



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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### MEMORANDUM

TO: Water Resources Commission

FROM: Brenda Bateman, Senior Policy Coordinator

SUBJECT: Agenda Item J, November 16, 2012  
Water Resources Commission Meeting

### Legislative Preview – 2013 Legislative Session

#### I. Introduction

During 2013, Oregon's 77<sup>th</sup> Legislative Assembly will convene in Salem. This Legislative preview includes information about session basics, legislative concepts and budget proposals developed by the Department.

As we have done in the past, the Department has also invited a panel of experts from the water lobby to share their goals, insights and predictions in advance of the 2013 Legislative Session.

#### II. Session Basics

In odd-numbered years, the Oregon Legislative Assembly convenes on the second Monday in January, to swear-in newly elected officials, elect legislative leaders, adopt rules, organize and appoint committees, and begin introducing bills. Sessions, including committee hearings, then begin in February.

Also in odd-numbered years, sessions may not exceed 160 days, unless five-day extensions are approved by a two-thirds vote in each house.

At the November 16 Commission meeting, staff will be able to report on the post-election composition of the Oregon Legislature.

There are generally three legislative committees who will hear water resource-related bills.

- 1) The Senate Environment and Natural Resources Committee (SENR) handles environmental policy for the Oregon State Senate. The Oregon Senate consists of 30 members who are elected to serve for four-year terms. Each senator represents a district containing about 114,000 citizens. During 2011-12, the SENR committee consisted of five members, who are listed below along with their status after the May 2012 primaries.

- Jackie Dingfelder (D-Portland), Chair. Running unopposed.
  - Alan Olsen (R-Canby), Vice Chair. Mid-term; not running.
  - Mark Hass (D-Beaverton). Running opposed.
  - Floyd Prozanski (D-Eugene). Mid-term; not running.
  - Chuck Thomsen (R-Welches). Mid-term; not running.
- 2) The House Energy, Environment, and Water Committee (HEEW) handles environmental policy for the Oregon House of Representatives. The Oregon House of Representatives consists of 60 members who are elected to serve for two-year terms. Each representative represents a district containing about 57,000 citizens. During 2011-12, the HEEW Committee consisted of eight members, evenly divided between the parties. Members, all of whom are running for re-election, are listed below, along with their status after the May 2012 primaries.
- Jules Bailey (D-Portland), Co-Chair. Running unopposed.
  - Vic Gilliam (R-Molalla, Silverton), Co-Chair. Running unopposed.
  - Debbie Boone (D-Cannon Beach), Co-Vice Chair. Running opposed.
  - Wayne Krieger (R-Gold Beach), Co-Vice Chair. Running opposed.
  - Cliff Bentz (R-Ontario). Running unopposed.
  - Brad Witt (D-Clatskanie). Running opposed.
  - Jim Thompson (R-Dallas). Running opposed.
  - Alissa Keny-Guyer (D-Portland). Running unopposed.
- 3) The Natural Resources Subcommittee of the Ways and Means Committee handles budget and fiscal matters for the natural resources arena. During the interim 2012 session, leadership and membership changed slightly. Members are listed below, along with their status after the May 2012 primaries.
- Sen. Chris Edwards (D-Eugene), Co-Chair. Mid-term; not running.
  - Sen. Floyd Prozanski (D-Eugene). Mid-term; not running.
  - Sen. Chuck Thomsen (R-Welches). Mid-term; not running.
  - Rep. Terry Beyer (D-Springfield), Co-Chair. Decided not to run. Two new candidates.
  - Rep. Bob Jenson (R-Pendleton), Co-Chair. Running opposed.
  - Rep. Jules Bailey (D-Portland), Co-Vice Chair. Running unopposed.
  - Rep. Mike McLane (R-Powell Butte), Co-Vice Chair. Running opposed.

By the February 2013 Water Resources Commission meeting, we should have more information about Committee Chairs and Membership Assignments.

### **III. Water-Related Legislative Concepts Developed by the Department**

See Attachment 1 for descriptions of the water-related legislative concepts developed by the Department for 2013. Details about bills that will originate with legislators have not yet been released to the public. More information will become available at the start of the 2013 session.

