 feet of a water supply or monitoring well; or**
 - (c) Used to make a determination of water quality; or**
 - (d) Constructed in an area of known or reasonably suspected contamination.**
- (2) When a geotechnical report is required, the person responsible for the construction shall have one of the following certifications:**
 - (a) Current Oregon Monitoring Well Constructor License;**
 - (b) Current Oregon Water Supply Well Constructor License;**
 - (c) Registration by the State of Oregon as a Professional Geologist; or**
 - (d) Registration by the State of Oregon as a Professional Civil Engineer.**
- (3) The Water Resources Commission may adopt rules to implement any provision of this section including rules prescribing the form of the log required under subsection (1) and rules allowing a reduced fee for persons submitting materials to the Water Resources Department in a digital format.**
- (4) Each geotechnical report log submitted under subsection (1) of this section shall be accompanied by a recording fee of \$25.**
- (5) The moneys paid under subsection (4) of this section shall be paid into the Water Resources Department Operating Fund as established under ORS 537.763. All interest, if any, from moneys received under subsection (4) of this section shall inure to the benefit of the Water Resources Department. Such moneys and interest earned on such moneys are continuously appropriated to the Department to be used to pay the costs of the Department to employ personnel to inspect wells and well construction.**