



Oregon

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MEMORANDUM

TO: Water Resources Commission

FROM: Dwight French, Water Rights Services Administrator

SUBJECT: Agenda Item F, May 11, 2017
Water Resources Commission Meeting

Preview of Upcoming Rulemaking: Divisions 54, 86, 87, 300, 310, and 500

I. Introduction

The Water Resources Department (Department) is planning four rulemaking efforts covering six divisions, relating to: 1) Water Rights; 2) Municipal Water Management and Conservation Plans (WMCP); 3) Reclaimed Water; and 4) Convert a Hydroelectric Water Right to an Instream Right. During this informational agenda item, staff will provide a preview of the upcoming rulemaking efforts which will begin this summer or fall.

These four rulemakings relate to water rights processing, involving programs administered by the Water Right Services Division.

II. Background

Water rights, Divisions 300, 310 and 500

As discussed during the last Commission meeting, the Department has been examining water right process related to Internal Management Directives (IMDs), also referred to as "internal memorandums," to determine which ones, if any, need to be incorporated into rules. During the internal review the Department found six memos that the Department uses that need to be converted into rules. These changes will take place within the Division 310 rules.

Also, a couple years ago, the Department met with water right attorneys to discuss the water rights process and see if there were suggested changes to the rules or even statutes that the group would like to see pursued. The group agreed that it would be beneficial to change the 310 rules to add a rule to clarify that there was an opportunity, after a protest has been filed, to enter into settlement discussions instead of moving towards a more expensive contested case hearing.

Lastly, also related to the water rights process, is the subject of definitions. The water rights process uses definitions from Division 300 while the Department's basin programs rules uses definitions from Division 500. The two sets of definitions cause confusion amongst the water user community and Department staff. The goal is to move Division 500 definitions into Division 300, add a couple definitions and fix a couple of other discrepancies.

Municipal Water Management and Conversation Plans, Division 86

Division 86 established the guidelines and requirement for the preparation, submission, review and approval of WMCP for municipal water suppliers. For small municipal water suppliers the requirement may pose significant financial or staffing burdens and may not be applicable or relevant. Additionally, the uniform requirements of the current rule may deter some small municipal water suppliers from preparing and submitting a WMCP, forgoing the benefits of developing certain aspects of the plan that may be advantageous the supplier such as water curtailment and or water conservations plans.

The proposed rule would allow small municipal water suppliers to submit a WMCP for small water suppliers that require a level of detail and analysis the Department has deemed appropriate for a small municipality. The information required in this proposed rule amendment would continue to ensure that water is being used responsibly, that emergency plans are in place, and that water rights and diversion amounts are fully understood by small water suppliers.

Reclaimed Water, Division 87

Oregon statutes have allowed the use of reclaimed water by municipalities since 1991. The statutes exempt users of reclaimed water from water right permit requirements if the use of the reclaimed water is authorized by certain DEQ permits and other specific conditions are satisfied. Persons intending to make use of reclaimed water are required to file registrations with the Department. The Department has received approximately 100 registrations since adoption. This rulemaking effort is an attempt to implement ORS 537.132(6) with respect to the standards for the registration process which include: registration requirements; map requirements; completeness review; exemption requirements; renewal requirements; protection for existing water rights; and restrictions on reclaimed water rights. This proposed rule would support the Task Force on Drought Emergency Response Recommendation H, and Integrated Water Resources Strategy Recommendation M. This would be a new division of rules.

Converting a Hydroelectric Water Right to an Instream Right, Division 54

ORS 543A.305 provides, under certain conditions, that up to the full amount of a hydroelectric water right should be converted to an in-stream water right. The Department may include mitigation measures to avoid injury and to ensure the continuation of authorized water uses by other existing water rights as of October 23, 1999. Although the hydroelectric water right near Grants Pass has been converted instream (it was downstream of a very large reservoir so it was determined that other users would not be impacted) the case of the conversion of the hydroelectric right on the Hood River (formerly PacifiCorp's Powerdale Project) has highlighted the need to define procedures and standards for the conversion instream, and for mitigation measures to ensure the continuation of other existing uses. This would be a new division of rules.

III. Conclusion

The Department is planning on convening four separate Rules Advisory Committees starting this summer or fall.