#### **IV. Budget Packages Developed by the Department**

See Attachment 2 for a description of budget packages developed by the Department for 2013. By early December, agencies should have more information on the status of these packages in the Governor's Recommended Budget.

#### **V. Panel Presentation**

This morning, lobbyists from the water industry will engage in a panel discussion sharing their goals, insights, and predictions for the 2013 Legislative Session. Presenters have been asked to share whether their organizations have any issues related to water that they will be bringing to the session or tracking during the session. We have also asked them to share any opinions or suggestions they may have about the Department's legislative and budget proposals thus far.

Presenters include:

John DeVoe, representing WaterWatch of Oregon;  
Katie Fast, representing Oregon Farm Bureau;  
Robin Freeman, representing the League of Oregon Cities;  
Joe Furia, representing The Freshwater Trust;  
Teresa Huntsinger, representing the Oregon Environmental Council;  
Mark Landauer, representing the Special Districts Association of Oregon;  
Helen Moore, representing Water for Life;  
Leslie Bach, representing The Nature Conservancy;  
Jeff Stone, representing the Oregon Association of Nurseries; and  
Jim Welsh, representing the Oregon Cattlemen's Association (Invited).

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Attachment 1: WRD's Proposed 2013 Legislative Concepts  
Attachment 2: WRD's Proposed 2013 Budget Packages



## OREGON WATER RESOURCES DEPARTMENT 2013 LEGISLATIVE CONCEPTS

### OUR MISSION

To serve the public by practicing and promoting responsible water management through two key goals:

- (1) to directly address Oregon's water supply needs, and
- (2) to restore and protect streamflows and watersheds in order to ensure the long-term sustainability of Oregon's ecosystems, economy, and quality of life.

### **LC 657 Authority to Change a Name on a Water Right Certificate**

Today, there are no statutory provisions that allow the name and contact information on a water right certificate to be changed, even if the holder of the certificate has passed away or sold off interests. There are about 85,000 water rights in Oregon today; about 71,000 of them are currently certificated. The state needs the ability to respond to holders of water rights who are asking to modify the names on these certificates, especially in light of recent court cases, favoring the name written on a water right certificate over other factors. Such a change would facilitate other process efficiencies, such as communicating with water right holders, mapping water rights, updating the water right database, and improving compliance with measurement and reporting conditions. Such a change would be voluntary and would necessitate a fee, to fully pay for the required staff time.

### **LC 658 Establish a Water Supply Development Program**

Other western states have long had authorities in place, allowing the state to take an active role in the development of water supply. Through discussions with stakeholders and partners, the Water Resources Department has become aware of potential opportunities to invest in, purchase, broker, fund, and develop new water supplies. Today, the state of Oregon has neither the authority nor the funding to enter into such arrangements. This concept requests authority for the Water Resources Department to provide these services. A fee charged for the state's purchase and sale of water could partially offset the Department's expenses for these services.

### **LC 659 Establish a Water Right Management Fee**

The Water Resources Department, which is heavily dependent on the General Fund for its operating budget, has experienced a declining share of the General Fund, as well as declining dollars overall for the past two decades. Unlike most agencies, the Water Resources Department is smaller today than it was 20 years ago. This is compounded by a corresponding decrease in water management funds from county and federal partners. These declines come at the same time that water resource workload is increasing in complexity, particularly as it relates to groundwater science. The Water Resources Commission, the overarching policy body, has been increasingly concerned about these trends and has formed a revenue enhancement subcommittee, which has met with more than 40 stakeholder groups during the past two years.

One revenue solution developed by the Water Resources Commission and its subcommittee is an annual fee, charged to all those holding a water right (e.g., a permit, certificate, or decree). These water rights are used beneficially for industrial, agricultural, municipal, and instream purposes. This concept assumes that all water right holders would be subject to an annual fee of \$100 per water right. However, the Department has also assumed in its calculations a cap of \$1,000 for all but municipal customers who have a rate-paying base to assist with the costs.

There are currently 85,000 water rights in Oregon. Assuming water right holders would cancel a number of these rights, rather than pay a fee, and assuming significant implementation costs during the first biennium, the Water Resources Department has estimated revenues of \$12 million, beginning in the second biennium after the program is established. Revenues would pay for implementation costs of the program, as well as the cost of the critical field and science work that help ensure water availability for beneficial uses.

