



Oregon

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Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Racquel Rancier, Senior Policy Coordinator

SUBJECT: Agenda Item L, May 30, 2014
Water Resources Commission Meeting

Legislative Update: 2015 Legislative Concept Development

I. Issue Statement and Background

The Department has been working to develop its Legislative Concepts for the 2015 Legislative Session. The Commission will engage in a discussion, followed by a request to endorse the proposed Legislative Concepts.

II. Discussion

The 2015 Oregon Legislature will convene on January 12-14, 2015 for organizational days to swear-in newly elected officials, elect legislative leaders, adopt rules, organize and appoint committees, and begin introducing bills. The 2015 Session will be a long session, not to exceed 160 days, in which both biennial budgets as well as public policy matters will be addressed.

Legislative Concept development for the 2015 Legislative Session began in March. Two meetings were held with stakeholders to review and discuss the concepts. Summaries of the proposed Legislative Concepts are attached.

Currently, the Department of Administrative Services (DAS) and the Governor's office are reviewing the requests and determining whether or not to approve the concepts for drafting. If approved for drafting, the Department will work with Legislative Counsel to develop the bill language. The concepts must be finalized and filed with DAS by the end of November.

IV. Conclusion

State agencies have begun developing legislative concepts and will need to work towards finalizing concepts in the coming months. The Department seeks input from the Commission regarding the proposed Legislative Concepts and whether to move them forward.

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Attachment 1: Summary of Legislative Concepts

Temporary Transfer and Lease of Determined Claims in the Klamath Adjudication

Background: Claims for pre-1909 state water rights and federal reserved water rights are validated, quantified and determined through a process called a water right adjudication. The first phase of an adjudication is administrative, with the Oregon Water Resources Department (OWRD) reviewing claims, hearing contests to claims, reviewing the administrative law judge's proposed orders, and ultimately determining claims in a Findings of Fact and Final Order of Determination (FFOD). The second phase involves court review of the FFOD. After hearing exceptions, the Court will issue a water rights decree affirming or modifying the FFOD.

According to Oregon law, the watermaster can regulate in favor of determined claims upon the Director delivering the FFOD to the court, but unlike certificated or decreed rights, determined water right claims are not eligible for temporary transfers or instream leases until a final court decree is issued. Temporary transfers allow for a change in the place of use of a water right for up to five years, as well as a change in the point of diversion if necessary to carry out the change in the place of use. Similarly, a lease allows for the temporary use of a water right for an instream purpose for a period of up to five years. In both instances, the change cannot result in injury to existing water rights and the department may revoke a lease or temporary transfer if, at any time, the department determines that the use is causing injury to an existing water right.

Proposal: This concept would allow the temporary transfer or instream lease of determined water right claims in the Klamath Basin Adjudication. This would provide holders of determined water right claims with protection from forfeiture, some flexibility in how they manage their water, as well as the opportunity to lease water, and potentially be paid for putting water instream. In addition, it will be needed to help meet the provisions of the Upper Klamath Basin Comprehensive Agreement. The bill would sunset January 2, 2020.

Implementation of the Klamath Basin Restoration Agreement

Background: In early 2010, after years of intense and often difficult negotiations, the Klamath Basin Restoration Agreement (KBRA) and the associated Klamath Hydroelectric Settlement Agreement (KHSA) were signed. Broadly speaking, the KBRA provides the means to settle key disputes about water allocation in the Klamath River Basin, provide enough water to sustain the Upper Klamath Basin's agricultural economy, and help fish populations to recover by restoring habitat.

The KBRA acknowledges that implementation of the Agreement may result in the loss of property tax revenues to Klamath County due to reduced agricultural land values in the Klamath Reclamation Project resulting from reduced water deliveries, and to reduced agricultural land values in the areas above Upper Klamath Lake due to the voluntary retirement and/or sale of water rights.

Proposal: As signatory to the KBRA, the State of Oregon has committed to support legislative authorization and appropriation of funds to compensate Klamath County for the anticipated loss of property tax revenues. In addition to property tax revenue compensation, the commitment includes providing grants for renewable energy, energy efficiency, and water conservation projects that serve agricultural users in Klamath County.

