



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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### MEMORANDUM

TO: Water Resources Commission

FROM: Racquel Rancier, Senior Policy Coordinator

SUBJECT: Agenda Item I, August 22, 2014  
Water Resources Commission Meeting

### Legislative Update

#### I. Background

At the May Commission meeting, staff introduced the Department's proposed legislative concepts for the 2015 Legislative Session. Requests were due May 2, with placeholder information due July 11. Legislative Counsel has already begun drafting several of the concepts. The concepts must be finalized and filed with DAS by the end of November.

#### III. Discussion

Summaries of the Legislative Concepts are included in Attachment 1. Since the last Commission meeting, the Department has worked to refine two of the concepts.

*Water Right Management Fee and Department Funding:* After speaking with several members of the Commission, stakeholders, and the Governor's Office, it was apparent that further discussions needed to occur in regards to generating a stable source of funding for the Department. Therefore, the Department will not be introducing a legislative concept to institute an annual water right management fee. In order to continue the momentum behind efforts to provide stable funding for Department activities, the proposed legislative concept would convene a task force comprised of stakeholders, a member of the Commission, and several legislators to recommend options for funding.

*Department Contracting and Grant Authorities:* The Department has also worked to refine the placeholder bill regarding the Department's authorities. The Department undertakes a number of activities to purchase goods and services, such as water measuring devices and gauges, well drilling, and other activities that are not typical goods and services under the Public Contracting Code. The legislative concept provides the Department with more explicit authority to enter into contracts and agreements with other entities and exempts the Department from the Public Contracting Code.

The Department also has identified a number of activities that it would like to ensure it has clear authority to undertake. These include providing grants for place-based planning, dam safety modification, and dam emergency action plans. It also would like to make clear that it has authority to require emergency action plans and contract with others to evaluate dams.

*Levee Technical Assistance:* The Department has also been collaborating with the Infrastructure Finance Authority on a bill that would provide the Department with authority to assist in levee inspections and certifications. As discussed at the May Commission meeting, the Department has a budget package proposal to fund one Professional Engineer to conduct this work.

## **V. Summary**

The Department will continue to engage in discussions with stakeholders, the Commission, and the public on the proposed legislative concepts in preparation for the 2015 Legislative Session. All agency legislative concepts must still receive final approval by the Governor's office in order to be introduced as bills.

Attachment 1: Summaries of Legislative Concepts

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## 2015 Water Resources Department Legislative Concepts

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### **Temporary Transfer and Lease of Determined Claims in the Klamath Adjudication**

*IWRS Action # 10, 11b*

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.

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. The bill would sunset January 2, 2020.

### **Implementation of the Klamath Basin Restoration Agreement**

*IWRS Action # 2c, 9c*

In early 2010, 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. As signatory to the KBRA, the State of Oregon has committed to support legislative authorization and appropriation of funds to compensate Klamath County for potential economic losses. In addition, 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**

*IWRS Action # 2c, 9c*

The 2014 Upper Klamath Basin Comprehensive seeks to: (i) support the economic development interests of the Klamath Tribes; (ii) provide a stable, sustainable basis for the continuation of agriculture in the Upper Klamath basin; (iii) manage and restore riparian corridors along streams that flow into Upper Klamath Lake in order to achieve Proper Functioning Conditions permanently; and (iv) resolve controversies regarding certain water right claims and contests in the Oregon Klamath Basin Adjudication.

Section 12.4 of the agreement 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 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.

### **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.

### **Water Resources Department Authorities**

*IWRS Action # 7a, 10, 9a, 9c*

Although the Department believes it has broad authority, the Department generally does not have explicit authority to enter into contracts and other agreements with other entities. Currently, the Department must undertake these activities through authorities under the Department of Administrative Services and the Public Contracting Code. The Department undertakes a number of activities to purchase goods and services such as water measuring devices and gauges, well drilling, and other activities that are not typical goods and services. Other states agencies in Oregon have already sought and received specific authority allowing them to enter into contracts and exempting them from the Public Contracting Code.

In addition, the Department also has identified a number of activities that it would like to ensure that it has clear authority to undertake. These include providing grants for place-based planning, dam safety, and dam emergency action plans. It also would like to make clear that it has authority to require emergency action plans and contract with others to evaluate dams.

### **Water Resources Department Funding**

*IWRS Action # 13b*

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, reductions in staffing capacity, as well as declining dollars overall for the past two decades. This has been compounded by a corresponding decrease in water management funds from county and federal partners. In the meantime, the Department workloads are increasing in complexity, particularly in regards to groundwater science. The Water Resources Commission, the overarching policy body, increasingly concerned about these trends, previously formed a revenue enhancement subcommittee. This Legislative Concept would continue the Commission's efforts by establishing a task force to identify and recommend solutions to stabilize and increase Department funding.