



# 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 L, January 27, 2012  
Water Resources Commission Meeting

**Request for Adoption of Rules Implementing HB 2133 (2011), HB 2135 (2011) and Making Other Miscellaneous Changes Encompassing a Total of 12 Divisions of Rules**

#### I. Issue Statement

The Department initiated House Bills 2133 and 2135 in the 2011 session. Both bills passed and became law on January 1, 2012. The Department is required to adopt rules to implement the new law changes. In addition, the Department has used this rulemaking opportunity to make other needed miscellaneous changes. In total, 12 divisions of rules are affected by the changes. The Commission will be asked to adopt the final proposed rules as set forth in Attachment 1.

#### II. Background

The 2011 Legislature approved HB 2133 (Attachment 2), which allows the Department to adopt rules that facilitates the transmittal of electronic documents between the agency and its customers. The 2011 Legislature also approved HB 2135 (Attachment 3). This bill allows the Department to adopt rules that will decrease the number of times certain notices are required to be published in newspapers. In addition, the Department has used this rulemaking process as an opportunity to make several other needed miscellaneous changes. A table showing the 12 divisions of rules affected by the three areas of change (HB 2133, HB 2135, and Other Changes) is shown in Table 1.

A more detailed analysis of the three areas of rulemaking (HB 2133, HB 2135, and Other Miscellaneous Changes) is provided below.

**Table 1.**

A listing of the divisions of rules, with their titles that are affected by the rulemaking.

	<b>Rule Division Title</b>	<b>Number</b>	<b>HB 2133</b>	<b>HB 2135</b>	<b>Other</b>
1	Petition to Change Dept Records w/in Water Districts	690-013		x	x
2	Allocation of Conserved Water	690-018		x	x
3	Drought Mitigation	690-019		x	
4	Hydroelectric License, Power Claim and Certificate Amendments	690-053	x	x	x
5	Instream Water Rights	690-077	x		x
6	Definitions	690-300			x
7	Water Right Application Processing	690-310	x	x	x
8	Water Right Permit Extensions	690-315	x		
9	Water Right Certificates	690-330	x		
10	Water Right Transfers	690-380	x	x	x
11	Ground Water Registration Modifications	690-382	x	x	x
12	District Water Right Transfers	690-385	x		

**A. HB 2133:** Currently, various statutes require that a number of Water Resources Department documents must be passed back and forth between the Department and customers in hardcopy. These documents are created and used in an electronic format, and therefore transferring this format to hardcopy for mailing to customers involves extra time and materials. The bill authorizes the Department to send and receive documents electronically when mutually agreed upon with the customer. The Department still plans to keep permits, certificates, and other final decisions in a hardcopy format for long-term record retention. Departmental documents, whether electronic or hardcopy, will still be available as part of the public record.

If these proposed rules are adopted the Department will implement HB 2133 by allowing applicants to “consent” to receiving Department generated contact via email. Examples of documents that may be provided by the email are Initial Reviews or Proposed Final Orders on water right applications, Draft Proposed Determination on a transfer application, and Extension Proposed Final Orders. It is the Department’s intent to send all final orders that approve a request by email and regular mail. It is our belief that the recipient of a permit, certificate or approval of a transfer should be able to keep their hardcopy of any final documents in a safe place for easy future reference.

**B. HB 2135:** In many cases, the Department’s pending transactions must be noticed in local newspapers, some requiring multiple-week notices. The multiple-week notices inflate the time and materials involved, and do not take into account the fact that most members of the public now have access to information in electronic form. This bill reduces to two the number of publications required for certain notices pertaining to Water Resources Department and Water Resources Commission.

**C. Other Miscellaneous Changes:** In addition to the implementing the two house bills, several other rule changes were incorporated into this rule making effort.

1. We are proposing to fix an incorrect rule reference in Division 13, an incorrect statutory reference in Division 380, and spelling issues in Divisions 53 and 77.
2. While working on the HB 2135 rule implementation we determined that rules allowing the applicants to work directly with newspapers to publish notices need to be changed to be consistent with the controlling statutes. The proposed rules are consistent with past discussions held with our attorney general on this issue. These changes are reflected in Divisions 18, 380 and 382.
3. The attorney general informed the Department that definitions for “Commercial Water Use” and “Industrial Water Use” in Division 300 need to be changed. The proposed rules make these necessary changes.
4. We are proposing that water right and transfer applicants can provide two rather than four copies of oversized maps. This change takes advantage of the fact that we now do most of our map sharing electronically instead of using paper copies.
5. Also related to mapping standards, the Department is proposing that water right applicants can request waivers of map scale requirements in Division 310. This will allow the Department to provide waivers if a less expensive smaller map would provide all the required information.

### **III. Rulemaking Process**

A Rules Advisory Committee convened and met on August 18 and 24, 2011, to discuss the proposed rule changes for the 12 divisions of rules listed in Table 1. Notice of this rulemaking was published in the *Oregon Bulletin* on October 1, 2011. In addition to the opportunity to provide written comment, three public rulemaking hearings were held in Salem on October 24, 2011: one for HB 2133, one for HB 2135, and one for the other miscellaneous changes. No testimony was provided to the Department during the public rulemaking hearings.

No written comments were received.

The proposed rules shown in Attachment 1 were not modified as a result of the hearings or the public comment period.

### **IV. Summary**

The proposed rule amendments in OAR Chapter 690, Divisions 013, 018, 019, 053, 077, 300, 310, 315, 330, 380, 382 and 385 implement HB 2133, HB 2135, and make other miscellaneous needed changes.

## **V. Alternatives**

The Commission may consider the following alternatives with regard to the proposed amendment of OAR Chapter 690, Divisions 013, 018, 019, 053, 077, 300, 310, 315, 330, 380, 382 and 385.

1. Adopt the final proposed rules as set forth in Attachment 1.
2. Adopt modified final proposed rules.
3. Decline to adopt the proposed rules and request that the Department further evaluate the issues.

## **VI. Recommendation**

The Director recommends that the Commission adopt the final proposed rules as set forth Attachment 1.

Attachments:

1. Final Compilation of Proposed Rules (All 12 Divisions Combined)
2. HB 2133 (2011)
3. HB 2135 (2011)

Dwight French  
503-986-0819