## **LC 660 Split Season Leasing – Remove Program Sunset**

Split Season Leasing allows water right holders to use water beneficially for a portion of the year, and lease (up to) the unused portion of the right for the remainder of the year, providing that the uses do not occur at the same time.

This program, authorized under ORS 537.348, Section 3, is part of the Water Resources Department's broader portfolio of instream leasing programs. The program has been in place since 2001, passing with strong support of the Oregon Legislature. In 2007, its sunset was extended to January 2, 2014, again with strong Legislative support. It has enjoyed participation from about a dozen water right holders from across the state; the largest concentration has come from the Deschutes, Rogue, and Willamette Basins.

This concept removes the program sunset. Responding to concerns voiced during the 2012 legislative session, this concept also clarifies that the Department will (and already does) provide notice, guard against injury during the course of program implementation, and revoke or modify an order if it finds that the lease results in injury to an existing water right. Note: WRD has undertaken a review of this program with stakeholders in accordance with Oregon Administrative Rules 690-077-0079.

## **LC 661 Extend Water Right Transactions Fee Schedule – Remove Sunset**

The Department's fees for all water right transactions are set in statute. Last modified in 2009, the current fees are due to sunset in 2013. If this occurs, fees will revert back to levels that were set in 2003 and remained in place until 2009. The current fee schedule funds about \$2.1 million worth of work, or 16 permit writers in the Water Rights Division. A roll-back to 2003 levels would decrease authorized funding levels and would decrease staff by 7 FTE, resulting in drastically reduced service to customers.

This legislative concept: (1) removes the sunset, (2) creates a couple of additional fees, to bring consistency to the overall fee schedule, and (3) adjusts the current schedule of fees to account for the increased cost of doing business; these increased costs are set each biennium by the Oregon Department of Administrative Services and are estimated at 13 percent for the 2013-15 biennium. This would maintain the 50-50 split between General Fund and Fees negotiated in 2009.

## **LC 662 Split a Permit into Multiple Ownerships**

As properties are split up and sold, the water right appurtenant to the land is also affected. It is not unusual to have one or more property owners ready to "prove up" on their portion of a water right, while the other owners are not yet ready or willing. Increasingly, banks favor loaning money for property with certificated water rights, instead of permitted water rights.

This concept would amend the permit amendment process, allowing property owners to certificate their portion of the original water right permit as they become eligible. This would not release any property owners from obligations that existed under the original permit. This concept would apply to domestic and agricultural permits only.



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## Attachment 2: WRD's Proposed 2013 Budget Packages

### **WRD Pkg # 101 Water-Use Reporting Program** **\$175,000**

This re-instates the Department's water-use reporting position, necessary to fulfill statutory responsibilities and provide technical assistance to water users. Restoration of this staff position will enable the Department to work with water users to fulfill the requirements of their water use for measurement and reporting, essential tools for the Department in managing water resources on a sustainable basis for the economy and for future generations.

(IWRS Recommended Action 2b)

*Funding: \$175,000 General Fund*

*Staff: 1.0 FTE*

### **WRD Pkg # 102 Instream Protections** **\$368,129**

This package is designed to help the state meet its instream needs, by first collecting necessary data and then implementing greater instream protections. Oregon's ability to meet instream needs is limited by our understanding of these needs. While scientists know that ecosystems and species depend upon both surface water and groundwater, they have not yet identified or quantified all of the ecological functions that rely on groundwater and surface water. Nor have they fully quantified the ecological degradation that occurs with differing qualities and quantities of water. On implementation of this proposal, staff will develop criteria for basins throughout the state, and a schedule for completion of each basin. This package compliments a request at Oregon Department of Fish and Wildlife for biologists to determine the flow needs of native fish species. An OWRD hydrologist and permit writer will help develop and process resulting requests for instream water rights.

(IWRS Recommended Action 3a, 11b)

*Funding: \$368,129 General Fund*

*Staff: 2.0 FTE*

### **WRD Pkg # 103 Re-institute the Measurement Cost Share Fund** **\$50,000**

Water-use measurement is critical to successful management of the resource. The cost to install weirs, flumes, meters, or other appropriate measurement devices can be significant, up to several thousand dollars for water users with multiple diversions. This concept re-capitalizes an already existing fund to assist water users with this partnership in water management. Installation costs are shared; users then provide water-use measurements.