Implementation of the Upper Klamath Basin Comprehensive Agreement

Background: The 2014 Upper Klamath Basin Comprehensive Agreement addresses some of the issues that were not resolved in the KBRA, particularly in the off-project region. The four co-equal goals of the Upper Klamath Basin Comprehensive Agreement include: (i) To support the economic development interests of the Klamath Tribes; (ii) To provide a stable, sustainable basis for the continuation of agriculture in the Upper Klamath basin; (iii) To manage and restore riparian corridors along streams that flow into Upper Klamath Lake in order to achieve Proper Functioning Conditions permanently; and (iv) To resolve controversies regarding certain water right claims and contests in the Oregon Klamath Basin Adjudication.

Proposal

The Upper Klamath Basin Comprehensive Agreement (Section 12.4) requires the state to seek legislation that would provide the authority to the Klamath County Circuit Court to hear exceptions on less than all of the water right claims in the Adjudication and issue more than one final and appealable decree called “partial final decrees.” The legislation will also provide for the issuance of conditional partial decrees. In both instances, the agreement outlines the circumstances in which conditional and partial final decrees will be allowed. It also provides that a conditional partial final decree does not constitute a decreed water right for the purposes of Oregon water law until such decree is no longer conditional.

In addition, the Agreement requires the formation of a Joint Management Entity (JME) as an Oregon tax-exempt non-profit corporation, responsible for administration of certain provisions of the Agreement. The JME will include a Board of Directors (Board) responsible for decision-making. The intent of the agreement is that the Board will be comprised of representatives of the Klamath Tribes, the United States, the State (OWRD), and the Landowner Entity. Currently, the Department does not have authority to sit on the JME Board as a voting member. Until legislation is enacted authorizing the State to participate as a voting member, the state members can only provide recommendations to the JME. This concept would authorize the Department to sit as a voting member of the Board of the JME. The legislation would be limited to OWRD’s authority with respect to the JME and the Agreement.

Sunset on Irrigation District Pilot Project allowing Temporary Transfers within Boundaries

The 2003 Legislative Assembly authorized a pilot project allowing qualifying districts to make annual place of use changes to water rights within their legal boundaries without making application for a temporary transfer. To temporarily change the place of use of water rights under the pilot program, districts are required to satisfy standard water right transfer criteria and maintain records. The purpose of the pilot project was to provide districts greater water management flexibility, while ensuring no injury to other water rights or expansion of the authorized irrigated acres. The program was extended during the 2007 and 2009 Legislative sessions and is currently set to sunset June 30, 2016. A report to the legislature is due January 31, 2015. This concept would require a report to the Legislature January 31, 2021 and extend the sunset to January 2, 2022.

Authority to Enter into Certain Agreements with other Entities

Background: Although the Department believes it has broad authority, the Department does not have the explicit authority to enter into agreements with other entities. Other states agencies in Oregon have already sought and received specific authority to do so. In fact, the Water Resources Department is the only natural resources agency that does not have some type of contracting authority. The Department seeks to clarify that it has specific authority to enter into contracts and agreements with other entities, receive and issue grants, and exchange information and services. The proposed language is adapted from Oregon Department of Agriculture's statutes.

Proposal: The specifics of this concept require further development, but could include provisions that would allow the Department to:

- Enter into contracts and other agreements with, and receive funds from, any department or agency of the United States.
- Enter into contracts and other agreements with authorized departments and agencies of this state and other states, units of local government, Indian tribes, public and private corporations and other persons of this state, in connection with the administration of laws of this state.
- Enter into contracts with foreign governments or foreign government agencies, and contracts and other agreements with entities located outside of the United States, for the department or the foreign government, agency or person to provide services pertaining to water resources.
- Receive grants from any source and may issue grants to a department or agency of this state or other states, any department or agency of the United States, a unit of local government, an Indian tribe, a public or private corporation or another person for any purpose related to the laws administered or enforced by the department.
- Exchange information and services with any public or private body or person described in this subsection, in order to minimize duplication of public services, investigations, inspections and enforcement activities.
- Receive compensation, and make payment, for services rendered in performance of contracts and other agreements authorized by this subsection.

Department Funding and Water Rights Management Fee

Until 2013, the Water Resources Department, which is heavily dependent on the General Fund for its operating budget, had experienced a declining share of the General Fund, as well as declining dollars overall for the past two decades. Unlike many of its sister 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, increasingly concerned about these trends, formed a revenue enhancement subcommittee. One revenue solution developed by the Water Resources Commission is an annual fee, charged to all those holding water rights (e.g., permits, certificates, or decrees). These water rights are used beneficially for industrial, agricultural, municipal, and instream purposes. Under this concept, all water right holders would be subject to an annual fee of \$100 per water right, with a cap of \$1,000 for all but municipal customers. Municipal user's fees would be capped at \$2,500.