(IWRS Recommended Action 2b)

*Funding: \$50,000 General Fund*

*Staff: -0- FTE*

### **WRD Pkg #104 Place Based Planning – Template Development and Pilot Test** **\$250,000**

Because every river basin in Oregon is unique with widely varying ecological issues, community values, and economic dynamics, place-based integrated water resources planning is vital to meeting Oregon's water management challenges. Such planning enables communities to engage in a collaborative process to determine how best to meet their unique instream and out-of-stream water needs.

Place-based planning allows conversations to take place at a scale that a statewide water strategy may not be able to achieve. Voluntary place-based plans can "roll up" and inform the statewide Strategy. Place-based plans can leverage technical and funding resources available through the

Strategy to make more meaningful local impacts. This approach is meant to empower communities to conduct voluntary, place-based integrated water resources planning in consultation with the State.

In order to successfully take a place-based approach to water resources management, the State must develop a template of guidelines to ensure that plans are integrated, addressing instream and out-of-stream needs—including water quantity, water quality, and ecosystem needs. Plans should account for the interaction between groundwater and surface water. Plans should also delineate and describe local population centers, key industries, and listed fish species, among the many factors that influence the use and management of water. Plans should conclude by identifying water development projects that merit further effort.

The Department proposes a \$250K grant to one Oregon community, to build local capacity and ensure its ability to participate in this process as a full partner. This pilot will be used as a guide for future integrated water resource planning at the local level and provide feedback as to the utility of the template as a local planning tool.

(IWRs Recommended Action 9a)

*Funding: General Fund - \$250,000*

*Staff: -0- FTE*

#### **WRD Pkg # 105 Groundwater Data Collection and Integration**

**\$1,415,646**

Provides resources necessary to manage Oregon groundwater in a manner that maximizes the opportunity for use while ensuring sustainability for existing users and future generations. Expands the current well net by 30 percent, reduces the number of wells without confirmed identification information by 50 percent, and eliminates all backlog related to groundwater applications. Incorporates the existing well information data base with the surface water data base and hosts the information on the Department's web page.

(IWRs Recommended Action 1b, 1c)

*Funding: \$1,415,646 General Fund*

*Staff: 3.0 FTE*

#### **WRD Pkg # 106 Surface Water Data Collection and Integration**

**\$1,116,225**

The issues addressed here are two-fold: 1) a need to upgrade surface water data collection in Oregon; and 2) agency coordination of collecting and sharing of data across local, state, federal, and tribal agencies. The Department's network of stream gages is important in the management of Oregon's surface water and groundwater resources. It is used by a variety of agencies and other entities for making daily decisions, protecting and monitoring instream flows, forecasting floods, designing infrastructure such as bridges and culverts, planning for recreational activities, better understanding how much water is available for new uses, and tracking long - term trends such as climate change and drought.

OWRD completed an evaluation of the stream gage network in Oregon and published the analysis in 2012. The report focused on the gage network as used for water distribution among water right holders, including instream water rights. The report identified a need for 70 new stream gages with 30 of those as high priority installations.

(IWRs Recommended Action 1b, 1c)

*Funding: \$1,116,225 General Fund*

*Staff: 5.0 FTE*

**WRD Pkg # 107 Metolius Modeling** **\$100,000**

In 2011 the Legislature passed HB 3623, which requires the Department report every five years to the Legislature on the status of the Deschutes Basin study area, including "...a review of groundwater uses on the headwaters of the Metolius River and other key reaches of the Metolius River System." No funding was provided for this new groundwater investigative work. This funding provides the Department with the ability to model specific impacts on the Metolius River that result from water use. This information will be reported to the Legislature as required by HB 3623.

*Funding: \$100,000 General Fund*

*Staff: .5 FTE*

**WRD Pkg # 108 Water Right Management Fee** **\$2,000,000**

The proposed water right management fee provides a stable funding source for core responsibilities related to water right management. Funds will be obtained through an annual flat fee for each water right held by an entity, with a maximum amount that can be charged any one entity no matter how many rights are held. Monies collected are to be deposited in the Water Rights Operating Fund and used to fund field, technical and administrative activities involving water rights management such as the administration, maintenance and protection of the water right permit and certificate system. These funds represent the implementation costs to establish the system and infrastructure for collection resulting in up to \$2 million in the first biennium and \$10 million in additional Other Funds in future biennia.

(IWRS Recommended Action 13b)

*Funding: \$2,000,000 Other Fund fees*

*Staff: 7.0 FTE*

**WRD Pkg #201 Implement the Integrated Water Resources Strategy** **\$209,773**

Implementation of the Integrated Water Resources Strategy, published in 2012, includes development of further project details for legislative action, fulfillment of scientific, outreach, and policy obligations, and documentation of lessons learned. In the coming years, an effective state-wide Strategy will require efforts at the local level as well, to develop place-based strategies that can guide not just one, but a series of water development projects over time. Funding should be available for the State to facilitate place-based planning and sustain the type of effort and expertise required to implement the water development strategies that emerge. The four primary agencies responsible for development of Oregon's Integrated Water Resources Strategy—Water Resources Department, Department of Environmental Quality, Department of Fish and Wildlife, and Department of Agriculture—are all proposing packages to fund coordination of IWRS implementation.

(IWRS Recommended Action 13a)

*Funding: \$209,773 General Fund*

*Staff: 1.0 FTE*

**WRD Pkg #202 Conduct Basin Groundwater Investigations** **\$250,000**

Understanding Oregon's groundwater resource is clearly articulated in Oregon's Integrated Water Resource Strategy in Recommended Action 1a. In developing the Strategy staff found the number one request WRD receives from county and other local planners is for more information about groundwater resources: "Where is the groundwater?" "How much groundwater is available?" and "What rate of pumping is sustainable?" This information is an important input for economic development throughout Oregon. Funds will be used to partner with the U.S. Geological Survey (USGS). OWRD and USGS scientists will jointly conduct comprehensive



basin-by-basin groundwater investigations that include data surveys, define relationships between groundwater and surface water, and provide science-based tools for managing groundwater on a sustainable basis.

(IWRS Recommended Action 1a)

*Funding: \$250,000 General Fund*

*Staff: -0- FTE*

**WRD Pkg #203 Field Services**

**\$343,430**

These positions are partial fulfillment of the Integrated Water Resources Strategy (IWRS), a three-year planning process that culminated in adoption by the Water Resources Commission in August 2012. The Strategy and associated work plan present a need for rebuilding field capacity to meet the water distribution and water supply demands, including: flow restoration, protection of instream water rights, monitoring compliance, and stream flow gaging. The two positions include a watermaster in Wallowa County and an assistant watermaster in Klamath County.

(IWRS Recommended Action 1c, 10)

*Funding: \$343,430 General Fund*

*Staff: 2.0 FTE*

**WRD Pkg #204 Create a Water Supply Development Program**

**\$23.6 Million**

This budget corresponds with Legislative Concept #659, requesting almost \$24 million in lottery-backed bonds for the state to serve as:

- 1) *Investor.* As an example, the State of Washington's Columbia River Program is evaluating the feasibility of several above- and below-ground storage options. During the next few years, the State of Oregon may have an opportunity to investment in such projects, gaining access to short- and long-term water supplies.
- 2) *Broker.* The U.S. Army Corps of Engineers operates a series of dams in the Willamette, the Rogue, and other river basin systems in Oregon. These storage systems hold millions of acre-feet of water; not all the water has been contracted for use. The Corps has expressed interest in contracting with the state for bulk purchases of water that the state would then sell to willing buyers.
- 3) *Funder.* Oregon does not currently have grant and loan programs available, in all locations or for all water users, expressly for the implementation of water resource development projects.
- 4) *Banker.* Other western states have the ability to directly acquire water, on either a temporary or permanent basis, to use as new water supply, mitigation, or other beneficial use.

A fee charged for the state's purchase and sale of water could partially offset the Department's expenses for these services.

(IWRS Recommended Action 10e)

*Funding: Lottery Backed Bonds - \$23,597,488*

*Staff: 4 FTE*

**WRD Pkg #205 Water Development Loan Fund – Umatilla Project** **\$11 million**

The 2009 Legislature authorized General Obligation bonds in the amount of \$10 million during the 2009-11 biennium and \$15 million during the 2011-13 biennium for the implementation of water development projects in the Columbia River Basin. The Umatilla Basin Aquifer Recovery Project has successfully provided “water on the ground” and proven the viability of the aquifer recharge project. The Umatilla Basin Water Commission has requested that the bonding authority be deferred until 2013-15 in the event that they find it beneficial to use the Water Development Loan Fund to finance the next phase of the project.

(IWRs Recommended Action 10b)

*Funding: \$11,061,191 Bonds (Article XI-I(1))*

*Staff: -0- FTE*

**WRD Pkg #206 – Feasibility Study Grants** **\$1.3 million**

Oregon is facing increasing water demand and increasingly scarce water supplies. To adequately meet Oregon’s diverse water demands now and into the future, Oregonians must use their water wisely and efficiently; that means looking more closely at innovative water conservation and reuse programs and environmentally sound storage projects that capture available water so it can be put to beneficial use when needed. Across the state, there are numerous potential water supply projects that are not pursued because a lack of funds necessary to cover the up-front costs related to feasibility study. This presents a considerable and often insurmountable barrier. “Up-front costs” may include hundreds of thousands of dollars to conduct the numerous feasibility studies and environmental analyses required before a project can begin.

The Water Conservation, Storage and Reuse grant program provides cost share to individuals and communities who are seeking local solutions to their water shortage problems.

Biennium	Requests		Awards	
	# of Applications	\$ Dollars	# of Applications	\$ Awarded
2009-11	35	\$5,040,943	21	\$1,370,875
2011-13	23	\$2,295,774	19	\$1,123,835
2013-15 Proposed	30	\$2,500,000	18	\$1,075,000

*Funding: Lottery Backed Bonds - \$1,301,385*

*Staff: .5 FTE*

**WRD Pkg #207 Update Water Right Certificates with Contact Information** **\$370,402**

Today, there are no statutory provisions that allow the name on a water right certificate to be changed, even if the holder of the certificate has passed away or sold off interests. There are about 85,000 water rights in Oregon today. The state needs the ability to respond to holders of water rights who are asking to modify the names on these certificates, especially in light of recent court cases, favoring the name written on a water right certificate over other factors. Such a change would facilitate other process efficiencies, such as communicating with water right holders, mapping water rights, updating the water right database, and improving compliance with measurement and reporting conditions. Such a change would involve a fee to pay for the required staff time. This request corresponds with Legislative Concept 658.

(IWRs Recommended Action 2d)

*Funding: \$370,402 Other Fund fees*

*Staff: 2.0 FTE*

**WRD Pkg #208 Extend Water Right Transactions Fee****\$1,000,000**

The Department's fee schedule for water right transactions is scheduled to sunset in 2013. If it does so, fee levels will revert back to levels established in 2003. The current fee schedule funds about \$2.1M worth of work and 16 FTE in the Water Rights Division. A roll-back to 2003 levels would decrease both the funding and staffing levels by 7 FTE. The Department has worked with stakeholders to develop a Legislative Concept (LC 661) that would eliminate the 2013 sunset. Any reduction in fees levels from those described in Legislative Concept 661 will result in fewer staff available to process the applications received by the agency. This will cause wait times for processing to increase.

(IWRS Recommended Action 13b)

*Funding: \$1,000,000 Other Fund fees*

*Staff: 7.0 FTE*

**WRD Pkg #209 Make Permanent an Existing Assistant Watermaster****\$167,632**

Currently, the Department has a limited duration assistant watermaster in the Deschutes Basin. This package requests making this limited duration position permanent, to help the Department conduct its core responsibilities, including: settling water right disputes; protecting existing instream and out-of-stream water rights; collecting hydrologic data for planning and regulation; inspecting dams and wells for structural integrity and public safety. This position is funded from other funds, including monies from Deschutes, Jefferson, Crook, and Klamath counties.

*Funding: \$167,632 Other Funds (Counties)*

*Staff: 1.0 FTE*